

WESTBANK FIRST NATION
RESIDENTIAL PREMISES LAW No. 2008-03
CONSOLIDATED VERSION

Including Amendments approved by Council,
March 22, 2010

**A Law to Regulate Residential Premises on
Westbank Lands**

WFN RESIDENTIAL PREMISES LAW

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WESTBANK FIRST NATION
RESIDENTIAL PREMISES LAW NO. 2008-03

WHEREAS Council of Westbank First Nation deems it advisable and in the best interests of Westbank First Nation to enact a law to regulate residential premises on Westbank Lands;

NOW THEREFORE Council of Westbank First Nation repeals *Westbank First Nation Residential Premises Law 2005-21* and enacts the following law;

1. TITLE

1.1 This Law may be cited as the "*WFN Residential Premises Law No. 2008-03.*"

2. DEFINITIONS

2.1 In this Law unless the context otherwise requires:

"**administrator**" means a person or persons appointed by Council pursuant to section 49 of this Law;

"**arbitrator**" means an arbitrator appointed under Part IV of this Law;

"**caretaker's premises**" means premises used for residential purposes provided to a person employed as a caretaker, janitor, manager or superintendent in respect of residential property in which the premises are situated;

"**Council**" means the governing body of Westbank elected pursuant to the Westbank First Nation Constitution;

"**court**" means court of competent jurisdiction;

"**day**" means Monday through Friday, exclusive of statutory holidays;

"**document**" includes an application, decision, notice and order;

"**employment premises**" means premises used for residential purposes provided by an employer to an employee to occupy during his or her employment;

"**family corporation**" means a corporation in which all the voting shares are owned by:

(a) one individual; or

(b) one individual plus one or more of his or her father, mother, brother, sister, child, spouse, grandparent, grandchild, or his or her spouse's mother, father, brother, sister or child, grandparent or grandchild;

"**fixed term tenancy agreement**" means a tenancy agreement with a predetermined expiry date;

“hotel” means a hotel, motel, inn, rooming house and apartment hotel but does not include a facility:

- (a) owned or operated by Council, a non-profit society incorporated under the *Society Act*, a college designated under the *College and Institute Act* or a university named in the *University Act*, or
- (b) in which the landlord resides and which contains fewer than a total of 5 bedrooms or rooms used as bedrooms;

“landlord” includes a permitter, lessor, sublessor, owner or other person permitting the occupation of residential premises, and his or her heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying the premises, entitled to possession of the residential premises; and in the case of premises owned by Westbank means Council;

“manufactured home” means any structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to be moved from one place to another by being towed or carried and to be a dwelling unit, but does not include a travel trailer, tent trailer or trailer otherwise designated by resolution of Council;

“manufactured home pad” means land rented as space for and on which a tenant, under a tenancy agreement, is entitled to place a manufactured home;

“manufactured home park” means a location where a landlord rents or offers to rent two or more manufactured home pads and includes the structures and facilities provided by a landlord for common use of persons residing in the park;

“mediator” means a person or persons designated under Part V of this Law;

“person” in addition to its ordinary meaning, includes any association, household, society, corporation, partnership or party, whether acting by themselves or by a servant, agent or employee, and the successors, assigns and personal or other legal representatives of such person to whom the context can apply according to law;

“prime rate” means the prime lending rate of the principal banker to WFN on the first day of each calendar year;

“public housing body” means a person or organization designated by resolution of Council;

“rent” means consideration, whether in the form of money, services or goods, which are paid, given or agreed to be paid or given by a tenant to a landlord in respect of residential premises, and includes consideration for a privilege, benefit, service, facility or other thing provided, directly or indirectly, by the landlord to the tenant that relates to the use, occupation or enjoyment of residential premises, but does not include a security deposit or a utility charge paid directly by a tenant;

“rental unit” means living accommodation rented or intended to be rented to a tenant, and excludes manufactured home pads;

“residential premises” means a dwelling unit used for residential purposes, and includes, without limitation:

- (a) a manufactured home;
- (b) a manufactured home pad;
- (c) caretaker’s premises;
- (d) employment premises;
- (e) any premises subject to the terms of a rent to purchase agreement;

but does not include:

- (a) premises whose occupant or occupants are required to share a bathroom or kitchen facility with the landlord, the landlord’s spouse, child or parent, or the landlord’s spouse’s child or parent, where the landlord, spouse, child or parent lives in the building in which the premises are located;
- (b) accommodation provided to the public in a hotel, motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment, inn, campground, trailer park, tourist home, bed and breakfast establishment or farm vacation home;
- (c) short term accommodation provided as emergency shelter;
- (d) premises under a registered lease or sublease for a term exceeding 10 years;
- (e) accommodation in intermediate or long term care facilities or premises;
- (f) premises, under a single lease, occupied for business purposes with a dwelling unit attached;

“residential property” means a building in which residential premises are situated and includes the land on which the building is located;

“security deposit” means money or property advanced or deposited, or a right given, by or on behalf of a tenant or prospective tenant, to be held or enforced by or on behalf of a landlord:

- (a) to secure the performance by a tenant or prospective tenant of an obligation under this Law or a tenancy agreement or in respect of residential premises;
- (b) to secure payment by a tenant or prospective tenant of a liability or probable liability to a landlord; or
- (c) to be returned to a tenant or prospective tenant, or in respect of which a tenant or prospective tenant is to be released, on the happening of an event;

including without limitation;

- (d) a negotiable instrument made negotiable more than 30 days after the date it is given;
- (e) a prepayment of rent for other than the first month of a tenancy agreement;
- (f) a deposit in respect of damage or rent for which a tenant is, or may be made to be, responsible;
- (g) an agreement entitling a right to be enforced if a tenant ends a tenancy agreement or goes out of possession of residential premises other than in accordance with this Law or a tenancy agreement;
- (h) a fee or deposit that is not refundable; or
- (i) a requirement to pay a rental payment that is substantially greater than other rental payments required under a tenancy agreement;

"service or facility" includes, with respect to residential premises, any of the following that are supplied, or agreed to be supplied, by the landlord:

- (a) furniture, appliances and furnishings;
- (b) parking and related facilities;
- (c) cablevision facilities;
- (d) utilities and related services;
- (e) cleaning or maintenance services;
- (f) maid services;
- (g) laundry facilities;
- (h) storage facilities;
- (i) elevator facilities;
- (j) common recreational facilities;
- (k) intercom systems;
- (l) garbage facilities and related services; and
- (m) heating facilities or services;

"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;

“tenancy agreement” means an agreement, whether written or oral, express or implied, having a predetermined expiry date or not, between a landlord and tenant respecting possession of residential premises;

“Westbank” or **“WFN”** means the Westbank First Nation as defined in the *Westbank First Nation Constitution*;

“Westbank Lands” means:

- (a) the following Westbank Indian Reserves:

- (i) Mission Creek Indian Reserve No. 8
- (ii) Tsinstikeptum Indian Reserve No. 9
- (iii) Tsinstikeptum Indian Reserve No.10
- (iv) Medicine Hill Indian Reserve No. 11
- (v) Medicine Creek Indian Reserve No. 12; and

- (b) lands set apart by Her Majesty the Queen in right of Canada in the future as lands reserved for the use and benefit of Westbank, within the meaning of section 91(24) of *the Constitution Act, 1867*;

“WFN Housing Commission” means the Westbank Housing Commission established by Council to develop, implement and enforce Westbank housing policies and any other duties assigned to it by Westbank Law or policy;

“WFN housing unit” means any rental unit owned and operated by Westbank.

- 2.2 Unless otherwise provided in this Law, words, expressions and rules of construction used in this Law have the same meaning as in the *Westbank First Nation Constitution*.

3. TENANCY AGREEMENTS OF INFANTS

- 3.1 Despite section 19 of the *Infants Act*, a tenancy agreement entered into by a person under the age of 19 years is enforceable by and against the person to the same extent as if that person had been an adult on the date of entry into the tenancy agreement.

4. APPLICATION OF LAW

- 4.1 Despite any other WFN Law or an agreement or waiver to the contrary, this Law applies to tenancy agreements, residential premises and residential property on Westbank Lands.

- 4.2 Despite section 4.1, this Law does not apply to a tenancy agreement for a term exceeding 10 years.

PART I TERMS OF TENANCY AGREEMENT

5. DEEMED TERMS

- 5.1 Sections 8.1 to 15.5 and 19.1 to 29.5 are deemed to be terms of every tenancy agreement.
- 5.2 Council may by resolution establish a schedule setting out other terms that are to be included or are not to be included in every tenancy agreement or application for a tenancy agreement and may establish different terms for different classes of tenancy agreements.
- 5.3 Terms established under section 5.2 that are to be included in a tenancy agreement are deemed to be terms of every tenancy agreement.
- 5.4 A term in a tenancy agreement that is in conflict with this Law is void.

6. STANDARD FORM TENANCY

- 6.1 Without limiting sections 5.1 to 5.4, Council may by resolution establish standard forms of tenancy agreements and require their use.
- 6.2 Without limiting section 6.1, Council may by resolution establish:
- (a) different standard form tenancy agreements for use:
 - (i) by different classes of persons; or
 - (ii) in different circumstances;
 - (b) that if the terms of a standard form tenancy agreement are deemed to be included in a tenancy agreement or class of tenancy agreement, a provision of the tenancy agreement or class of tenancy agreement that is in conflict with the standard form tenancy agreement is void; and
 - (c) that if a person, or class of persons, is required to use a standard form tenancy agreement and instead uses another tenancy agreement, that other agreement is void and the standard form tenancy agreement is deemed to be the agreement that was entered into.

7. PERMITTED TERMS

- 7.1 A tenancy agreement may contain reasonable terms respecting the tenant's use, occupation and maintenance of:
- (a) residential premises; and
 - (b) a service or facility used in connection with the residential premises.

- 7.2 A term is, in the absence of evidence to the contrary, reasonable if it is:
- (a) intended to:
 - (i) promote fair distribution of a service or facility to every occupant in the residential property;
 - (ii) promote the convenience, safety and welfare of every person working or residing in the residential property; or
 - (iii) protect the landlord's property from abuse;
 - (b) reasonably related to the purpose for which it is intended; and
 - (c) sufficiently explicit to inform the tenant of what he or she must do or must not do in order to comply with it.

7.3 A term that is not reasonable is not enforceable.

7.4 A term in a manufactured home pad tenancy agreement that a manufactured home must be purchased from a specific vendor is not reasonable, for the purposes of this section, unless the term is disclosed to the prospective tenant before the tenancy agreement is entered into.

8. NO ACCELERATION PROVISION

8.1 Despite any other Westbank Law, if a tenant fails to comply with a term of a tenancy agreement, the tenancy agreement must not provide that all or part of the rent remaining for the term of the agreement becomes due and payable.

9. SERVICES UNSPECIFIED IN AGREEMENT

9.1 If a service or facility is reasonably related to a tenant's continued use and enjoyment of the residential premises, but is not expressly provided for in the tenancy agreement, the landlord must not discontinue providing the service or facility to the tenant.

10. FIXED TERM TENANCY AGREEMENTS

10.1 Subject to sections 33.1 to 33.6, if:

- (a) a fixed term tenancy agreement expires;
- (b) the landlord and tenant do not enter into a new tenancy agreement before the agreement expires; and
- (c) the tenant continues to occupy the residential premises;

the landlord and the tenant are deemed to have renewed the agreement as a month to month tenancy agreement on the same terms as are provided for in the expired agreement.

