Annual Report on the Activities of the Rental Office

January 1-December 31, 2002

Submitted by
Hal Logsdon
Rental Officer

The Rental Office

The establishment of the Rental Office and the appointment of a Rental Officer came into effect in 1988 with the passage of the *Residential Tenancies Act*. The Act gives the Rental Officer specific powers and duties which are designed to resolve disputes between landlords and tenants who have entered into residential tenancy agreements. Prior to the passage of the *Residential Tenancies Act* all landlord tenant matters were heard by the Court. *The Residential Tenancies Act* was intended to provide a more expeditious and less formal dispute resolution mechanism for residential landlords and tenants.

A Source of Information for Landlords and Tenants

The Rental Office is an important source of information for both landlords and tenants. Many landlord/tenant problems are solved simply by providing the parties with information concerning their respective rights and responsibilities. Many tenants and a surprising number of landlords are unaware of the legislation that governs their relationship. The provision of information is probably the single most important function of the office, often serving to eliminate conflict and problems before they start.

The Rental Office maintains a toll-free telephone number which can be used anywhere in Canada. We receive numerous calls each day seeking information concerning rights and obligations of landlords and tenants as well as information about the process for filing applications.

The Rental Office also provides written information, including a simple to read booklet outlining the major aspects of the *Residential Tenancies Act*, short fact sheets on selected topics and numerous standard forms, including a tenancy agreement. Like the day-to-day inquiries, the written material helps both landlords and tenants acquire an understanding of mutual rights and responsibilities to help to solve problems before they start.

From time to time, the Rental Officer is called upon to make presentations to groups of tenants, property managers or others involved in residential tenancy matters. We provide these services free of charge in the belief that informed and knowledgeable landlords and tenants are more likely to respect the rights and obligations of each other and less likely to end up in a conflict situation.

The Investigation of Problems and Mediated Solutions

Some disputes require the Rental Officer to inquire into the matter prior to a hearing in order to determine the nature of the dispute and facts related to the dispute. Applications involving the physical condition of premises are often best understood through an inspection of the unit. Similarly, applications involving third parties, such as utilitiy suppliers are often investigated prior to hearing.

Often, the investigation leads to a resolution of the dispute by agreement. For example, a tenant may file an application when a security deposit has not been returned and no statement of the deposit has been provided to the tenant. A brief investigation into the matter may reveal that the landlord was unaware of the new address of the former tenant

or of his responsibility to produce a statement. The production of the statement may lead to an agreement between the parties and the withdrawal of the application.

Occasionally, the parties will agree to a mediated solution to the problem without recourse to a formal hearing or the issuance of an order. If the parties wish to try to settle the issue by mediation, the Rental Officer will assist them in the resolution of the matter and the preparation of a mediated agreement.

Adjudication

Often, landlords and tenants can not agree or one of the parties wants a decision which can be enforced, should the other party fail to abide by that decision. In these cases, the Rental Officer is empowered to hold a hearing and, after hearing the evidence and testimony of both parties, render a decision. The Rental Officer will issue a written order along with reasons for the decision. Orders by a Rental Officer may be filed in the Territorial Court and are deemed to be orders of that court when filed. Most disputes are settled in this manner as the majority of disputes concern non-payment of rent and an enforceable decision is desired by the applicant.

Enforcement of the Act

The contravention of certain sections of the *Residential Tenancies Act* and certain actions described in the Act are offences. On summary conviction, offenders are liable to a fine. Few choose to ignore the law when informed but occasionally the Rental Officer is required to investigate allegations of contraventions which could lead to charges being laid.

2002 Activities

Mr. Hal Logsdon served as Rental Officer throughout the year. Mr. Logsdon was appointed on April 1, 1999 to serve for a term of three years and was reappointed for a term of one year on April 1, 2002. Ms. Kim Powless continued to serve as the Rental Office Administrator during the year.

The success of the *"What you Should Know About....."* series of short fact sheets led to the development of others which are made available through our office and on the Rental Office website. We now have nine titles in the series.

- What You Should Know About Tenancy Agreements
- What You Should Know About Subletting and Assigning
- What You Should Know About Security Deposits
- What You Should Know About Terminating Tenancy Agreements
- What You Should Know About Rent Increases
- What You Should Know About Security of Tenure
- What You Should Know About Abandoned Premises

- What You Should Know About Abandoned Personal Property
- What You Should Know About Termination When Rental Units Are Sold

The Rental Office website continues to grow. A link now enables users to search for filed orders of the Rental Officer by applicant or respondent name. All orders of the Rental Officer are cataloged in the Court Library.

