

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 9 December 1986

RESIDENTIAL TENANCIES BILL

Proposed Amendments

Hon. P. B. GOFF, in Committee, to move the following amendments:

Clause 1: To omit from line 16 on page 3 the expression "November 1986", and substitute the expression "February 1987".

Clause 2: To omit the definition of the term "District Registrar" (all the words in lines 3 and 4 on page 5).

To insert on page 7, after the definition of the term "minor", the following definition:

"Officer of the Tribunal" means an officer of the Department of Justice, or of the Corporation, who is for the time being acting in the service of the Tribunal; and includes a Tenancy Mediator:

To insert on page 8, after the definition of the term "protected tenancy", the following definition:

"Registrar", in relation to the Tribunal, means a Registrar of the Tribunal appointed under section 70 of this Act; and includes a Deputy Registrar of the District Court who, by virtue of section 14 (3) of the District Courts Act 1947, is acting in the place of the Registrar:

To omit the definition of the term "the two Ministers" (all the words in lines 32 and 33 on page 9).

Clause 9: To insert in line 1 on page 17, after the words "a fixed-term tenancy", the words "or a service tenancy".

Clause 24: To add, on page 29, the following subclauses:

(6) Where a landlord has given a notice to increase the rent and subsequently realises that, because of—

(a) Some error in calculating the day on which the increased rent is to become payable or in the manner in which that day is expressed in the notice; or

(b) Some delay in serving the notice,—

the day fixed in the notice for the increased rent to become payable is in contravention of subsection (1) or subsection (2) of this section, the landlord may, with the agreement of the tenant or (failing such agreement) with the consent of the Tribunal,

give to the tenant a further notice varying the original notice so as to bring the terms of the original notice into accord with the provisions of that subsection or those subsections.

(7) Every notice given under subsection (6) of this section shall comply with the requirements of subsection (2) of this section.

(8) The Tribunal shall not give its consent under subsection (6) of this section unless it is satisfied—

- (a) That the error or the delay was inadvertent; and
- (b) That the landlord has sought to correct the matter as soon as practicable; and
- (c) That it would not be unfair to the tenant to allow the original notice to be varied in the manner proposed.

Clause 29: To omit subclause (3) (c) (all the words in lines 31 to 34 on page 33), and substitute the following paragraph:

- (c) To any rent paid by way of deduction from the tenant's pay, or from any benefit to which the tenant is entitled under the Social Security Act 1964, and paid into a bank account nominated by the landlord.

Clause 34: To omit from line 25 on page 35 the words "31st day of January", and substitute the words "30th day of April".

Clause 51: To add, on page 45, the following subclauses:

(7) Where a party has given a notice to terminate the tenancy and subsequently realises that, because of—

- (a) Some error in the way in which the period of the notice or the date of the expiry of that period is expressed in the notice; or

(b) Some delay in serving the notice,—
the period of notice given is less than the minimum prescribed by subsection (1) or (as the case may require) subsection (2) of this section, that party may, with the agreement of the other party or (failing such agreement) with the consent of the Tribunal, give to the other party a further notice varying the first notice so as to bring the period of notice given up to or above that minimum so required.

(8) Every notice given under subsection (7) of this section shall comply with the requirements of subsection (3) of this section.

(9) The Tribunal shall not give its consent under subsection (7) of this section unless it is satisfied—

- (a) That the error in the notice or the delay in serving the notice was inadvertent; and
- (b) That the party who gave the notice has sought to correct the matter as soon as practicable after realising that the period of notice given is inadequate; and
- (c) That it would not be unfair to the other party to allow the original notice to be varied in the manner proposed.

Clause 61: To insert in line 34 on page 55, after the words "possession order", the words "duly enforced in accordance with section 101 of this Act".

Clause 62: To omit from line 14 on page 56 the word "enforced", and substitute the words "filed under section 101 of this Act".

Clause 64: To omit from line 37 on page 56 the expression "October 1987", and substitute the expression "February 1988".

Clause 65: To omit from line 3 on page 58 the words “two Ministers”, and substitute the words “Minister of Justice made after consultation with the Minister of Housing”.

To omit from line 12 on that page, and also from line 18 on that page, and also from line 9 on page 59, the words “two Ministers”, and substitute in each case the words “Minister of Justice”.

Clause 66: To omit from line 24 on page 59 the word “of” where it first occurs, and substitute the words “not exceeding”.

