Queensland's Residential Tenancies Act 1975: Landlord's Charter or Fair Law?

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Introduction

The provisions of this Bill are designed so as to recognise the legitimate interests of all parties involved in the residential landlord-tenant relationship.[1]

The above passage was part of an opening speech in the Queensland Parliament to introduce the *Residential Tenancies Act* of 1975, an Act dealing solely with short term residential tenancies.[1(a)] The fact that an Australian State has, for the first time, enacted such legislation is of considerable interest to law reformers in other States.[2] Past legislation on landlord and tenant have never even differentiated between business and residential tenancies even though different considerations and assumptions underlie the residential landlord-tenant relationship.[2(a)] In particular, the short term residential tenancy has for too long been the cinderella never regarded in the Australian States as worthy for legislation, presumably because of the "financial smallness of the involved rights".[3] The *Residential Tenancies Act* 1975 may thus be an indication of a changing attitude towards problems arising from residential tenancies and could lead to similar legislation in other States within the not too distant future.[4]

In the light of such possible development, this paper sets out to examine and evaluate the Act[5] to show whether and if so, to what extent, it can in fact be said

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1. [1975] *Parl. Debates* (Qld.), 13th November, 1897 (per W.E. Knox, Minister for Justice and Attorney-General).

1(a) Section 5(1) of the Act makes it applicable to, *inter alia*, all "tenancies of dwelling-houses" subsisting at the commencement of the Act and to "tenancy agreements" entered into thereafter.

2. See generally, *Poverty and the Residential Landlord Tenant Relationship* 1975, A Research Report by Dr. A. Bradbrook for the Australian Government Commission of Inquiry into Poverty (hereinafter, Bradbrook Report). *Law and Poverty in Australia* 1975, A Report by Professor R. Sackville, a Commissioner of the Australian Government Commission of Inquiry into Poverty (hereinafter, Savkeille Report).

2(a) See generally, *Final Report on Landlord and Tenant Law* (1976), Ontario Law Reform Commission (Hereinafter Ontario Final Report).

3. *Powell on Real Property* (1968), vol. 2, 374, sec. 253. But see, Sternlieb, *The Tenement Landlord* (N.J., 1966), a recent revelation of slumlordism in Newark, an example of what can happen when the legislature ignores the plight of urban indigents for too long.

4. South Australia has already taken steps to have its landlord and tenant law revamped. They are along the lines of recent Canadian legislation: Teh, "Tenancy Law Reform in South Australia" [1976] *Aust. Current Law Dig.* 163.

5. For a complete picture of the law relating to residential tenancies reference should also be made to the *Property Law Act* 1974, Part VIII, which deals with general principles relating to leases and tenancies. That Act came into operation on the same day as the Act under discussion, viz, 1st December 1975. Although many provisions in the 1974 Act have been superceded (nothing in the 1975 Act expressly repealed the provisions in the 1974 Act) bv the latter Act, a number of provisions in the 1974 Act are still applicable to residential tenancies. These provisions are summarised in Thomas, "The Residential Tenancies Act 1975" [1976] *Queensland Law Soc.* J. 51, 57. See generally, Tarlo, "Property Law Reform in Queensland" (1974) 8

to have taken into account the competing interests of the parties to a residential landlord-tenant relationship and should thus be looked upon as a model for reform in other States. For this purpose the effect of the Act will be compared with residential tenancy law in Queensland before the Act came into operation. Where appropriate, comparisons will also be made with recent landlord-tenant legislation in other common law jurisdictions.

The reform of tenancy law and practice raises highly politicised issues and commentators on the subject are often criticised as being "unobjective". It may thus be relevant for the writer to openly declare at this juncture that his analysis of the Act proceeds from the observation that this branch of the law is archaic and iniquitous in that it more often than not protects the landlord's property interests at the expense of the tenant's housing needs.[6] If this underlying assumption makes the writer unobjective then he finds consolation in the fact that any paper on this subject can only be "objective" within the writer's range of subjectivity.[7]

II. Taking the Realities of Rental Practice into Account

The law of landlord and tenant is one area where rules of law are too often divorced from practice.[8] An inevitable result is that law reform in this area can become a futile exercise unless special provisions are enacted to take into account divergencies between law and rental practice.[9] Four features which in particular cannot be ignored are (i) the fact that today's written leases often require tenants to contract out of their legal rights and remedies; (ii) the fact that there is an increasing shortage of rental premises in good condition and, largely because of this, most leases are offered to tenants on a take-it-or-leave-it-basis; (iii) the fact that the parties to a residential landlord-tenant relationship rarely activate the judicial process as a forum for resolving their day-to-day grievances largely because of the prohibitive cost of litigation and (iv) the fact that there are landlords and tenants who will blatantly disregard legal rights of the other party.