The Rental Officer met with social housing managers on two occasions during the year to provide information on the *Residential Tenancies Act* and the process of filing and hearing applications.

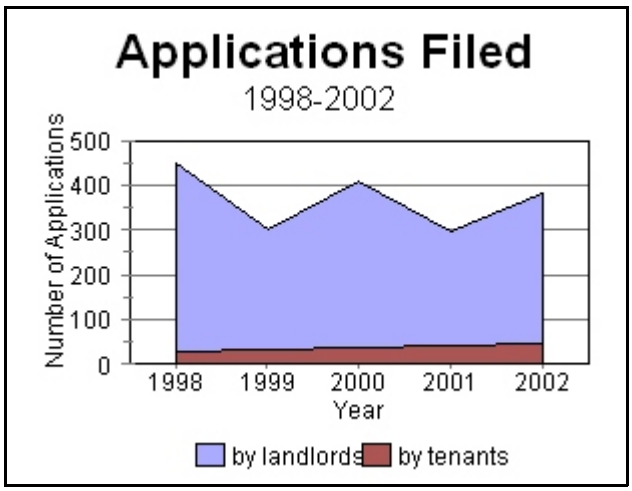
The Rental Officer represented the Northwest Territories at a conference in Toronto in October hosted by the Ontario Rental Housing Tribunal. Delegates discussed various legislative and administrative issues concerning residential landlord/tenant dispute resolution. An excellent tour of the Tribunal regional office allowed us to see several hearings and speak to adjudicators and mediators working in the Ontario system.

Trends and Issues

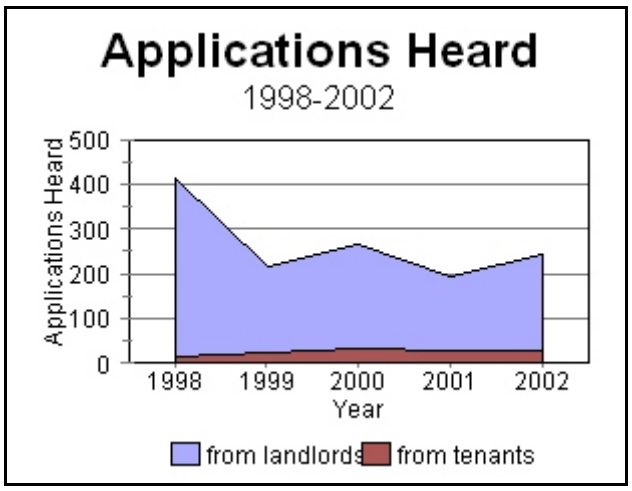
The economic activity in the NWT associated with the development of the new diamond mines in the Yellowknife area and oil and gas exploration in the Mackenzie Delta has served to significantly increase the demand for rental accommodation over the past two years. Rents in both Inuvik and Yellowknife continued to climb while vacancy rates, particularly in Yellowknife sank to even lower levels. Canada Mortgage and Housing Corporation reported the average apartment vacancy rate as 0.3% in October, 2002. Not surprisingly, apartment rents increased an average of 4.6% over the previous year with rents for bachelor units increasing the most at 10%.

The total number of applications filed increased by 26% from the 2001 level while applications filed regarding premises in the City of Yellowknife jumped 53%.

The Rental Officer conducted 271 hearings in 2002, of which 89% were based on applications filed by landlords. This represents a 23% increase in the total number of hearings compared to 2001. Hearings held regarding premises in the City of Yellowknife increased by 27% over the 2001 level.

