

RESIDENTIAL TENANCY AND OTHER ISSUES IN RESPECT OF ELDER CARE IN BRITISH COLUMBIA

Presenter: Christine Elliott, M.A. (Oxon), LL.B. (University of Victoria, BC)
Lawyer, BC
(604) 802-4460
celliot@cehql.com
www.cehql.com

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Introduction:

I will start with my conclusion which is that I am impressed with the level of thought and care that has gone into the topic of elder care in BC. I think we fail to give sufficient credit to the government and the not for profit and private providers of group living as a part of elder care.

The fact that there are so many points of view and different concerns is evidence of the complexity of the issue. We are all different and yet, in the elder portion of our lives, with the “sandwich generation” fully engaged with their own jobs and raising their families, it falls increasingly on the “government” and private providers to provide elder care. More thought is always helpful as circumstances and understanding changes, but I do not think, at least in British Columbia, that we have been remiss in addressing this most important issue.

Elder care requires that the government and private providers of elder care must respect both the individual as well as the group when individuals are living in a group setting. For a group setting, issues must be raised and dealt with in a practical, affordable and respectful fashion.

The purpose of this paper is to describe elder care in BC and to focus on what appears to be uncharted territory on how or if legislation relating to *all* residential tenancies should apply to all levels of elder care and whether our tax system applies in an equitable fashion across the levels of care.

I have used the Province of British Columbia as my proxy for all comments because I live and practice law here. As well, I have had the great pleasure and honour of acting for a number of care providers over many years, as well as a few residents. I have also reviewed government documents which relate to elder care. I believe I have seen how our system works from the perspective of private operators, not-for-profit operators, residents and government.

A. Who is “Elder”?

Apparently I am, at what I thought was the “young” age of 50. A few months ago, I took my nephews to a movie and the cashier asked if I wanted the seniors’ discount. I was so surprised that I said “no” without asking for their definition and therefore may have missed a discount!

I am not able to find a definition of “elder” in any British Columbia legislation which relates to elder care. Instead, BC uses a functional test according to how much assistance a person needs as being the de

facto definition, even though the vast majority of those of use our elder care “system” are people that we would, I think, identify as being elderly.

B. Description of British Columbia’s Structure for Provision of Elder Care.

Elder care is not warehousing. It is housing which provides appropriate supports for the activities of daily living. I know of no better example of this than “Kendal at Ithaca” in Ithaca, New York State, being the home of the Ivy League University of Cornell. <http://kai.kendal.org/> While Kendal does not make this claim on their web site, it is said around Cornell that Professors tend to move into Kendal when independent living is no longer possible. These same Professors take the bus to their emeritus offices for as long as they are able. But the real claim to fame of Kendal at Ithaca is that it is thought to have the *second* best Physics Department in the United States.

In BC, we have the following main models of elder housing, ranging from most independent to most dependent:

1. *Ordinary independent living*, whether at home or in rental accommodation.
2. *Supportive Housing*, which provides *hospitality services*, such as meals, but no *personal health services* so as to count as “Assisted Living”. This may occur at home or in ordinary rental accommodation or in “Supportive Housing” facilities which are generally operated by private operators.
3. “*Assisted Living Residence*” in BC is a defined term under our *BC Community Care and Assisted Living Act* SBC 2002 c. 75 (“**CCALA**”) to describe living in a residence with both hospitality and up to two prescribed personal health services.
http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02075_01
4. “*Community Care Facility*” in BC is a defined term under CCALA and describes residents living in housing provided by a publicly funded or privately funded operator where residents receive the highest levels of care short of being in a hospital. This level of care is subject to rigorous licensing standards under CCALA and is not the subject of this paper. The primary focus of this type of care is health service and there is no concept of “independent living” as there is with Supportive Housing and Assisted Living. Without a licence issued pursuant to the CCALA one cannot operate a Community Care Facility.

This paper will concentrate on Supportive Housing and Assisted Living, while referring to BC’s residential tenancy legislation which has relevance to both of the foregoing since they serve residents who still value and can manage “independent living”. Community Care Facilities, concentrating as they do on complex care, do not raise the same “tenancy” issues as do Supportive Housing and Assisted Living.

C. Ordinary Independent Living, whether at Home or in Rental Accommodation

Most people prefer to live for as long as possible at home. When assistance is required with meals or some types of medical care, it is possible for these services to be provided to the resident at their home.

Those people who own their homes have all the rights of any other owner of real estate in British Columbia.

Residential rental accommodation in British Columbia is regulated by the *BC Residential Tenancy Act* SBC 2002 c.78 (“RTA”): http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02078_01 As well, BC does have a program called SAFER which provides rental supplements for seniors in financial need to assist with payment of their rent <http://www.bchousing.org/programs/SAFER>. There are other in-home services available.

The RTA prescribes a required form of residential tenancy agreement (unless the lease is for more than a 20 year term in which case the RTA does not apply): <http://www.rto.gov.bc.ca/documents/RTB-1.pdf>

It is worth taking a look at the required form, a copy of which is attached to this paper (**Attachment #1**). It is short, a mere 6 pages in length. The required form anticipates that, in most instances, the tenancy, at least from the tenant’s perspective, is for a month to month term, allowing a tenant to give notice to terminate the lease on at least 1 month’s notice. Landlords by contrast, may terminate a residential tenancy agreement only for a few specified reasons (such as non-payment of rent), and are limited as to when and how much of a rental increase can be made. The required form also requires the landlord to make services available which are essential to the tenant’s use of the residential unit such as kitchen equipment, heat, electricity and water. No hospitality services or personal health services, such as delivery of meals or medication, are provided by the landlord to a residential tenant.

The BC Residential Tenancy Branch provides landlords and tenants with information and dispute resolution services: <http://www.rto.gov.bc.ca/> The dispute resolution services include dealing with rental increases, repairs and maintenance by the landlord and termination of a residential tenancy agreement by the landlord.

D. Supportive Housing

“Supportive Housing” is a term which has been adopted in general parlance in BC to describe accommodation where the residents may contract for an array of *hospitality services* which may include food services, flat linen service, weekly housekeeping, social and recreational programs. The Supportive Housing may also have available on site access to hair/barber salon, room service, personal laundry services. However, these services *do not include* the *personal health services* which would make the Supportive Housing an Assisted Living facility, which would require *registration* under CCALA and the resulting additional governmental oversight.

There is no governmental financial support directed at Supportive Housing.

This means that Supportive Housing is either provided by not-for-profit societies or by private providers. I cannot over-emphasize the level of “risk” which either type of provider takes in providing Supportive Housing. The buildings are “purpose built” with residential units which are smaller than normal residential market housing. There are other “purpose built” changes: accommodation of parking and recharging of scooters, accommodation of walkers, wheelchairs and showers which are accessible by wheel chair.

In Kinsella’s book *Field of Dreams*, he says “*build it and they will come*”. The operator knows that with Supportive Housing all the market studies prior to construction cannot guarantee success for a highly

significant investment. Supportive Housing capable of serving, for example, ◆100 residents, might cost in the range of ◆\$20,000,000 to build and commission, depending on where the Supportive Housing is built and resulting land cost. It would be the rare exception in which construction was not financed with an institutional lender with personal guarantees by the ultimate owners of the Supportive Housing. Building Supportive Housing is not an endeavour undertaken lightly.

If the Supportive Housing is not successful, then the use of the building would need to be changed. It might be difficult to attract residential tenants to smaller suites than normal, and the housing kitchen would not be of any use at all.

Every package of documents which I have seen for an Occupancy Agreement for Supportive Housing has mirrored significantly the same sort of agreements seen in Assisted Living. An example which contains most if not all of the common elements of the Occupancy Agreements which may be used for Supportive Housing is produced as a “best practices model” by BC Seniors Living Association <http://www.bcsla.ca/home.html>. I attach a copy. (**Attachment #2**) I have not attached the many other versions I have seen of this documentation in part because of copyright issues but also because the “best practices model” is very close to most of the documentation that I have seen.

The attached Supportive Housing Agreement deals with many items not found in the prescribed tenancy agreement under the RTA such as: references to hospitality service, use of oxygen and smoking to name three. As with Assisted Living, some combination of the following agreements is also included in the resident’s package of Supportive Housing documents:

- Resident Pre-Authorization for Suite Entry
- Motorized wheelchair and Powered 3-wheelers, rules regarding parking, re-charging and third party insurance
- Insurance to be maintained by the resident for their own property
- Meal Package
- Hospitality services, including those listed above
- Rules governing smoking and use of Oxygen tanks (some providers prohibit smoking altogether)
- Consent to use of pictures in advertising materials, or not, as the case may be.

Some Supportive Housing Agreements are explicit about what the Supportive Housing is not: it is not a care facility, it is not Assisted Living and residents must be able to manage their own medical requirements and be in reasonable health and be reasonably ambulatory. Further, no prescribed personal assistance will be provided in order to maintain the independence of the resident.

These Supportive Housing Agreements (in common with the Assisted Living Agreements) often run to about 18 pages (and often are virtually identical except for the references to personal health services) versus the 6 page prescribed Residential Tenancy Agreement. In my view, the Supportive Housing Agreement does not describe a normal residential tenancy arrangement.

E. Is Supportive Housing Governed by the BC Residential Tenancy Act?

As discussed above, the RTA is the long-established method of dealing with residential tenancy disputes in BC. The RTA assumes that both landlord and tenant have the full capacity and energy to engage in what can be a complex arbitration process. I do not think that any assumption of full capacity and energy on the part of a resident of Supportive Housing can be made. It is not uncommon for a resident

of Supportive Housing to already have in place a Power of Attorney (“**POA**”) who may have taken care of the resident’s financial affairs for some time. In other words, I think it may be unfair to impose the existing RTA regime on Supportive Housing which is an entirely different arrangement.

Regardless of my own views, one must look at the law. On the side of the argument that these Supportive Housing Occupancy Agreements are subject to the RTA, there is the definition of a “tenancy agreement” in Section 1 of the RTA:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

All tenancy agreements are mandatorily governed by the RTA. I have bolded the words at the end of the definition to highlight the inclusion of a “*licence to occupy a rental unit*”. Without this specific wording, one might interpret all the hospitality services delivered in Supportive Housing, which involve entering a resident’s suite, as taking away “exclusive possession”, being the hallmark of a lease. The common law might interpret Supportive Housing Agreements as being a “licence to occupy” only which does not confer exclusive possession. However it is clear that a “licence to occupy” is included within the “tenancy agreements” governed by the RTA. [As a footnote here, it does not matter for HST purposes whether the agreement is a tenancy giving exclusive possession or a non-exclusive licence to occupy: the *Canada Excise Tax Act* now provides for self assessment of HST when an operator finishes construction and is triggered when the operator gives an individual “use’ or “possession” of a unit.]

On the side of the argument that the Supportive Housing Occupancy Agreements are *not* subject to the RTA, there is an argument that the Supportive Housing Occupancy Agreements fall within the express exclusions from the RTA as set out in Section 4 of the RTA:

4 This Act does not apply to

...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

...

(f) living accommodation provided for emergency shelter or transitional housing,

The Section 4(c) RTA “shared kitchen facilities” exemption is based on the argument that, although the individual units of Supportive Housing have kitchenettes, the residents make substantial use, and are intended to make substantial use, of the meals provided in a common area for all residents and personnel.

The Section 4(f) RTA “transitional housing” exemption is based on the argument that the resident will be transitioning to an Assisted Living facility where personal health services are provided.

Arbitrators under the RTA do not publish their decisions. Section 64(2) of the RTA provides that:

(2) The director must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other decisions under this Part.

Anecdotally, I am aware of a claim made by a resident under the RTA regarding hospitality services. The operator elected to put the question of jurisdiction to one side and have the RTA arbitrator hear the case on its merits. I am advised that that arbitrator, having heard the evidence on both sides (presented by a POA for a resident) decided that the RTA had no jurisdiction. This anecdote has no probative value:

I have searched eCarswell for “Residential Tenancy Agreement” and found 82 cases within the last 10 years, none of which dealt with this issue. Since “Supportive Housing” is a somewhat new phenomenon, it does not surprise me that the RTA issue has not been resolved by the courts.

Whether or not the RTA applies to Supportive Housing Agreements is of vital importance for both residents and operators. Residents want to know their rights. Operators are keenly interested for a different reason. By definition, the operator of Supportive Housing is dealing with a population of residents who are at higher risk than the population generally. A resident may fall, suffer unexpected adverse changes in their mental health, suffer incontinence within the housing, leave a stove on, run up and down the halls at night banging on doors and so on. A resident of Supportive Housing who becomes confused or exhibits behaviours which put the other residents at risk of physical harm is clearly not in appropriate housing. Operators are keenly aware of their obligations to each resident but also to preserve the safety and well-being of residents generally.

Regardless of the plethora of reasons why a normal residential landlord and tenant might find themselves using the RTA arbitration process, in the case of Supportive Housing, the primary concern of the operator is to ensure that the resident is in appropriate accommodation for their physical and mental condition. I have reviewed a number of articles and theses which support the RTA process for Supportive Housing and for Assisted Living. The main thrust seems to be that there is no established mechanism to deal with fee disputes. With the greatest of respect, I think normal residential tenancies and Supportive Housing are dealing on entirely different time scales. Having a RTA arbitration date set for 3 months in the future is workable for a normal landlord and tenant. Such a delay in Supportive Housing would jeopardize the health and well-being of the resident and the other residents in the Supportive Housing. As well, BC Small Claims Court is available for fee disputes.

Regrettably, speed is not one of RTA’s strengths. I have applied (in non elder-housing situations) for termination of a residential lease due to inappropriate behaviour which risked the other residents in the building. It took me 3 months within the Residential Tenancy Branch to obtain an order terminating the Lease. I then had to apply for an Order for Possession in the BC Supreme Court, which took another month. The Tenant then applied for judicial review under the BC *Judicial Review Procedure Act* of both the Residential Tenancy Branch and BC Supreme Court decisions adding further months to the process. This was an extraordinary case. However, the point is that the time taken to use the RTA avenues when a resident is at risk to themselves as well as to their fellow residents is, in my view, a poor decision for everyone.

If asked, in such an unfortunate situation by an operator of Supportive Housing, I think I would explain the significant risk that the RTA applies, but that I think that any breach of the RTA at that point would need to be weighed against the safety of the resident in question and equally the safety of other residents of the Supportive Housing. It may be that invoking the eviction provisions of the Assisted Living legislation, or if necessary, calling an Ambulance, might be the only safe thing to do for the sake of all parties.

I should also add that for Supportive Housing as for Assisted Living and Community Care Facilities, when I say that the operator may be a “not for profit” entity, one should not necessarily assume that no profit is being made. Each type of housing requires management services and on-site personnel (whether as employees of the operator or contracted out) and I do not know of a “not for profit” in which the cost of management and on-site personnel is provided without “profit”: a fee to the management entity and wages to the on-site personnel.

F. Assisted Living

Assisted Living represents the threshold of care at which *regulation* specifically aimed at elder housing commences in BC. I say “regulation” because no licence is required – technically anyone could register and operate an Assisted Living facility provided that the operator meets the Assisted Living registration requirements. Regulation occurs through the Community Care and Assisted Living Act SBC 2002 c.75 already defined above as “CCALA” and found at:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02075_01

CCALA started regulating Assisted Living facilities in 2002. CCALA applies whether or not the Assisted Living residence is privately or government funded.

The definition of Assisted Living must be viewed both from the perspective of the residence but also from the perspective of the type of resident who is appropriate for residence there.

Section 1 of CCALA defines “Assisted Living Residence” as follows:

“assisted living residence” means a premises or part of a premises, other than a community care facility,
(a) in which housing, hospitality services and at least one but not more than 2 prescribed services are provided by or through the operator to 3 or more adults who are not related by blood or marriage to the operator of the premises, or
(b) designated by the Lieutenant Governor in Council to be an assisted living residence;”

The “prescribed services” are set out in the Community Care and Assisted Living Regulation, BC Reg 217/2004: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/13_217_2004 to mean the following:

“prescribed services” mean the following:
(a) regular assistance with activities of daily living, including eating, mobility, dressing, grooming, bathing or personal hygiene;
(b) central storage of medication, distribution of medication, administering medication or monitoring the taking of medication;
(c) maintenance or management of the cash resources or other property of a resident or person in care;
(d) monitoring of food intake or of adherence to therapeutic diets;
(e) structured behaviour management and intervention;
(f) psychosocial rehabilitative therapy or intensive physical rehabilitative therapy.

The “prescribed services” constitute personal health services. The regulation of the prescribed services is carried out primarily through the Office of the Assisted Living Registrar (“OALR”), which is discussed

below. It is important to note that the Assisted Living Residence may provide *only* 2 of the prescribed services: those 2 services apply to the entire Assisted Living Residence and not resident by resident.

In addition to the 1 or 2 prescribed services, the operator of an Assisted Living Residence must also provide five hospitality services specified by the OALR: meals, housekeeping, laundry of flat linens and provision of clothes washing machines for residents, social and recreational opportunities and a 24-hour emergency response system.

Assisted Living is only for adults over the age of 19 +; most commonly seniors: people with mild cognitive impairments and/or some physical disabilities. Younger adults might include those with MS. There are a number of nuances in the application of CCALA to residents of Assisted Living residences (e.g. where one spouse has capacity and one does not) which are beyond the remit of this paper.

What is within the remit of this paper is the limited capacity of Assisted Living: Section 26(3) of the CCALA, provides that:

(3) A registrant must not house in an assisted living residence persons who are unable to make decisions on their own behalf.

At the same time, Section 26(5) of the CCALA provides that:

(5) A registrant must ensure that the assisted living residence is operated in a manner that does not jeopardize the health or safety of its residents.

What this means is that the operator of an Assisted Living residence keeps an eye out for the well-being of the resident, and if the resident's needs exceed the service delivery capacity of the Assisted Living Residence, or the resident becomes unable to make decisions on their own behalf, the Assisted Living operator must develop an exit plan in consultation with: the resident; their physician; family and support network; and health authority (in BC our Government health care is managed by regions and each region is managed by a "health authority") case manager, if appropriate. In the meantime, before a suitable community care facility is available, the operator must ensure that increased services are provided to that resident to minimize risk and meet the higher care needs of such a resident.