- 10.2 A landlord and tenant may agree, in writing, at the time they enter into a fixed term tenancy agreement that, despite section 10.1, the tenancy agreement is ended on the predetermined expiry date.
- 10.3 An agreement made under section 10.2 that is not in writing is not enforceable.
- 10.4 Section 10.2 applies to a fixed term tenancy agreement respecting a manufactured home pad only in circumstances where the tenant is renting a manufactured home and the manufactured home pad under a single tenancy agreement.

11. APPLICATION AND PROCESSING FEES

- 11.1 Council may by resolution establish maximum fees that may be charged by a landlord for:
- (a) accepting an application for a tenancy;
 - (b) processing the application;
 - (c) investigating the applicants suitability as a tenant; or
 - (d) accepting the person as a tenant.

12. PEACEFUL OCCUPANCY: LANDLORD'S OBLIGATION

- 12.1 The landlord must not disturb a tenant's occupancy or enjoyment of the residential premises.
- 12.2 If the landlord interferes with a tenant's occupancy or enjoyment, the tenant may apply for an order under section 12.3.
- 12.3 Where, on the application of a tenant, an arbitrator determines that the landlord has breached the obligations imposed by this section, the arbitrator may make an order:
- (a) requiring the landlord to comply with his or her obligation,
 - (b) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach.

13. PEACEFUL OCCUPANCY: TENANT'S OBLIGATION

- 13.1 A tenant must not disturb any other resident's occupancy or enjoyment of a residential premises.
- 13.2 A disturbance caused by a person permitted by a tenant to enter the residential premises will be deemed to be a disturbance caused by the tenant.
- 13.3 If a tenant, or a person permitted by a tenant to enter the residential premises, causes a disturbance or disturbs any other resident's occupancy or enjoyment of the residential premises, the landlord may apply for an order under section 13.4.

- 13.4 Where, on the application of the landlord, an arbitrator determines that a tenant has not complied with the obligations imposed by this section, the arbitrator may make an order:
- (a) requiring the tenant to comply with his or her obligations;
 - (b) requiring the tenant to not breach his or her obligations again; or
 - (c) terminating the occupancy on the date specified in the order and ordering the tenant to vacate the residential premises on that date.

14. PEACEFUL OCCUPANCY: COMPLAINT PROCEDURE

- 14.1 Where a tenant informs the landlord that he or she has been affected by another tenant's breach of the obligation imposed by section 13.1, the landlord must inquire into the complaint and take appropriate action if necessary, including the making of an application under section 13.3.
- 14.2 Where, after receiving a complaint under section 14.1, the landlord does not make an application under section 13.3, and the complaining tenant is not satisfied with the action, if any, that the landlord has taken, the complaining tenant may apply to the administrator to designate an arbitrator.

15. DUTY TO REPAIR AND KEEP CLEAN

- 15.1 A landlord must provide and maintain residential premises and residential property in a state of decoration and repair that:
- (a) complies with health, safety and housing standards required by applicable law, and
 - (b) having regard to the age, character and location of the residential property, would make it reasonably suitable for occupation by a reasonable tenant who would be willing to rent it.
- 15.2 A landlord's duty under section 15.1(a) applies even though a tenant knew of a breach by the landlord of that section at the time the landlord and tenant entered into the tenancy agreement.
- 15.3 Section 15.1 does not apply to that part of residential premises owned by a tenant.
- 15.4 A tenant must:
- (a) maintain ordinary health, cleanliness and sanitary standards throughout the residential premises and residential property in respect of which he or she has entered into a tenancy agreement; and
 - (b) take necessary steps to repair damage caused to the residential premises and residential property, in respect of which he or she has entered into a tenancy agreement, by the tenant's willful or negligent act or omission, or that of a person permitted on the residential premises or residential property by the tenant.

15.5 A tenant is:

- (a) not liable for reasonable wear and tear to the residential premises; and
- (b) liable for the cleaning of the residential premises and residential property if he or she has contravened section 15.4.

16. REPAIR AND SERVICE ORDERS

16.1 A tenant may apply to an arbitrator for an order requiring a landlord to comply with this Law or the tenancy agreement if a landlord:

- (a) contravenes section 15.1; or
- (b) has failed, or may fail, to provide a service or facility that the landlord is obliged to provide under a tenancy agreement or under section 9.

16.2 On an application under section 16.1, the arbitrator may order:

- (a) the landlord to comply with this Law or the tenancy agreement;
- (b) a tenant to pay rent due to the landlord into an account established by Westbank to hold rent due until ordered paid out (the "WFN Account");
- (c) the rent paid into the WFN Account be paid to the landlord to be applied to the costs and expenses of complying with this Law or the tenancy agreement as specified in the order; or
- (d) that:
 - (i) the rent paid into the WFN Account; or
 - (ii) any future rent payable by the tenant or any other tenant affected by the landlord's act or omission, be paid to a named person who must hold the money paid to him or her in trust to be applied, as specified in the order, to the costs and expenses of complying with this Law or the tenancy agreement.

16.3 An order made under this section may contain terms respecting costs, expenses, remuneration and any other necessary matters.

16.4 This section does not affect the right of a tenant to bring a proceeding against a landlord for breach of contract.

16.5 In addition to other remedies a tenant may have under this Law, an order under this section may authorize a tenant to deduct up to one month's rent and to spend that amount on any repair, service or facility ordered under this section if, within the time specified in the order, the landlord fails to comply with an order made under section 16.2.

16.6 Where a tenant has deducted an amount for rent in accordance with section 16.5, the tenant will provide the landlord with copies of receipts for the amount spent on repairs or services.

17. RENT REDUCTION

17.1 In proceedings for an order under section 16.2, or if the landlord fails to comply with an order made under section 16.2(a), an arbitrator may order that rent payable by the tenant is reduced by the amount the arbitrator considers commensurate with the reduced value of the tenancy to the tenant as a result of the landlord's failure to comply with:

- (a) this Law or the tenancy agreement; or
- (b) the order made under section 16.2(a).

17.2 A reduction in rent under section 17.1 does not apply to rent that becomes payable after the landlord complies with the order made under section 16.2(a).

18. EMERGENCY REPAIRS

18.1 In this section, "emergency repairs" means repairs that are urgent and necessary for the health and safety of persons or the preservation and use of the residential property or residential premises, to:

- (a) major leaks in the pipes or roof;
- (b) damaged or blocked water or sewer pipes or plumbing fixtures;
- (c) the central or primary heating system;
- (d) defective locks that give access to the residential premises; or
- (e) in prescribed circumstances, the residential premises or residential property.

18.2 A landlord must post and maintain in a conspicuous place on the residential property the name of the person who will respond for the landlord in an emergency and the telephone number at which that person can be reached if emergency repairs are necessary.

18.3 If emergency repairs are not made within a reasonable time after a tenant has made a reasonable effort on two (2) or more occasions to contact the person at the telephone number referred to in section 18.2, the tenant may have repairs made, but the landlord may take over completion of those repairs at any stage.

18.4 A landlord must reimburse a tenant for the tenant's expenses under section 18.3 except expenses that an arbitrator, on application, finds to be:

- (a) not for emergency repairs;
- (b) for emergency repairs for which the tenant failed to comply with either section 18.3 or 18.5;

- (c) beyond a reasonable cost for the emergency repairs; or
 - (d) for emergency repairs the need for which arises primarily from the actions or neglect of the tenant or a guest of the tenant.
- 18.5 A tenant must provide a landlord with a written account, with receipts for each expense incurred, for emergency repairs made under section 18.3.
- 18.6 If a tenant complies with sections 18.3 and 18.5, the tenant may, in addition to other remedies the tenant may have under this Law, withhold from rent that becomes due an amount equal to the reasonable expenses incurred by the tenant under section 18.3, less reimbursement received under section 18.4.

19. LOCKS AND ACCESS

- 19.1 Subject to sections 19.2 and 19.3, a landlord or tenant must not, except by agreement or under an order of an arbitrator, alter a means of entrance or access to residential premises or residential property so as to interfere unreasonably with the other's use of the entrance or access.
- 19.2 If there is a reasonable threat to security, a landlord in an emergency may alter the locking system on a door that provides access to residential property, but a landlord must not, except by agreement, alter the locking system on a door that provides direct access to residential premises.
- 19.3 On the request of a tenant at the beginning of a new tenancy agreement, the landlord must:
- (a) re-key or otherwise change the locks so that keys issued to previous tenants do not give access to the residential premises; and
 - (b) pay all costs associated with the change made under paragraph (a).
- 19.4 A landlord may refuse to comply with a request under section 19.3 if the landlord, at the end of the previous tenancy, re-keyed or otherwise changed the locks to the residential premises of the tenant.
- 19.5 A landlord must not impose restrictions respecting access to residential property by:
- (a) candidates, or their authorized representatives, who are seeking election to an elected office and who are lawfully canvassing electors or distributing election material; or
 - (b) a tenant of residential premises located on the residential property or persons invited by a tenant of the residential premises.

20. CHANGE OF LOCKS BY THE TENANT

- 20.1 If an arbitrator, on application, is satisfied that a landlord may contravene section 19.1, the arbitrator may:

- (a) authorize the tenant to change the locks and other means that give access to the residential premises; and
 - (b) order that, while the tenancy continues, the landlord must not change those locks or obtain the keys or other means that give access to the residential premises.
- 20.2 For each change made under section 20.1(a), the tenant must give to the landlord at the end of the tenancy the keys and all other means that give access to the residential premises.
- 20.3 If at the end of the tenancy the tenant does not give the landlord the keys and all other means that give access, the reasonable cost to the landlord to replace the locks and all other means that give access may be deducted from the security deposit:
- (a) by agreement between the landlord and tenant; or
 - (b) by order of an arbitrator.

21. LANDLORD'S RIGHT OF ENTRY

- 21.1 A landlord must not enter residential premises in respect of which a tenant has a right of possession under a tenancy agreement unless:
- (a) an emergency exists;
 - (b) the tenant consents at the time of entry;
 - (c) the tenant gives consent, not more than one month before the time of entry, to enter for a specific purpose;
 - (d) the landlord has reasonable grounds to believe that a tenant has abandoned the residential premises;
 - (e) the landlord has given written notice of entry for a reasonable purpose not more than 72 hours and not less than 24 hours before the time of entry; or
 - (f) an arbitrator orders that the landlord or the landlord's agent may enter the residential premises at a specified time for a specified purpose and entry is made in accordance with the terms of the order.
- 21.2 In an entry under section 21.1(a):
- (a) the landlord has a right to enter even where the tenant is not at home at the time and has not given his or her consent; and
 - (b) where a tenant is at home, the tenant must permit the landlord to enter.
- 21.3 The landlord must specify in a notice of entry under section 21.1(e) the hours of the day during which the landlord intends to enter the residential premises, and those hours must, unless the tenant otherwise consents, be between 8 a.m. and 9 p.m.

21.4 If an arbitrator, on application, is satisfied that a landlord who exercised a right of entry under any of paragraphs (a) to (f) of section 21.1 did so for an improper purpose, at an unreasonable time or in an unreasonable manner, the arbitrator may do one or more of the following:

- (a) suspend any of those rights of entry of the landlord;
- (b) order that a right of entry of the landlord be exercised only on conditions ordered by the arbitrator.