As will be seen immediately below, however, there are only three features in the Act which could be regarded as an attempt on the part of the Queensland legislature to take such rental realities into account. Even so, the ensuing discussion will suggest that they are at best ineffectual.

(1) Restrictions on Contracting-out

Section 5(2) of the Act declares that nothing in the Act "prevents a landlord and tenant from agreeing to terms and conditions that are not inconsistent with the rights, obligations and restrictions conferred or imposed" by the Act. It is apparently based on similar provisions in landlord-tenant statutes in the Canadian Provinces[10] and intended to prevent the landlord from inserting a con-

University of Queensland L.J. 205, 223-228; Dutney & Copp, "Property Law Act 1974—Leases and Tenancies" [1975] *Queensland Law Soc.* J. 87.

6. See also, Bradbrook Report, 2; Sackville Report, 59. Compare, Rose, *Landlords and Tenants: A Complete Guide to the Residential Rental Relationship* (Transaction Book Co., 1973), 3-4.
7. Compare the underlying assumptions in the papers referred to in footnote 5.
8. See Sackville & Neave, *Property Law: Cases and Materials*, 2nd ed., 734.
9. Fodden, "Landlord and Tenant and Law Reform"; 12 *Osgoode Hall* L.J. 441 (1974).
10. Compare, *Landlord and Tenant Acts* 1970-1975 (Ontario), section 82(1); *Residential Tenancies Act* 1970 (Nova Scotia), Section 3(1); *Landlord and Tenant (Residential Tenancies) Act* 1973 (Newfoundland), Section 4(1). There is no section prohibiting contracting out in general in Part VIII of the *Property Law Act* 1974 (Qld.).

tracting out clause in his standard form lease.[11]

The section may thus be seen as legislative recognition of the fact that the tenant is in no bargaining position vis-a-vis the landlord and needs to have his statutory rights safeguarded.[12] At the same time, however, it makes allowances for the fact that there are various relatively insignificant terms in leases which the tenant can freely agree to without placing himself in any disadvantaged position. In such matters the legislature thus preserves the philosophy of freedom to contract.

The prohibition of contracting out is, however, a limited and "toothless" version of contracting out prohibitions. Violation of the prohibition is not an offence and, more importantly, nothing in the section nullifies rights and duties in a tenancy agreement which are inconsistent with those in the Act.[13] Thus although such terms would probably be unenforceable in a court of law they remain legally valid as between the parties.

(2) Sanctions and Remedies

Apart from creating a new statutory remedy (to be discussed below) the Act does not provide any other sanction to safeguard the statutory rights of one party from being violated by the other. Thus to take an obvious example, nothing in the Act renders it an offence to violate the statutory rights and duties. Nor does anything in the Act prohibit retaliatory conduct. This is a particularly regrettable omission since landlords, the stronger party in a landlord-tenant relationship, have been known to resort to their eviction powers in retaliation against tenants who cause them inconvenience or embarrassment by relying on their newly created statutory rights and remedies. The need to create offences in general and to prohibit retaliatory conduct in particular as a means of effectively regulating landlord-tenant relationship is recognised in this branch of legislation overseas as well as in Queensland's own antecedent *Landlord and Tenants Acts* 1948-1961.[14] One wonders therefore what divine wisdom could have caused the present Queensland legislature to have so much faith in the goodness of the parties in today's landlord-tenant relationship as to refuse to introduce commonly accepted sanctions in legislation of this kind.