Essentially, Section 26(3) of the CCALA amounts to "eviction" of the resident, but only through a carefully thought out process, in which all stakeholders participate, and which is intended to place the resident in a community care facility with higher care capacity more appropriate to the resident's needs.

This system is not perfect. One instance in 2009 involved a resident of an Assisted Living residence having a cache of weapons in her room. The Assisted Living residence was attempting to carry out the eviction process above and the resident shot three people, thankfully non-fatally. The resident is now in the midst of criminal proceedings. While this incident was very unfortunate, I do not think that the RTA process would have produced any better result. If anything, the incident is a reminder that we need constantly to be thinking of new and better ways of carrying out highly emotional tasks such as moving a resident to a different facility with a higher level of health services more appropriate for their needs.

To repeat, as was said above, the form of Assisted Living Agreements mirror very closely those being used in Supportive Housing, with the addition of *personal health services*, which cannot be provided in Supportive Housing. What the Supportive Housing Agreements are seeking to do is to mirror the

thoughtful, engaged manner of ensuring that residents are living in accommodation suitable to their needs rather than relying on the less time-sensitive provisions of the RTA, the more so when, by definition, this discussion is most likely taking place because the resident no longer has capacity to make decisions and must rely on the POA, if there is one, or family members, if there are any, or the case manager of the applicable health authority to represent their interests.

G. Office of the Assisted Living Registrar (“OALR”):

The regulation of Assisted Living residences is directed towards health and safety of the residents.

<http://www.hls.gov.bc.ca/assisted/>

The mandate of the Assisted Living Registrar, as stated on the OALR’s web page above, pursuant to the CCALA, is to protect the health and safety of the assisted living residents. This requires the Registrar to administer the provisions of the CCALA which apply to assisted living facilities and ensure that they meet BC provincial health and safety standards. This means OALR cannot deal with “tenancy issues”, a topic I will deal with separately below.

A right of appeal exists from the Assisted Living Registrar to the Community Care and Assisted Living Appeal Board. A review of their decisions at <http://www.CCALAab.gov.bc.ca/decisions.asp> shows that, while there are not many appeals, perhaps 10 in a year, that the legislation does have “teeth”. Having said that, some of the possible penalties such as closing down an Assisted Living residence must be treated gingerly because of the effect on elder residents. I think this is why on the OALR’s website the Assisted Living Registrar’s principles include investigation of “complaints using an incremental, remedial approach”.

I would adopt the OALR’s comments on the Office’s website that providing care for the frail and mentally impaired elderly is very challenging and requires a cohesive team of dedicated, empathetic and experienced caregivers. It often takes months to prepare an individual for the move into such a facility, then several months for that person to acclimatize and for the staff to learn to adjust to that particular individual’s unique personality and needs.

The OALR is complaint driven. Accordingly, an operator may not cease to provide care as a result of a complaint by a resident.

In addition to the OALR, residents also have recourse to the Office of the Ombudsperson in British Columbia: <http://www.ombudsman.bc.ca/seniors> which hears a variety of complaints relevant to seniors: particularly health related or with respect to income assistance. Again, the Ombudsperson does not deal with “tenancy issues” per se.

H. Assisted Living is not Governed by the BC Residential Tenancy Act

Currently, Assisted Living is not governed by the RTA. Section 4(g)(v) of the RTA provides that:

4 This Act does not apply to

...

(g) living accommodation

(v) in a housing based health facility that provides hospitality support services and personal health care...

Some commentators have identified the non-applicability of the RTA to Assisted Living as a gap in the system which deprives residents of their rights. I think this is an assumption that does not take into account the government-funding of about 90% of all Assisted Living residences in BC. The funding agreements between operators and health authorities, which can pay up to 30% of the base housing and services costs, contain standards of performance which do give government another window into Assisted Living residences. The Government is also a gate keeper in that a care manager for a health authority must approve a resident for entry into an Assisted Living residence which is Government funded. These government funding contracts are for a one year term. But an operator must find financing amortized over at least a 15 year term. No lender wants to lend money on a project which may not be sustainable if the Government elects not to renew funding. The gap is covered by CMHC insurance which will pay the lender if the Government funding contract is not renewed. CMHC insurance is not cheap and the fees can be significant. As well, lenders to operators want to ensure that the Assisted Living residence is in good standing with its licensing. Many eyes are watching the performance of any Assisted Living or Supportive Housing facility. The operator has all to gain from good management and much too lose from poor management.

I have anecdotally heard of one instance in which a resident of an Assisted Living residence did file a complaint with the Residential Tenancy Branch. The operator knew that the RTA did not have jurisdiction but opted to delay dealing with the “jurisdiction” issue so that the RTB arbitrator could hear all the facts and the “merits” of the complaint, after which the arbitrator concluded that RTA had no jurisdiction.

It is my own view that if there is a gap in the guarantee of elder rights with respect to the housing component of Assisted Living, as is the view of several people, that gap should be identified with more particulars and an appropriate solution reached. In my own view, I cannot identify a gap and do not think that a legislative solution is needed. I am mindful that every dollar spent on bureaucracy, the need for which has not been demonstrated, is a dollar which is not available to provide services to the elder residents.

In 2006, the current Government in British Columbia passed the *Tenancy Statutes Amendment Act* (the “RTA Amendment”). I attach a copy as **Attachment #3**. The Act was passed in 2006 but has not been brought into force by Order in Council of the same BC Government. The RTA Amendment would extend the coverage of the RTA to both Supportive Housing and Assisted Living. Section 57.2 of the RTA Amendment provides:

57.2 (1) The landlord and tenant of an assisted or supported living unit must enter into an agreement, in addition to the tenancy agreement, setting out the following:

(a) the agreed terms and conditions in respect of the hospitality services and personal care services provided under the tenancy agreement, including without limiting this,

(i) the nature and extent of hospitality services and personal care services provided under the service agreement to each occupant of the assisted or supported living unit,

(ii) the amount payable for each hospitality service and personal care service for a specified period, and, if the amount varies by the number of occupants of an assisted or supported living unit, the amount by which it varies,

(iii) the day in the month, or in the other period on which the tenancy is based, on which amounts payable under subparagraph (ii) are due,

(iv) the landlord's rights of entry for purposes of providing hospitality services or personal care services,

(v) if the occupants of an assisted or supported living unit include a person who does not require any hospitality services or personal care services, whether, and the extent to which, that person, or a guest, is required to use or pay for hospitality services and personal care services, and

(vi) if there is a separate rental unit in the residential property, all or a part of which consists of the assisted or supported living residence, reserved for guests of tenants, the terms on which the tenant's guest may use the unit;

(b) if part of the property of which the assisted or supported living residence is a part is used for a purpose other than as residential property, the uses of that part.

It could be argued that Section 57.2 of the RTA Amendment is already contained in most Supportive Housing and Assisted Living Agreements (indeed I cannot point to any such agreement that does not address these issues). It seems to me that the only difference between what happens now and what would happen if the RTA Amendment was ever brought into force is that an additional layer of bureaucracy would be brought into play with the RTA, which would not, to me, add value to the system already in place, but would place an additional financial burden on the Residential Tenancy Branch and add time to a process where time truly is of the essence for the best welfare of a resident.

It is to be hoped that the Government has realized that they do have a high degree of oversight over Assisted Living residences and that the sort of provisions and disclosure of services and the costs therefor have already found their way into the “best practices” documentation already in use in both Supportive Housing as well as Assisted Living residences.

Having said that, it would be useful to give guidance to Supportive Housing to confirm that the RTA does not apply, that, unlike other normal tenancy agreements, there is no prescribed form of agreement and that such agreements may permit notice periods by the operator of 30 or 60 days. The latter is sought by Supportive Housing operators who wish to operate with residents who are in reasonably good shape and are not increasing costs for all by bashing holes in drywall with walkers, or other mishaps which might be standard fare in Assisted Living residences.

H. Unexpected Challenges

In British Columbia, our municipalities are funded largely by property taxes. For the elderly, living on fixed incomes, this can be a burden. As a result, in BC, it is possible to defer payment of property taxes

under the "Property Tax Deferral Programs".

http://www.sbr.gov.bc.ca/individuals/property_taxes/property_tax_deferment/ptd.htm

This permits people over 55 to defer their property taxes. The taxes are still payable, and accrue interest at a rate that is 2% above the prime rate. To be eligible, you must own *and live* in your own home. The full amount of the deferred taxes are due on transfer of the house to a purchaser or on the death of the person who claimed deferral.

By contrast, the moment an elder resident of BC is unable to live independently and must move into an Supportive Housing, Assisted Living or Community Care facility, there is no shelter from these property taxes. This is not "visible" on the face of the charges payable by the resident of a care facility. The owner of the care facility is taxed and this tax must come from the funds which are paid either by the residents or the amounts payable by the Government to the care facility to provide the care. In any case, these are funds which are no longer deferred for the most vulnerable members of our community.

I. HST (Canadian Harmonized Sales Tax)

Many operators operate on the basis that so long as the value of services, whether hospitality or personal health services, provided by the operator to a resident is less than 50% of the total monthly charge to a resident, then, for HST purposes, under the "single supply analysis" the Supportive Housing or Assisted Living residence does not charge HST to residents. However, the moment that this figure exceeds 50% or the moment some of these services are provided by a third party directly to the resident and paid for by the resident directly to the third party other than the operator of the residence, then HST is applicable to the full amount of services provided by the operator, and to the full amount of services provided by a third party, respectively. These thresholds seem arbitrary but will be an important cost consideration to operators and residents.

This is a complicated and nuanced area of the law. Firstly, the "50% rule" assumes that the "package" of accommodation and services will be viewed as a single "supply" - as the case law says, the components must be interdependent and intertwined i.e. it is unrealistic to separate the services from the accommodation because it is not likely that they would be provided without the accommodation. The case on which we have based this view is ten years old and no one seems to quarrel with the idea.

However, it will always be open to the CRA (Canada Revenue Agency) to take issue with some aspect of the service. Secondly, some third party services could be exempt depending on the circumstances. Government funded personal care, and nursing care are examples.

For my conclusion to this paper, I refer you to page 1 of my paper.

J. Other Sources

I wish to acknowledge The Canadian Centre for Elder Law which, under the auspices of the British Columbia Law Institute, published its very thoughtful paper: Discussion Paper on Assisted Living: Past, Present and Future Legal Trends in Canada in October, 2008 at

http://www.bcli.org/sites/default/files/2008-10-31_Assisted_Living.pdf



Residential Tenancy Agreement

Important Notes:

#RTB-1

The Residential Tenancy Branch (RTB) is of the opinion that this Residential Tenancy Agreement accurately reflects the Residential Tenancy Act (RTA) and accompanying regulations. The RTB makes no representations or warranties regarding the use of this Agreement. A landlord and tenant may wish to obtain independent advice regarding whether this agreement satisfies their own personal or business needs. For the rental of a manufactured home and a manufactured home site under a single tenancy agreement, use this agreement form. For the rental of a manufactured home site use the Manufactured Home Site Tenancy Agreement.

The words **tenant** and **landlord** in this tenancy agreement have the same meaning as in the Residential Tenancy Act (RTA), and the singular of these words includes the plural. In this tenancy agreement, the words **residential property** have the same meaning as in the RTA. **Residential property** means a building, a part of a building or related group of buildings, in which one or more rental units or common areas are located; the parcel or parcels on which the building, related group of buildings or common areas are located; the rental unit and common areas and any other structure located on the parcel or parcels.

HOW TO COMPLETE THIS FORM ELECTRONICALLY: If you are accessing this agreement form from the B.C. Government Web site, it can be printed and completed by hand (*print clearly, using dark ink*) or filled out while at the computer workstation—simply type your responses in the boxes. If you cannot complete all the sections at the computer right away, you can print off what you have completed and fill in the remaining fields by hand. Note, you **cannot save** the completed form to your computer, therefore, after you complete the form, make sure you review the form for accuracy and print the number of copies you require **before** you leave the document or shut down the program/computer.

IF ADDITIONAL SPACE IS REQUIRED TO LIST ALL PARTIES, complete and attach Schedule of Parties (#RTB-26)

RTB-26 used & attached:

RESIDENTIAL TENANCY AGREEMENT between: *(use full, correct legal names)*

the LANDLORD(S): *(if entry for landlord is a business name, use the 'last name' field box to enter the full legal business name)*

<input type="text"/>	<input type="text"/>
last name	first and middle name(s)
<input type="text"/>	<input type="text"/>
last name	first and middle name(s)

and the TENANT(S):

<input type="text"/>	<input type="text"/>
last name	first and middle name(s)
<input type="text"/>	<input type="text"/>
last name	first and middle name(s)

ADDRESS OF PLACE BEING RENTED TO TENANT(S) *(called the 'rental unit' in this agreement):*

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="B.C."/>	<input type="text"/>
unit	address	city	province	postal code

ADDRESS FOR SERVICE of the **landlord** **landlord's agent:**

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
unit	address	city	province	postal code
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
daytime phone number	other phone number	fax number for service		

1. APPLICATION OF THE RESIDENTIAL TENANCY ACT

- 1) The terms of this tenancy agreement and any changes or additions to the terms may not contradict or change any right or obligation under the Residential Tenancy Act or a regulation made under that Act, or any standard terms. If a term of this tenancy agreement does contradict or change such a right, obligation or standard term, the term of the tenancy agreement is void.
- 2) Any change or addition to this tenancy agreement must be agreed to in writing and initialed by both the landlord and the tenant. If a change is not agreed to in writing, is not initialed by both the landlord and the tenant or is unconscionable, it is not enforceable.
- 3) The requirement for agreement under subsection (2) does not apply to:
 - a) a rent increase given in accordance with the Residential Tenancy Act,
 - b) a withdrawal of, or a restriction on, a service or facility in accordance with the Residential Tenancy Act, or
 - c) a term in respect of which a landlord or tenant has obtained a dispute resolution officer's order that the agreement of the other is not required.

2. LENGTH OF TENANCY *(please fill in the dates and times in the spaces provided)*

This tenancy starts on:
day month year

Length of tenancy: *(please check a, b or c and provide additional information as requested)*

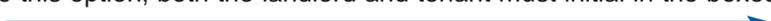
This tenancy is:

a) on a month-to-month basis

b) for a fixed length of time: ending on:
length of time day month year

At the end of this fixed length of time: *(please check one option, i or ii)*

i) the tenancy may continue on a month-to-month basis or another fixed length of time

ii) the tenancy ends and the tenant must move out of the residential unit
If you choose this option, both the landlord and tenant must initial in the boxes to the right. 

Landlord's
Initials

Tenant's
Initials

c) other periodic tenancy as indicated below:

weekly bi-weekly other:

3. RENT *(please fill in the information in the spaces provided)*

a) **Payment of Rent:**

The tenant will pay the rent of \$ each *(check one)* day week month to the landlord on the first day of the rental period which falls on the *(due date, e.g., 1st, 2nd, 3rd, 31st)* day of each *(check one)* day week month subject to rent increases given in accordance with the RTA.

The tenant must pay the rent on time. If the rent is late, the landlord may issue a Notice to End Tenancy to the tenant, which may take effect not earlier than 10 days after the date the notice is given.

b) **What is included in the rent:** *(Check only those that are included and provide additional information, if needed.)*

The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Water | <input type="checkbox"/> Stove and Oven | <input type="checkbox"/> Window Coverings | <input type="checkbox"/> Storage |
| <input type="checkbox"/> Electricity | <input type="checkbox"/> Dishwasher | <input type="checkbox"/> Cablevision | <input type="checkbox"/> Garbage Collection |
| <input type="checkbox"/> Heat | <input type="checkbox"/> Refrigerator | <input type="checkbox"/> Laundry (free) | <input type="checkbox"/> Parking for <input type="text"/> vehicle(s) |
| <input type="checkbox"/> Furniture | <input type="checkbox"/> Carpets | <input type="checkbox"/> Sheets and Towels | <input type="checkbox"/> Other: <input type="text"/> |
| <input type="checkbox"/> Additional Information: <input type="text"/> | | | |

4. SECURITY DEPOSIT AND PET DAMAGE DEPOSIT

A. Security Deposits

The tenant is **required to pay** a security deposit of \$
by
day month year

B. Pet Damage Deposit not applicable

The tenant is **required to pay** a pet damage deposit of \$
by
day month year

- 1) The landlord agrees
 - a) that the security deposit and pet damage deposit must each not exceed one half of the monthly rent payable for the residential property,
 - b) to keep the security deposit and pet damage deposit during the tenancy and pay interest on it in accordance with the regulation, and
 - c) to repay the security deposit and pet damage deposit and interest to the tenant within 15 days of the end of the tenancy agreement, unless
 - i) the tenant agrees in writing to allow the landlord to keep an amount as payment for unpaid rent or damage, or
 - ii) the landlord applies for dispute resolution under the Residential Tenancy Act within 15 days of the end of the tenancy agreement to claim some or all of the security deposit or pet damage deposit.
- 2) The 15 day period starts on the later of
 - a) the date the tenancy ends, or
 - b) the date the landlord receives the tenant's forwarding address in writing.
- 3) If a landlord does not comply with subsection (1), the landlord
 - a) may not make a claim against the security deposit or pet damage deposit, and
 - b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both.
- 4) The tenant may agree to use the security deposit and interest as rent only if the landlord gives written consent.

5. PETS

Any term in this tenancy agreement that prohibits, or restricts the size of, a pet or that governs the tenant's obligations regarding the keeping of a pet on the residential property is subject to the rights and restrictions under the Guide Animal Act.