22. RIGHT TO ASSIGN OR SUBLET

- 22.1 A tenant may assign or sublet his or her interest in a tenancy agreement with the consent of the landlord.
- 22.2 A landlord of a rental unit must not arbitrarily or unreasonably withhold his or her consent to assign or sublet the tenant's interest in a tenancy agreement and if such consent is not given must provide reasons in writing to the tenant.
- 22.3 A landlord of a manufactured home pad may withhold his or her consent to assign or sublet the tenant's interest in a tenancy agreement only in the circumstances prescribed in the Manufactured Home Pad Assignment and Sublet Regulation.
- 22.4 A landlord must not receive any consideration, directly or indirectly, for giving his or her consent under this section.
- 22.5 If consent to assign or sublet the tenant's interest in a tenancy agreement is arbitrarily or unreasonably withheld by a landlord contrary to section 22.2, an arbitrator may order that a tenancy agreement is assigned or sublet.

23. ARBITRATION OF DISPUTES

- 23.1 A landlord and tenant are deemed to have agreed to submit to an arbitrator any of the following applications:
- (a) an application either to arbitrate or for an order regarding any matter under section 12.3, 13.3, 14.2, 16.1, 18.4, 19.1, 20.1, 21.4, 22.5, 27.4, 27.10, 34.1, 37.1, 42.3, 44.1, 47.1, 50.4, 52.1, 52.3, 53.1, 54.1, 59.1, 61.1, 61.3, 81.1, 83.1; and
 - (b) an application to dispute the amount of a rent increase between a tenant of a manufactured home pad and the landlord if:
 - (i) the manufactured home pad is rented in circumstances other than where the tenant is renting a manufactured home and the pad together under a single tenancy agreement; and
 - (ii) the tenant applies for arbitration within thirty (30) days of receiving the notice of rent increase given by the landlord under section 33.4 or 33.5, or within such longer period set under section 23.2(d).

- 23.2 In an arbitration of a dispute under section 23.1(b), an arbitrator:
- (a) must determine the appropriate rent increase in accordance with the formula established by resolution of Council, from time to time, to determine justifiable rent increases;
 - (b) may order that the rent increase be a specified amount;
 - (c) may order that the rent increase ordered under paragraph (b) is effective on or after the effective date of the rent increase specified in the notice of rent increase given by the landlord under section 33.4 or 33.5; and
 - (d) may extend the period within which application may be made under clause 23.1(b)(ii) of this section.
- 23.3 An order under section 23.2(b) may be made retroactive to the effective date of the rent increase specified in the notice of rent increase given by the landlord, and if the order is made retroactive, it is deemed to have come into force on the date to which it is made retroactive.
- 23.4 If the amount of a rent increase is the subject of an order under section 23.2 or 23.3 and the rent has been collected other than in accordance with the order, the amount of the rent increase that is contrary to the order and that has been paid by the tenant:
- (a) may be set off against all or part of the rent due from the tenant; or
 - (b) is recoverable by the tenant.
- 23.5 Section 23.1 does not apply if:
- (a) a court, on application, orders otherwise; or
 - (b) in the case of a monetary claim the amount claimed is more than \$10,000.00.

24. COPY OF TENANCY AGREEMENT

- 24.1 If a written tenancy agreement is entered into, the landlord must give a copy of the agreement to the tenant as soon as practicable, and in any event not later than 21 days after it was entered into.
- 24.2 If a landlord does not comply with section 24.1, the tenant's obligation to pay rent is suspended until a copy of the agreement is delivered to the tenant, and as soon as the copy of the agreement is delivered to the tenant, any rent that was not paid to the landlord in reliance on this section becomes immediately due and payable.

25. AMOUNT OF SECURITY DEPOSIT

- 25.1 A landlord must not:
- (a) impose a requirement that a security deposit be given except at the time the tenancy agreement is entered into; or

- (b) require or receive a security deposit in an amount exceeding the equivalent of half of one month's rent payable under the tenancy agreement.
- 25.2 Notwithstanding section 25.1, if after October 1, 2008 a landlord and tenant enter into a tenancy agreement and the tenant has a pet, the landlord may require a security deposit in an amount not to exceed one month's rent.
- 25.3 If a landlord receives a security deposit in excess of the amount permitted under section 25.1 or 25.2, the tenant may set off the excess amount against all or part of the rent due from the tenant.
- 25.4 Despite the number of occupants of a residential premises, a landlord must not require more than one security deposit in respect of those premises.
- 25.5 A tenant may, with the consent of the landlord, set off all or part of a security deposit and the accrued interest, if any, on it against all or part of the rent due from the tenant.

26. LIQUIDATED DAMAGES LIMITED

- 26.1 A landlord must not require that a security deposit, or part of a security deposit, be forfeited on the end of a month-to-month tenancy.

27. SECURITY DEPOSIT RETURN AND INTEREST

- 27.1 A landlord who receives a security deposit must pay interest on it calculated in accordance with section 28.1.
- 27.2 The landlord must return the security deposit and interest to the tenant on or before the 15th day after the end of the tenancy agreement, except for an amount that:
 - (a) the tenant agrees in writing to allow the landlord to keep as payment for unpaid rent or damages; or
 - (b) an arbitrator has ordered the tenant to pay to the landlord.
- 27.3 Section 27.2 does not apply if the landlord applies for an order under section 27.4 on or before the 15th day after the end of the tenancy agreement.
- 27.4 On application by a landlord, an arbitrator under section 23.1 may make an order that a landlord retain or return some or all of a security deposit plus interest.
- 27.5 A landlord must not apply for the order referred to in section 27.4 after the 15th day following the end of the tenancy agreement.
- 27.6 An agreement under section 27.2(a) is unenforceable if a landlord requires a person to make it:
 - (a) as a condition of entering into a tenancy agreement; or
 - (b) as a term of a tenancy agreement.

- 27.7 If a landlord fails to comply with section 27.2 and does not apply for an order under section 27.4, the tenant may apply to the administrator, without notice to the landlord, for an order that the landlord pay to the tenant the security deposit, any application fee paid by the tenant and interest.
- 27.8 On an application by a tenant under section 27.7, the administrator may, without hearing the landlord, order the landlord to pay to the tenant the security deposit, any application fee paid by the tenant and interest.
- 27.9 An order under section 27.8 does not take effect unless the tenant serves a copy of it on the landlord in accordance with section 85.1.
- 27.10 A landlord may, within three (3) days after a copy of any order made under either section 27.4 or section 27.8 is received, apply to the arbitrator or the administrator making the ruling, as the case may be, to vary or cancel the order.
- 27.11 A tenant must not begin an action or claim for the return of a security deposit after two (2) years following the end of the tenancy agreement.
- 27.12 If, after the end of the tenancy agreement, the landlord is unable to locate the tenant, any money owing to the tenant under this section is deemed to be held in trust by the landlord for the tenant for two (2) years following the end of the tenancy agreement.
- 27.13 If the money owing to the tenant is not claimed by the tenant within two (2) years following the end of the tenancy agreement, the money is forfeited to the landlord.
- 27.14 Notwithstanding any other provision of this Law, if a tenant does not give a landlord a forwarding address in writing within one year after the end of tenancy, the landlord may keep the security deposit and the right of the tenant to the return of the security deposit is extinguished.

28. INTEREST ON SECURITY DEPOSIT

- 28.1 The interest payable under section 27.1 must be calculated from the date the security deposit is paid by the tenant and is payable at the prime rate minus two (2%) per cent, compounded annually.

29. CONDITION INSPECTION: START OF NEW TENANCY

- 29.1 For all tenancies entered into after October 1, 2008, the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- 29.2 The landlord must offer the tenant at least 2 opportunities for the inspection.
- 29.3 The landlord must complete a condition inspection report in accordance with the criteria established by resolution of Council from time to time.
- 29.4 Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of the report in accordance the criteria established by Council from time to time.

- 29.5 The landlord must complete and sign the condition inspection report without the tenant if:
- (a) the landlord has complied with section 29.2, and
 - (b) the tenant does not participate on either occasion.

30. LEAVING THE RENTAL UNIT AT THE END OF A TENANCY

- 30.1 Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1:00p.m. on the day the tenancy ends.
- 30.2 When a tenant vacates a rental unit, the tenant must:
- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

31. CONDITION INSPECTION: END OF TENANCY

- 31.1 For all tenancies entered into after October 1, 2008, the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit:
- (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- 31.2 The landlord must offer the tenant at least 2 opportunities for the inspection.
- 31.3 The landlord must complete a condition inspection report in accordance with the criteria established by resolution of Council from time to time.
- 31.4 Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of the report in accordance the criteria established by Council from time to time.
- 31.5 The landlord may make the inspection and complete and sign the condition inspection report without the tenant if:
- (a) the landlord has complied with section 31.2 and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

32. CONSEQUENCES FOR TENANT AND LANDLORD IF CONDITION INSPECTION REPORT REQUIREMENTS NOT MET

- 32.1 For tenancies commencing after October 1, 2008, the right of a tenant to the return of a security deposit is extinguished if:
- (a) the landlord has complied with section 29.2 and 31.2, and
 - (b) the tenant has not participated on either occasion.
- 32.2 For tenancies commencing after October 1, 2008, the right of a landlord to claim against a security deposit for damage to residential property is extinguished if the landlord:
- (a) has not complied with section 29.2 and 31.2
 - (b) having complied with section 29.2 and 31.2, does not participated on either occasion, or
 - (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulation.

**PART II
RENT INCREASES**

33. RENT INCREASE

- 33.1 Council must establish by resolution, from time to time, a formula to determine justifiable rent increases.
- 33.2 Subject to sections 33.3, 33.4 and 33.5, despite a change of landlord, a landlord must not collect an increase in rent from a tenant until 12 months have expired following:
- (a) the date the last lawful increase in rent for that tenant became effective; or
 - (b) if there has been no previous increase in rent for that tenant, the date the existing rent was established for that tenant.
- 33.3 If an order to phase in an increase is made under section 35.2(b), the date referred to in section 33.2(a) is the date the first phase of the increase takes effect.
- 33.4 A landlord must give the tenant written notice of a rent increase in the form approved by the administrator at least three (3) months before the date the rent increase is to be effective.
- 33.5 Despite section 33.4, if a landlord gives a notice of rent increase respecting a manufactured home pad in circumstances other than where the tenant is renting a manufactured home and the manufactured home pad under a single tenancy agreement, the landlord must give not less than six (6) months' notice in the form approved by the administrator before the date the rent increase is to be effective.

33.6 If a landlord gives a notice of rent increase to a tenant that does not comply with the time requirements of section 33.2, 33.4 or 33.5, the notice is deemed to take effect on the earliest date that would comply with section 33.2, 33.4 or 33.5.

34. DISPUTING A PROPOSED RENT INCREASE

34.1 A rent increase in any amount stated in the notice given under section 33.4 or 33.5 takes effect unless the tenant:

(a) disputes the increase by applying to the administrator to designate an arbitrator under section 58.1 within thirty (30) days of receiving the notice or within a longer period set under section 35.2(a); or

(b) gives notice under section 40.1 effective before the increase takes effect.

34.2 A tenant may not make application to dispute a rent increase that complies with this Part.

34.3 Notwithstanding any other provision of this Law, a tenant may not make application to dispute a rent increase for a WFN housing unit.

35. ADJUDICATION OF A RENT INCREASE DISPUTE

35.1 The arbitrator must use the formula established by Council to ascertain and award the justifiable rent increase, if any, for the residential premises.

35.2 An arbitrator adjudicating a disputed rent increase may, in addition to the other remedies available under this Law,

(a) extend the period within which application may be made under section 34.1(a);

(b) if all or part of the rent increase is granted, order that the increase granted be phased in over time; and

(c) make the coming into force of a rent increase conditional on compliance by the landlord with a previous or concurrent order of an arbitrator under this Law.

35.3 An arbitrator must not award a rent increase that is more than the total amount specified in the notice of rent increase given under section 33.4 or 33.5.