The fact remains that an aggrieved party has only the choice of either relying

11. A recent example of a contracting out clause is clause 3(1) of the Tenancy Agreement (Residential Premises) used by members of the Real Estate Institute of Queensland before it was subsequently redrafted to take account of the relevant provisions in the *Property Law Act* 1974 and the *Residential Tenancies Act* 1975. (Hereinafter, R.E.I.Q. Tenancy Agreement). Under that clause the tenant is supposed to have "expressly agreed" with his landlord to exclude from their agreement the provisions of section 18 of the *Termination of Tenancies Act* 1970 which protects tenants from arbitrary evictions. The clause was deleted from the redrafted version of the Agreement (hereinafter, Redrafted R.E.I.Q. Tenancy Agreement).
12. Bradbrook Report, Chapter 10; compare, Mueller, "Residential Tenancies and their Leases: An Empirical Study", 69 *Michigan* L. Rev. 247 (1970-71).
13. Compare, the repealed *Landlord and Tenant Acts* 1948-1961 (Qld.), section 65, which makes "absolutely void and of no legal effect whatsoever" any "contract or arrangement, whether oral or in writing, the purpose of effect of which is either directly or indirectly to defeat, evade, or prevent the operation" of the Act. This is complemented by section 70 which makes any contravention of any provision of the Act an offence liable to the penalty of a fine or imprisonment of up to six months.
14. *Supra*. See also, sections 31-32, *Landlord and Tenant Acts* 1948-1961 (Qld.); sections 107-108, *Landlord and Tenants Acts* 1970-1975 (Ontario); sections 15(7) and 19(6), *Landlord and Tenant (Residential Premises) Act* 1973 (Newfoundland). See generally, *Report on Landlord and Tenant Relationships*: Residential Tenancies (Project No. 12) 1973, Law Reform Commission of British Columbia (hereinafter, British Columbia Report), 46-47, 117-120.

on his new statutory remedy or whatever remedies traditionally available to him at common law. Leaving aside the new statutory remedy for the moment, this in effect means that he will have to institute a Supreme Court action against the offending party. Such an expensive and formidable course of action is obviously of dubious use in cases where only nominal damages are suffered. In any event the extensive delays and prohibitive costs of invoking such a court action would practically render it prohibitive. This is reflected in the fact that tenants in particular are seldom the plaintiff in a court action and also in the fact that (apart from eviction) it is extremely rare for problems of residential tenancies to be taken to court.[15] Some more realistic sanction such as the creation of offences against the Act is obviously called for.

(3) A New Statutory Remedy

The legislature created a new statutory remedy in the form of a right to terminate the lease where the other party has violated his statutory obligations. The remedy is given to both landlord and tenant.

On the part of the landlord he may terminate the lease and evict his tenant for failing to observe and perform any of the obligations in section7(b) of the Act, viz, failure to pay rent,[16] causing a nuisance or annoyance to neighbours, omission to take care of the premises or to repair damage to the premises caused by himself or his invitees, or for non-observance or performance of other obligations in the tenancy agreement. The tenant, on the other hand, has the power to terminate the tenancy and quit the premises should the landlord fail to observe or perform the obligations contained in section 7(a) of the Act, viz, violation of the tenant's right to quiet enjoyment, failure to provide and maintain the premises (and furnishings, where appropriate) in good repair and in a condition fit for human habitation, and failure to observe or perform his other obligations, if any, in the tenancy agreement.

The requisite notice in either case is fourteen days and such power of termination applies regardless of whether the tenancy is for a fixed term or from period to period.[17]

This new remedy at first sight appears to be a real answer to the problems arising from the present legal framework. It costs practically nothing and can be directly and immediately activated by the aggrieved party. On close examination, however, it is really quite an unrealistic remedy, at least so far as tenants are concerned. Its effectiveness as a sanction is too dependent upon a balanced market condition in rental housing. Thus although the tenant can freely rely on the remedy at a time of high vacancy rate it would be equally true that he cannot freely rely on it when rental housing is in great demand as is at the present time. There are in fact plenty of indications that landlords in Queensland are already in blatant breach of the Act in that they have allowed premises to fall into substandard condition.[18] Yet because of the acute shortage of rented premises, ten-

15. Fodden, *supra*; See also, Martin, "Civil Remedies Available to Residential Tenants in Ontario: the Case for Assertive Action" (1976) 114 Osgoode Hall L.J. 65; Berney, et. al., *Legal Problems of the Poor* (Little Brown, 1975), 309. Cass and Sackville, *Legal Needs of the Poor* (1975), Research Report for the Australian Government Commission of Inquiry into Poverty.
16. A proviso to section 7 states that a tenant is deemed to have failed to pay rent "if the rent in respect of any period of the tenancy remains unpaid for seven days after that rent becomes due."
17. Section 17. The notice may be given orally or in writing although in the case of the landlord's notice it should be given in writing as it will otherwise be unenforceable: section 17(5).
18. Quirk, "Landlords Ignore New Housing Act" *Sunday Sun* (Qld.), 11 January 1976.

ants continue to live in such premises notwithstanding that they have this new statutory remedy. The supply of rental housing is not likely to improve in the immediate future so that even right at the start the remedy already appears to be of doubtful use to the tenant.