6. CONDITION INSPECTIONS

- 1) In accordance with sections 23 and 35 of the Act [condition inspections] and Part 3 of the regulation [condition inspections], the landlord and tenant must inspect the condition of the rental unit together
 - a) when the tenant is entitled to possession,
 - b) when the tenant starts keeping a pet during the tenancy, if a condition inspection was not completed at the start of the tenancy, and
 - c) at the end of the tenancy.
- 2) The landlord and tenant may agree on a different day for the condition inspection.
- 3) The right of the tenant or the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if that party does not comply with section 24 and 36 of the Residential Tenancy Act [consequences if report requirements not met].

7. PAYMENT OF RENT

- 1) The tenant must pay the rent on time, unless the tenant is permitted under the Act to deduct from the rent. If the rent is unpaid, the landlord may issue a notice to end a tenancy to the tenant, which may take effect not earlier than 10 days after the date the tenant receives the notice.
- 2) The landlord must not take away or make the tenant pay extra for a service or facility that is already included in the rent, unless a reduction is made under section 27 (2) of the Act.
- 3) The landlord must give the tenant a receipt for rent paid in cash.
- 4) The landlord must return to the tenant on or before the last day of the tenancy any post-dated cheques for rent that remain in the possession of the landlord. If the landlord does not have a forwarding address for the tenant and the tenant has vacated the premises without notice to the landlord, the landlord must forward any post-dated cheques for rent to the tenant when the tenant provides a forwarding address in writing.

8. RENT INCREASE

- 1) Once a year the landlord may increase the rent for the existing tenant. The landlord may only increase the rent 12 months after the date that the existing rent was established with the tenant or 12 months after the date of the last legal rent increase for the tenant, even if there is a new landlord or a new tenant by way of an assignment. The landlord must use the approved Notice of Rent Increase form available from any Residential Tenancy Office or Service BC-Government Agent Office.
- 2) A landlord must give a tenant 3 whole months notice, in writing, of a rent increase. [For example, if the rent is due on the 1st of the month and the tenant is given notice any time in January, including January 1st, there must be 3 whole months before the increase begins. In this example, the months are February, March and April, so the increase would begin on May 1st.]
- 3) The landlord may increase the rent only in the amount set out by the regulation. If the tenant thinks the rent increase is more than is allowed by the regulation, the tenant may talk to the landlord or contact the Residential Tenancy Branch for assistance.
- 4) Either the landlord or the tenant may obtain the percentage amount prescribed for a rent increase from the Residential Tenancy Branch.

9. ASSIGN OR SUBLET

- 1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of 6 months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.
- 2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may apply for dispute resolution under the Residential Tenancy Act.

10. REPAIRS

- 1) Landlord's obligations:
 - a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
 - b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may

seek a dispute resolution officer's order under the Residential Tenancy Act for the completion and costs of the repair.

- 2) Tenant's obligations:
 - a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The tenant is not responsible for reasonable wear and tear to the residential property.
 - b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may seek a monetary order through dispute resolution under the Residential Tenancy Act for the cost of repairs, serve a notice to end a tenancy, or both.
- 3) Emergency Repairs:
 - a) The landlord must post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of the designated contact person for emergency repairs.
 - b) If emergency repairs are required, the tenant must make at least two attempts to telephone the designated contact person, and then give the landlord reasonable time to complete the repairs.
 - c) If the emergency repairs are still required, the tenant may undertake the repairs, and claim reimbursement from the landlord, provided a statement of account and receipts are given to the landlord. If the landlord does not reimburse the tenant as required, the tenant may deduct the cost from rent. The landlord may take over completion of the emergency repairs at any time.
 - d) Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of the residential property and are limited to repairing
 - i) major leaks in pipes or the roof,
 - ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - iii) the primary heating system,
 - iv) damaged or defective locks that give access to a rental unit, or
 - v) the electrical systems.

11. OCCUPANTS AND GUESTS

- 1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- 2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
- 3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the Residential Tenancy Act.

12. LOCKS

- 1) The landlord must not change locks or other means of access to residential property unless the landlord provides each tenant with new keys or other means of access to the residential property.
- 2) The landlord must not change locks or other means of access to a rental unit unless the tenant agrees and is given new keys.
- 3) The tenant must not change locks or other means of access to
 - a) common areas of residential property, unless the landlord consents to the change, or
 - b) his or her rental unit, unless the landlord consents in writing to, or a dispute resolution officer has ordered, the change.

13. LANDLORD'S ENTRY INTO RENTAL UNIT

- 1) For the duration of this tenancy agreement, the rental unit is the tenant's home and the tenant is entitled to quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance, and exclusive use of the rental unit.
- 2) The landlord may enter the rental unit only if one of the following applies:
 - a) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant a written notice which states
 - i) the purpose for entering, which must be reasonable, and
 - ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise;
 - b) there is an emergency and the entry is necessary to protect life or property;
 - c) the tenant gives the landlord permission to enter at the time of entry or not more than 30 days before the entry;
 - d) the tenant has abandoned the rental unit;
 - e) the landlord has an order of a dispute resolution officer or court saying the landlord may enter the rental unit;

- f) the landlord is providing housekeeping or related services and the entry is for that purpose and at a reasonable time.
- 3) The landlord may inspect the rental unit monthly in accordance with subsection (2) (a).
- 4) If a landlord enters or is likely to enter the rental unit illegally, the tenant may apply for a dispute resolution officer's order under the Residential Tenancy Act, to change the locks, keys or other means of access to the rental unit and prohibit the landlord from obtaining entry into the rental unit. At the end of the tenancy, the tenant must give the key to the rental unit to the landlord.

14. ENDING THE TENANCY

- 1) The tenant may end a monthly, weekly or other periodic tenancy by giving the landlord at least one month's written notice. A notice given the day before the rent is due in a given month ends the tenancy at the end of the following month. [For example, if the tenant wants to move at the end of May, the tenant must make sure the landlord receives written notice on or before April 30th.]
- 2) This notice must be in writing and must
 - a) include the address of the rental unit,
 - b) include the date the tenancy is to end,
 - c) be signed and dated by the tenant, and
 - d) include the specific grounds for ending the tenancy, if the tenant is ending a tenancy because the landlord has breached a material term of the tenancy.
- 3) If this is a fixed term tenancy and the agreement does not require the tenant to vacate at the end of the tenancy, the agreement is renewed as a monthly tenancy on the same terms until the tenant gives notice to end a tenancy as required under the Residential Tenancy Act.
- 4) The landlord may end the tenancy only for the reasons and only in the manner set out in the Residential Tenancy Act and the landlord must use the approved notice to end a tenancy form available from the Residential Tenancy Office.
- 5) The landlord and tenant may mutually agree in writing to end this tenancy agreement at any time.
- 6) The tenant must vacate the residential property by 1 p.m. on the day the tenancy ends, unless the landlord and tenant otherwise agree.

15. LANDLORD TO GIVE TENANCY AGREEMENT TO TENANT

The landlord must give the tenant a copy of this agreement promptly, and in any event within 21 days of entering into the agreement.

16. RESOLUTION OF DISPUTES

Either the tenant or the landlord has the right to apply for dispute resolution to resolve a dispute, as provided under the Residential Tenancy Act.

17. ADDITIONAL TERMS

- a) Write down any additional terms which the tenant and the landlord agree to. Additional terms may cover matters such as pets, yard work, smoking and snow removal. Additional pages may be added.
- b) Any addition to this tenancy agreement must comply with the Residential Tenancy Act and regulations, and must clearly communicate the rights and obligations under it. If a term does not meet these requirements, or is unconscionable, the term is not enforceable.
- c) Attached to this tenancy agreement, there is is not an Addendum

If there is an Addendum attached, provide the following information on the Addendum that forms part of this tenancy agreement:

Number of pages of the Addendum:

Number of additional terms in the Addendum:

By signing this tenancy agreement, the landlord and the tenant are bound by its terms.

LANDLORD(S): (if entry for landlord is a business name, use the 'last name' field box to enter the full legal business name)

<input type="text"/>	<input type="text"/>
last name	first and middle name(s)
Signature: _____	Date: _____

<input type="text"/>	<input type="text"/>
last name	first and middle name(s)
Signature: _____	Date: _____

TENANT(S):

<input type="text"/>	<input type="text"/>
last name	first and middle name(s)
Signature: _____	Date: _____

<input type="text"/>	<input type="text"/>
last name	first and middle name(s)
Signature: _____	Date: _____

General Information about Residential Tenancy Agreements

Important Legal Document – This tenancy agreement is an important legal document. Keep it in a safe place.

Additional Terms – Any additional terms cannot contradict or change any right or duty under the RTA or this tenancy agreement.

Amendment of the RTA – The RTA or a regulation made under the RTA, as amended from time to time, take priority over the terms of this tenancy agreement.

Condition Report – The landlord and tenant are required to inspect the residential unit together at the beginning and end of the tenancy and complete a written condition report. If the landlord allows the tenant to have a pet after the start of the tenancy, an inspection report must be done on the day the tenant starts keeping a pet or on another day mutually agreed to by the landlord and tenant, unless the tenancy started on or after January 1, 2004, and a condition inspection report was completed at that time. A report may describe any damage, how clean each room is, and the general condition of the residential unit including: the floors, carpets, appliances, and paint on the walls. The report must be signed and dated by both the landlord and the tenant who made the inspection, and each should keep a copy.

Change of Landlord – A new landlord has the same rights and duties as the previous one and must follow all the terms of this agreement unless the tenant and new landlord agree to other terms.

Resolution of Disputes – If problems or disagreements arise, the landlord and tenant should try to talk to each other to find a solution. If they still cannot agree, either may contact the Residential Tenancy Branch for clarification of their rights and responsibilities or an intervention. If no agreement is reached, a landlord or a tenant may apply for a dispute resolution to get a decision. Many, but not all, kinds of disagreements can be decided by dispute resolution.

FOR MORE INFORMATION . . . visit our Web site: www.rto.gov.bc.ca

OR call the Residential Tenancy Branch at:

• in the Lower Mainland 604 660-1020 • in Victoria 250 387-1602 • elsewhere in B.C. call toll free: 1 800 665-8779



Disclaimer and Advisement

BC Seniors Living Association provides this contract as a best practices tool for the purposes of creating a Resident Occupancy Agreement that is in the best interests of both residents and residences.

Should your company choose to use all or part of this best practices agreement, BCSLA strongly recommends you have your final agreement reviewed by a lawyer to ensure you are covered for all aspects of insurance and liability.

The Board of Directors of BCSLA

Company Logo

Resident Occupancy Agreement

This OCCUPANCY AGREEMENT is made on the ___ day of _____ 20 ____.

1. THIS AGREEMENT

Between: _____
Owner/Operator

And: _____
The Resident(s)

And: _____
P.O.A. (if applicable)

**In consideration of the rent and the covenant and agreements herein set forth
Landlord and Resident agree as follows:**

The address of the Premises being rented to the Resident is:

Suite number: _____ (suite)

Address: _____ (Premises)

Residence: _____ (Residence)

The Owner/Operator hereby agrees to demise and rent the suite to the Resident on a month to month basis and agrees to provide to the Resident the services (as defined in Schedule "A"), and the Resident agrees to pay the Owner/Operator the rent herein stated under the following terms and conditions:

Occupancy Date: _____

Move-In Date: _____

Surname: _____ First name and initial: _____

Surname: _____ First name and initial: _____

The person(s) named above shall be the only permanent occupant(s) of the Premises.

2. THIS OCCUPANCY AGREEMENT CONSISTS OF THE FOLLOWING:

All items are included and form part of this Agreement.

Inclusions - Monthly Basic Fee – Schedule “A”	_____
Suite Condition Report – Schedule “B”	_____
Parking – Schedule “C”	_____
Motorized Scooters and Wheelchairs – Schedule “D”	_____
Pet Authorization – Schedule “ E”	_____
Assisted Living Fees – Schedule “F”	_____
Meal package breakdown	_____

Any change or addition to this contract must be agreed in writing and initialed by both parties. If a change is not agreed to in writing, is not initialed by both parties, or is unconscionable, it is not enforceable.

This does not apply to an accommodation fee increase.

STANDARD TERMS OF THE OCCUPANCY AGREEMENT

3. MONTHLY FEES

The Total Monthly Fees are payable to the Owner/Operator by automatic preauthorized payments on the first day of every month during the occupancy.

Accommodation Fee: (Schedule A)	\$ _____
Second Occupant:	\$ _____
Additional Meal Service: (if applicable)	\$ _____
Parking Fee: (if applicable)	\$ _____
Pet Fee: if applicable (Schedule E)	\$ _____
Storage Locker Fee: (if applicable)	\$ _____
Assisted Living Fee Package: (Schedule F)	\$ _____
Total of Monthly Fees:	\$ _____

Accommodation Rate: The rent is fixed for a one year period from the date of occupancy. Care Services and Meals may be increased on a ninety (90) days notice to the Resident. However, if the Resident’s level of assistance changes, this does not prevent the site from increasing fees to meet the Resident’s requirements.

Second Resident Charge: The Resident will pay to the Owner/Operator a monthly fee (Second Resident Charge) of \$_____ in respect of the Second Resident’s occupancy and use of the suite and the provision of services to the Second Resident. The Second Resident Charge will be payable the first day of each month during the period of stay. It is incorporated in to the total monthly fee. If the Second Resident permanently vacates

the suite, then the Second Resident Charge will terminate when written notice has been provided to the Owner/Operator.

If payment is late, interest will be charged on all overdue accounts at the rate equal to the prime lending rate + 1%.

Should the Federal or Provincial Government implement a rental sales tax, such tax and, or other applicable taxes will be the responsibility of the Resident.

4. MOVING IN

If the Resident enters into occupancy of the Premises prior to the Commencement Date of this Agreement, the Resident shall pay on a per diem basis all fees payable under this Agreement for each day of occupancy. The per diem rate is equal to the Total Monthly Fees times 12 divided by 365.

5. SECURITY DEPOSIT

The Resident agrees to pay a security deposit of \$ _____ representing one half of the total monthly accommodation fee for the suite.

The Owner/Operator agrees:

- ◇ To keep the security deposit during the tenancy and pay interest on it,
- ◇ To return the security deposit and interest to the Resident.

6. FUTURE INCREASES:

The accommodation fee may be increased not more than once every 12 months, calculated on the anniversary date of this agreement, with 90 days written notice of the fee increase.

7. NOTICE OF TERMINATION

If a Notice of Termination is given by the Owner/Operator or by the Resident/P.O.A./Second Resident, such notice shall be in writing and signed by the party giving the notice.

Resident Notice to terminate the Resident Occupancy Agreement is one full calendar month. For example: If notice is given October 10, 2010, the Resident/Second Person/P.O.A. are responsible to pay rent to November 30, 2010. The Residency will end at 1:00 p.m. on the last day of the Termination date.

In addition, as of the day notice is given, the Owner/Operator shall hereby be authorized to enter the suite, upon giving the Resident 24 hrs notice, for the purpose of showing the suite to potential new residents, making repairs that may be necessary to the safety, preservation, or restoration of the suite.

A Resident Notice to Terminate requires a suite inspection and an itemized written account of the general state of repair of the suite by the Owner/Operator and Resident and/or P.O.A. to be jointly completed at end of tenancy.

It is agreed and understood that a Resident's effects will be removed from the suite by the Resident/P.O.A. by the end of the termination period. If additional time is required for such removal, advance arrangements must be made and an additional monthly fee will be pro-rated.

8. RESPONSIBILITY OF ESTATE

If the Resident should pass away while this agreement is in force, the Agreement will terminate as per "notice of termination".

The Estate of the Resident is responsible for payment in full of all fees calculated to the date of termination.

9. THE FAMILY/P.O.A./HEALTH CARE ADVOCATE

The parties agree that they shall be able to exercise all of the rights and responsibilities of the Resident under this Agreement and may make whatever decisions or provide whatever notices may be given under this Agreement as though they were the Resident. In the event that the Resident and parties disagree under this Agreement, the parties agree that the Owner/Operator may in all respects rely on the decisions of the party and shall not be bound by any direction of the Resident to the contrary. The parties agree to:

- ◇ Assist with and participate in any and all evaluations of the Resident's needs including needs for support as may be provided by the Owner/Operator;
- ◇ Provide the Resident with needed personal items and furnishings for the suite;
- ◇ Remove the Resident's furnishings and personal effects from the suite at the time of termination of this Agreement;
- ◇ Assist in making decisions concerning the welfare of the Resident and in transferring the Resident to an appropriate care facility if the need arises.

The parties further agree to be fully responsible to the Owner/Operator for any and all amounts due to the Owner/Operator on account.

The parties further agree to be bound by the terms of this Agreement insofar as and in the same manner as though the Responsible Party were the Resident.

If no other parties are named or is a party in this Agreement, the Owner/Operator agrees that this Agreement shall be read as though this Section and all other references to the parties were not in this Agreement.

10. ONGOING HEALTH ASSESSMENT

The health and/or supportive care needs of the Resident may be assessed from time to time by the Owner/Operator. If, following an assessment, it is determined by the Owner/Operator that the Resident has personal assistance needs which are beyond the realm of the community or places others at risk or substantially interferes with other resident's reasonable enjoyment, the Owner/Operator will be entitled to terminate this Agreement with proper cause and documentation.

The Resident and/P.O.A. agree to immediately cooperate in locating alternate accommodation for the Resident and to expedite a move to a more appropriate setting. While the Resident is awaiting the move to the appropriate setting as a result of the above, the Owner/Operator will assist the Resident and/or parties to organize additional personal assistance that is required. The Resident is responsible for the additional costs.

If the Resident's health deteriorates beyond the level of service of the Owner/Operator, arrangements must be made for care and services as deemed necessary by the Owner/Operator, and if the Resident refuses to make these arrangements or leave for appropriate care, the Resident and/or Responsible Party agrees to indemnify the Owner/Operator fully for any costs incurred by the Owner/Operator to provide extra care services or to regain possession of the suite, including legal fees, disbursements and GST.

The foregoing does not place the Owner/Operator under any duty to provide care beyond that contracted for by the Resident under this Agreement and which legally may be provided by the Owner Operator.