36. UNLAWFUL RENT INCREASE RECOVERY

36.1 A landlord or the landlord's agent must not demand, collect or attempt to collect a rent increase other than in accordance with section 33.1 to 33.6.

36.2 If a rent increase is collected other than in accordance with sections 33.1 to 33.6, the rent increase paid by the tenant:

(a) may be set off against all or part of the rent due from the tenant; or

(b) is recoverable by the tenant.

37. HIDDEN RENT INCREASE

- 37.1 An arbitrator may make an order under section 37.2 if an arbitrator, on application, determines that a landlord in respect of residential premises has:
- (a) made a charge for a service or facility used or enjoyed by a tenant at a lesser charge or no charge before the date the charge became effective; or
 - (b) failed to provide a service or facility, or reduced a service or facility required to be provided, under a tenancy agreement and the arbitrator considers that the failure or reduction has resulted in a substantial reduction of the use and enjoyment of residential premises or of the service or facility.
- 37.2 In the circumstances referred to in section 37.1, an arbitrator may order that, effective on a specified date, one or both of the following is a rent increase to which section 36.2 applies:
- (a) the charge for a service or facility;
 - (b) the value of the service or facility or its reduction in value.
- 37.3 If the application of sections 37.1 and 37.2 affects more than one residential premises in a residential property, an arbitrator may limit the application of an order made under section 37.2 to one or more of those residential premises.

PART III END OF TENANCY AGREEMENT

38. DEFINITION AND INTERPRETATION FOR THIS PART III

- 38.1 In this Part, "**rental payment period**" means the interval at which rent is payable under a tenancy agreement.
- 38.2 For the purposes of this Part, if a rental payment period exceeds one month, a notice of the end of the tenancy agreement is sufficiently given if it is given on or before the last day of a calendar month to take effect on the last day of an ensuing calendar month.
- 38.3 For the purposes of this Part, a rental payment period can begin on any day, but the rental payment period is deemed to begin on the first day of the calendar month following the day the tenant first became entitled to possession of the residential premises, unless:
- (a) the rental payment period is less than one month; or
 - (b) the landlord and tenant otherwise expressly agree.

39. END OF TENANCY AGREEMENT

- 39.1 A tenancy agreement is ended only:

- (a) if a notice of the end of the tenancy agreement is given in accordance with this Law;
- (b) if the tenant has vacated or abandoned the residential premises;
- (c) on the effective date of an order for possession of the residential premises in favour of the landlord;
- (d) on the date specified by an arbitrator under section 44.1;
- (e) if the tenant has elected under section 40.1 to treat the agreement as ended;
- (f) if it is a fixed term tenancy agreement described in section 10.2 and its term has expired; or
- (g) if, after the tenancy agreement is entered into, the landlord and tenant agree in writing that it is ended.

39.2 Section 39.3 applies to a landlord if:

- (a) an agreement under section 39.1(g) is made respecting a manufactured home pad in circumstances other than where the tenant is renting a manufactured home and the manufactured home pad under a single tenancy agreement; and
- (b) the landlord does not advise the tenant of the tenant's rights under sections 46.9 or 48.3 before entering into the agreement to terminate.

39.3 In the circumstances referred to in section 39.2, on the end of a tenancy agreement under section 39.1(g), the landlord must pay to the tenant the amount of the tenant's actual and reasonable moving expenses, without delay, after:

- (a) the tenant vacates the premises; and
- (b) the landlord receives a written account of those expenses.

39.4 Despite section 39.1, a landlord must not regain possession of residential premises unless:

- (a) the tenant has vacated or abandoned the premises; or
- (b) the landlord is acting under the authority of a writ of possession.

40. NOTICE OF END OF TENANCY AGREEMENT BY TENANT

40.1 A tenant may give a notice of the end of a tenancy agreement, other than a fixed term tenancy agreement, on or before the last day of a rental payment period to be effective on the last day of an ensuing rental payment period, but the period of notice must be at least one month.

41. NOTICE OF END OF TENANCY AGREEMENT—END OF EMPLOYMENT

- 41.1 A landlord may give a notice under section 41.2 of the end of the tenancy agreement in respect of caretaker's premises if:
- (a) a tenant's employment as a caretaker, janitor, manager or superintendent is terminated; and
 - (b) the landlord intends in good faith to give occupancy of the caretaker's premises occupied by that tenant to a new caretaker, janitor, manager or superintendent.
- 41.2 In the circumstances referred to in section 41.1, the landlord may give a notice of the end of the tenancy agreement in respect of those premises, on or before the last day of a rental payment period to be effective on the last day of an ensuing rental payment period, but the period of notice must be at least one month.
- 41.3 If the employment of a tenant occupying employment premises is terminated, the landlord may give a notice of the end of the tenancy agreement in respect of those premises, on or before the last day of a rental payment period to be effective on the last day of an ensuing rental payment period, but the period of notice must be at least one month.

42. NOTICE OF END OF TENANCY AGREEMENT—NON-PAYMENT OF RENT

- 42.1 If a tenant fails to pay rent in accordance with a tenancy agreement, the landlord may, on any day following the day the rent was due, give the tenant a notice of the end of the tenancy agreement to be effective not earlier than 10 days after the date the notice is given.
- 42.2 A tenant may, within five (5) days after receiving the notice given under section 42.1, pay the landlord all the rent due, and in that case the notice of the end of the tenancy agreement is void.
- 42.3 On application made before or after the five (5) days referred to in section 42.2 have expired, an arbitrator may extend the time for a tenant to pay all the rent due under a tenancy agreement only in one of the following circumstances:
- (a) the extension is agreed to by the landlord; or
 - (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under the order of an arbitrator.
- 42.4 Section 42.1 does not apply to rent withheld under section 18.6.

43. NOTICE OF END OF TENANCY AGREEMENT—FOR CAUSE

- 43.1 A landlord may, at any time, give the tenant a notice of the end of the tenancy agreement in accordance with section 43.2 if any one of the following events has occurred:

- (a) the conduct of the tenant, or of a person permitted in or on the residential premises or residential property by the tenant, has resulted in the enjoyment of other occupants in the residential property being unreasonably disturbed;
- (b) the tenant, or a person permitted in or on the residential property or residential premises by the tenant, has caused extraordinary damages to the residential premises or the residential property;
- (c) occupancy by the tenant has resulted in the residential property or residential premises being damaged to an extent that exceeds reasonable wear and tear, and the tenant has failed within a reasonable time after the damage occurred to take the necessary steps to repair the damage;
- (d) the tenant has failed to give, within 30 days after the date he or she entered into a tenancy agreement, the security deposit required under the tenancy agreement;
- (e) the tenant has knowingly misrepresented the residential property or residential premises to a prospective tenant or prospective purchaser of the residential property or residential premises;
- (f) the number of persons permanently occupying the residential premises is unreasonable;
- (g) the tenant has breached a reasonable material term of the tenancy agreement and has failed to rectify the breach within a reasonable time after receiving written notice to do so from the landlord;
- (h) the tenancy agreement has been frustrated;
- (i) the residential premises must be vacated to comply with an order by Council or other lawful authority respecting zoning, health, safety, building or fire prevention standards;
- (j) the tenant has purported to assign or sublet the residential premises without the consent of the landlord.;
- (k) the tenant is repeatedly late paying rent;
- (l) the tenant or a person permitted on the residential property by the tenant has:
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant of the residential property; or
 - (iii) put the landlord's property at significant risk;
- (m) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:

- (i) has caused or is likely to cause damage to the landlord's property;
- (ii) 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, or
- (iii) has jeopardized or is likely to jeopardized a lawful right or interest of another occupant or the landlord of the residential property.

43.2 For greater clarity, and without limiting the generality of sections 43.1(l) and (m), the following are deemed to be activities that justify the issuance of a notice to end tenancy:

- (a) the trafficking or cultivation of a controlled substance, as that term is defined under the *Controlled Drugs and Substances Act*, at or from the residential property;
- (b) the operation of a disorderly house, as that term is defined under the Criminal Code of Canada, at or from the residential property; and
- (c) the commission of a firearms related offence under Part III of the Criminal Code of Canada, which occurs at the residential property.

43.3 In arbitration proceedings, proof of offence listed in 43.2(a) through (c) shall not require a criminal charge or conviction and a written report by the RCMP or WFN Law Enforcement Officer is evidence of the commission of such an offence, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

43.4 A notice of the end of the tenancy agreement given under section 43.1 must be at least one month and is effective on the last day of an ensuing rental payment period.

43.5 Despite section 43.4, if section 43.1(f) applies because of the placement of a child for adoption or the birth of a child, the notice of the end of the tenancy agreement must be not less than nine months and is effective on the last day of an ensuing rental payment period.

44. EARLY END OF TENANCY AGREEMENT ON ORDER

44.1 If one of the events described in section 43.1(a), (b), (l) or (m) has occurred in respect of residential premises, and an arbitrator considers that it would be inequitable to:

- (a) the other occupants of the residential property in which the residential premises are located; or
- (b) the landlord;

to require the landlord to give the period of notice specified in section 43.4, an arbitrator may, on application,

- (c) order the tenancy agreement to end on a specified date; and

- (d) grant an order of possession to take effect on or after the date referred to in paragraph (c).

45. END OF TENANCY – PUBLIC HOUSING BODY

45.1 Subject to section 49, 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.

45.2 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.

45.3 A notice under this section must comply with section 50.

45.A. END OF TENANCY – WFN HOUSING UNIT

45.A.1 Despite any other provision of this Law, Council may, in relation to a WFN housing unit,

- (a) make a determination as to whether circumstances warrant the issuance of a Notice to End Tenancy under section 43, or
- (b) make a determination as to whether to issue a Notice to End Tenancy to a tenant who is not a Member,

and direct that a Notice to End Tenancy be issued to the tenant of the WFN housing unit.

45.A.2 The decision to end a tenancy under section 45.A.1 shall be evidenced by a resolution of Council.

45.A.3 Despite any other provision of this Law and unless the tenant agrees in writing to an earlier date:

- (a) a notice under section 45.A.1(a) must end the tenancy on a date that is not earlier than 7 days after the date the notice is received, and
- (b) a notice under section 45.A.1(b) must end the tenancy on a date that is:
 - (i) not earlier than 2 months after the date the notice is received, and
 - (ii) 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.

45.A.4 A notice under this section must comply with section 51.

45.A.5 A decision made under this section is final and is not open to review by an arbitrator or appeal to any court. *[amended, March 22, 2010]*

46. NOTICE OF END OF TENANCY AGREEMENT—LANDLORD USE OF PROPERTY

46.1 For the purposes of sections 46.2 and 46.3:

“landlord” means a landlord:

- (a) who is an individual who:
 - (i) at the time of giving the notice of the end of the tenancy agreement, has a reversionary interest in the residential premises exceeding three (3) years; and
 - (ii) holds not less than half of the full reversionary interest; or
- (b) that is a family corporation that:
 - (i) at the time of the giving of the notice of the end of the tenancy agreement, has a reversionary interest in the residential premises exceeding three (3) years; and
- (c) holds not less than half of the full reversionary interest;

“purchaser” means:

- (a) an individual who; or
- (b) a family corporation that;
- (c) has agreed to purchase at least half of the full reversionary interest in residential premises.

46.2 The landlord may give a notice of the end of the tenancy agreement to the tenant under section 46.6 if:

- (a) the landlord enters into an agreement in good faith with a purchaser for the sale of residential premises occupied under a tenancy agreement and any conditions precedent in the sale agreement have been satisfied;
- (b) the purchaser, or in the case of a purchaser that is a family corporation, a person owning voting shares in the family corporation, intends in good faith that he or she or his or her spouse or a child or parent of his or hers or of his or her spouse must occupy the residential premises; and
- (c) the purchaser requests in writing that the landlord give the tenant of the premises a notice of the end of the tenancy agreement.