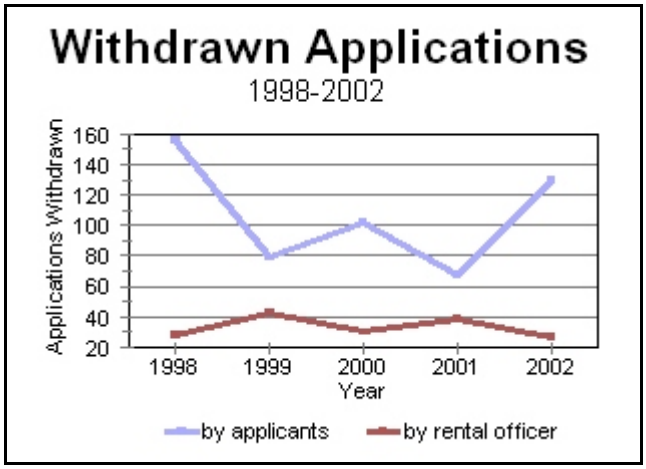


Hearings were held on 58 dates during the year. 223 hearings were conducted in person, 39 were conducted by telephone and 9 conducted by videoconference. Telephone hearings continue to be an effective way to hear matters in a timely manner, particularly when only one or two applications are received from a community outside Yellowknife or when the parties reside in different communities. Video-conference hearings are a great improvement over telephone hearings but the number of locations where video facilities exist is still very limited.



Formal mediation of disputes continues to be an uncommon occurrence. Most disputes involve the non-payment of rent, many of which are uncontested by the respondent. It is common to mediate a scheduled repayment of the rental arrears, but the applicant normally wants such a schedule included in an order so that it is enforceable. The unwillingness to participate in mediated settlements is largely a function of the time it takes to obtain a order. Few applicants want a mediated settlement if they must then initiate a lengthy process to obtain an enforceable order if the mediated agreement falls apart.

Often, a dispute is resolved to the satisfaction of the applicant before a hearing is held, resulting in the withdrawal of the application by the applicant. In other cases, applications are withdrawn by the Rental Officer because the applicant failed to serve the application on the respondent. The number of applications withdrawn by applicants rose significantly in 2002 while the number withdrawn by the Rental Officer fell.

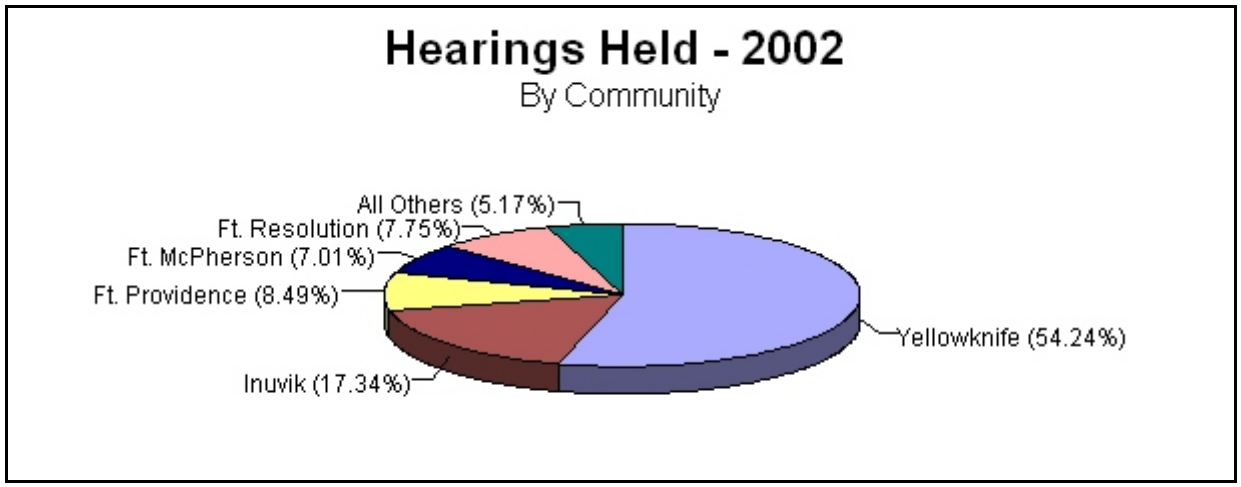


The increase in the number of applications and withdrawals of applications in 2002 would seem to indicate that landlords are more readily filing applications for rent but are withdrawing them if the rent is paid prior to the hearing. Unlike most other jurisdictions in Canada, the NWT *Residential Tenancies Act* does not include a mechanism whereby a landlord may serve a notice of termination on a tenant if rent is unpaid and the notice becomes ineffective if the rent is paid by a certain date.

Such a legislative amendment would serve to reduce the number of applications made and the number of applications which are withdrawn. See “Considerations for Change” section later in this report.