To omit from line 34 on that page the words “two Ministers”, and substitute the words “Minister of Justice”.

Clause 69: To omit subclause (2) (all the words in lines 26 to 30 on page 61), and substitute the following subclause:

(2) Sittings of the Tribunal shall be held, as and when necessary for the dispatch of its business,—

(a) At the discretion of the Principal Tenancy Adjudicator, at each place, or at the nearest District Court to each place, specified in the First Schedule to this Act; and

(b) At such other places as the Principal Tenancy Adjudicator may from time to time direct.

Clause 70: To omit from line 9 on page 62, and also from line 14 on that page, and also from line 20 on that page, the word “District”.

Clause 71: To omit from line 2 on page 63 the words “Tenancy Adjudicator and each District”.

To omit from lines 7 and 8 on that page the words “two Ministers from time to time determine”, and substitute the words “Secretary for Justice from time to time determines”.

Clause 72: To omit from line 11 on page 63, and also from line 17 on that page, and also from line 25 on that page, the word “District”.

To insert in line 17 on that page, after the words “for public inspection”, the words “on payment of the prescribed fee (if any)”.

Clause 74: To omit from lines 9 and 10 on page 64 the words “two Ministers”, and substitute the words “Minister of Housing”.

To omit from line 2 on page 65 the word “District”.

To omit from line 18 on that page the word “of”, and substitute the words “not exceeding”.

To omit from line 22 on that page, and also from line 23 on that page, the words “two Ministers”, and substitute in each case the words “Minister of Housing”.

Clause 85: To omit from line 22 on page 73, and also from line 27 on that page, the word “District”.

Clause 86: To omit from line 42 on page 73, and also from line 2 on page 74, the word “District”.

Clause 94: To omit from line 3 on page 82 the word “District”.

Clause 95: To omit from line 23 on page 83 the word “District”.

Clause 100: To omit from line 7 on page 85 the word “District”.

Clause 102: To omit subclause (6) (all the words in lines 22 to 27 on page 86), and substitute the following subclause:

(6) The Corporation may advance to any person who seeks to enforce an order pursuant to subsection (1) of this section

the amount of any filing fee payable by that person; and, where the Corporation does make any such advance, the amount of the advance shall be recoverable from the other party for the credit of Part B of the Fund.

Clause 104: To insert in line 31 on page 89, before the words "or section 30 (2)", the words "or section 29 (4)".

Clause 107: To omit from line 29 on page 90 the word "member", and substitute the words "Tenancy Adjudicator".

To omit from line 38 on that page the word "District".

Clause 111: To omit from line 9 on page 93 the word "claims", and substitute the word "applications".

Clause 112: To omit from line 8 on page 94 the words "District Registrar", and substitute the words "Registrar of the Tribunal".

To insert in line 10 on that page, and also in line 14 on that page, after the word "Registrar" in each case, the words "of the Court".

Clause 123: To omit from lines 40 and 41 on page 100 the words "with the approval of the Director-General".

Clause 137: To omit paragraph (c) (all the words in line 38 on page 108).

Clause 138: To omit from line 21 on page 109 the words "two Ministers", and substitute the word "Minister".

EXPLANATORY NOTE

Clause 1: The amendment changes the commencement date of the Bill from 1 November 1986 to 1 February 1987. The amendments to *clauses 34 and 64* are consequential upon that change.

Clause 2: The first and third amendments are consequential upon the amendments to *clause 70*, which changes the designation of "District Registrar" of the Tribunal (as proposed in the Bill) to "Registrar". The amendments to *clauses 72, 73, 85, 86, 95, 100, and 122*, and the second amendment to *clause 74* are also consequential upon that change.

The second amendment to *clause 2* inserts a definition of the term "Officer of the Tribunal" for the purposes of *clauses 93 and 107*.

The fourth amendment to *clause 2* is consequential upon the amendments to *clause 65 and clause 71* (as to which, see below).

Clause 9: The amendment is consequential upon the new *subclause (2) (b)* recommended by the Social Services Committee.

Clause 24: The amendments provide for the case where the landlord serves notice to raise the rent, and subsequently realises that the day fixed in the notice for the increased rent to become payable is earlier than allowed, or that the period of notice actually given is less than the minimum required. The landlord will be able to correct the error by giving a further notice, either with the agreement of the other party or with the consent of the Tribunal. Before giving its consent, the Tribunal must be satisfied that the error was inadvertent, that the landlord has moved to correct it as soon as practicable after discovering it, and that it would not be unfair to the tenant to allow correction.