46.3 If:

- (a) a landlord; or
- (b) in the case of a landlord that is a family corporation, a person owning voting shares in the family corporation;

intends in good faith that he or she or his or her spouse or a child or parent of his or hers or of his or her spouse will occupy residential premises occupied under a tenancy agreement, the landlord may give a notice of the end of the tenancy agreement to the tenant under section 46.6.

- 46.4 If a landlord intends in good faith to occupy or use residential premises for the purpose of:
- (a) demolition;
 - (b) entering into a tenancy agreement for a term exceeding 10 years;
 - (c) converting it, for not less than six (6) months, into a use other than residential premises occupied under a tenancy agreement;
 - (d) converting it into caretaker's premises for not less than six (6) months; or
 - (e) renovation, if vacant possession of the residential premises is necessary to conduct and perform the renovation;

and the landlord has obtained whatever permits and approvals are required by law to demolish, convert or renovate the residential premises, the landlord may give a notice of the end of the tenancy agreement to the tenant, with the applicable notice period under sections 46.6, 46.7 or 46.8.

- 46.5 A landlord must not enter into a tenancy agreement for a term exceeding 10 years before the landlord gives notice of intention to enter into the tenancy agreement to each tenant or prospective tenant who occupies the residential premises under an existing tenancy agreement, if any, and to each tenant or prospective tenant who will first occupy the residential premises under the proposed tenancy agreement.
- 46.6 A notice of the end of the tenancy agreement under this section must be at least two (2) months to be effective on the later of:
- (a) the last day of an ensuing rental payment period; or
 - (b) if the tenancy agreement has a predetermined expiry date, the predetermined date.
- 46.7 If a landlord in good faith intends to demolish residential premises and Westbank has, by law, established a notice period of at least two (2) and not more than six (6) months, that period is, despite section 46.6, the minimum notice period for the purposes of the notice.
- 46.8 Despite sections 46.6 and 46.7, if a landlord gives a notice of the end of the tenancy agreement under this section respecting a manufactured home pad in circumstances other than where the tenant is renting a manufactured home and the manufactured home pad under a single tenancy agreement, the period of notice must be at least 12 months.

46.9 On the end of a tenancy agreement under section 46.8 the landlord must pay the tenant, on or before the effective date of the notice, an amount that is equivalent to 12 months' rent payable under the tenancy agreement.

47. COMPENSATION RESPECTING SECTION 46 NOTICES

47.1 An arbitrator may make an order under section 47.2 if a tenant who has vacated residential premises after being given a notice of the end of the tenancy agreement under:

(a) section 47.2 establishes, on application, that the purchaser or, in the case of a purchaser that is a family corporation, a person owning voting shares in the family corporation, his or her spouse or a child or parent, or grandchild, or grandparent of his or hers or of his or her spouse did not occupy the residential premises as a residence for a period of at least six (6) months beginning within a reasonable time after the effective date of the notice of the end of the tenancy agreement;

(b) section 47.3 establishes, on application, that the landlord or, in the case of a landlord that is a family corporation, a person owning voting shares in the family corporation, his or her spouse or a child or parent of his or hers or of his or her spouse did not occupy the residential premises as a residence for a period of at least six (6) months beginning within a reasonable time after the effective date of the notice of the end of the tenancy agreement; or

(c) section 47.4 establishes, on application, that the landlord did not actually occupy or use the residential premises for a specified and permitted purpose or the required period of time.

47.2 In the circumstances referred to in section 47.1, an arbitrator may order that the purchaser, in a matter under section 46.2, or the landlord, in a matter under section 46.3, 46.4 or 46.7, pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

47.3 An arbitrator must not make an order under section 47.2 if the purchaser or landlord, as the case may be, establishes that he or she intended, in good faith, at the time of giving the notice of the end of the tenancy agreement, to occupy the residential premises for the purpose specified in the notice.

47.4 If a landlord gives notice for a reason specified in section 46.4 with a notice period specified in section 46.6 or 46.7, the landlord must pay to the tenant the greater of:

(a) an amount that is equivalent of one month's rent payable under the tenancy agreement; or

(b) if proceedings are brought under sections 47.1 and 47.2, the amount ordered by an arbitrator.

47.5 An application under sections 47.1 and 47.2 must be brought no later than nine (9) months after the effective date of the notice of the end of the tenancy agreement.

48. NOTICE OF END OF TENANCY AGREEMENT—REASONABLE CAUSE

- 48.1 If a tenant has given reasonable cause to end a tenancy agreement in circumstances other than those described in section 42 or 43, a landlord may give the tenant a notice of the end of the tenancy agreement to be effective on the last day of an ensuing rental payment period but the period of notice must be at least two (2) months.
- 48.2 Despite section 48.1, if a landlord gives a notice of the end of the tenancy agreement under section 48.1 respecting a manufactured home pad in circumstances other than where the tenant is renting a manufactured home and the manufactured home pad under a single tenancy agreement, the period of notice must be not less than six (6) months.
- 48.3 On the end of a tenancy agreement under section 48.2, the landlord must pay to the tenant the amount of the tenant's actual and reasonable moving expenses, up to a maximum prescribed amount, without delay, after:
- (a) the tenant vacates the premises; and
 - (b) the landlord receives a written account of those expenses.

49. EARLY NOTICE BY TENANT

- 49.1 If a landlord gives a tenant a notice of the end of a tenancy agreement under section 45 or 46, the tenant may, at any time during the period of notice,
- (a) give to the landlord at least 10 days' written notice of a date for the end of the tenancy agreement that is earlier than that specified by the landlord; and
 - (b) pay the landlord, on the date the notice is given under paragraph (a), the proportionate amount of rent due up to the date of the end of the tenancy agreement as specified in that notice.

50. FORM OF NOTICE OF END OF TENANCY AGREEMENT

- 50.1 A notice of the end of a tenancy agreement must:
- (a) be in writing and signed by the landlord or tenant giving the notice;
 - (b) specify the date the tenancy agreement ends;
 - (c) if the notice is given by a landlord under section 41.1, 43.1, 50.2, 50.3, 50.4 or 52.1:
 - (i) specify the reasons for, and particulars of, the end of the tenancy agreement; and
 - (ii) advise the tenant of the right to dispute the notice under section 52.1; and
 - (d) if the notice is given by a landlord under section 42.1, advise the tenant of the right to dispute the notice under section 52.1, and specify:

- (iii) the amount of unpaid rent;
- (iv) the right of the tenant under section 42.2 to pay to the landlord all the rent due within five (5) days after receiving the notice;
- (v) the right of the tenant to apply to an arbitrator for an extension of time to pay under section 42.3; and
- (vi) that:
 - (1) if the tenant does not pay the rent within the five (5) day period referred to in section 42.2 or obtain an arbitrator's order extending the time for payment, the tenancy agreement is ended on the date specified in the notice; and
 - (2) if the tenant pays the rent within the five (5) day period, the notice is void under section 42.3.

50.2 Subject to sections 50.3 and 51.1, a notice of the end of the tenancy agreement given by:

- (a) a landlord is void unless it is in the form approved by the administrator; and
- (b) a tenant may be in any form as long as it otherwise complies with this Law.

50.3 An arbitrator may make an order under section 50.4 if:

- (a) a landlord or tenant is given a notice of the end of the tenancy agreement that fails to comply with sections 50.1(b) to (d) or section 50.2; and
- (b) an arbitrator considers that:
 - (i) the person receiving the notice knew or ought to have known the information that should have been included in it; and
 - (ii) it is reasonable in the circumstances.

50.4 In the circumstance referred to in section 50.3, the arbitrator may, on application, order the defective notice amended in a manner and subject to conditions the arbitrator may specify, and, on the order being made, the notice is deemed to have complied with this section at the time it was given.

51. INCORRECT NOTICE OF END OF TENANCY AGREEMENT

51.1 If a landlord or tenant gives a notice of the end of the tenancy agreement that is otherwise in accordance with this Law except that the notice specifies:

- (a) an effective date that is earlier than permitted by this Law, the notice is deemed to be effective on the earliest date permitted under this Law;
- (b) an effective date, other than the last or first day of a rental payment period, that is a date later than the earliest date permitted under this Law, the notice is deemed

to be effective on the last day of the rental payment period in which the notice was specified to be effective; or

- (c) the effective date as the day after the last day of a rental payment period, the notice is deemed to be effective on the last day of the rental payment period preceding the effective date specified in the notice.

52. DISPUTE OF NOTICE OF END OF TENANCY AGREEMENT

52.1 A tenant may apply to an arbitrator for an order setting aside a notice of the end of the tenancy agreement given or purportedly given under this Law.

52.2 An application under section 52.1 must be made, if the notice was given:

- (a) under section 42.1, within five (5) days after the date the notice was given to the tenant;
- (b) under section 41.1 or 43.1, within ten (10) days after the date the notice was given to the tenant; or
- (c) under section 45., 46.2 or 48.1, within fifteen (15) days after the date the notice was given to the tenant.

52.3 An arbitrator may in exceptional circumstances, on application brought before or after the time period referred to in section 52.2 has expired, extend the time within which a tenant may bring an application under section 52.1.

52.4 If a tenant does not bring an application to dispute a notice under section 52.1, the tenant is conclusively deemed to have accepted the end of the tenancy agreement on the effective date of the notice of the end of the tenancy agreement.

53. ORDER OF POSSESSION FOR LANDLORD

53.1 A landlord may apply to an arbitrator for an order for possession of residential premises:

- (a) at the hearing of an application under section 44.1 or 52.1;
- (b) at any time after a notice of the end of the tenancy agreement has been given respecting the residential premises, if the tenant gave the notice;
- (c) if the landlord gave the notice referred to in paragraph (b), at any time after the earlier of:
 - (i) the expiration of the applicable time period specified under section 52.2; and
 - (ii) the time an application is filed under section 52.2; or
- (d) at any time after a tenancy agreement has been ended under section 39.1(e), (f) or (g).

53.2 In the case of a hearing under section 52.1, an arbitrator must grant an order of possession of the residential premises to the landlord if, at the time scheduled for the hearing:

- (a) the landlord makes an oral or written request for an order of possession, and
- (b) the arbitrator dismisses the tenant's application or upholds the landlord's notice to end tenancy.

53.3 An arbitrator may grant an order of possession, before or after the date when a tenant is required to vacate a residential premises, and the order takes effect on the date specified in the order.

54. ORDER OF POSSESSION FOR TENANT

54.1 A tenant may apply to an arbitrator for an order of possession of residential premises.

54.2 An arbitrator may grant an order of possession under section 54.1, before or after the beginning of the term of a tenancy agreement, to be effective on the date specified in the order, but the date specified in the order must not be earlier than the date of the beginning of the term of the tenancy agreement.

PART IV RESOLUTION OF DISPUTES

55. ADMINISTRATOR

55.1 Council may by resolution appoint one or more administrator(s) who will be responsible for the administration of this Law in accordance with the duties set out in this Law.