Risk

The Resident understands that the property, which the Premises forms a part of, is neither a nursing home, nor is the property to be considered a health care facility in any way. We are an Independent Living Community/Assisted Living Community. The Resident is not under constant supervision, or observation, and health care assistance is not readily available. The Resident understands that the design of the building may entail risks to the Resident that they may experience in any property where there is not constant supervision or observation.

11. OXYGEN EQUIPMENT

The Resident shall inform the Owner/Operator in writing of any intent to use oxygen life-support equipment in the suite. The installation and removal of such equipment are the sole responsibility of the Resident and should be maintained by an accredited oxygen therapy company.

12. LIABILITY AND INSURANCE

Unless the Owner/Operator is in breach of its lawful duty, the Resident hereby releases the Owner/Operator from any liability in connection with the use by Resident or guests of the suite, including without limitation any services, furnishings, equipment, and facilities provided by the Owner/Operator, including injuries or damages caused by an act or omission or act by any Resident or the Owner/Operator or its agents, employees, or independent contractors. The Owner/Operator shall exercise reasonable care and attention to prevent such injuries or damages.

The Resident is required to purchase and maintain in full force a tenant's package insurance policy which includes:

- ◇ "All risks" insurance on all personal property owned by the Resident and Second Resident for the full replacement cost basis without deduction or depreciation;
- ◇ Comprehensive personal liability insurance, including Resident's legal liability;
- ◇ Coverage for additional living expenses; and

- ◇ Coverage for any water damage that may occur from an accident or omission by the Resident.

Upon request, the Resident shall provide the Owner/Operator with a copy of all relevant insurance policies together with evidence of renewal thereof from time to time.

Notwithstanding the above section the Resident shall be responsible for, and shall promptly pay to the Owner/Operator upon demand, at the Owner/Operator's sole discretion, any damage caused by the act, omission or negligence of the Resident, or any person for whom the Resident is responsible, to the Residence, the grounds thereof or other property of the Owner/Operator. The Owner/Operator may recover the cost of such damage from the Resident as rent in arrears.

13. USE OF SUITE AND REPAIRS

Residents and guests shall use the suite for private residential purposes only. Premises must not be used for any unlawful, commercial, or business purposes.

The Resident shall abide by all policies, rules, and regulations of the Residence as revised from time to time.

The Resident shall not make or cause to be made any structural alterations to the resident suite. Painting, papering, and redecoration shall be done only with the prior consent of the Owner/Operator. Hooks, nails, tape, or other devices for hanging pictures or plants, or for affixing anything to the structure shall be of a type approved by Owner/Operator and shall be used only with the Owner/Operator's prior consent. At the sole discretion of the Owner/Operator, the Resident may be responsible for the removal or replacement of any alterations to the suite upon his or her termination of occupancy.

14. COMMON AREAS

The Resident shall use the common areas of the Residence prudently, safely, and equitably and shall conform to all notices, rules, and regulations posted on or about the building concerning the use of common areas. This includes, without limitation, the use of the laundry rooms, recreation rooms, parking areas, and any restrictions on use by Residents and others, including children. The use of any of the common areas of the Residence shall be at risk of the Resident(s) or his or her guests.

15. LOCKS AND KEY FOBS

- ◇ The door to the Resident's suite shall be kept locked at all times.
- ◇ Neither the Owner/Operator nor the Resident may change or add a lock or security device to the suite.
- ◇ The Owner/Operator may change the lock on the main doors of the Residence. The Owner/Operator will then supply the Resident with a copy of the new key fob. Key fobs are for the exclusive use of the Resident. The Resident agrees not to make extra copies or provide any keys to other persons for any lock in the Residence or suite except with the prior written consent of the Owner/Operator. At the end of the occupancy, the Resident must return the key fob(s) to the Owner/Operator.
- ◇ The Owner/Operator may charge a fee for replacement of key fob(s).

16. ENTRY OF THE SUITE BY THE OWNER/OPERATOR

For the duration of the Agreement, the suite is the Resident's home and the Resident is entitled to privacy and quiet enjoyment and to exclusive use of the suite.

The Owner/Operator may enter the suite only if one of the following applies:

- ◇ Regularly scheduled services e.g. housekeeping, personal assistance, maintenance
- ◇ The Owner/Operator gives the Resident written notice which states why the Owner/Operator needs to enter the suite and specifies a reasonable time not sooner than 24 hours or not later than 72 hours from the time of giving notice;
- ◇ There is an emergency – that is if there is a real or perceived emergency as determined by the Owner/Operator, or if the Owner/Operator has a reasonable fear that the Resident's health or physical well-being may be at risk and/or property at risk;
- ◇ The Resident has abandoned the suite; or
- ◇ The Owner/Operator/staff is providing additional services as contracted by the Resident under Ongoing Health Assessment.

17. REGISTERED CARE ATTENDANTS

Prescribed services will be administered by a Registered Care Attendant (R.C.A.) as determined by the resident. The Resident is responsible for directing the actions of the R.C.A.

18. CONDUCT

In order to promote the convenience, safety, welfare, and comfort of other Residents on the property, the Resident and guests shall not disturb, harass, or annoy other occupants of the building or neighbours, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time and shall maintain quiet between 11 p.m. and 7 a.m. Any Resident who does not comply with this request may have their occupancy terminated following progressive enforcement.

19. STORAGE

The Resident must not store any items and/or bicycles, wheelchairs, scooters, or walkers on balconies or in hallways, and must store property in proper storage areas. The Resident must not store any hazardous materials in the suite.

20. PARKING (see Schedule "C")

Parking is on a first come basis. A monthly fee as per Schedule "C" may be charged.

When a vehicle is no longer owned or driven by the Resident, the Resident will remove the vehicle from the property. If the Resident does not remove the vehicle, the Owner/Operator may take steps to have it removed at the expense of the Resident.

The resident must keep in full force current car insurance.

21. MOTORIZED WHEELCHAIRS AND SCOOTERS (see Schedule "D")

No motorized wheelchairs, scooters, or similar equipment shall be kept or sheltered in the Residence without the prior written permission of the Owner/Operator. The Resident must keep in full force and effect at all times Resident's insurance in respect of the use of such equipment, including \$1,000,000 personal liability coverage.

Should electrical outlets be provided for the motorized scooters or wheelchairs in the parking area, they must remain there for recharging. Scooter access in and out of the building will be through a designated entrance if applicable.

22. PETS AND ANIMALS (See Schedule "E")

No cats, dogs, reptiles, birds, or other pets shall be kept or sheltered in the suite without the prior written permission of the Owner/Operator.

The Resident shall be liable for any damage caused by his or her pet(s).

The Owner/Operator may review at any time the acceptability of any pet(s) kept by the Resident. Following progressive documentation, the Resident shall immediately have the pet(s) removed from the suite should the Owner/Operator find the pet(s) unacceptable.

Having regard to the potential noise, damage and mess, the Resident shall not feed wild birds or animals at or near the residence.

23. REFUSE AND RECYCLE

No refuse, boxes, or papers shall be placed or left in corridors, parking areas, or other common areas of the Residence, except those areas designated for disposal.

All garbage shall be drained, bagged, or wrapped and tied securely before transporting to the residence receptacles. The Resident shall report spillage immediately so that it may be cleaned up immediately.

The Resident must comply with the building recycling methods.

24. OUTSIDE

Rugs, mops, rags, and dusters shall not be shaken out of windows, doors, or in the common areas of the Residence. Nothing shall be thrown from, placed on, hung on, or affixed to the inside or outside of the windows, doors, balconies, or the exterior parts of the buildings without the Operator's prior written permission. Awnings, cables, satellite dishes, or wires shall not be installed.

25. MOVING

Possessions and furniture of the Resident shall be moved in or out of the suite and Residence in a competent manner and within the designated time frames and elevator. The Resident shall be liable for any damage caused in the course of moving to or from the Residence.

26. SMOKING

This is a designated non-smoking Residence and the Owner/Operator makes no accommodation for interior smoking for Resident and/or Guests. There is a zero tolerance for breach of the non-smoking policy. Where the Resident is found in breach of this section, the Owner/Operator may proceed with termination of the Agreement. Any Guest in violation of this will be requested to leave the property. Please check the smoking bylaws in your city for the required distance designation.

27. ADDITIONAL PROVISIONS

Any changes or additions to the Agreement must be agreed to in writing and initialed by the Owner/Operator and the Resident and/or Responsible Party.

28. ENUREMENT

This Agreement shall enure to the benefit of the Owner/Operator, its successors, and assignees, and this document is enforceable against the Resident, Responsible Party, and its successors, and permitted assignees.

Date:	
Location:	
Resident Name:	Resident Signature:
P.O.A. Name (if applicable):	P.O.A. Signature:
<i>Agreed to and accepted by the Owner/Operator or by its authorized signatory below:</i>	
Authorized Person Name/Position:	Authorizing Person Signature:

SCHEDULE "A"

INCLUSIONS IN BASIC OCCUPANCY AGREEMENT

(please adjust to meet your community)

- ◇ Heat • Water • Hydro • Gas
- ◇ Cablevision available in T.V. lounge
- ◇ Pre-wired outlet for individual telephone, cable and computer
- ◇ Air conditioning in common areas
- ◇ Emergency response call bell system
- ◇ Smoke detectors in suite and common area, fire sprinkler and suppression system
- ◇ Fire alarm monitoring
- ◇ Emergency lighting in main common areas
- ◇ In suite kitchenette with refrigerator, and microwave
- ◇ Bathroom(s)
- ◇ Suite window coverings and treatments
- ◇ Individual mail box with key
- ◇ Common dining room & refreshment areas
- ◇ Laundry room with complimentary machines
- ◇ Landscaping/snow removal
- ◇ Parking for guests
- ◇ Amenity spaces
- ◇ Fitness and exercise room
- ◇ Private dining room
- ◇ Spa and Therapeutic Tub Area
- ◇ Beauty Salon
- ◇ Library and computer lounge
- ◇ Garden walkway
- ◇ Bistro

Support Services

- ◇ Professional on-site management
- ◇ Personal Assistance – Assisted Living Sites only – Schedule "F".
- ◇ Assistance with medication – Assisted Living Sites only –Schedule "F"
- ◇ Weekly housekeeping (includes vacuuming, light dusting (no moving of ornaments), cleaning of bathrooms, kitchenette, floors, changing bed linens)
- ◇ Complimentary room service up to 4 days during illness (e.g. Flu, pneumonia) thereafter a cost per tray will be implemented – tailored to meet your own policy
- ◇ Access to optional services on a fee-for-service basis including hair salon, foot care specialist
- ◇ Access to scheduled recreation and leisure services programs (social, arts entertainment and fitness)
- ◇ Scheduled transportation for local shopping and appointments
- ◇ Reasonable repairs and maintenance of appliances and fixtures installed by the Owner/Operator
- ◇ Reception/concierge
- ◇ 24 hour emergency response system

Meal Services (please adjust to meet your community)

- Continental breakfast
- Morning coffee, afternoon tea and evening snack
- Chef prepared lunch and dinner served in main Dining Room

EXCLUSIONS FROM THE BASIC OCCUPANCY AGREEMENT

The Resident agrees to pay for all utilities and services provided to the Resident and the suite during the occupancy, which are at the request of the Resident, and which are not outlined in the **Total Monthly Fees**, including:

- ◇ Suite furnishings and additional equipment
- ◇ Telephone
- ◇ Internet connection
- ◇ Additional housekeeping services or personal laundry
- ◇ Dry cleaning (external)
- ◇ Guest services including meals and accommodation
- ◇ Additional activities and outings where participation fees may be charged
- ◇ Purchases from the Residence store
- ◇ Pendant/bracelet for security
- ◇ Room service/tray service
- ◇ Landscaping of private patios
- ◇ Hairdressing costs
- ◇ Foot Care
- ◇ Massage Therapy
- ◇ Other services requested and approved by the Owner/Operator

Date:	
Location:	
Resident Name:	Resident Signature:
P.O.A. Name (if applicable):	P.O.A. Signature:
<i>Agreed to and accepted by the Owner/Operator or by its authorized signatory below:</i>	
Authorized Person Name/Position:	Authorizing Person Signature:

SCHEDULE "B"

SUITE CONDITION

SUITE #	RESIDENT NAME(S):
Location:	

Suite Condition Inspection Report: Please list any and all irregularities in the suite upon Resident Move-In.

If Applicable: The following features of the suite have been installed by previous residents and are not standard items in the Owner/Operator suites. They have been left for the comfort and convenience of the new Resident. It is therefore agreed and understood that, should any repair or replacement be required in the future to these special features, it will be the sole responsibility of the current Resident.

The parties agree that the above correctly describes the suite and its condition as at the date noted.

Date:	
Location:	
Resident Name:	Resident Signature:
P.O.A. Name (if applicable):	P.O.A. Signature:
<i>Agreed to and accepted by the Owner/Operator or by its authorized signatory below:</i>	
Authorized Person Name/Position:	Authorizing Person Signature:

SCHEDULE "C"

PRIVATE PARKING

General Parking is available on a first-come first-serve basis and is restricted to licensed and insured vehicles. As agreed to in the Resident Occupancy Agreement, if and when a vehicle is no longer owned or the Resident does not have a valid driver's license, the Resident will remove the vehicle from the property. If the Resident does not remove the vehicle, the Owner/Operator may take steps to have it removed at the expense of the Resident.

Reserved Parking is indicated as Number _____. Reserved Parking is identified by number for the Resident's personal protection.

The monthly fee for parking services is \$00.00. Monthly fees for parking include all applicable taxes. Check appropriate payment schedule:

The monthly parking fee (if applicable) will be incorporated into the Total Monthly Fee in the Agreement.

Date:	
Location:	
Resident Name:	Resident Signature:
P.O.A. Name (if applicable):	P.O.A. Signature:
<i>Agreed to and accepted by the Owner/Operator or by its authorized signatory below:</i>	
Authorized Person Name/Position:	Authorizing Person Signature:

SCHEDULE "D"

MOTORIZED SCOOTERS AND PARKING

The Resident hereby recognizes that the use of this equipment may create a degree of risk either to the Resident or to others, and undertakes to hold harmless the Owner/Operator and its servants and agents from all claims, costs, demands, or legal actions arising from the Resident's use of the this equipment. Further, should the Resident's use of this equipment result in any claims or costs to the Owner/Operator, at any time, the Resident hereby agrees to indemnify the Owner/Operator for the full amount of any such cost incurred and to it hold harmless in respect of such claims.

The Resident agrees to take out and keep in full force and effect at all times tenant's insurance in respect of the use of such equipment, including \$1,000,000.00 personal liability coverage, and to notify the insurance agent of the use of this equipment.

The monthly fee for wheelchair and scooter parking is \$0.00.

Date:	
Location:	
Resident Name:	Resident Signature:
P.O.A. Name (if applicable):	P.O.A. Signature:
<i>Agreed to and accepted by the Owner/Operator or by its authorized signatory below:</i>	
Authorized Person Name/Position:	Authorizing Person Signature:

SCHEDULE "E"

PET AUTHORIZATION

Cat: <input type="checkbox"/>	Dog: <input type="checkbox"/>	Guide Dog	Other: <input type="checkbox"/> Specify
Name :		Age :	
Breed:		Colour:	

In consideration of the Owner/Operator to allow the Resident's pet, described above, to reside in the suite of the Owner/Operator, the Resident hereby agrees to the following terms:

- The Resident shall be responsible for the entire animal's care, including feeding, grooming, and cleaning up after the pet.
- If the pet is a cat, the Resident shall use a proper litter box which the Resident will clean and empty on a regular basis. The Resident will dispose of contents in a sealed bag and remove from their suite.
- If the pet is a dog, the Resident will take the dog outside daily, and will use discretion in where the dog may relieve itself. The Resident will be responsible for cleaning up after the dog.
- Other than when traveling from the Resident's suite to outside, the pet will remain in the suite. At no time will the pet be allowed into the corridors unaccompanied and unrestrained by the Resident.
- The Resident will ensure the suite remains reasonably free of odours and damage i.e. soiled carpets and scratched or damaged walls or woodwork. If such damage occurs, the Resident will be responsible for the cost of repair or replacement, as ascertained by the Owner/Operator.
- The Resident will make arrangements with family members or others to board the pet in case of emergency or a prolonged absence.
- The Owner/Operator reserves the right to review, from time to time, the suitability of this arrangement to ensure the above conditions are met and that the pet may remain at the Residence.
- The Resident complies with all legislated requirements, municipal and/or provincial, in regards to pet ownership, registration and pet vaccinations. Documentation is to be provided to Owner/Operator annually or as legislated.
- This Agreement is specific to the pet described above and is not transferable to another pet.

Contact name / address and number of person to care for pet in case of emergency or absence:	
Name:	Telephone: (Home) (Business) (Cell)
Address:	

The monthly fee for pets is: \$00.00 plus all applicable taxes.

- The monthly pet fee (if applicable) will be incorporated into the Total Monthly Fees.