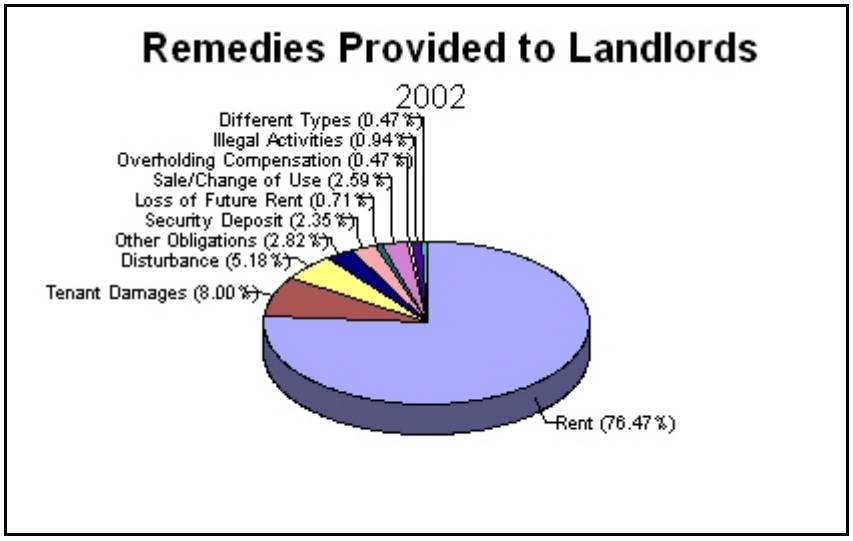
Although landlords file the majority of applications, tenants rely on the Rental Office as a source of information and make good use of the toll-free number to make inquiries. An increasing number of persons are asking about information on our webpage and how to access the Act on the internet.

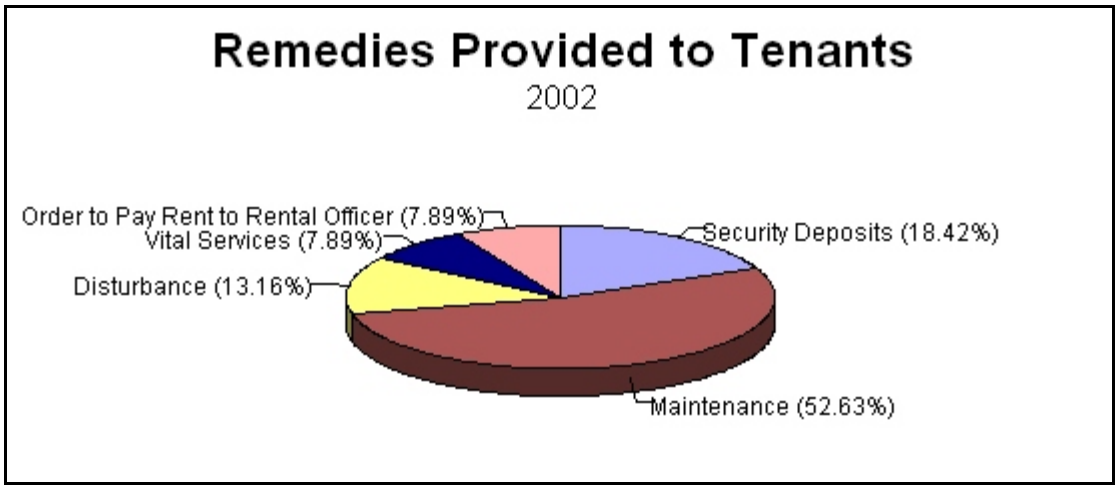
Applications are received from most communities in the NWT but applications from the major centres, particularly Yellowknife and Inuvik, continue to make up the bulk of filed applications.



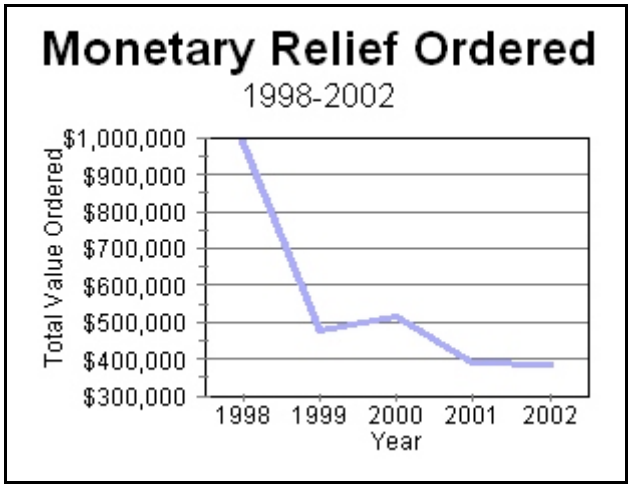
The most frequent remedies provided to landlords through Rental Officer are for non-payment of rent. The number of orders issued regarding payment of rent or termination for non-payment of rent remained at about the same level as 2001. There was a sharp increase in the number of terminations due to sale or change of use of the premises. This is most likely due to the vibrant real estate market in the City of Yellowknife. As well, one apartment complex and one mobile home park in the city were converted to condominiums, requiring the termination of existing tenancy agreements