55.2 Council may by resolution provide that reasonable remuneration be paid to the administrator(s).

56. DUTIES OF ADMINISTRATOR

56.1 The administrator must:

- (a) perform the duties required of the position under this Law;
- (b) make reports and recommendations to Council respecting every matter they believe advisable for the effective carrying out of the purposes of this Law;
- (c) give landlords and tenants information about their rights and duties under this Law;
- (d) receive applications and written submissions in relation to arbitrations, reviews and mediations;
- (e) designate arbitrators and mediators pursuant to this Law;

- (f) serve notices, orders and decisions of an arbitrator under Part IV or a mediator under Part V of this Law;
 - (g) assist landlords and tenants, where practicable, to resolve differences without recourse to a hearing before an arbitrator; and
 - (h) advise Council in the establishment of forms consistent with this Law.
- 56.2 The administrator must provide a copy of the decision or orders of the arbitrator to the landlord, tenant and any other parties to an application in accordance with section 84.1 or 85.2.
- 56.3 The administrator or a person authorized by the administrator may publish decisions or orders of arbitrators or otherwise make them available to the public and to arbitrators unless the arbitrator provides in the decisions or orders for non-publication.
- 56.4 The administrator must keep a copy of the decision or order on file and make it available for inspection unless the arbitrator provides in the decision or order for non-publication.
- 56.5 Subject to sections 56.3 and 56.4, a person, upon payment of an appropriate fee, may obtain from the administrator a certified copy of the decision.

57. ADMINISTRATOR'S DECISION

- 57.1 For the purposes of Section 33:
- (a) the decision or order of the administrator must be given without delay and, in any event, within 30 days after the application is received;
 - (b) the failure of the administrator to issue a decision or order within 30 days does not result in any loss of jurisdiction or otherwise affect the validity of the decision or order;
 - (c) except as otherwise provided in this Law, such a decision or order of the administrator is final and binding on the parties;
 - (d) a decision or order of the administrator may be filed in the Provincial Court if the amount required to be paid under the decision or order is \$10,000 or less excluding interest and costs, and on being filed the decision or order has the same effect, and proceedings may be taken on it, as if it were an order of the court; and
 - (e) without limiting paragraph (d), if an order of the administrator is filed in the Provincial Court and the order was made in the absence of a party, the judge may, on application of the absent party, change or cancel the order to the same extent as if the order has been made by a judge in the absence of a party.

58. LANDLORD AND TENANT SELECTION OF ARBITRATOR

- 58.1 The landlord and tenant may, by written agreement, select an arbitrator to conduct an arbitration of an application referred to in section 23.1.

- 58.2 A copy of an agreement made under section 58.1 must be provided to the administrator by the landlord or tenant within three (3) days of making the agreement.
- 58.3 An agreement under section 58.1 is unenforceable if the landlord requires the tenant or the tenant requires the landlord to reach the agreement:
- (a) as a condition to entering into a tenancy agreement; or
 - (b) as a term of a tenancy agreement.
- 58.4 An arbitrator selected under section 58.1 must advise the administrator in writing of his or her selection.
- 58.5 Where the landlord and tenant agree to select an arbitrator, that person is deemed to be a person selected by the administrator and will have all the same powers as an arbitrator selected by the administrator.

59. APPLICATION TO ADMINISTRATOR TO DESIGNATE AN ARBITRATOR

- 59.1 If a landlord and tenant do not select an arbitrator under section 58.1, either the landlord or the tenant may apply to the administrator to designate an arbitrator.
- 59.2 An application to the administrator must:
- (a) give full particulars of the matter being submitted to arbitration;
 - (b) be in the form approved by the administrator; and
 - (c) be accompanied by the prescribed fee.
- 59.3 On receiving an application under section 59.1, the administrator must:
- (a) designate an arbitrator from among the arbitrators appointed under section 60.1;
 - (b) provide copies of the application and all related material to the arbitrator;
 - (c) specify the time, date and place of arbitration hearings in a Notice of Hearing.
- 59.4 The administrator must not designate an arbitrator who has or appears to have an interest in the matter that is subject to the arbitration.
- 59.5 The administrator must provide the applicant with a hearing information package, which must include:
- (a) the Notice of Hearing;
 - (b) the application for arbitration and related material filed; and
 - (c) information concerning the arbitration process.

59.6 The applicant must serve a copy of the application, the Notice of Hearing and the information concerning the arbitration process on the landlord or tenant, as the case may be, within three (3) days of making the application.

59.7 An applicant may withdraw an application for arbitration at any time prior to the arbitration hearing.

60. ARBITRATORS APPOINTED BY COUNCIL

60.1 Council may by resolution appoint arbitrators who may be designated by the administrator under section 59.3 to conduct arbitrations under section 23.1.

61. SIMILAR DISPUTES – ARBITRATION

61.1 An arbitrator may make an order under section 61.2 if the arbitrator is designated to conduct an arbitration of an application referred to in section 23.1 and:

- (a) all parties to the arbitration give consent in writing to the making of an order under this section; and
- (b) other landlords or tenants, who are not parties to the arbitration but whose disputes raise substantially similar issues in substantially similar circumstances, agree in writing to be bound by the arbitration decision.

61.2 In the circumstances referred to in section 61.1, the arbitrator may order that:

- (a) only one fee prescribed under section 59.2(c) be paid in respect of the arbitration proceeding;
- (b) landlords or tenants referred to in section 61.1(b) are parties to and are bound by the outcome of the arbitration; and
- (c) the hearing of other arbitrations under this Part respecting landlords or tenants referred to in section 61.1(b) are deferred until the arbitration is heard and decided.

61.3 An arbitrator may make an order under section 61.2:

- (a) on application by any person before the date set for the start of the arbitration hearing; or
- (b) on the motion of any person at the arbitration hearing.

61.4 If the matters to be determined in two (2) or more arbitrations are related and it is reasonable that these matters be heard jointly, the administrator may order that the arbitrations be heard jointly.

61.5 If an order is made under section 61.3 or 61.4, the administrator may order that only one fee prescribed under section 59.2(c) be paid in respect of the arbitrations heard jointly.

62. POWER AND AUTHORITY OF ARBITRATOR

- 62.1 Despite any other provisions of this Law, an arbitrator may refuse to conduct a hearing if the arbitrator considers that the matter is frivolous, vexatious, trivial or has not been initiated in good faith.
- 62.2 An arbitrator may make any finding of fact or law that is necessary or incidental to the making of a decision or order under this Law.
- 62.3 An arbitrator may do one or more of the following:
- (a) order a landlord or tenant to comply with the Law, regulation or a tenancy agreement;
 - (b) make an order, with or without conditions;
 - (c) make an interim order;
 - (d) order substituted service of a document;
 - (e) set aside a notice to end a tenancy agreement, with or without conditions, if the arbitrator is satisfied, having regard to all the circumstances, that ending the tenancy agreement would create unreasonable hardship in relation to the conduct, breach or circumstances that led to the issue of the notice;
 - (f) order that the tenancy ends on a date other than the date specified in the notice to end the tenancy.

63. ARBITRATION PROCEDURE

- 63.1 Council may by resolution establish procedures governing the conduct of arbitrations and reviews of arbitrators' decisions under this Law.
- 63.2 The procedures must provide the parties an opportunity to be heard and to examine the material filed for the hearing.
- 63.3 In a matter before an arbitrator, the arbitrator:
- (a) may conduct the hearing in the manner he or she considers necessary, subject to procedures established by Council under section 63.1;
 - (b) must make his or her decision on the merits of the matter and is not bound by legal precedent;
 - (c) may administer oaths;
 - (d) may receive and accept, on oath, affidavit or otherwise, the evidence or information he or she considers necessary and appropriate whether or not the evidence or information would be admissible in a court;

- (e) may question parties at the hearing and any witnesses giving evidence at the hearing;
- (f) must give the decision in writing and with reasons;
- (g) may, before or after the three (3) days referred to in section 59.6 have expired, make an order extending the time for an applicant to give a copy of the application to the landlord or tenant, as the case may be;
- (h) may, with the consent of the parties to the arbitration, hear a related matter over which he or she has jurisdiction under this Law, at the same time as the matter in respect of which he or she was designated as arbitrator, and may, in that event order that any of sections 59.1 to 59.6 do not apply to that related matter;
- (i) may, with or without a hearing, on the arbitrator's own initiative or on the request of a party to the arbitration, correct a typographical, arithmetical or other similar error in the arbitrator's decision or order; and
- (j) may, with or without a hearing, on the arbitrator's own initiative or on the request of a party, but in either case within 15 days after the decision, order, or written reasons are given:
 - (i) clarify the decision, order or reasons; or
 - (ii) deal with an obvious error or inadvertent omission in the decision, order or reasons.

63.4 On the request of a party to an arbitration or on the arbitrator's own initiative, the arbitrator may amend the application in order to correct a mistake, error or omission.

63.5 For the purposes of this section, a hearing may include a submission

- (a) made orally, including by telephone; or
- (b) made in writing;

but another party to the hearing must be given an opportunity, at that or a later time and in the manner the arbitrator considers appropriate, to rebut the submission.

63.6 On application under section 16.1, an arbitrator may make an interim order.

63.7 A party to a hearing may be represented by an agent or by a lawyer.

63.8 An arbitrator may order a party to an arbitration to bear all or any part of the cost of the fee under section 59.2.

63.9 If an arbitrator orders a party to a hearing to pay any monetary amount or to bear all or any part of the cost of the fee under section 59.2, the amount or cost may be deducted from:

- (a) in the case of a payment in favour of a tenant, any rent due to the landlord; or

- (b) in the case of payment in favour of a landlord, any security deposit due to the tenant.
- 63.10 A request to an arbitrator under section 63.3(i) or (j) by a party to an arbitration may be made without notice to any other party, but the arbitrator may require that another party be given notice.
- 63.11 An arbitrator must not exercise a power under section 63.3(i) or (j) unless the arbitrator considers it just and reasonable to do so in all the circumstances.

64. SUMMONS TO TESTIFY

- 64.1 An arbitrator may, at the request of a party to the hearing, or on the arbitrator's own motion, summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce the records and things the arbitrator considers necessary to a full consideration of matters before the arbitrator, in the same manner as the Supreme Court.
- 64.2 The failure or refusal of a person on the summons of an arbitrator to attend, to take an oath, to answer questions or to produce the records and things in his or her custody or possession makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

65. ARBITRATOR'S DECISION

- 65.1 The decision or order of an arbitrator must be given without delay and, in any event:
- (a) within 10 days after the hearing under Section 35; and
 - (b) within 30 days after the hearing for a matter not described in paragraph (a).
- 65.2 The failure of an arbitrator to issue a decision within the time prescribed in section 65.1 does not result in any loss of jurisdiction or otherwise affect the validity of the decision or order.
- 65.3 Except as otherwise provided in this Law, a decision or order of the arbitrator is final and binding on the parties.
- 65.4 A decision or order of an arbitrator may be filed in the Supreme Court of British Columbia anytime after the time limit set out in section 67.1 for an application for review under section 66.1 has expired or anytime after there has been a determination on an application for review, and, on being filed, has the same force and effect, and proceedings may be taken on it, as if it were an order of the court.
- 65.5 A decision or order of an arbitrator in respect of a monetary amount or the return of property may be filed in the provincial court if the amount required to be paid under the decision or order, or the value of the personal property, is \$10,000.00 or less, excluding interest and costs, and on being filed, the decision or order has the same effect and proceedings may be taken on it, as if it were an order of the court.

65.6 The decision or order of an arbitrator may not be filed in a court while the decision or order is suspended under section 68.4.

65.7 Despite sections 65.4 and 65.5, a decision or order filed in court may not be appealed from.

66. APPLICATION FOR LEAVE TO REVIEW AN ARBITRATOR'S ORDER OR DECISION

66.1 A party to an arbitration may apply to the administrator for leave to review an arbitrator's order or decision.

66.2 An application under section 66.1:

- (a) must be made in the form and manner approved by the administrator;
- (b) may be made without notice to any other party; and
- (c) must be accompanied by full written particulars of the evidence on which the applicant intends to rely.