Date:	
Location:	
Resident Name:	Resident Signature:
P.O.A. Name (if applicable):	P.O.A. Signature:
<i>Agreed to and accepted by the Owner/Operator or by its authorized signatory below:</i>	
Authorized Person Name/Position:	Authorizing Person Signature:

Schedule "F"

Assisted Living Costs

1. **Activities of Daily Living:** \$ _____
2. **Medication:** \$ _____
- Total Monthly Cost of Assisted Living Expenses:** \$ _____

Date:	
Location:	
Resident Name:	Resident Signature:
P.O.A. Name (if applicable):	P.O.A. Signature:
<i>Agreed to and accepted by the Owner/Operator or by its authorized signatory below:</i>	
Authorized Person Name/Position:	Authorizing Person Signature:

Attachment #3

2010 AGM Resolution

Personal Security of Care Providers and Appropriate Placement of Residents

WHEREAS BC Care Provider Association members employ close to 10,000 full-time, part-time and casual care aides, nurses and community health workers across British Columbia;
WHEREAS employers greatly value the work and contribution of these health care professionals

and regularly consider measures to improve their safety;

WHEREAS recent WorkSafe BC statistics confirm that 58% of the 2,000+ reported cases of care aides being injured on the job in BC each year occur in long term care settings;

WHEREAS government and care providers have worked together to combat seniors' abuse over the past year through a comprehensive public awareness campaign and the introduction of Canada's first Care Aide Registry;

WHEREAS care providers are beginning to face increased difficulty with respect to appropriate placement of residents, especially in regard to resident behavioural issues;

WHEREAS care providers have expressed concern that these cases are increasingly resulting in

violence by family members, police intervention, the use of weapons and eviction;

WHEREAS care providers are concerned that the number of these incidents is likely to increase in the coming year due to a variety of factors including:

- increasing complexity and total number of long-term care cases
- limited access to community mental health services
- admission of more younger, able-bodied clients into assisted living settings
- lack of funding for increased staff
- introduction of significant new client user fees

IT IS HEREBY recommended that the BC Care Providers Association invite the Ministers of Health and Healthy Living to establish a partnership to:

- review staff training
- increase awareness of problem and dispute resolution options
- create a broader set of living options
- develop more effective admission/eviction procedures
- educate families and advocates
- celebrate the contribution of care aides, nurses and health care managers
- assess cost pressures associated with increasing complexity of care and case mix

**2006 Legislative Session: 2nd Session, 38th Parliament
FIRST READING**

The following electronic version is for informational purposes only.
The printed version remains the official version.

**HONOURABLE RICH COLEMAN
MINISTER OF FORESTS AND RANGE
AND MINISTER RESPONSIBLE FOR HOUSING**

BILL 27 -- 2006

TENANCY STATUTES AMENDMENT ACT, 2006

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Manufactured Home Park Tenancy Act

1 Section 1 of the Manufactured Home Park Tenancy Act, S.B.C. 2002, c. 77, is amended

(a) by repealing the definitions of "arbitration", "arbitrator" and "director" and substituting the following:

"director" means the director appointed under section 8 [*appointment of director*] and, in relation to a power, duty or function of the director given to an employee referred to in section 9 (2) or delegated to a person retained under that section, includes that employee or person; , *and*

(b) by adding the following definitions:

"application for dispute resolution" means an application to the director under section 51 (1) [*determining disputes*];

"dispute resolution proceeding" means a proceeding started by making an application under section 51 (1) [*determining disputes*]; .

2 Section 3 is amended by striking out "as a tenant,".

3 Sections 6 (2), 36 (2), 39 (5), 40 (5), 41 (6), 42 (5), 49 (1) and 59 (3) are amended by striking out "apply for arbitration" and substituting "make an application for dispute resolution".

4 Section 9 is repealed and the following substituted:

Director's powers and duties

- 9 (1) The director is responsible for the administration and management of all matters and persons appointed or retained under this Act.
- (2) Employees may be appointed under the *Public Service Act*, and the director may retain other persons, whom the director considers necessary to exercise the director's powers and perform the director's duties and functions under this Act.
- (3) The director may establish and publish rules of procedure for the conduct of proceedings under Part 6 [*Resolving Disputes*].
- (4) The director may not assign or delegate to the same person both the function of conducting investigations under section 88.1 [*investigations*] into a matter and the power to impose penalties under section 86.1 [*administrative penalties*] in relation to that matter.
- (5) The director may do one or more of the following:
- (a) provide information to landlords and tenants about their rights and obligations under this Act;
 - (b) help landlords and tenants resolve any dispute in relation to which an application for dispute resolution has been or may be made;
 - (c) publish, or otherwise make available to the public, decisions under Part 6 or summaries of them.

Director's power to delegate to contractors

- 9.1 (1) The director may delegate to a person retained under section 9 (2) any of the director's powers, duties or functions under this Act, except the power under section 9 (3) and the power to delegate under this section.
- (2) A delegation under subsection (1)
- (a) may be cancelled,
 - (b) does not prevent the director from carrying out the delegated power, duty or function, and
 - (c) may be subject to the terms or conditions the director considers appropriate.
- (3) If the director ceases to hold office, a delegation under this section continues in effect
- (a) for the duration of the contract, or

(b) until cancelled by a succeeding director.

(4) A person who claims to be carrying out a power, duty or function delegated by the director under this section, on request, must produce evidence of the delegation.

5 Section 11 is amended

(a) by renumbering section 11 as section 11 (1),

(b) in subsection (1) by striking out everything before "must not be compelled" and substituting "The director and persons employed, engaged or retained under section 9 (2) [director's powers and duties]" and by striking out "or an arbitration", and

(c) by adding the following subsection:

(2) Despite subsection (1), the court may require the director to produce the record of a dispute resolution proceeding that is the subject of an application for judicial review under the *Judicial Review Procedure Act*.

6 Sections 14 (3) (d), 23 (c) and 59 (2) (b) are amended by striking out "arbitrator's order" and substituting "order of the director".

7 Section 24 (1) and (2) is amended by striking out "must not restrict access" and substituting "must not unreasonably restrict access".

8 Section 25 (2) is amended by striking out "unless the landlord consents to" and substituting "unless the landlord agrees in writing to".

9 Sections 27 (6), 28 (1) (b), 37 (1) (f), 40 (1) (k), 51 (4) (b), 57 (3), 58 (1), 59 (2), 60, 61 (1) and (2), 62, 63, 64 (2), 65 (2), 67 (1), 69 (1), 70 (1) and (3), 71 (1), 72 (2), 77 (1), 77.1 (2), 78 (1), 81 (i), 82 (1) (e) and (2) (e), 87 (3) and 89 (2) (q) are amended by striking out "an arbitrator" wherever it appears and substituting "the director".

10 Section 28 (1) is amended

(a) by striking out "if one of following" and substituting "if one of the following", and

(b) by adding the following paragraph:

(c) the tenancy agreement authorizes the assignment or sublease.

11 Section 36 is amended

(a) by repealing subsection (1) (a) and (b) and substituting the following:

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing. ,

(b) in subsection (3) by striking out "a landlord may apply to an arbitrator for approval" and substituting "a landlord may request the director's approval" and by adding "by making an application for dispute resolution" after "subsection (1) (a)", and

(c) by repealing subsection (4).

12 Section 37 (1) (a) is amended by adding the following subparagraph:

(vi) section 43 [*tenant may end tenancy early*]; .

13 Section 38 (3) is repealed and the following substituted:

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

14 Sections 39 (4) (b), 40 (4), 41 (5), 42 (4), 47 (1) and 48 (2) are amended by striking out "by applying for arbitration" wherever it appears and substituting "by making an application for dispute resolution".

15 Section 40 (1) (h) is amended by striking out "written consent or the order of an arbitrator" and substituting "written consent or an order of the director".

16 Section 47 (2) is amended by striking out "order of possession under this section" and substituting "order of possession under this section to a tenant".

17 Sections 47 (2), 48 (3), 49 (2), 55 (1) to (3), 56 (1), 57 (2), 59 (1) and (3), 64 (1), 65 (1), 67 (2) and (3), 68, 70 (2), 71 (1.1) and (3) and 77.1 (1) are amended by striking out "An arbitrator" and substituting "The director".

18 Sections 47 (2), 48 (1), 56 (2), 58 (1), 62, 63, 64 (2) (a) and (b), 68, 69 (1) (b), 70 (1) (b), 71 (2) and (3), 74 (1) (b) (iii) and (4), 75 (3) and 77.1 (2) are amended by striking out "the arbitrator" wherever it appears and substituting "the director".

19 Section 48 is amended

(a) in subsection (1) by striking out "applies for arbitration" and substituting "makes an application for dispute resolution" and by striking out "order of possession of the manufactured home site if," and substituting "order of possession of the manufactured home site to the landlord if," and

(b) by adding the following subsection:

(4) Despite section 54 [*setting down dispute for hearing*], in the circumstances described in subsection (2) (b), the director may, without holding a hearing,

(a) grant an order of possession to the landlord, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

20 The following section is added:

Order of possession: tenancy frustrated

49.1 (1) A landlord may make an application for dispute resolution requesting an order

(a) ending a tenancy because

(i) the manufactured home site is not capable of being occupied by a manufactured home, or

(ii) the tenancy agreement is otherwise frustrated, and

(b) granting the landlord an order of possession of the manufactured home site.

(2) If the director is satisfied that a manufactured home site is not capable of being occupied as a manufactured home site or the tenancy agreement is otherwise frustrated, the director may make an order

(a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and

(b) specifying the effective date of the order of possession granted to the landlord.

21 The heading to Division 1 of Part 6 is repealed and the following substituted:

Division 1 -- Dispute Resolution Proceedings .

22 Section 51 is amended

(a) in subsection (1) by striking out everything before paragraph (a) and substituting "Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:"

(b) by repealing subsection (2) and substituting the following:

(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless

(a) the claim is for more than the monetary limit for claims under the *Small Claims Act*,

(b) the application was not made within the applicable period specified under this Act, or

(c) the dispute is linked substantially to a matter that is before the Supreme Court. ,

(c) in subsection (3) by striking out "submitted to arbitration" and substituting "submitted for determination by the director", and

(d) in subsection (5) by striking out "an arbitration under this Act." and substituting "a dispute resolution proceeding."

23 Section 52 is amended

(a) by repealing subsection (1),

(b) in subsection (2) by striking out "An application for arbitration" and substituting "An application for dispute resolution",

(c) in subsection (2) (a) by striking out "the approved form," and substituting "the applicable approved form,"

(d) in subsection (2) (b) by striking out "of the arbitration" and substituting "of the dispute resolution proceeding",

(e) by repealing subsection (3) and substituting the following:

(3) A person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making the application, or within a different period specified by the director. ,

(f) in subsection (5) by striking out "an application for arbitration" and substituting "an application for dispute resolution", and

(g) by repealing subsection (5) (a) and substituting the following:

(a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part, .

24 Section 53 is amended

(a) in subsection (1) by striking out "by which an application for arbitration must be filed, it must be filed" and substituting "by which an application for dispute resolution must be made, it must be made",

(b) in subsection (2) by striking out "if an application for arbitration is not filed" and substituting "if an application for dispute resolution is not made", and

(c) by repealing subsection (3) and substituting the following:

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

25 Section 54 is repealed and the following substituted:

Setting down dispute for hearing

54 If an application for dispute resolution is properly completed and is accepted by the director, the director must set the matter down for a hearing and,

- (a) if the hearing is to be oral, specify the date, time and place of the hearing, and
- (b) if the hearing is to be in writing, specify when written submissions are due.

26 Section 55 is amended

(a) in subsection (1) by striking out "to arbitrate" and substituting "to determine",

(b) by repealing subsection (1) (a) and substituting the following:

(a) disputes in relation to which the director has accepted an application for dispute resolution, and,

(c) by repealing subsection (4) and substituting the following:

(4) The director may dismiss all or part of an application for dispute resolution if

- (a) there are no reasonable grounds for the application or part,
- (b) the application or part does not disclose a dispute that may be determined under this Part, or
- (c) the application or part is frivolous or an abuse of the dispute resolution process. , **and**

(d) by repealing subsection (5).

27 Section 56 (2) is amended by striking out "during arbitration proceedings," and substituting "during dispute resolution proceedings,".

28 Section 57 is amended

(a) by repealing subsection (1),

(b) in subsection (2) by striking out "other arbitration decisions under this Act." and substituting "other decisions under this Part.",

(c) by repealing subsection (3) (c) and substituting the following:

(c) amend an application for dispute resolution or permit an application for dispute resolution to be amended. , and

(d) by repealing subsection (4) and substituting the following:

(4) If, in the director's opinion, another tenant of a landlord who is a party to a dispute resolution proceeding will be or is likely to be materially affected by the determination of the dispute, the director may

(a) order that the other tenant be given notice of the proceeding, and

(b) provide that other tenant with an opportunity to be heard in the proceeding.

29 Sections 65 (1) and 72 (1) and (7) are amended by striking out "party to an arbitration" and substituting "party to a dispute resolution proceeding".

30 Section 66 is amended

(a) in subsections (1) and (2) by striking out "applications for arbitration" and substituting "applications for dispute resolution",

(b) in subsection (1) by striking out "schedule the arbitrations to be heard by a single arbitrator at the same time." and substituting "hear the disputes at the same time.", and

(c) in subsection (2) by striking out "schedule the arbitrations to be heard by a single arbitrator." and substituting "hear the disputes together."

31 Section 67 is amended

(a) in subsection (1) by striking out "an arbitration hearing" and substituting "a hearing under this Division", and

(b) in subsection (4) by striking out "party to an arbitration" and substituting "party to a dispute resolution proceeding".

32 Section 68 (b) is amended by striking out "the arbitration." and substituting "the dispute resolution proceeding."

33 Section 69 is amended

(a) in subsection (1) by striking out "arbitrator's own initiative," and substituting "director's own initiative,"

(b) in subsection (1) (a) by striking out "an arbitration hearing or proceeding" and substituting "a hearing under this Division", and

(c) in subsection (1) (b) by striking out "subject matter of the arbitration." and substituting "subject matter of the dispute."

34 Section 70 (2) is amended by striking out "in an arbitration," and substituting "in a dispute resolution proceeding,"

35 Section 71 (1.1) (a) is amended by striking out "arbitrator's own initiative," and substituting "director's own initiative,"

36 Section 71.1 is repealed and the following substituted:

Application of Administrative Tribunals Act

71.1 Sections 1, 44, 48, 56 to 58 and 61 of the *Administrative Tribunals Act* apply to the director as if the director were a tribunal and to dispute resolution proceedings under Division 1 of this Part and reviews under Division 2 of this Part.

37 Section 72 is amended

(a) in subsections (1) and (2) (c) by striking out "the arbitrator's decision or order" and substituting "the director's decision or order",

(b) by repealing subsection (6), and

(c) in subsection (7) by striking out "the arbitration." and substituting "the proceedings."

38 Sections 72 (3) and (5), 73 and 74 (1) are amended by striking out "an arbitrator's decision or order" and substituting "a decision or order of the director".

39 Section 73 (a) (iii) is amended by striking out "or 49 [landlord's application for order ending tenancy early];" and substituting ", 49 [application for order ending tenancy early] or 49.1 [order of possession: tenancy frustrated];".

40 Section 74 is amended

(a) in subsection (1) by striking out "the arbitrator designated to conduct the review may" and substituting "the director may", and

(b) in subsection (3) by striking out "The arbitrator designated to review a decision or an order may order that the decision or order be suspended," and substituting "The director may order that a decision or order in relation to which a review has been requested be suspended,".

41 Section 75 is amended by repealing subsections (1) and (2) and substituting the following:

(1) Unless the director dismisses or refuses to consider an application for a review under section 74, the director must review the decision or order.

(2) The director may conduct a review

(a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,

(b) by reconvening the original hearing, or

(c) by holding a new hearing.

42 Section 76 is repealed.

43 The heading to Division 3 of Part 6 is amended by striking out "Arbitration" and substituting "Director's".

44 Section 77 (1) (a) is amended by striking out "the arbitrator's decision or order" and substituting "the director's decision or order".

45 Section 77.1 is amended

(a) in subsection (1) by striking out "an arbitration proceeding under Division 1 of this Part or a review under Division 2 of this Part" and substituting "a dispute resolution proceeding under Division 1 of this Part or in a review under Division 2 of this Part", and

(b) in subsection (2) by striking out "under this Act".

46 Section 78 (2) (a) is amended by striking out "the arbitrator's decision or order" and substituting "the director's decision or order".

47 Division 4 of Part 6 is repealed.

48 Section 82 is amended

(a) in subsection (1) by striking out everything before "when required to be given" and substituting "An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 6,"

(b) in subsection (2) striking out "or 49 [landlord's application for order ending tenancy early]" and substituting ", 49 [application for order ending tenancy early] or 49.1 [order of possession: tenancy frustrated]", and

(c) by adding the following subsection:

(3) A notice under section 86.21 [notice of administrative penalty] must be given in a manner referred to in subsection (1).

49 Part 7 is amended by adding the following division:

Division 2.1 -- Administrative Penalties

Administrative penalties

86.1 (1) Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a) contravened a provision of this Act or the regulations, or
- (b) failed to comply with a decision or order of the director.

(2) Before the director imposes an administrative penalty on a person, the director must

- (a) give the person an opportunity to be heard, and
- (b) consider all the following:
 - (i) previous enforcement actions for contraventions of a similar nature by the person;
 - (ii) the gravity and magnitude of the contravention;
 - (iii) the extent of the harm to others resulting from the contravention;
 - (iv) whether the contravention was repeated or continuous;
 - (v) whether the contravention was deliberate;
 - (vi) any economic benefit derived by the person from the contravention;
 - (vii) the person's efforts to correct the contravention.

- (3) A penalty imposed under this section must be paid within the prescribed time.
- (4) Instead of enforcing a penalty under subsection (1), the director, subject to the regulations, may enter into an agreement with the person who would otherwise be liable for the penalty.
- (5) An agreement under subsection (4) may provide, in accordance with the regulations, for the reduction or cancellation of the penalty subject to the terms and conditions the director considers necessary or desirable.
- (6) An agreement under subsection (4) must specify the time for performing the terms and conditions and, if the person fails to perform those terms and conditions by the date specified, the penalty ordered under subsection (1) is due and payable on the date of the failure.
- (7) Neither the director's decision whether to enter into an agreement under subsection (4), nor the terms and conditions of such an agreement, may be the subject of an application for dispute resolution.
- (8) If a corporation contravenes the Act or the regulations or fails to comply with a decision or order as described under subsection (1), an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable under this section even though the corporation is liable for or pays a monetary penalty under this section.

Charging offence or imposing administrative penalty as alternatives

- 86.11** (1) A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.
- (2) If the director imposes an administrative penalty on or enters into an agreement with a person, a prosecution for an offence under this Act in respect of the contravention or failure may not be brought against the person.

Amount of penalty

- 86.2** (1) A monetary penalty imposed under section 86.1 (1) may not exceed \$5 000.
- (2) If a contravention or failure referred to in section 86.1 (1) occurs over more than one day or continues for more than one day, separate monetary penalties, each not exceeding the maximum under subsection (1) of this section, may be imposed for each day the contravention or failure continues.