There was a dramatic shift in the common remedies provided to tenants. Remedies involving security deposits fell sharply while remedies for maintenance increased significantly. The rise in the number of orders regarding the landlord's obligation to maintain rental premises is particularly interesting since it follows a similar rise in market rent.



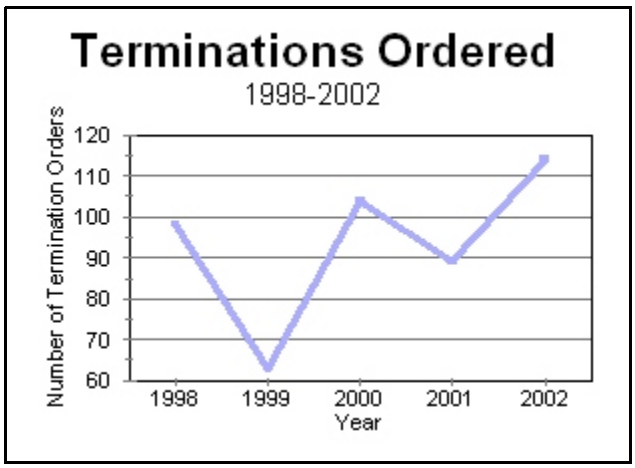


In 2002, 203 orders were issued which required monetary payment to be paid by one party to the other. Although the number of orders increased, the total value of these orders was $385,242, marginally lower than in 2001. The average value of compensation ordered also decreased by 15% from the 2001 level.



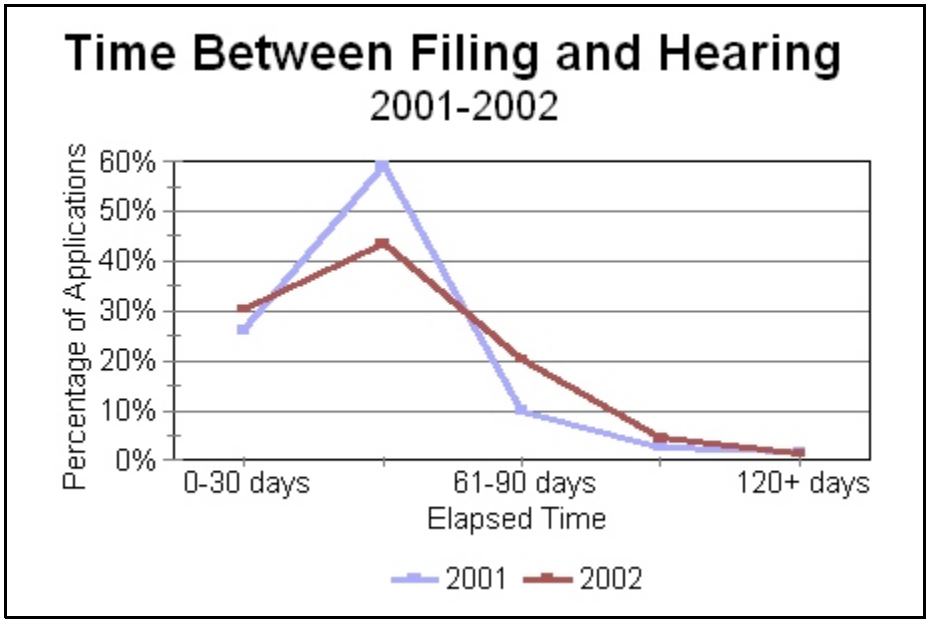
Since orders for rent arrears are the most common orders, it would appear that landlords are not hesitating to file applications when rent is unpaid.

The number of terminations ordered increased in 2002, but expressed as a percentage of applications heard, increased by only 2%. It should be noted however that many of these termination orders were conditional in nature and did not necessarily result in the termination of the tenancy agreement. In many cases involving rent, the order issued will terminate the tenancy agreement unless the tenant pays the rent arrears by a particular date.



We have no way of tracking how many orders for termination actually result in a termination of the tenancy agreement but we suspect that many conditional termination orders are satisfied and the tenancy continues.