66.3 An order or decision of an arbitrator may be reviewed on one or more of the following grounds:

- (a) a party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control;
- (b) a party has new and relevant evidence that was not available at the time of the original hearing; and/or
- (c) a party has evidence that the arbitrator's decision was obtained by fraud.

66.4 The administrator must designate a different arbitrator to consider the application for leave to review.

66.5 A party to an arbitration may make an application under this section only once in respect of that arbitration.

67. TIME LIMITS FOR AN APPLICATION FOR LEAVE TO REVIEW

67.1 A party must make an application under section 66.1 for review of a decision or order of an arbitrator that relates to:

- (a) section 22.4, 44.1, 53.3 or 54.2, within two (2) days after a copy of the decision or order is received by the party;
- (b) section 16.2 or 52.3, within five (5) days after a copy of the decision or order is received by the party; and
- (c) any other section, within 15 days after a copy of the decision or order is received by the party.

67.2 An arbitrator may extend the time for making an application under section 66.1 or for taking any steps in the application to review an order or decision.

68. DECISION ON APPLICATION FOR LEAVE TO REVIEW

68.1 On an application for leave to review, the arbitrator hearing the application may grant or refuse to grant leave based on the written submission of the applicant alone or on the written submission and other communication with the applicant.

68.2 On an application for leave to review, the arbitrator must grant leave if satisfied that the application discloses reasons that, if uncontradicted, satisfy the requirements under section 66.3 to set aside the decision or order of the arbitrator.

68.3 On an application for leave to review, the arbitrator may refuse to grant leave for one or more of the following reasons:

- (a) the issues raised by the application can be dealt with sufficiently under section 63.3(i) or (j);
- (b) the application does not provide full particulars of the matter submitted for review;
- (c) the application fails to disclose sufficient grounds for review;
- (d) the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the arbitrator would be set aside;
- (e) the application is frivolous, vexatious, trivial or has not been initiated in good faith;
- (f) the applicant fails to pursue the application diligently or comply with an order made in the course of the review.

68.4 On an application for leave to review, the arbitrator may order that the decision or order of the original arbitrator being reviewed be suspended with or without conditions until the review has been completed and a decision given to the parties.

68.5 The arbitrator hearing the application for leave to review must give a decision in writing and with reasons and if granting leave, must set out in the decision:

- (a) the time and place of the review hearing; or
- (b) the means by which the parties may learn the time and place of the review hearing.

68.6 The administrator must serve a copy of the decision, and any order giving effect to the decision, on all parties.

69. REVIEW OF ARBITRATOR'S ORDER OR DECISION

- 69.1 If leave to review is granted, the administrator may designate the arbitrator granting leave or a different arbitrator to determine the matter.
- 69.2 Parties wishing to make written submissions on the review must file the written submission with the administrator within ten (10) days of receipt of the decision or order under review.
- 69.3 The administrator must forward all written submissions received to the arbitrator.
- 69.4 An arbitrator may review the order or decision, based solely on the record of the original arbitration and any written submissions of the parties.
- 69.5 The arbitrator may confirm or vary the original order or decision.
- 69.6 The arbitrator who conducts the review has all the powers and duties of an arbitrator in an original arbitration.
- 69.7 The decision of the arbitrator who conducts the review is final and binding on the parties.
- 69.8 The administrator must serve a copy of the decision or order on all parties.

PART V MANUFACTURED HOME PARK RULES AND DISPUTE RESOLUTION

70. APPLICATION OF THIS PART

- 70.1 This Part applies to the rental of a manufactured home pad in circumstances other than where the tenant is renting a manufactured home and the manufactured home pad under a single tenancy agreement.
- 70.2 Council may by resolution establish procedures governing manufactured home parks on Westbank Lands.
- 70.3 Council may by resolution appoint mediators who may be designated by the administrator under section 72.4 to conduct mediations under this Part.

71. LOCAL PARK COMMITTEE

- 71.1 In this section, "**park**" means a manufactured home park.
- 71.2 The landlord and tenants of a park may establish, consistent with any established procedures, a local park committee consisting of representatives of the landlord and the tenants.
- 71.3 The representatives of the tenants and of the landlord on a local park committee must be chosen, and the local park committee must conduct itself, in accordance with the any established procedures.

- 71.4 The local park committee may, subject to this Law and consistent with any established procedures, make rules that govern the operation of the park and that are not contrary to this Law or any other Westbank Law, provincial or federal law.
- 71.5 When rules are made under section 71.4, they are the rules in effect in the park and any other rules are ineffective.
- 71.6 Rules made by a local park committee may be changed, repealed or replaced by the local park committee in accordance with this Law or with any established procedures or with the rules.
- 71.7 If there are no valid rules in force made by a local park committee to govern the operation of a park, the rules in any established procedures apply.
- 71.8 The local park committee may, subject to this Law and any established procedures, assist a landlord and tenant of a park to reach a voluntary resolution of a dispute arising from:
- (a) rules governing the operation of the park;
 - (b) a rent increase; or
 - (c) other park issues.

72. APPLICATION FOR MEDIATION

- 72.1 A tenant or landlord of a manufactured home pad may apply for mediation of any dispute, other than a dispute over rent increase, by filing an application for mediation with the administrator in the form and manner approved by the administrator, and by paying the prescribed fee, if any.
- 72.2 The party applying for mediation must include with the application the names and addresses of the other parties and must notify the other parties of the application and the grounds for the application, in the form and manner required by the administrator.
- 72.3 Council may by resolution establish procedures governing the conduct of mediations under this Part.
- 72.4 The administrator must designate a mediator to mediate a dispute between a tenant of a manufactured home pad and the landlord, if the subject matter of the dispute could be referred to an arbitrator under section 23.2.
- 72.5 Despite section 72.4, the administrator may refuse to designate a mediator if:
- (a) the parties have already attempted to resolve the dispute through mediation or another non-binding dispute resolution process;
 - (b) a decision by an arbitrator on the dispute would clarify an important question of legal interpretation or public policy; or

- (c) it is materially impracticable or unfair to require one or more of the parties to attend at mediation.
- 72.6 Despite section 72.4, the administrator must refuse to designate a mediator if satisfied that:
- (a) a local park committee is currently assisting the parties to reach a voluntary resolution of the dispute; or
 - (b) the dispute is properly before or has been decided by an arbitrator or a court.
- 72.7 The administrator must give to all parties written notice of his or her decision designating or refusing to designate a mediator.
- 72.8 Tenants or landlords of manufactured home pads who have disputes that raise substantially similar issues in substantially similar circumstances may apply to the administrator, in the form and manner approved by the administrator:
- (a) for the designation of a mediator to mediate their disputes at the same time; or
 - (b) to join a mediation being conducted by a mediator if the dispute being mediated and the dispute of the applicants raise substantially similar issues in substantially similar circumstances.
- 72.9 The administrator may grant the application under section 72.8 if satisfied that:
- (a) the disputes raise substantially similar issues in substantially similar circumstances; and
 - (b) it is appropriate to do so having regard to all the circumstances.

73. TIME SUSPENDED

- 73.1 A time period under this Law that would otherwise apply to a landlord or tenant is suspended with respect to a matter being mediated under this Part from the time the administrator receives an application for mediation from the landlord or tenant accompanied by the appropriate fee and does not begin to run again until written notice is given under section 72.7, 74.2, or 74.3.

74. MEDIATOR

- 74.1 The mediator must assist the parties to enter into a written agreement that resolves the dispute.
- 74.2 If at any time during mediation the mediator is satisfied that the parties have entered into a written agreement resolving the dispute, the mediator must end the mediation by giving written notice to that effect to the parties.
- 74.3 If within sixty (60) days after the application for mediation is filed under section 72.1 the mediator is satisfied that the parties have failed to enter into a written agreement resolving the dispute, the mediator must promptly give the parties a written notice:

- (a) ending the mediation, with a recommendation for ending the dispute; or
- (b) ending the mediation without a recommendation for ending the dispute.

74.4 If the parties accept the mediator's recommendation, the mediator must prepare a written agreement resolving the dispute for their signature.

74.5 The 60-day time limit under section 74.3 may be extended by agreement of the parties and the mediator.

75. ORDER TO COMPLY WITH AGREEMENT

75.1 A party to an agreement that resolves a dispute under mediation may apply to the Supreme Court of British Columbia or to an arbitrator for an order requiring another party to the agreement to comply with the agreement.

75.2 On an application under section 75.1, the court or the arbitrator may order a party to comply with the agreement.

75.3 An order under this section may contain terms respecting costs, expenses, remuneration and any other necessary matters.

75.4 This section does not affect any right of a party to bring a proceeding for breach of contract.

76. CONFLICT OF INTEREST

76.1 A person must not act as a mediator if the person has or appears to have an interest in the matter being mediated.

77. NOTICE

77.1 A notice that is required to be given by the mediator may be given in accordance with section 84.2, or in a manner established by Council from time to time.

PART VI GENERAL

78. CONTRACTUAL RELATIONSHIP

78.1 The relationship of landlord and tenant created by a tenancy agreement under this Law is one of contract only and does not create any interest in land in favour of the tenant.

79. APPLICATION OF CERTAIN PRINCIPLES

79.1 Despite any other Act, law, the common law or an agreement to the contrary, a landlord must not distrain for default in the payment of rent.

- 79.2 Despite the common law or an agreement to the contrary, a landlord must not seize personal property of a tenant in satisfaction of a claim or demand unless the seizure is made under an order of a court and is in compliance with section 89 of the *Indian Act*, RSC 1985, c. I-5.
- 79.3 Even though a tenant does not take possession of residential premises, rights under a tenancy agreement are capable of taking effect from the date specified in the tenancy agreement as the beginning of the term of the tenancy agreement.
- 79.4 If a landlord or tenant who is a party to a tenancy agreement contravenes this Law, he or she is liable to compensate the other party to the tenancy agreement for loss suffered by the other party as a result of the contravention.
- 79.5 If a landlord or tenant becomes liable to the other for damages as a result of a breach of the tenancy agreement or this Law, the landlord or tenant entitled to claim damages has a duty to mitigate his or her damages.
- 79.6 Without limiting section 79.5, if a tenant ends a tenancy agreement or vacates or abandons residential premises, other than in accordance with this Law and the tenancy agreement, the landlord has a duty to again rent the residential premises at a reasonably economic rent.
- 79.7 If a landlord or tenant gives notice of the end of the tenancy agreement in accordance with this Law and the tenant continues to occupy the residential premises after the date on which the notice is effective, the landlord may claim from the tenant compensation for the period the tenant continues to occupy the residential premises.
- 79.8 If a landlord is entitled to claim compensation under section 79.7 and a person brings proceedings against the landlord to enforce a right to possess the residential premises occupied by the tenant, the landlord may add the tenant as a third party to the proceedings.
- 79.9 A person having rent in arrears or due on a lease or demise for life or lives may recover those arrears or that rent as if the rent were due and received on a lease for years.
- 79.10 The obligations of a landlord under sections 25.1 to 28.1 run with the land or reversion.

80. DISCRIMINATION BY SOURCE OF INCOME PROHIBITED

- 80.1 A landlord must not discriminate against a tenant or prospective tenant based on a lawful source of income.

81. CLAIM FOR RETURN OF PERSONAL PROPERTY

- 81.1 A tenant may apply to an arbitrator for an order that the landlord must return personal property that has been seized contrary to section 79.1 or 79.2.
- 81.2 If the current value of the personal property is greater than \$10,000.00, section 23.1 does not apply for the purposes of section 81.1.