Notice of administrative penalty

- 86.21** If the director imposes an administrative penalty on a person, the director must give to the person a notice specifying each of the following:

- (a) the contravention or failure to which the penalty relates;
- (b) the amount of the penalty;
- (c) the date by which the penalty must be paid;
- (d) the person's right to have the director reconsider the decision imposing the penalty.

Review of administrative penalty

86.3 (1) A person who receives a notice under section 86.21 may apply to the director for a review of the matters set out in the notice.

(2) Division 2 [*Review of Decisions and Orders*] of Part 6 applies to a review referred to in subsection (1).

Recovery of administrative penalties

86.31 (1) An administrative penalty imposed under this Division is a debt due to the government.

(2) If a person fails to pay an administrative penalty as required by a notice under section 86.21 and the time for requesting a review under section 86.3 has expired, the director may file a certificate in a court that has jurisdiction and, upon filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed.

(3) A certificate under subsection (2) must be in the approved form, be signed by the director and set out

- (a) the name of the person who is liable for the penalty,
- (b) the contravention or failure in relation to which the penalty is imposed, and
- (c) the amount of the penalty.

50 Section 87 (1) is amended

(a) by renumbering paragraph (a) as paragraph (a.1), and

(b) by adding the following paragraph:

- (a) section 13 (1), (2) or (3) [*requirements for tenancy agreements*]; .

51 The following section is added:

Investigations

88.1 (1) The director may conduct investigations to ensure compliance with this Act and the regulations whether or not the director has accepted an application for dispute resolution in relation to the matter.

(2) If an investigation is conducted, the director must make reasonable efforts to give the person under investigation an opportunity to respond.

52 Section 89 (2) is amended

(a) by repealing paragraph (j) and substituting the following:

(j) respecting matters related to reviews under Division 2 of Part 6; , ***and***

(b) by adding the following paragraph:

(r.1) respecting administrative penalties, including, without limiting this,

(i) establishing procedures for providing an opportunity to be heard for the purposes of section 86.1 (2) (a), which need not entail an oral hearing,

(ii) prescribing consequences for failing to appear or provide submissions, as applicable, on an opportunity prescribed under subparagraph (i), which may include, but are not limited to, proceeding in the absence of the person who fails to appear or without their submission, as applicable,

(iii) prescribing time limits for paying administrative penalties,

(iv) the matters that must be considered by the director in establishing a penalty in a particular case,

(v) prescribing a limitation period for imposing an administrative penalty and evidentiary matters in relation to that period,

(vi) respecting agreements, including prescribing terms and conditions that must be included in an agreement under section 86.1 (4), and

(vii) establishing consequences for failing to pay an administrative penalty which may include, but are not limited to, imposing additional penalties; .

53 Sections 92, 93 and 94 are repealed.

54 The following section is added:

Transition from arbitrators to director as decision maker

96.1 (1) Effective on the date this section comes into force, each arbitrator appointed under section 79, as it read immediately before its repeal, is deemed to have been retained under section 9 (2) for a term ending on the date the appointment under section 79 would otherwise have terminated.

(2) Despite section 9.1 (1), a person described in subsection (1) of this section has the powers and duties of the director necessary for the purposes of determining a dispute under Division 1 of Part 6, or a review under Division 2 of Part 6, delegated to the person under section 9.1 (1).

(3) Subsections (1) and (2) must not be construed as

(a) a termination for the purposes of section 14.9 (3) of the *Public Sector Employers Act*, or

(b) a breach of the service contract related to the appointment of a person to whom subsection (1) applies.

(4) An order of an arbitrator made before the date this section comes into force is deemed to be an order of the director.

Residential Tenancy Act

55 Section 1 of the Residential Tenancy Act, S.B.C. 2002, c. 78, is amended

(a) by repealing the definitions of "arbitration" and "arbitrator",

(b) by adding the following definitions:

"application for dispute resolution" means an application to the director under section 58 (1) [*determining disputes*];

"assisted or supported living residence" means residential property or a part of residential property in which living accommodation described in section 4 (g) (v) is provided;

"assisted or supported living unit" means a rental unit in an assisted or supported living residence;

"dispute resolution proceedings" means proceedings started by making an application for dispute resolution under section 58 (1);

"service agreement" means an agreement described in section 57.2 [*service agreements in relation to assisted or supported living units*]; ,

(c) by repealing the definition of "director" and substituting the following:

"director" means the director appointed under section 8 [*appointment of director*] and, in relation to a power, duty or function of the director given to an employee referred to in section 9 (2) or delegated to a person retained under that section, includes that employee or person; ,

(d) by repealing paragraph (a) of the definition of "landlord" and substituting the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

(i) permits occupation of the rental unit under a tenancy agreement, or

(ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement; , ***and***

(e) in paragraph (a) of the definition of "residential property" by striking out "a building, or related group of buildings," and substituting "a building, a part of a building or a related group of buildings,".

56 Section 3 is amended by striking out "as a tenant," and substituting "or a service agreement,".

57 Section 4 (g) is amended by repealing subparagraphs (i) and (v) and substituting the following:

(i) in a community care facility under the *Community Care and Assisted Living Act*,

(v) except as provided in Part 4.1 [*Assisted or Supported Living Tenancies*] of this Act, in which hospitality services or personal care services, both as defined in Part 4.1, are provided by the landlord, or .

58 Sections 6 (2), 43 (2), 46 (5), 47 (5), 48 (6), 49 (9), 56 (1) and 66 (3) are amended by striking out "apply for arbitration" and substituting "make an application for dispute resolution".

59 Section 9 is repealed and the following substituted:

Director's powers and duties

9 (1) The director is responsible for the administration and management of all matters and persons appointed or retained under this Act.

(2) Employees may be appointed under the *Public Service Act*, and the director may retain other persons, whom the director considers necessary to exercise the director's powers and perform the director's duties and functions under this Act.

(3) The director may establish and publish rules of procedure for the conduct of proceedings under Part 5 [*Resolving Disputes*].

(4) The director may not assign or delegate to the same person both the function of conducting investigations under section 96.1 [*investigations*] into a matter and the power to impose penalties under section 94.1 [*administrative penalties*] in relation to that matter.

(5) The director may do one or more of the following:

(a) provide information to landlords and tenants about their rights and obligations under this Act;

(b) help landlords and tenants resolve any dispute in relation to which an application for dispute resolution has been or may be made;

(c) publish, or otherwise make available to the public, decisions under Part 5 or summaries of them.

Director's power to delegate to contractors

9.1 (1) The director may delegate to a person retained under section 9 (2) any of the director's powers, duties or functions under this Act, except the power under section 9 (3) and the power to delegate under this section.

(2) A delegation under subsection (1)

(a) may be cancelled,

(b) does not prevent the director from carrying out the delegated power, duty or function, and

(c) may be subject to the terms or conditions the director considers appropriate.

(3) If the director ceases to hold office, a delegation under this section continues in effect

(a) for the duration of the contract, or

(b) until cancelled by a succeeding director.

(4) A person who claims to be carrying out a power, duty or function delegated by the director under this section, on request, must produce evidence of the delegation.

60 Section 11 is amended

(a) by renumbering section 11 as section 11 (1),

(b) in subsection (1) by striking out everything before "must not be compelled" and substituting "The director and persons employed, engaged or retained under section 9 (2) [director's powers and duties]" and by striking out "or an arbitration", and

(c) by adding the following subsection:

(2) Despite subsection (1), the court may require the director to produce the record of a dispute resolution proceeding that is the subject of an application for judicial review under the *Judicial Review Procedure Act*.

61 Sections 14 (3) (c), 29 (1) (d) and 66 (2) (b) are amended by striking out "arbitrator's order" and substituting "order of the director".

62 Section 30 (1) and (2) is amended by striking out "must not restrict access" and substituting "must not unreasonably restrict access".

63 Section 31 (3) is amended by striking out "unless the landlord consents to" and substituting "unless the landlord agrees in writing to".

64 Sections 31 (3), 33 (6), 38 (3) (a) and (4) (b), 44 (1) (f), 47 (1) (l), 58 (4) (b), 64 (3), 65 (1), 66 (2), 67, 68 (1) and (2), 69, 71 (2), 72 (2), 74 (1), 76 (1), 77 (1) and (3), 78 (1), 79 (2), 84 (1), 84.1 (2), 85 (1), 88 (i), 89 (1) (e) and (2) (e), 95 (3) and 97 (2) (o) are amended by striking out "an arbitrator" wherever it appears and substituting "the director".

65 Section 38 (1) (d) is amended by striking out "file an application for arbitration to make a claim" and substituting "make an application for dispute resolution claiming".

66 Section 43 is amended

(a) by repealing subsection (1) (a) and (b) and substituting the following:

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing. ,

(b) in subsection (3) by striking out "a landlord may apply to an arbitrator for approval" and substituting "a landlord may request the director's approval" and by adding "by making an application for dispute resolution" after "subsection (1) (a)", and

(c) by repealing subsection (4).

67 Section 44 (1) (a) is amended by adding the following subparagraphs:

- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(viii) section 57.41 [*notice to end tenancy: tenant's needs*]; .

68 Section 45 (3) is repealed and the following substituted:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

69 Sections 46 (4) (b), 47 (4), 48 (5), 49 (8), 54 (1) and 55 (2) are amended by striking out "by applying for arbitration" wherever it appears and substituting "by making an application for dispute resolution".

70 Section 47 (1) is amended

(a) by repealing paragraph (h) (i) and substituting the following:

(i) has failed to comply with a material term of the tenancy agreement or of a service agreement, and , **and**

(b) by adding the following paragraph:

(m) the tenant of an assisted or supported living unit fails to pay the amount due under the applicable service agreement within 30 days after the date it is required to be paid under the service agreement.

71 The following section is added:

Landlord's notice: tenant ceases to qualify for rental unit

49.1 (1) In this section:

"public housing body" means a prescribed person or organization;

"subsidized rental unit" means a rental unit that is

(a) operated by a public housing body, or on behalf of a public housing body, and

(b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

(2) Subject to section 50 [*tenant may end tenancy early*] and if provided for in the tenancy agreement, a landlord may end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

(3) Unless the tenant agrees in writing to an earlier date, a notice under this section must end the tenancy on a date that is

(a) not earlier than 2 months after the date the notice is received,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(4) A notice under this section must comply with section 52.

(5) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

72 Section 50 (1) is amended by striking out "section 49 [*landlord's use of property*]," and substituting "section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*],"

73 Section 51 (1) is repealed and the following substituted:

(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

74 Section 54 (2) is amended by striking out "order of possession under this section" and substituting "order of possession to a tenant under this section".

75 Sections 54 (2), 55 (3), 62 (1), (2) and (3), 63 (1), 64 (2), 66 (1) and (3), 70 (1), 71 (1), 72 (1), 74 (2) and (3), 75, 77 (2), 78 (1.1) and (3) and 84.1 (1) are amended by striking out "An arbitrator" and substituting "The director".

76 Sections 54 (2), 55 (1), 63 (2), 65 (1), 69, 70 (2), 71 (2) (a) and (b), 75, 76 (1) (b), 77 (1) (b), 78 (2) and (3), 81 (1) (b) and (4), 82 (3) and 84.1 (2) are amended by striking out "the arbitrator" wherever it appears and substituting "the director".

77 Section 55 is amended

(a) in subsection (1) by striking out "applies for arbitration" and substituting "makes an application for dispute resolution" and by striking out "order of possession of the rental unit if," and substituting "order of possession of the rental unit to the landlord if," and

(b) by adding the following subsection:

(4) Despite section 61 [*setting down dispute for hearing*], in the circumstances described in subsection (2) (b), the director may, without holding a hearing,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

78 Section 56 is amended

(a) in subsection (1) (a) by striking out "section 47 [*landlord's notice: cause*]," and substituting "section 47 [*landlord's notice: cause*] or 57.41 [*notice to end tenancy: tenant's needs*],"

(b) by repealing subsection (2) and substituting the following:

(2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,

(a) either that

(i) the health or safety of the tenant of an assisted or supported living unit is seriously jeopardized because of

(A) the tenant's own behavior, or

(B) the landlord's inability to meet the tenant's needs with the current hospitality services and personal care services offered by the landlord, or

(ii) the tenant or a person permitted on the residential property by the tenant has done any of the following:

(A) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;

(B) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;

(C) put the landlord's property at significant risk;

(D) engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;

(E) engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;

(F) engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(G) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] or 57.41 [*notice to end tenancy: tenant's needs*] to take effect.

(2.1) A tenant may make an application for dispute resolution to request an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 57.41 [*notice to end tenancy: tenant's needs*].

(2.2) The director may make an order specifying the date on which a tenancy ends only if satisfied, in the case of a tenant's application, that

(a) the tenant's health or safety is seriously jeopardized because of the landlord's inability to meet the tenant's needs, and

(b) it would be unreasonable, or unfair to the tenant, to wait for a notice to end the tenancy under section 57.41 [*notice to end tenancy: tenant's needs*] to take effect. , **and**

(c) *in subsection (3) by striking out "landlord to give the tenant a notice" and substituting "landlord or tenant, as applicable, to give notice"*.

79 The following section is added:

Order of possession: tenancy frustrated

56.1 (1) A landlord may make an application for dispute resolution requesting an order

(a) ending a tenancy because

(i) the rental unit is uninhabitable, or

(ii) the tenancy agreement is otherwise frustrated, and

(b) granting the landlord an order of possession of the rental unit.

(2) If the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order

(a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and

(b) specifying the effective date of the order of possession.

80 The following Part is added:

Part 4.1 -- Assisted or Supported Living Tenancies

Definitions

57.1 In this Part:

"hospitality services" means the services defined as hospitality services in the *Community Care and Assisted Living Act*, other than housekeeping services;

"personal care services" has the same meaning as "prescribed services" under the *Community Care and Assisted Living Act*;

"rent" does not include money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for hospitality services or personal care services.

Application of Act to assisted or supported living residences

57.11 (1) Except as specifically provided in this Part, this Act applies to assisted or supported living residences, assisted or supported living units and tenancy agreements in relation to assisted or supported living units.

(2) This Part applies to a tenancy agreement and a service agreement in relation to an assisted or supported living unit whether entered into before or after the date this Part comes into force.

(3) Section 34 (2) does not apply to assisted or supported living residences or assisted or supported living units.

Service agreements in relation to assisted or supported living units

57.2 (1) The landlord and tenant of an assisted or supported living unit must enter into an agreement, in addition to the tenancy agreement, setting out the following:

(a) the agreed terms and conditions in respect of the hospitality services and personal care services provided under the tenancy agreement, including without limiting this,

(i) the nature and extent of hospitality services and personal care services provided under the service agreement to each occupant of the assisted or supported living unit,

(ii) the amount payable for each hospitality service and personal care service for a specified period, and, if the amount varies by the number of occupants of an assisted or supported living unit, the amount by which it varies,

(iii) the day in the month, or in the other period on which the tenancy is based, on which amounts payable under subparagraph (ii) are due,

(iv) the landlord's rights of entry for purposes of providing hospitality services or personal care services,

(v) if the occupants of an assisted or supported living unit include a person who does not require any hospitality services or personal care services, whether, and the extent to which, that person, or a guest, is required to use or pay for hospitality services and personal care services, and

(vi) if there is a separate rental unit in the residential property, all or a part of which consists of the assisted or supported living residence, reserved for guests of tenants, the terms on which the tenant's guest may use the unit;

(b) if part of the property of which the assisted or supported living residence is a part is used for a purpose other than as residential property, the uses of that part.

(2) If a tenancy agreement in relation to an assisted or supported living unit ends under this Act, any service agreement associated with the tenancy also ends.

(3) The following provisions of this Act apply in relation to a service agreement as if it were a tenancy agreement:

- (a) section 5 [*this Act cannot be avoided*];
- (b) section 6 (1) and (3) [*enforcing rights and obligations of landlords and tenants*];
- (c) section 7 (1) [*liability for not complying with Act or tenancy agreement*];
- (d) section 13 (3) [*requirements for a tenancy agreement*];
- (e) section 22 [*acceleration term prohibited*];
- (f) section 26 (2), (3) and (4) [*rules about payment and non-payment of rent*];
- (g) section 47 (1) (b) [*landlord's notice: cause*];
- (h) section 91 [*common law applies*].

Increasing the cost of hospitality services or personal care services

57.21 Unless a tenant otherwise agrees in writing, a landlord must not collect an increase in the amount payable for a hospitality service or a personal care service unless the landlord has given the tenant notice of the amount of the increase not less than 3 months before its effective date.

Terminating or restricting hospitality services or personal care services

57.3 (1) Subject to this section, except as otherwise agreed in writing between a landlord and tenant of an assisted or supported living unit, section 27 applies in relation to the termination or restriction of hospitality services or personal care services.

(2) For the purpose of subsection (1),

- (a) the notice period in section 27 (2) (a) is 60 days, and
- (b) the reference in section 27 (2) (b) to "rent" must be read as a reference to the amount payable under the service agreement for the hospitality service or personal care service, as applicable.

Landlord's right to enter assisted living unit

57.31 Despite sections 28 (c) and 29 (1), a landlord of an assisted or supported living unit may enter the unit, or authorize a person to enter the unit,

(a) in accordance with the service agreement, for purposes of and as necessary for providing hospitality services and personal care services, or

(b) if an emergency exists and the entry is necessary to protect a tenant's health or safety.

Tenant's obligation to repair

57.4 In determining a tenant's obligations under section 32 (2) to (4), a landlord and the director must consider the physical condition and other relevant circumstances of a tenant of an assisted or supported living unit in deciding if damage is reasonable wear and tear.

Notice to end tenancy: tenant's needs

57.41 (1) Subject to section 57.5 [*tenant may end tenancy early following notice under Part*], a landlord may end the tenancy of an assisted or supported living unit by giving notice to end the tenancy if one or both of the following applies:

(a) the tenant starts requiring hospitality services or personal care services that are not provided by the landlord;

(b) the tenant's behaviour seriously jeopardizes the tenant's health or safety.