Clause 29: The amendment substitutes a new paragraph (c) for that recommended by the Social Services Committee in respect of *subclause (3)*. The paragraph recommended by that Committee would remove the requirement of a receipt for rent where, in respect of a service tenancy, the rent is deducted by the landlord from the tenant's pay.

The new paragraph is wider in 2 respects. First, it applies to all tenancies covered by the Bill, and not just service tenancies. Secondly, it applies to cases

where rent is deducted from a Social Security Benefit to which the tenant is entitled, as well as cases where it is deducted from the tenant's pay.

Clause 51: The amendments provide for the case where one party serves notice to terminate the tenancy, and subsequently realises that the period of notice actually given is less than the minimum required. That party will be able to correct the error by giving a further notice, either with the agreement of the other party or with the consent of the Tribunal. Before giving its consent, the Tribunal must be satisfied that the error was inadvertent, that the party giving the notice has moved to correct it as soon as practicable after discovering it, and that it would not be unfair to the other party to allow correction.

Clause 61: The amendment is consequential upon the amendment to *subclause (1)* recommended by the Social Services Committee.

Clause 62: The amendment relates to the enforcement of possession orders by filing in the District Court under *clause 101* of the Bill.

As *subclause (4)* reads at present, such an order could not be enforced after the prescribed period of 3 months, even if it was duly filed within that period. The amendment corrects this situation.

Clause 65 relates to the appointment of Tenancy Adjudicators. As the clause reads at present, the recommendation for appointment (by the Governor-General) would be made by the Minister of Justice and the Minister of Housing acting jointly. Under the amendments, the recommendation will be made by the Minister of Justice after consultation with the Minister of Housing.

Clause 66: The first amendment relates to the term of office of Tenancy Adjudicators. As the clause reads at present, each Tenancy Adjudicator would be appointed for a term of 3 years. Under the amendment, each appointment would be for a term not exceeding 3 years.

The second amendment is consequential upon the amendment to *clause 65*.

Clause 69: The amendment allows the Tribunal, at the discretion of the Principal Tenancy Adjudicator, to sit at the nearest District Court to each of the places specified in the *First Schedule* to the Bill. At present, the Bill stipulates that the Tribunal will sit at those places.

Clause 71: The first amendment provides that a Tenancy Adjudicator will not retain possession of the Tribunal's seal. Each seal will remain in the custody of a Registrar.

The second amendment requires the Secretary for Justice to determine the form of the seal. Under the Bill at present, this is determined by the Minister of Justice and the Minister of Housing jointly.

Clause 74: The first and fourth amendments relate to the appointment of Tenancy Mediators, other than those who are officers of the Corporation. As the clause reads at present, each such Tenancy Mediator would be appointed by the Minister of Justice and the Minister of Housing acting jointly. Under the amendment, each such appointment will be made by the Minister of Housing alone.

The third amendment relates to the term of appointment of such Tenancy Mediators. As the Bill stands at present, each such Tenancy Mediator would be appointed for a term of 3 years. Under the amendment, each will be appointed for a term not exceeding 3 years.

Clause 102: A new *subclause (6)* is substituted. The present subclause provides that no filing fee is payable where an order of the Tribunal is filed in the District Court for enforcement, but the cost of filing may be recovered from the other party for the credit of the Consolidated Account. Under the new subclause, the Corporation may advance the amount of the fee to the party seeking enforcement, and recover the cost from the other party for the credit of Part B of the Residential Tenancies Fund.

Clause 104: The amendment corrects an oversight. At present, the Bill provides no maximum penalty for a breach of *clause 29 (4)*. The effect of the amendment is to prescribe a maximum penalty of \$100.

Clause 107: The amendment is consequential upon the recommendation of the Social Services Committee to redesignate members of the Tribunal as Tenancy Adjudicators.

Clause 111: The amendment corrects an error in the Bill as introduced.

Clause 123: The amendment allows the Corporation to invest money in Part A of the Fund without first seeking the approval of the Director-General.

Clause 137: The amendment removes a redundant power to make regulations relating to the practice and procedure of the Tribunal. This is covered by the power to make rules of procedure under *clause 111*.

Clause 138: The amendment allows the list of places in the First Schedule to be amended by Order in Council made on the advice of the Minister of Housing alone. At present, the advice is to be given by that Minister and the Minister of Justice.