The time it takes from the time an application is filed to the time it is heard depends on a number of factors, some of which are outside the control of the Rental Office. Users of the services occasionally complain about the length of time it takes to resolve a dispute and we continue to do what we can to make the administration of the process move as rapidly as possible. Over 73% of applications heard in 2002 were heard within 60 days of filing and 94% were heard within 90 days of filing.



Over the past three years we have continued to make progress in reducing the time between filing an application and the issuance of an order. It would appear that we have reached a point where only changes to the process, much of which is contained in the legislation, will shorten this time.

It has been our experience that where the filed application is not delayed by mail, the applicant serves the respondent quickly, the hearing notices are deliverable and the parties do not seek any postponements, an application will be heard within 60 days of filing. However any or all of the above factors can delay the process considerably, and often do.

Considerations for Change

The following suggestions for legislative changes have been assembled from our experience in administering the *Residential Tenancies Act*, and through discussion with landlords and tenants about their experiences with the Act.

1. **Amend section 54 to allow for a binding termination notice subject to appeal by the tenant in cases where a substantial breach of the tenancy agreement has occurred.** Perhaps the most common complaint concerning the administration of the *Residential Tenancies Act* is the length of time it takes to terminate a tenancy agreement where a tenant has substantially breached the tenancy agreement.

   The inability of the legislation to provide timely remedies for substantial breaches of the tenancy agreement has, on numerous occasions, prompted landlords to take eviction into their own hands rather than suffer economic loss or watch their quality tenants seek accommodation elsewhere. Increased losses inevitably translate into business expenses which in turn drives rents higher and produces higher social housing costs. Tenants as well, are adversely affected by the inability of the Act to deal promptly with these remedies. The noisy, disturbing or dangerous tenant can continue to annoy or threaten the safety of other tenants for months on end before the landlord is able to terminate the tenancy and provide the other tenants with the environment they promised to supply.

   Section 54 of the Act is intended to provide early termination of the tenancy agreement in cases of a serious or repeated breach by a tenant, but in reality only permits the landlord to give notice. If the tenant does not vacate the premises, the landlord must proceed with an application to the Rental Officer, serve the tenant and await a hearing to obtain an order. If the landlord is successful in obtaining an order for termination and the tenant does not vacate, the landlord must then make application to the Supreme Court for a writ of eviction. The entire process can take weeks or months depending on the location of the premises and the scheduling of hearings and court. A tenant who is seriously damaging the premises and\or not paying rent may create an extraordinary loss for the landlord before a writ of eviction is obtained.

   As well, a tenant who is constantly creating a disturbance may continue to disturb other

tenants or even jeopardize their safety for months before the landlord can legally remedy the situation.

A revision of section 54 to allow for a termination notice to result in a legal termination of the tenancy agreement unless disputed by the tenant within a specified period of time would cut down on the time required for termination when serious breaches are involved. The landlord would be required to use an approved form of the termination notice and be required to prove service of the notice on the tenant. The notice would specifically advise the tenant of the right to appeal and the process for filing such an appeal. If the tenant appealed, the Rental Officer would hear the matter. If the tenant failed to appeal, the landlord could seek a writ of eviction from the Supreme Court.

Since non-payment of rent is the most common breach of the Act, section 54 could also contain provisions that termination notices for breach of the obligation to pay rent would be null and void if the outstanding arrears were paid within a specific period of time. Most other jurisdictions have this type of provision in their legislation. The notice would be in a required form and would clearly state the alleged arrears and the time permitted for payment. A tenant who was served with such a notice would have the option of paying the alleged amount or filing a dispute with the Rental Officer to have the matter heard. Either action would serve to nullify the notice.

2. **Allowing for service of filed applications within 14 days of receiving filed applications rather than 14 days from the date of filing.**
Currently filed applications are required to be served within 14 days from the date of filing (Sec. 68(2)). There may be some question at law as to whether or not an application is valid if not served within the specified time. The Rental Officer is not provided with the authority to extend this time requirement. Given our geographical area and postal system this provision has been proved to be unrealistic.

3. **Amend section 62(1) to change the reference to section 9(2) to read section 5(2).**
This is a typographical error.

4. **Amend section 52 to require a 30 day notice for a tenant to terminate a monthly periodic tenancy agreement, regardless of the duration of the agreement.**
The current distinction, based on the duration of the tenancy agreement is unnecessary and makes it difficult for tenants to make a transition between one tenancy agreement and another. I see no reason for the distinction and most landlords and tenants fail to see why the duration of the agreement should be a factor.