(2) A tenant may end a fixed term tenancy of an assisted or supported living unit by giving notice to end the tenancy if the tenant starts requiring hospitality services or personal care services not provided by the landlord.

(3) A notice under subsection (1) or (2) must end the tenancy on a date that is

(a) not earlier than 3 months after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice under this section must comply with section 52.

(5) A tenant or a landlord may dispute a notice under this section by making an application for dispute resolution within 30 days after the date the tenant or landlord receives the notice.

(6) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (5), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the assisted or supported living unit by that date.

Tenant may end tenancy early following notice under this Part

57.5 Section 50 applies in relation to a tenant who has received notice under this Part to end a tenancy.

Assisted or supported living disputes

57.51 (1) If there is a dispute between the tenant and landlord of an assisted or supported living unit in relation to the tenancy agreement or service agreement, whether or not an application for dispute resolution has been made in the dispute, the tenant or landlord may request the director's assistance in resolving the dispute informally.

(2) For the purposes of informally resolving a dispute referred to in subsection (1), the director may use any process agreed to by the landlord and tenant.

(3) Part 5 [*Resolving Disputes*] applies in relation to a dispute between a landlord and tenant in respect of a service agreement as if the service agreement were a tenancy agreement.

(4) Despite section 66 (3) [*director's orders: changing time limits*], if the director attempts to assist a tenant and landlord to resolve a dispute before an application for dispute resolution has been made, on receipt of an application for dispute resolution in relation to the dispute, the director may extend the time under section 60 (1) for making the application.

Settlement agreements

57.6 (1) The resolution under section 57.51 of a dispute may be recorded as a decision or order of the director or as an agreement between the parties.

(2) An agreement referred to in subsection (1) is enforceable as a decision or order of the director.

Conflict with *Community Care and Assisted Living Act*

57.61 If there is a conflict between the application of a provision of this Act and the application of section 26 (3) of the *Community Care and Assisted Living Act*, section 26 (3) of the *Community Care and Assisted Living Act* prevails.

81 *The heading to Division 1 of Part 5 is repealed and the following substituted:*

Division 1 -- Dispute Resolution Proceedings .

82 *Section 58 is amended*

(a) in subsection (1) by striking out everything before paragraph (a) and substituting "Except as restricted under this Act, a person may make an application to the director for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:",

(b) by repealing subsection (2) and substituting the following:

(2) Except as provided in subsection (4), if the director receives an application under subsection (1), the director must determine the dispute unless

(a) the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*,

(b) the application was not made within the applicable period specified under this Act, or

(c) the dispute is linked substantially to a matter that is before the Supreme Court. ,

(c) in subsection (3) by striking out "submitted to arbitration" and substituting "submitted for determination by the director", and

(d) in subsection (5) by striking out "an arbitration under this Act" and substituting "a dispute resolution proceeding".

83 Section 59 is amended

(a) by repealing subsection (1),

(b) in subsection (2) by striking out "An application for arbitration" and substituting "An application for dispute resolution",

(c) in subsection (2) (a) by striking out "the approved form," and substituting "the applicable approved form,"

(d) in subsection (2) (b) by striking out "of the arbitration," and substituting "of the dispute resolution proceedings,"

(e) by repealing subsection (3) and substituting the following:

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. ,

(f) in subsection (5) by striking out "an application for arbitration" and substituting "an application for dispute resolution",

(g) by repealing subsection (5) (a) and substituting the following:

(a) in the director's opinion, the application does not disclose a dispute that may be determined under this Part, , ***and***

(h) in subsection (6) by striking out "may apply to an arbitrator, without notice to any other party, for" and substituting "may make an application for dispute resolution, without notice to any other party, requesting".

84 Section 60 is amended

(a) in subsection (1) by striking out "by which an application for arbitration must be filed, it must be filed" and substituting "by which an application for dispute resolution must be made, it must be made",

(b) in subsection (2) by striking out "if an application for arbitration is not filed" and substituting "if an application for dispute resolution is not made", and

(c) by repealing subsection (3) and substituting the following:

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

85 Section 61 is repealed and the following substituted:

Setting down dispute for hearing

61 If an application for dispute resolution is properly completed and is accepted by the director, the director must set the matter down for a hearing and,

(a) if the hearing is to be oral, specify the date, time and place of the hearing, and

(b) if the hearing is to be in writing, specify when written submissions are due.

86 Section 62 is amended

(a) in subsection (1) by striking out "to arbitrate" and substituting "to determine",

(b) by repealing subsection (1) (a) and substituting the following:

(a) disputes in relation to which the director has accepted an application for dispute resolution, and ,

(c) by repealing subsection (4) and substituting the following:

(4) The director may dismiss all or part of an application for dispute resolution if

(a) there are no reasonable grounds for the application or part,

(b) the application or part does not disclose a dispute that may be determined under this Part, or

(c) the application or part is frivolous or an abuse of the dispute resolution process. , ***and***

(d) by repealing subsection (5).

87 Section 63 (2) is amended by striking out "during arbitration proceedings," and substituting "during dispute resolution proceedings,".

88 Section 64 is amended

(a) by repealing subsection (1),

(b) in subsection (2) by striking out "other arbitration decisions under this Act." and substituting "other decisions under this Part.",

(c) by repealing subsection (3) (c) and substituting the following:

(c) amend an application for dispute resolution or permit an application for dispute resolution to be amended. , ***and***

(d) by repealing subsection (4) and substituting the following:

(4) If, in the director's opinion, another tenant of a landlord who is a party to a dispute resolution proceeding will be or is likely to be materially affected by the determination of the dispute, the director may

(a) order that the other tenant be given notice of the proceeding, and

(b) provide that other tenant with an opportunity to be heard in the proceedings.

89 Sections 72 (1) and (2) and 79 (1) and (7) are amended by striking out "party to an arbitration" and substituting "party to a dispute resolution proceeding".

90 Section 73 is amended

(a) in subsections (1) and (2) by striking out "applications for arbitration" and substituting "applications for dispute resolution",

(b) in subsection (1) by striking out "schedule the arbitrations to be heard by a single arbitrator at the same time." and substituting "hear the disputes at the same time.", and

(c) in subsection (2) by striking out "schedule the arbitrations to be heard by a single arbitrator." and substituting "hear the disputes together."

91 Section 74 is amended

(a) in subsection (1) by striking out "an arbitration hearing" and substituting "a hearing under this Division", and

(b) in subsection (4) by striking out "party to an arbitration" and substituting "party to a dispute resolution proceeding".

92 Section 75 (b) is amended by striking out "the arbitration." and substituting "the dispute resolution proceeding."

93 Section 76 (1) is amended

(a) by striking out "arbitrator's own initiative," and substituting "director's own initiative,"

(b) in paragraph (a) by striking out "an arbitration hearing or proceeding" and substituting "a hearing under this Division", and

(c) in paragraph (b) by striking out "subject matter of the arbitration." and substituting "subject matter of the dispute."

94 Section 77 (2) is amended by striking out "in an arbitration," and substituting "in a dispute resolution proceeding,"

95 Section 78 (1.1) (a) is amended by striking out "arbitrator's own initiative," and substituting "director's own initiative,"

96 Section 78.1 is repealed and the following substituted:

Application of the Administrative Tribunals Act

78.1 Sections 1, 44, 48, 56 to 58 and 61 of the *Administrative Tribunals Act* apply to the director as if the director were a tribunal and to dispute resolution proceedings under Division 1 of this Part and reviews under Division 2 of this Part.

97 Section 79 is amended

(a) in subsections (1) and (2) (c) by striking out "the arbitrator's decision or order" and substituting "the director's decision or order",

(b) by repealing subsection (6), and

(c) in subsection (7) by striking out "the arbitration." and substituting "the proceedings."

98 Sections 79 (3) and (5), 80 and 81 (1) are amended by striking out "an arbitrator's decision or order" and substituting "a decision or order of the director".

99 Section 80 (a) (iii) is amended by striking out "or 56 [landlord's application for order ending tenancy early];" and substituting ", 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated];".

100 Section 81 is amended

(a) in subsection (1) by striking out "the arbitrator designated to conduct the review may" and substituting "the director may", and

(b) in subsection (3) by striking out "The arbitrator designated to review a decision or an order may order that the decision or order be suspended," and substituting "The director may order that a decision or order in relation to which a review has been requested be suspended,".

101 Section 82 is amended by repealing subsections (1) and (2) and substituting the following:

(1) Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2) The director may conduct a review

(a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,

(b) by reconvening the original hearing, or

(c) by holding a new hearing.

102 Section 83 is repealed.

103 The heading to Division 3 of Part 5 is amended by striking out "Arbitration" and substituting "Director's".

104 Section 84 (1) (a) is amended by striking out "the arbitrator's decision or order" and substituting "the director's decision or order".

105 Section 84.1 is amended

(a) in subsection (1) by striking out "an arbitration proceeding under Division 1 of this Part or a review under Division 2 of this Part" and substituting "a dispute resolution proceeding or in a review under Division 2 of this Part", and

(b) in subsection (2) by striking out "under this Act".

106 Section 85 (2) (a) is amended by striking out "the arbitrator's decision or order" and substituting "the director's decision or order".

107 Division 4 of Part 5 is repealed.

108 Section 89 is amended

(a) in subsection (1) by striking out everything before "when required to be given" and substituting "An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5,"

(b) in subsection (2) striking out "or 56 [landlord's application for order ending tenancy early]" and substituting ", 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated]", and

(c) by adding the following subsection:

(3) A notice under section 94.21 [notice of administrative penalty] must be given in a manner referred to in subsection (1).

109 Part 6 is amended by adding the following division:

Division 2.1 -- Administrative Penalties

Administrative penalties

94.1 (1) Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

(a) contravened a provision of this Act or the regulations, or

(b) failed to comply with a decision or order of the director.

(2) Before the director imposes an administrative penalty on a person, the director must

(a) give the person an opportunity to be heard, and

(b) consider all the following:

- (i) previous enforcement actions for contraventions of a similar nature by the person;
- (ii) the gravity and magnitude of the contravention;
- (iii) the extent of the harm to others resulting from the contravention;
- (iv) whether the contravention was repeated or continuous;
- (v) whether the contravention was deliberate;
- (vi) any economic benefit derived by the person from the contravention;
- (vii) the person's efforts to correct the contravention.

(3) A penalty imposed under this section must be paid within the prescribed time.

(4) Instead of enforcing a penalty under subsection (1), the director, subject to the regulations, may enter into an agreement with the person who would otherwise be liable for the penalty.

(5) An agreement under subsection (4) may provide, in accordance with the regulations, for the reduction or cancellation of the penalty subject to the terms and conditions the director considers necessary or desirable.

(6) An agreement under subsection (4) must specify the time for performing the terms and conditions and, if the person fails to perform those terms and conditions by the date specified, the penalty ordered under subsection (1) is due and payable on the date of the failure.

(7) Neither the director's decision whether to enter into an agreement under subsection (4), nor the terms and conditions of such an agreement, may be the subject of an application for dispute resolution.

(8) If a corporation contravenes the Act or the regulations or fails to comply with a decision or order as described under subsection (1), an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure is also liable under this section even though the corporation is liable for or pays a monetary penalty under this section.

Charging offence or imposing administrative penalty as alternatives

94.11 (1) A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

(2) If the director imposes an administrative penalty on or enters into an agreement with a person, a prosecution for an offence under this Act in respect of the contravention or failure may not be brought against the person.

Amount of penalty

94.2 (1) A monetary penalty imposed under section 94.1 (1) may not exceed \$5 000.

(2) If a contravention or failure referred to in section 94.1 occurs over more than one day or continues for more than one day, separate monetary penalties, each not exceeding the maximum under subsection (1) of this section, may be imposed for each day the contravention or failure continues.

Notice of administrative penalty

94.21 If the director imposes an administrative penalty on a person, the director must give to the person a notice specifying each of the following:

- (a) the contravention or failure to which the penalty relates;
- (b) the amount of the penalty;
- (c) the date by which the penalty must be paid;
- (d) the person's right to have the director reconsider the decision imposing the penalty.

Review of administrative penalty

94.3 (1) A person who receives a notice under section 94.21 may apply to the director for a review of the matters set out in the notice.

(2) Division 2 [*Reviews of Decisions and Orders*] of Part 5 applies to a review referred to in subsection (1).

Recovery of administrative penalties

94.31 (1) An administrative penalty imposed under this Part is a debt due to the government.

(2) If a person fails to pay an administrative penalty as required by a notice under section 94.21 and the time for requesting a review under section 94.3 has expired, the director may file a certificate in a court that has jurisdiction and, upon filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed.

(3) A certificate under subsection (2) must be in the approved form, be signed by the director and set out

- (a) the name of the person who is liable for the penalty,
- (b) the contravention or failure in relation to which the penalty is imposed, and
- (c) the amount of the penalty.

110 Section 95 is amended

(a) in subsection (1) by renumbering paragraph (a) as paragraph (a.1),

(b) in subsection (1) by adding the following paragraphs:

- (a) section 13 (1), (2) or (3) [*requirements for tenancy agreements*];
- (n) section 57.21 [*increasing the cost of hospitality services or personal care services*]., ***and***

(c) by adding the following subsection:

(5.1) A person who fails to enter into a service agreement as required under this Act or who fails to comply with the terms of a service agreement commits an offence and is liable on conviction to a fine of not more than \$5 000.

111 The following section is added:

Investigations

96.1 (1) The director may conduct investigations to ensure compliance with this Act and the regulations whether or not the director has accepted an application for dispute resolution in relation to the matter.

(2) If an investigation is conducted, the director must make reasonable efforts to give the person under investigation an opportunity to respond.

112 Section 97 (2) is amended

(a) by repealing paragraph (j) and substituting the following:

- (j) respecting matters related to reviews under Division 2 of Part 5; , ***and***

(b) by adding the following paragraphs:

- (p.1) respecting administrative penalties, including, without limiting this,
 - (i) establishing procedures for providing an opportunity to be heard for the purposes of section 94.1 (2) (a), which need not entail an oral hearing,

(ii) prescribing consequences for failing to appear or provide submissions, as applicable, on an opportunity prescribed under subparagraph (i), which may include, but are not limited to, proceeding in the absence of the person who fails to appear or without their submission, as applicable,

(iii) prescribing time limits for paying administrative penalties,

(iv) the matters that must be considered by the director in establishing a penalty in a particular case,

(v) prescribing a limitation period for imposing an administrative penalty and evidentiary matters in relation to that period,

(vi) respecting agreements, including prescribing terms and conditions, that must be included in an agreement under section 94.1 (4), and

(vii) establishing consequences for failing to pay an administrative penalty which may include, but are not limited to, imposing additional penalties;

(p.2) respecting service agreements, including, without limiting this, prescribing terms or conditions of a service agreement or additional matters that must be dealt with in a service agreement; .

113 Sections 99, 101 and 102 are repealed.

114 The following sections are added:

Transition from arbitrators to director as decision maker

104.1 (1) Effective on the date this section comes into force, each arbitrator appointed under section 86, as it read immediately before its repeal, is deemed to have been retained under section 9 (2) for a term ending on the date the appointment under section 86 would otherwise have terminated.

(2) Despite section 9.1 (1), a person described in subsection (1) has the powers and duties of the director necessary for the purposes of determining a dispute under Division 1 of Part 5, or a review under Division 2 of Part 5, delegated to the person under section 9.1 (1).

(3) Subsections (1) and (2) must not be construed as

(a) a termination for the purposes of section 14.9 (3) of the *Public Sector Employers Act*, or

(b) a breach of the service contract related to the appointment of a person to whom subsection (1) applies.

(4) An order of an arbitrator made before the date this section comes into force is deemed to be an order of the director.

Transitional -- assisted or supported living tenancies

104.2 (1) Despite section 57.11 (2), the landlord and tenant of an agreement in relation to an assisted or supported living tenancy that is in effect on the date Part 4.1 comes into force need not comply with this Act until January 1, 2007 or a later date prescribed by regulation.

(2) Subsection (1) ceases to apply on and after the date the landlord and tenant agree in writing to comply with this Act.

Consequential Amendments

Public Sector Employers Act

115 Section 14.9 (1) (c) of the Public Sector Employers Act, R.S.B.C. 1996, c. 384, is repealed.

Public Service Labour Relations Act

116 Section 1 (1) of the Public Service Labour Relations Act, R.S.B.C. 1996, c. 388, is amended in the definition of "employee" by adding the following paragraph:

(f.2) a person appointed under the *Public Service Act* to exercise the powers of or perform the duties of

(i) the director under Part 5 of the *Residential Tenancy Act*, or

(ii) the director under Part 6 of the *Manufactured Home Park Tenancy Act*; .

Strata Property Act

117 Section 175 (2) (a) and (b) of the Strata Property Act, S.B.C. 1998, c. 43, is repealed and the following substituted:

(a) Part 5 of the *Residential Tenancy Act* applies to the dispute, or

(b) Part 5 of the *Residential Tenancy Act* does not apply to the dispute and all parties have agreed that the *Commercial Arbitration Act* will apply.

Commencement

118 This Act comes into force by regulation of the Lieutenant Governor in Council.

Explanatory Notes

Manufactured Home Park Tenancy Act

SECTION 1: [*Manufactured Home Park Tenancy Act, section 1*]

- repeals the definitions of "arbitration" and "arbitrator" because this Bill removes arbitrators from the Act and provides arbitration powers to the director;
- repeals and replaces the definition of "director" to include persons acting for the director;
- adds a definition of "application for dispute resolution" and "dispute resolution proceeding".

SECTION 2: [*Manufactured Home Park Tenancy Act, section 3*] authorizes a minor to enter into a tenancy agreement as either a landlord or a tenant.