82. MATERIAL TERMS

- 82.1 Subject to sections 82.2 and 82.3 or to any other provision of this Law to the contrary, the common law rules respecting the effect of the breach of a material term by one party to a contract on the obligation to perform by the other party apply to a tenancy agreement.
- 82.2 Except as otherwise provided in this Law, a tenant must not refuse to pay rent merely because of a breach by a landlord of a material term in a tenancy agreement.
- 82.3 If a landlord breaches a material term in a tenancy agreement, the tenant may elect to treat the tenancy agreement as ended, but the agreement is not ended until the tenant advises the landlord in writing that the tenant has so elected.
- 82.4 A term, whether or not it is a material term, and a condition respecting residential premises or residential property contained in a tenancy agreement, is enforceable by or against a person in possession of, and a person having an interest in a reversion of, the residential premises.
- 82.5 Section 86.4 does not affect the rights or liabilities of persons between whom, at common law, there is privity of contract or privity of estate.

83. MONETARY CLAIMS

- 83.1 Subject to any applicable limitation period, a landlord or tenant may commence an action or claim in debt or for damages against the other party in respect of a right or obligation under this Law or a tenancy agreement.

84. SERVICE OF DOCUMENTS

- 84.1 An order for the return of a security deposit referred to in section 27.9, a hearing information package under section 59.5 or a review decision and order under section 68.6, must be given to or served on a person by serving it in one of the following ways:
- (a) by leaving a copy of the document with the person;
 - (b) if the person is a landlord, by leaving a copy of the document with an agent of the landlord;
 - (c) by sending a copy of the document by registered mail to the address at which the person resides, or if the person is a landlord, to the address at which the person carries on business as a landlord.
- 84.2 Except as provided in section 84.1, a document required or permitted to be given to or served on a person under this Law must be served in one of the following ways:
- (a) by leaving a copy of the document with the person;
 - (b) If the person is a landlord, by leaving a copy of the document with an agent of the landlord;

- (c) by sending a copy of the document by registered mail to the address at which the person resides, or if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) by sending a copy of the document by ordinary mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (e) by leaving a copy of the document at the person's residence with an adult person who apparently resides with the person to be served;
- (f) by leaving a copy of the document in a mailbox or mail slot at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (g) by attaching a copy of the document to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy of the document to the fax number provided as an address for service by the person to be served.

84.3 A document served under sections 84.1 and 84.2 is deemed to have been received if served by:

- (a) mail, on the fifth day after mailing it;
- (b) fax, on the third day after faxing it;
- (c) attaching a copy of the document to a door or other place, on the third day after attaching it; or
- (d) leaving a copy of the document in a mail box or mail slot, on the third day after leaving it.

84.4 Despite sections 84.1, 84.2 and 84.3, an arbitrator, in respect of a matter before him or her, may order that:

- (a) a document must be served in a manner the arbitrator considers necessary; or
- (b) a document is deemed to have been sufficiently served for the purposes of this Law on a day the arbitrator determines.

84.5 Even though a document is not given in accordance with this section, it is sufficiently given for the purposes of this section if the person to whom it is to be given receives it and becomes aware of its nature.

85. GENERAL

- 85.1 Any deviations from a form established by Council to complement or support this Law that do not affect its substance and are not calculated to mislead, do not invalidate the form used.

86. APPLICATION OF LAW

- 86.1 Where any federal Act or regulation or provincial Act or regulation or any other Westbank Law may apply to any matter covered by this Law, compliance with this Law will not relieve the person from also complying with the provisions of the other applicable Act, regulation or law.
- 86.2 If any section of this Law is for any reason held invalid by a decision of a court of competent jurisdiction, the invalid section or subsection will be severed from and not affect the remaining provisions of this Law.
- 86.3 The headings given to the sections and paragraphs in this Law are for convenience of reference only. They do not form part of this Law and will not be used in the interpretation of this Law.
- 86.4 Unless otherwise noted, any specific statute named in this Law is a reference to a statute of British Columbia and the regulation thereto, as amended, revised, consolidated or replaced from time to time, and any Law referred to herein is a reference to a law of Westbank, as amended, revised, consolidated or replaced from time to time.

87. FEES, FORMS AND PROCEDURES

- 87.1 Council may by resolution from time to time establish procedures as are considered necessary and advisable, which are ancillary to this Law but not inconsistent with it, and without limiting the generality of the foregoing will include:
- (a) procedures setting out the circumstances when a landlord may consider that a tenant has abandoned personal property, the manner in which a landlord may dispose of personal property abandoned by a tenant, how competing claims on the property are to be resolved, the circumstances in which the purchaser of abandoned personal property acquires a marketable title free of all encumbrances, how proceeds from the disposition of the property are to be dealt with and imposing a duty of care on the landlord respecting that property;
 - (b) procedures related to a local park committee or to its functions;
 - (c) standard forms;
 - (d) standard park rules to govern a manufactured home park or class of manufactured home parks, the circumstances under which those rules apply and the process for changing the rules in force in a park;
 - (e) procedures related to the assignment and sublet of a manufactured home pad tenancy agreement, including but not limited to the criteria and procedures for withholding or granting consent to an assignment or sublet;

- (f) definitions of kinds and levels of services to be provided by the landlord in manufactured home parks;
 - (g) administrative and procedural matters for which no express, or only partial, provision has been made;
 - (h) definitions of words or phrases used but not defined in the Law.
- 87.2 Council may by resolution establish, correct, revise or update the terms of any applicable fee schedules, forms, protocols or other related documentation which complement and support this Law, and will post notice of same in a public area of the WFN administration building and make a copy of same available for viewing free of charge at the administrative offices of Westbank and available for distribution at a nominal charge.

88. OFFENCES

- 88.1 No person shall obstruct, interfere with or hinder Council or any authorized employee, officer, or agent in the carrying out of their duties and responsibilities under this Law.
- 88.2 Any person who violates any of the provisions of this Law or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this Law, or who neglects to do or refrains from doing any act or thing required by any of the provisions of this Law, is guilty of an offence under this Law, and is liable to the penalties imposed by this Law.
- 88.3 Each day a violation of this Law continues will be deemed to be a separate offence for which a fine or imprisonment may be imposed.
- 88.4 Any person who is guilty of an offence under this Law is liable, on summary conviction to a fine of not more than One Thousand Dollars (\$1,000.00) or to a term of imprisonment not exceeding thirty (30) days, or both.
- 88.5 A person who coerces, threatens, intimidates or harasses a tenant, a landlord or the administrator to deter the tenant or landlord from making an application under this Law, including any schedules, or to deter the administrator from carrying out its obligations under this Law, including schedules, or in retaliation for seeking or obtaining a remedy under this Law, including the schedules, commits an offence and is liable, on conviction, to a fine of not more than \$1,000.00.
- 88.6 A person who gives false or misleading information in an arbitration proceeding under this Law, including the schedules, commits an offence and is liable, on conviction, to a fine of not more than \$1,000.00.
- 88.7 A tenant or occupant who willfully causes damage to the residential property commits an offence and is liable, on conviction, to a fine of not more than \$1,000.00.

89. IMMUNITY

- 89.1 No action for damages lies or may be instituted against present or past Council or members, employees, servants or agents of either Westbank or Council:

- (a) for anything said or done or omitted to be said or done by that person in the performance or intended performance of the person's duty or the exercise of the person's authority; or
- (b) for any alleged neglect or default in the performance or intended performance of the person's duty or the exercise of the person's authority.

89.2 Section 89.1 does not provide a defence if:

- (a) Council, members, employees, servants or agents have, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or willful misconduct; or
- (b) the cause of action is libel or slander.

89.3 Westbank, present or past Council, or members, employees, servants or agents of any of Westbank or Council is not liable for any damages or other loss, including economic loss, sustained by any person, or to the property of any person, as a result of neglect or failure, for any reason, to discover or detect any contravention of this Law or any other Westbank Law, or from the neglect or failure, for any reason or in any manner, to enforce this Law or any other Westbank Law.

89.4 All actions against Westbank for the unlawful doing of anything that:

- (a) is purported to have been done by Westbank under the powers conferred by this Law or any Westbank Law, and
- (b) might have been lawfully done by Westbank if acting in the manner established by law,

must be commenced within six (6) months after the cause of action first arose, or within a further period designated by Council in a particular case, but not afterwards.

89.5 Westbank is in no case liable for damages unless notice in writing, setting out the time, place and manner in which the damage has been sustained, is delivered to Westbank, within two (2) months from the date on which the damage was sustained. In case of the death of a person injured, the failure to give notice required by this section is not a bar to the maintenance of the action. Failure to give the notice or its insufficiency is not a bar to the maintenance of an action if the court before whom it is tried, or, in case of appeal, the Court of Appeal, believes:

- (a) there was reasonable excuse, and
- (b) Westbank has not been prejudiced in its defence by the failure or insufficiency.

90. REPEAL

90.1 Westbank First Nation Residential Premises Law No. 2005-21 is hereby repealed.

BE IT KNOWN that this Law entitled, "*WFN Residential Premises Law No. 2008- 03*" is hereby:

Read a first time by Council at a duly convened meeting held on the 26th day of May, 2008;

Presented to the Membership at a Special Membership Meeting held on the 13th day of August, 2008;

Read a second time by Council at a duly convened meeting held on the 2nd day of September, 2008;

Read a third time, and enacted by Council of Westbank First Nation at a duly convened meeting held on the 15TH day of September, 2008.

Signed by the following members of Council:

Chief Robert Louie

Councillor Larry Derrickson

Councillor Loretta Swite

Councillor Brian Eli

Councillor Miguel DeGuevara

**WESTBANK FIRST NATION
AMENDMENTS TO THE
WFN RESIDENTIAL PREMISES LAW No. 2008-03**

NOW THEREFORE Westbank First Nation Council enacts the following amendments to the *WFN Residential Premises Law No. 2008-03*:

45.A. END OF TENANCY – WFN HOUSING UNIT

45.A.1 Despite any other provision of this Law, Council may, in relation to a WFN housing unit,

- (a) make a determination as to whether circumstances warrant the issuance of a Notice to End Tenancy under section 43, or
- (b) make a determination as to whether to issue a Notice to End Tenancy to a tenant who is not a Member,

and direct that a Notice to End Tenancy be issued to the tenant of the WFN housing unit.

45.A.2 The decision to end a tenancy under section 45.A.1 shall be evidenced by a resolution of Council.

45.A.3 Despite any other provision of this Law and unless the tenant agrees in writing to an earlier date:

- (a) a notice under section 45.A.1(a) must end the tenancy on a date that is not earlier than 7 days after the date the notice is received, and
- (b) a notice under section 45.A.1(b) must end the tenancy on a date that is:
 - (i) not earlier than 2 months after the date the notice is received, and
 - (ii) 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.

45.A.4 A notice under this section must comply with section 51.

45.A.5 A decision made under this section is final and is not open to review by an arbitrator or appeal to any court.

BE IT KNOWN that this amendment to the *WFN Residential Premises Law No. 2008-03* is hereby:


Read a first time by Council at a duly convened meeting held on the 15th day of February, 2010;

Presented to the Membership at a Special Membership Meeting held on the 11th day of March, 2010;

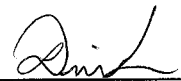
Read a second time by Council at a duly convened meeting held on the 22nd day of March, 2010;

Read a third time and enacted by Council at a duly convened meeting held on the 22nd day of March, 2010.


Signed by the following Members of Council:


Chief Robert Louie


Councillor Brian Eli


Councillor Larry Derrickson


Councillor Miguel De Guevara


Councillor Loretta Swite