5. **Amend section 14 to permit a deposit to hold premises for a future tenancy and expressly prohibit the collection of a security deposit prior to the effective date of the tenancy agreement.**
Landlords are not permitted to collect any deposit or fee other than the security deposit allowed under section 14. Although the security deposit is supposed to be collected at the commencement of the tenancy, landlords will often collect it in advance of the occupancy date. Occasionally the prospective tenant will fail to take possession and the landlord will claim the security deposit as damages. The landlord has no right in law to do this as only damages to the premises and rent may be deducted from a security deposit. Occasionally a landlord will collect a deposit, "shop for tenants" and return the deposit if a better tenant is found.

Provisions which would allow for a deposit to hold a premise would be useful to both landlords and tenants. The maximum amount should be prescribed and, provided the tenancy commences, would have to be applied to rent or the security deposit at the commencement of the tenancy. If the tenant failed to take possession, the deposit would be forfeited.

Provisions should also be made to specifically prohibit the collection of a security deposit prior to the commencement of the tenancy and provide remedies and/or penalties in cases where this prohibition is violated.

6. **Amend sections 16 and 41(3) to allow for rates of interest to be fixed by regulation.**
The interest rates for late rent penalty and security deposits are not only unrealistic, but cumbersome and difficult to calculate. The interest rate for late rent is so low that rent will likely be the last item anyone pays if they find themselves short of funds. As well it should be easy to calculate.

Similarly the rate for security deposits is usually higher than the landlord is able to obtain unless he violates the provisions of maintaining the amounts in trust. The rate and the method of calculation should be reasonable, simple and set through regulation.

7. **Eliminate the "subsidized public housing" definition and introduce a "social housing" definition which would include housing programs and providers approved by regulation.**
The current definition, which relies on receiving funding through the *National Housing Act* or *Northwest Territories Housing Corporation Act* and reduced rents based on income, no longer reflects the realities of social housing in the NWT. Important provisions regarding security of tenure, subletting, eligibility and continued occupancy, rent increases and security deposits are tied to this definition which is quickly becoming obsolete.

We suggest that a definition for "social housing" replace the current "subsidized public housing" definition. Specific projects to be considered "social housing" would be approved by regulation which could be amended from time to time.

8. **Section 71 be amended to allow the method of service to include telecopiers (fax).** Presently all notices or documents relating to a residential tenancy must be served in person or by registered mail. Limiting service of documents to in-person or registered mail creates unnecessary time delays. Amendments to the Northwest Territories Rules of Court now recognizes telecopiers (Section 40) as an acceptable form of service.

9. **Repeal sections 51(2) and 52(2).**
These two sections permit a landlord to legally terminate a tenancy agreement by notice alone simply on the basis that the premises were the only residence of the landlord in the territories. It is unclear why this criteria should permit a landlord to terminate such a tenancy without a breach by the tenant or other cause. It is unfair, in my opinion, to deny reasonable security of tenure to tenants in these cases. Even if this provision is judged as reasonable, the "single premises" criteria in section 51(2) is absent in section 52(2) making the provisions clearly inconsistent.

10. **Consider a requirement for notice to the tenant where a subsidized public housing landlord or employer landlord does not intend to renew a term agreement.**
Section 49(3) exempts subsidized public housing landlords and employer landlords from the security of tenure provisions of section 49. This means that tenancy agreements made for a term are not automatically renewed, but expire at the expiry date. Providers of subsidized public housing have been successful in obtaining writs of eviction where the tenant has failed to vacate the premises after a term agreement has expired. In my opinion, a requirement to provide reasonable notice to vacate should be required, either before or after the term expires in order to seek a writ of eviction. Thirty days should be sufficient.

11. **Revise sections 76 and 77 regarding mediation and the decision to hold a hearing.**
Section 76 requires a Rental Officer to inquire into a matter arising from an application and assist the parties in resolving the matter by agreement before holding a hearing to determine the matter. Most applications involve the non-payment of rent and many are uncontested by the respondent. Applicant/landlords do not want an agreement with the tenant that rent will be paid. They want an order that can be enforced if payment is not made. The Rental Officer may only issue an order after making a determination through a hearing.

The requirement to inquire into the matter only serves to add time to the process. Removing the requirement would not diminish the Rental Officer's ability to mediate where mediation is possible.