SECTION 3: [*Manufactured Home Park Tenancy Act, sections 6, 36, 39, 40, 41, 42, 49 and 59*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 4: [*Manufactured Home Park Tenancy Act, sections 9 and 9.1*]

- clarifies that the director can use both employees and contractors to exercise director powers and perform director duties under the Act and prohibits the director from having the same individual both investigate a person and impose an administrative penalty on a person;
- authorizes the director to delegate certain powers and duties to contractors and specifies the effect of a delegation.

SECTION 5: [*Manufactured Home Park Tenancy Act, section 11*] ensures that the director and persons carrying out the director's powers and duties are not compellable in civil proceedings and authorizes a court reviewing a dispute resolution proceeding to require production of the record.

SECTION 6: [*Manufactured Home Park Tenancy Act, sections 14, 23 and 59*] is consequential to replacing arbitrators with the director.

SECTION 7: [*Manufactured Home Park Tenancy Act, section 24*] clarifies that the duty of the landlord not to restrict access to residential property is governed by the standard of reasonableness.

SECTION 8: [*Manufactured Home Park Tenancy Act, section 25*] imposes a requirement that the landlord's consent be obtained in writing before a tenant changes locks to the common area of a manufactured home park.

SECTION 9: [*Manufactured Home Park Tenancy Act, sections 27, 28, 37, 40, 51, 57 to 65, 67, 69 to 72, 77, 77.1, 78, 81, 82, 87 and 89*] replaces references to "an arbitrator" with "the director" as a consequence of eliminating arbitrators from the Act.

SECTION 10: [*Manufactured Home Park Tenancy Act, section 28*]

- makes a housekeeping amendment;
- permits a landlord and tenant to agree in a tenancy agreement that a tenancy agreement is assignable.

SECTION 11: [*Manufactured Home Park Tenancy Act, section 36*]

- permits a landlord to increase rent in an amount greater than is authorized by the Act with the tenant's consent in writing;
- makes amendments consequential to the elimination of arbitrators;
- repeals a redundant provision.

SECTION 12: [*Manufactured Home Park Tenancy Act, section 37*] adds tenant ending tenancy early following a landlord's notice to the ways a tenancy ends.

SECTION 13: [*Manufactured Home Park Tenancy Act, section 38*] adds a requirement that a tenant provide a landlord with a reasonable period after written notice to correct a failure to comply with a material term before the failure is grounds to end the tenancy.

SECTION 14: [*Manufactured Home Park Tenancy Act, sections 39 to 42, 47 and 48*] is consequential to replacing applications for arbitrations with applications for dispute resolution as the start of the dispute resolution process.

SECTION 15: [*Manufactured Home Park Tenancy Act, section 40*] is consequential to replacing arbitrators with the director and makes a housekeeping amendment.

SECTION 16: [*Manufactured Home Park Tenancy Act, section 47*] clarifies that the order of possession under the section is for the tenant.

SECTION 17: [*Manufactured Home Park Tenancy Act, sections 47 to 49, 55 to 57, 59, 64, 65, 67, 68, 70, 71 and 77.1*] replaces references to "An arbitrator" with "The director" as a consequence of eliminating arbitrators from the Act.

SECTION 18: [*Manufactured Home Park Tenancy Act, sections 47, 48, 56, 58, 62 to 64, 68 to 71, 74, 75 and 77.1*] replaces references to "the arbitrator" with "the director" as a consequence of eliminating arbitrators from the Act.

SECTION 19: [*Manufactured Home Park Tenancy Act, section 48*] makes consequential amendments to replace references to "applications for arbitration" with "applications for dispute resolution", clarifies that the order of possession under the section is for the landlord and authorizes orders to be made without a hearing in certain circumstances.

SECTION 20: *[Manufactured Home Park Tenancy Act, section 49.1]* authorizes a landlord to request an order of possession if a manufactured home site is damaged so that it cannot be used as a manufactured home site.

SECTION 21: *[Manufactured Home Park Tenancy Act, heading to Division 1 of Part 6]* changes the heading of the Division.

SECTION 22: *[Manufactured Home Park Tenancy Act, section 51]* is consequential to replacing applications for arbitration with applications for dispute resolutions as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 23: *[Manufactured Home Park Tenancy Act, section 52]* is consequential to replacing applications for arbitration with applications for dispute resolutions as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 24: *[Manufactured Home Park Tenancy Act, section 53]* is consequential to replacing applications for arbitration with applications for dispute resolutions as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 25: *[Manufactured Home Park Tenancy Act, section 54]* is consequential to replacing applications for arbitration with applications for dispute resolutions as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 26: *[Manufactured Home Park Tenancy Act, section 55]* is consequential to replacing applications for arbitration with applications for dispute resolutions as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 27: *[Manufactured Home Park Tenancy Act, section 56]* is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 28: *[Manufactured Home Park Tenancy Act, section 57]* is consequential to replacing applications for arbitration with applications for dispute resolutions as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 29: *[Manufactured Home Park Tenancy Act, sections 65 and 72]* is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 30: *[Manufactured Home Park Tenancy Act, section 66]* is consequential to replacing applications for arbitration with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 31: *[Manufactured Home Park Tenancy Act, section 67]* is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 32: *[Manufactured Home Park Tenancy Act, section 68]* is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 33: [*Manufactured Home Park Tenancy Act, section 69*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 34: [*Manufactured Home Park Tenancy Act, section 70*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 35: [*Manufactured Home Park Tenancy Act, section 71*] is consequential to replacing arbitrators with the director.

SECTION 36: [*Manufactured Home Park Tenancy Act, section 71.1*] is consequential to replacing arbitrators with the director.

SECTION 37: [*Manufactured Home Park Tenancy Act, section 72*] is consequential to replacing arbitrators with the director.

SECTION 38: [*Manufactured Home Park Tenancy Act, sections 72 to 74*] is consequential to replacing arbitrators with the director.

SECTION 39: [*Manufactured Home Park Tenancy Act, section 73*] adds the new order of possession available when a tenancy agreement is frustrated to the list of matters in relation to which an application for review must be made within 2 days.

SECTION 40: [*Manufactured Home Park Tenancy Act, section 74*] is consequential to replacing arbitrators with the director.

SECTION 41: [*Manufactured Home Park Tenancy Act, section 75*] is consequential to replacing arbitrators with the director.

SECTION 42: [*Manufactured Home Park Tenancy Act, section 76*] repeals a section made unnecessary as a result of replacing arbitrators with the director.

SECTION 43: [*Manufactured Home Park Tenancy Act, heading to Division 3 of Part 6*] is consequential to replacing arbitrators with the director.

SECTION 44: [*Manufactured Home Park Tenancy Act, section 77*] is consequential to replacing arbitrators with the director.

SECTION 45: [*Manufactured Home Park Tenancy Act, section 77.1*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 46: [*Manufactured Home Park Tenancy Act, section 78*] is consequential to replacing arbitrators with the director.

SECTION 47: [*Manufactured Home Park Tenancy Act, Division 4 of Part 6*] repeals a division made unnecessary as a result of replacing arbitrators with the director.

SECTION 48: [*Manufactured Home Park Tenancy Act, section 82*]

- is consequential to replacing arbitrators with the director;
- adds a service rule for serving an application under the new section 49.1.

SECTION 49: [*Manufactured Home Park Tenancy Act, Division 2.1 of Part 7*] adds a division authorizing the imposition of administrative penalties up to a maximum of \$5 000 and setting out the process for imposing the penalty, reviewing that decision and recovering administrative penalties.

SECTION 50: [*Manufactured Home Park Tenancy Act, section 87*] adds an offence of failing to satisfy the requirements under section 13 for a tenancy agreement.

SECTION 51: [*Manufactured Home Park Tenancy Act, section 88.1*] authorizes the director to make investigations whether or not an application for dispute resolution has been received.

SECTION 52: [*Manufactured Home Park Tenancy Act, section 89*] adds regulation making powers in relation to administrative penalties.

SECTION 53: [*Manufactured Home Park Tenancy Act, sections 92 to 94*] repeals spent provisions.

SECTION 54: [*Manufactured Home Park Tenancy Act, section 96.1*] deems arbitrators appointed under the Act before its amendment by this Bill to have been retained by the director under section 9 (2) of the Act for the duration the original appointment.

Residential Tenancy Act

SECTION 55: [*Residential Tenancy Act, section 1*]

- repeals the definitions of "arbitration" and "arbitrator" because this Bill removes arbitrators from the Act and provides arbitration powers to the director;
- adds definitions of "assisted or supported living residence", "assisted or supported living unit" and "service agreement" consequential to the addition of Part 4.1 applying to those types of living accommodation;
- repeals and replaces the definition of "director" to include persons acting for the director;
- adds a definition of "application for dispute resolution" and "dispute resolution proceeding";
- makes a housekeeping amendment.

SECTION 56: [*Residential Tenancy Act, section 3*] authorizes a minor to enter into a tenancy agreement or a service agreement as either a landlord or a tenant.

SECTION 57: [*Residential Tenancy Act, section 4*]

- updates a statutory reference;
- is consequential to the addition of Part 4.1.

SECTION 58: [*Residential Tenancy Act, sections 6, 43, 46 to 49, 56 and 66*] is consequential to replacing applications for arbitrations with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 59: [*Residential Tenancy Act, sections 9 and 9.1*]

- clarifies that the director can use both employees and contractors to exercise director powers and perform director duties under the Act and prohibits the director from having the same individual both investigate a person and impose an administrative penalty on a person;
- authorizes the director to delegate certain powers and duties to contractors and specifies the effect of a delegation.

SECTION 59: [*Residential Tenancy Act, sections 9 and 9.1*]

SECTION 60: [*Residential Tenancy Act, section 11*] ensures that the director and persons carrying out the director's powers and duties are not compellable in civil proceedings and authorizes a court reviewing a dispute resolution proceeding to require production of the record.

SECTION 61: [*Residential Tenancy Act, sections 14, 29 and 66*] is consequential to replacing arbitrators with the director.

SECTION 62: [*Residential Tenancy Act, section 30*] clarifies that the duty of the landlord not to restrict access to residential property is governed by the standard of reasonableness.

SECTION 63: [*Residential Tenancy Act, section 31*] imposes a requirement that the landlord's consent be obtained in writing before a tenant changes locks to a rental unit.

SECTION 64: [*Residential Tenancy Act, sections 31, 33, 38, 44, 47, 58, 64 to 69, 71, 72, 74, 76 to 79, 84, 84.1, 85, 88, 89, 95 and 97*] is consequential to replacing arbitrators with the director.

SECTION 65: [*Residential Tenancy Act, section 38*] is consequential to replacing applications for arbitrations with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 66: [*Residential Tenancy Act, section 43*]

- permits a landlord to increase rent in an amount greater than is authorized by the Act with the tenant's consent in writing;
- makes amendments consequential to the elimination of arbitrators;
- repeals a redundant provision.

SECTION 67: *[Residential Tenancy Act, section 44]* adds tenant's ability to end a tenancy early following certain landlord notices and the two new notice sections added by this Bill to the ways that a tenancy ends.

SECTION 68: *[Residential Tenancy Act, section 45]* adds a requirement that a tenant provide a landlord with a reasonable period after written notice to correct a failure to comply with a material term before the failure is grounds to end the tenancy.

SECTION 69: *[Residential Tenancy Act, sections 46 to 49, 54 and 55]* is consequential to replacing applications for arbitration with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 70: *[Residential Tenancy Act, section 47]* adds the failure to comply with a material term of a service agreement and the failure to pay amounts due under a service agreement as grounds for ending a tenancy.

SECTION 71: *[Residential Tenancy Act, section 49.1]* authorizes a landlord to give notice to a tenant of a rental unit if the tenant had to qualify for the rental unit and has ceased to qualify.

SECTION 72: *[Residential Tenancy Act, section 50]* authorizes a tenant to give a landlord early notice if the tenant has received notice under section 49.1.

SECTION 73: *[Residential Tenancy Act, section 51]* authorizes a tenant to withhold from rent an amount payable under the section.

SECTION 74: *[Residential Tenancy Act, section 54]* clarifies that the order of possession under the section is for the tenant.

SECTION 75: *[Residential Tenancy Act, sections 54, 55, 62 to 64, 66, 70, 71, 72, 74, 75, 77, 78 and 84.1]* replaces references to "An arbitrator" with references to "The director" as a consequence of eliminating arbitrators from the Act.

SECTION 76: *[Residential Tenancy Act, sections 54, 55, 63, 65, 69 to 71, 75 to 78, 81, 82 and 84.1]* replaces references to "the arbitrator" with references to "the director" as a consequence of eliminating arbitrators from the Act.

SECTION 77: *[Residential Tenancy Act, section 55]* makes consequential amendments to replacing applications for arbitration with applications for dispute resolution, clarifies that the order of possession under the section is for the landlord and authorizes an order to be made without a hearing in certain circumstances.

SECTION 78: *[Residential Tenancy Act, section 56]* authorizes a landlord to request an early end to a tenancy of an assisted or supported living unit if the tenant is a danger to himself or herself or if the tenant's health or safety is at risk because the landlord cannot meet the person's needs.

SECTION 79: [*Residential Tenancy Act, section 56.1*] authorizes a landlord to request an order of possession if a rental unit is uninhabitable.

SECTION 80: [*Residential Tenancy Act, Part 4.1*]

- adds a Part applying the Act to assisted or supported living residences and units;
- modifies the application of the Act for these tenancies;
- requires service agreements in respect of hospitality or personal care services provided by the landlord;
- authorizes both the landlord and tenant of an assisted or supported living unit to give the other notice if the services provided by the landlord are not sufficient to meet new needs of the tenant.

SECTION 81: [*Residential Tenancy Act, heading to Division 1 of Part 5*] changes the heading to the division.

SECTION 82: [*Residential Tenancy Act, section 58*] is consequential to replacing applications for arbitration with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 83: [*Residential Tenancy Act, section 59*] is consequential to replacing applications for arbitration with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 84: [*Residential Tenancy Act, section 60*] is consequential to replacing applications for arbitration with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 85: [*Residential Tenancy Act, section 61*] is consequential to replacing applications for arbitration with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 86: [*Residential Tenancy Act, section 62*] is consequential to replacing applications for arbitration with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 87: [*Residential Tenancy Act, section 63*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 88: [*Residential Tenancy Act, section 64*] is consequential to replacing applications for arbitration with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 89: [*Residential Tenancy Act, sections 72 and 79*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 90: [*Residential Tenancy Act, section 73*] is consequential to replacing applications for arbitration with applications for dispute resolution as the start of the dispute resolution process and to replacing arbitrators with the director.

SECTION 91: [*Residential Tenancy Act, section 74*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 92: [*Residential Tenancy Act, section 75*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 93: [*Residential Tenancy Act, section 76*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 94: [*Residential Tenancy Act, section 77*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 95: [*Residential Tenancy Act, section 78*] is consequential to replacing arbitrators with the director.

SECTION 96: [*Residential Tenancy Act, section 78.1*] is consequential to replacing arbitrators with the director.

SECTION 97: [*Residential Tenancy Act, section 79*] is consequential to replacing arbitrators with the director.

SECTION 98: [*Residential Tenancy Act, sections 79 to 81*] is consequential to replacing arbitrators with the director.

SECTION 99: [*Residential Tenancy Act, section 80*] adds the new order of possession available when a tenancy agreement is frustrated to the list of matters in relation to which an application for review must be made within 2 days.

SECTION 100: [*Residential Tenancy Act, section 81*] is consequential to replacing arbitrators with the director.

SECTION 101: [*Residential Tenancy Act, section 82*] is consequential to replacing arbitrators with the director.

SECTION 102: [*Residential Tenancy Act, section 83*] repeals a section made unnecessary as a result of replacing arbitrators with the director.

SECTION 103: [*Residential Tenancy Act, heading to Division 3 of Part 5*] is consequential to replacing arbitrators with the director.

SECTION 104: [*Residential Tenancy Act, section 84*] is consequential to replacing arbitrators with the director.

SECTION 105: [*Residential Tenancy Act, section 84.1*] is consequential to replacing arbitrations with dispute resolution proceedings.

SECTION 106: [*Residential Tenancy Act, section 85*] is consequential to replacing arbitrators with the director.

SECTION 107: [*Residential Tenancy Act, Division 4 of Part 5*] repeals a Division made unnecessary as a result of replacing arbitrators with the director.

SECTION 108: [*Residential Tenancy Act, section 89*]

- is consequential to replacing arbitrators with the director;
- adds a service rule for serving an application under the new section 56.1.

SECTION 109: [*Residential Tenancy Act, Division 2.1 of Part 6*] adds a Division authorizing the imposition of administrative penalties up to a maximum of \$5 000 and setting out the process for imposing the penalty, reviewing that decision and recovering administrative penalties.

SECTION 110: [*Residential Tenancy Act, section 95*] adds the offences of failing to comply with the requirements under section 13 for a tenancy agreement, of increasing the cost of hospitality or personal care services without complying with the Act and of failing to enter into a service agreement as required under the Act.

SECTION 111: [*Residential Tenancy Act, section 96.1*] authorizes the director to make investigations whether or not an application for dispute resolution has been received.

SECTION 112: [*Residential Tenancy Act, section 97*] adds regulation making authority in relation to administrative penalties and service agreements.

SECTION 113: [*Residential Tenancy Act, sections 99, 101 and 102*] repeals spent provisions.

SECTION 114: [*Residential Tenancy Act, sections 104.1 and 104.2*]

- deems arbitrators appointed under the Act before its amendment by this Bill to have been retained by the director under section 9 (2) of the Act for the duration of the original appointment;
- provides a transition period for existing tenancy agreements in relation to assisted or supported living units to be brought into line with the Act.

SECTION 115: [*Public Sector Employers Act, section 14.9*] is consequential to replacing arbitrators with the director in the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*.

SECTION 116: [*Public Service Labour Relations Act, section 1*] amends the definition of "employee" to exclude persons exercising the director's arbitration powers and duties.

SECTION 117: [*Strata Property Act, section 175*] is consequential to replacing arbitrations with dispute resolution proceedings in the *Residential Tenancy Act*.

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