



## Housing issues

# Improving access to justice for women in the NWT



**For more information:**

Jeannette Savoie,  
Barrister & Solicitor  
Family & Legal Aid Outreach  
YK Centre East, 3rd floor  
Phone: 867-920-3268  
[jeannette\\_savoie@gov.nt.ca](mailto:jeannette_savoie@gov.nt.ca)

- The *Residential Tenancies Act* does not have specific provisions that apply specifically to persons fleeing domestic violence, therefore my presentation will focus on those areas that could affect a woman fleeing an abusive home.

**What happens when a woman is fleeing the violence in her home?**

- The major concern for women who are fleeing an abusive home:
- WHERE WILL I GO?
- Family, friends, shelter????

- If a woman goes to a shelter, she has a temporary home for approximately 6 weeks (subject to possible extension).
- This gives her time to make a plan and take steps.
- Will she go back to the home as it is?
- Will she choose not to go back and seek a legal separation with a division of property or an order for exclusive possession of the home?

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- Who is going to pay the rent until she goes back? Who will pay after she gets back? (she was a stay at home mom)
- What if the abusive partner refuses to leave?
- What if the abusive partner refuses to pay the rent or the arrears?
- What if the abusive partner refuses to break the lease or get his name off the lease?

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- What if the abuse created disturbances to the point where the landlord will seek to terminate the lease and/or have the rental officer issue an eviction order because the violence disturbed the peaceful possession of the neighbours for the 10<sup>th</sup> time?

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- all important questions...

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- Possibility that the noise, violence or chaos may have disturbed the peaceful possession of the other tenants or neighbours and they may have complained to the landlord. This may not be the first time.
- The landlord may file an application to terminate the tenancy and for an eviction

**Landlord applies for termination of lease/eviction due to disturbance**

- - the woman could contact the landlord or the rental officer and ask the rental officer to mediate by explaining that she will be applying for an emergency protection order with an order for exclusive possession of the home and a clause that the abusive partner must leave the home and continue to pay the rent as before for 90 days
- the woman could also explain that she will be contacting a family lawyer for longer term family law (separation/divorce) measures.

### **Landlord applies for termination of lease/eviction due to disturbance**

- If the woman flees an abusive home and she fears for her safety, she can apply for an emergency protection order.
- The Justice of the Peace can order that:
- The woman get exclusive possession of the home for the 90 days
- That the abusive partner continue to pay the rent and costs for 90 days
- Not have any contact, direct or indirect and cannot be in or near the home for 90 days
- If the abusive partner brakes the conditions, he may be charged with a criminal offence.

### **Emergency protection order**

- A woman might apply for an order for division of property in Supreme Court and ask for an interim order for exclusive possession of the home and a restraining order as part of her application for division of property
- A judge of the Supreme Court can also order the abusive party to continue paying for the mortgage (if the parties own their home) and there is nothing in the Act that necessarily says that this could not apply to rent also
- An exclusive possession order could be in place until the last of the children is no longer a child of the marriage as defined in the Divorce Act.
- Age of majority: 19 years old, or withdrawal from parental charge, finished school, college or university, child is married or is in a relationship with a child of his own

## **Family law**

- The woman could contact the landlord and ask that the lease be terminated on notice (if she is the lease holder)
- If the woman is not the leaseholder, she could abandon the premises and the landlord could deal with the other partner only.
- She could make other arrangements and ask the landlord to give her more time with the help of the rental officer as mediator

## **Landlord applies for termination of lease/eviction**

- If the family lives in low cost housing, the woman can apply for transitional housing and sign a statutory declaration called a repudiation of spouse in front of a commissioner of oaths. (this newly created form is used by all housing authorities in the NWT and /or income support ).
- This form was created by Legal Division of the GNWT(at my insistence), 2 years ago, to allow a spouse to show evidence of separation with a spouse for housing and income support purposes.
- (the example used at the time to advocate for the creation of the form, was a spouse trying to flee an abusive relationship and where the spouse refused to leave or where he refused to sign the document that would free the woman from her obligations, or the parties could not afford the legal fees associated with the drafting of a legal separation agreement which was required by Housing).
- A spouse leaving an abusive relationship, can apply for her own income support, can unilaterally sever her lease by signing a repudiation of spouse document, can apply for her own housing unit, can have the arrears owing (if any) split equally between the woman and the other spouse and then enter into a payment plan with the landlord for her share only.

## **Landlord applies for termination of lease/eviction due to non-payment of rent or accumulation of arrears**

- **Evictions will happen despite best efforts**
- Evictions happen when the tenancy has ended, but the tenant has not moved out. There is no need for an eviction if the tenant has moved out. Only the rental officer can issue an eviction order.
- The landlord makes an application to the rental officer asking him or her to make an order terminating the tenancy and ordering the tenant to leave. The landlord can also apply for an order to evict the tenant. The applications can be made together or at different times.
- The rental officer will hold a hearing to hear from both people and will then decide if the order should be made.
- An eviction order has to be filed with the clerk of the NWT Supreme Court within six months. The landlord must give the writ of possession to the sheriff's office to carry out the eviction. The sheriff will then take steps to put the landlord in possession of the rental unit.

## **eviction**

- If a woman leaves her home for a few months and comes after the husband has agreed to leave
- He may have not paid the rent
- There may be arrears

### **What could a woman do?**

- A woman could contact the landlord and make a payment plan right away if the landlord has not filed for termination of the tenancy and eviction.
- Even if the landlord has already filed, the woman can ask the rental officer to mediate an agreement between the landlord and tenant.
- If a eviction hearing is scheduled, the woman can testify to her circumstances and advise the rental officer of her plan to make up the late rent and pay the arrears. The rental officer has the power to grant a stay of the proceedings.

- The parties are separated and the abusive partner is gone...
- What recourse does the woman have to get help with paying the arrears?
- Sign repudiation of spouse with her application for housing/income support
- Apply to legal aid to get a family lawyer and request an equal division of property and debts.
- Check with the NWT Homelessness coalition to see if they have funds available to assist

- If the abusive partner will not remove himself from the lease or leave the home for more than 90 days, (assuming the family lives in housing units owned by the Housing authorities in the NWT), the woman can sign a repudiation of spouse and leave with her share of the debt, enter into a payment plan with housing, so that she can get back on the housing list right away.

- Once the woman gets the Supreme Court order for equal division of property and debts (in most cases, the clients have very little property but lots of debts), she can request garnishment of wages of the spouse for half the debt.
- If the woman missed the deadline for applying for division of property and debts (which is 2 years from the date of separation), she can pay off the debt and sue the other party in small claims or for all intensive purposes she could possibly file a small claims court action for payment of half the debt as a breach of contract and file the order in territorial court requesting garnishment of wages or seizure and sale of the other partner's property to pay the debt

## **Enforcing a family court order**

- For More Information:

Contact:

Jeannette Savoie, Barrister & Solicitor

Family & Legal Aid Outreach

YK Centre East, 3<sup>rd</sup> floor

Yellowknife, NWT

Phone: 867-920-3268

E-mail: [jeannette\\_savoie@gov.nt.ca](mailto:jeannette_savoie@gov.nt.ca)