In many cases, particularly those involving rent, the remedy contained in the order is a result of mediation that takes place in the context of a hearing. For example, it is common for a Rental Officer to mediate an agreement pertaining to how rent arrears are to be paid, Often a schedule of payment is arranged or a deadline for payment agreed to by both parties.

It is suggested that the wording in Section 76 be altered by changing "shall inquire" to "may inquire", giving the Rental Officer the flexibility to determine without inquiry, whether a matter should proceed directly to hearing.

Similarly it is suggested that section 77(1) be altered to remove the reference to inquiry to read, "Where a Rental Officer is of the opinion that.....

12. **Revise section 14(6) to permit a Rental Officer to make an order terminating a tenancy agreement where a tenant has failed to provide a security deposit in accordance with the tenancy agreement and Act.**
Section 14(6) sets out remedies pertaining to both landlord and tenant breaches of the security deposit provisions. It permits a Rental Officer to make an order requiring a tenant to pay the required security deposit to the landlord but does not permit a Rental Officer to consider an order terminating the tenancy agreement.

Ironically, section 54(1)(c) permits a landlord to serve a notice of termination on a tenant when the tenant has failed to give the landlord the required security deposit. On hearing the matter, the Rental Officer may consider the remedy of termination pursuant to section 54(4). I see no reason why the remedy of termination should not be considered solely on the basis that a notice under section 54 was not provided by the landlord. There is no such inconsistency between sections 41 and 54 pertaining to rent or between sections 43 and 54 pertaining to quiet enjoyment.

13. **Revise section 22(3) and 22(4) to include assignment of the tenancy agreement.**
Section 22 requires a tenant to get written consent from the landlord for sub-letting or assignment but states that such consent shall not be unreasonably withheld. Subsections 3 and 4 permit a tenant to apply for an order permitting subletting when the landlord has unreasonably withheld consent but only mentions subletting. The provision should apply to assignments of the tenancy agreement as well.

14. **Revise sections 32 and 33 to specify how rent paid to a Rental Officer may be disbursed by the Rental Officer.**
Section 32 permits a Rental Officer to order a tenant to pay rent to a Rental Officer on the application of a tenant pursuant to section 30(4). Section 33 permits the redirection of rent to the Rental Officer when vital services are being withheld. Neither section provides any detail concerning how the redirected rent can be disbursed by a Rental Officer or under what circumstances it can be released to the landlord.

Ordering a landlord to make certain repairs or to restore vital services and ordering the tenant to pay rent to a Rental Officer is usually an effective method of encouraging a landlord to comply with their obligations. In some cases, however, a landlord may be unwilling to do repairs, even if he is ordered to do so and his cash flow from the property is curtailed. A provision which would permit a Rental Officer to provide compensation or repair expenses to the tenant from the redirected rent would help to ensure that the tenant receives some useful relief.

15. **Revise section 46 to include all illegal activities.**
Section 46 prohibits tenants from carrying on any criminal act in the rental premises or residential complex. Although the margin heading is "illegal activities" the wording of the legislation is "criminal act". Illegal activity is a more appropriate term as it covers many of the offences which are disturbing to other tenants and the community, such as illegal sale of alcohol which are not Criminal Code offenses.

16. **Include a remedy under section 47 for refund of overpayment of rent.**
Section 47 includes provisions for rent increases. On occasion, a rent increase is determined to be in violation of the provisions of the Act although the tenant has paid the rent demanded. There is no provision which would allow a Rental Officer to order a landlord to refund an overpayment of rent made by a tenant where a rent increase has been determined to not be in accordance with the Act.

17. **Include a remedy under section 56 for refund of overpayment of rent.**
Section 46 provides that a tenancy agreement for premises provided by the tenant's employer as a benefit of employment is terminated when the employment is terminated. The provisions require the tenant to vacate within one week during which no rent or compensation is to be charged. Commonly, employers deduct rent for these types of tenancies from the employee's pay. If excessive rent or compensation charges are levied and deducted from pay, there is no provision for a Rental Officer to order the landlord to refund these deductions.

18. **Revise section 71(1) to include service by registered mail to a former tenant**.
Section 71 permits service to a tenant by registered mail at the address of the rental premises. Service by registered mail is deemed served seven days the date of mailing. A significant number of applications are made against former tenants who no longer reside at the rental premises. Changes to the section should be made to permit service by registered mail at the known address of the tenant.