There are at least three other features of the remedy making it in its present form unrealistic. In the first place, it allows a landlord to terminate the lease and evict the tenant if the tenant is in breach of some obligation or restriction in the tenancy agreement however trifling and frivolous it may be. Thus it gives an opportunity to the oppressive type of landlord to enlarge the scope of his eviction power by imposing duties in the tenancy agreement which he knows cannot be observed by his tenant, as for instance a duty to mow the lawn twice a day every day. The example is obviously an absurd and unlikely situation but it nevertheless shows the large loop-hole in the section creating this remedy. The legislature should have taken account of the fact that leases will still be offered to tenants on a take-it-or-leave-it basis and that such a provision is likely to have the effect of putting the tenant back into the hands of the party who drafts the tenancy agreement, viz, the landlord.

In the second place, the remedy is too narrow in scope in so far as it is not applicable to a breach or non-observance of certain important rights provided in the Act. Thus it is not available to the tenant whose landlord has unreasonably and arbitrarily refused to consent to the tenant's proposal to assign the lease. Nor is the remedy available to the tenant if the landlord unlawfully distrains for rent[19] or enters his home in contravention of the limitations imposed on the landlord's right of entry.[20] In these situations the tenant's only remedy is his impracticable common law right to sue in a Supreme Court action.

In the third place, the statutory power to terminate the lease is too final, no provision being made anywhere in the Act[20a] to give the party in breach an opportunity to save the lease by taking steps to remedy the breach. Far from it the party entitled to the remedy is in fact expected to act promptly failing which he may lose his remedy.[21] As a result of this a tenant is liable to lose his lease just for being seven days in arrears with his rent or because he has—perhaps unwittingly—caused some annoyance to neighbouring residents. In the same way too a landlord can lose his tenant just because he has failed to maintain the premises in "good tenantable repair".

It would have been far more realistic and conducive to a harmonious landlord-tenant relationship if the Act had provided the defaulting party with an opportunity to rectify his breach before the summary power of termination is made available to the other party.[22] As it is, however, this statutory power is likely to be abused. A tenant may resort to it as one cheap and quick way to terminate his liabilities under the lease. To the landlord—particularly one who does not use a written lease—it could be a highly potent power to summarily evict his tenant.

Evaluated in terms of the day-to-day context of renting, the idea underlying such a statutory power no longer reflects the conventional belief that the judicial process is the only acceptable mechanism for redressing tenancy grievances. In

19. Distress for rent is prohibited by section 11 of the Act.
20. Section 8 of the Act.
20(a) As will be seen later in the text, Section 124, *Property Law Act* 1974 (Qld.) does provide some relief but excludes its operation from, *inter alia*, short term tenancies and residential leases.
21. The remedy is not available if the other party's non-performance or observance of his duty has been "waived or excused": section 17. See also, section 119, *Property Law Act* 1974.
22. Compare section 146, *Property Law Act* 1958 (Vic.).

its actual formulation, however, insufficient account has been taken of the realities in the renting situation.

III. Balancing the Competing Interests in a Landlord-Tenant Relationship

We shall now see whether the Act has given recognition to the "legitimate interests"[23] of all parties in its readjustment of the rights and duties of landlord and tenant. Once again the realities of rental practice will be taken into account when discussing the effect of the Act on actual landlord-tenant relationship. For the sake of simplicity, the following discussion is subdivided into the various areas dealt with in the Act.

(1) Repair and Maintenance

The Act requires the landlord to provide, and maintain during the tenancy, rented premises that are both repair-free and in a condition fit for human habitation.[24] Where the premises are let as furnished this duty also applies to the furnishings.[25] The landlord is required, in addition, to comply with all lawful requirements with regard to safety and health standards in the premises.[26] On the tenant's part he is under a duty to take reasonable care of the premises and its furnishings and he is liable for repairs only where damage to the premises has arisen because of his own wilful or negligent conduct or that of his invitees.[27]

It is a complete departure from repair clauses in standard form leases which invariably place onerous repairing duties on the tenant.[28] The Act has thus, to that extent, recognised that the repair and upkeep of rental property is primarily the landlord's responsibility because of his special interest in the preservation and improvement of the value of the property. Moreover, it may be said to have taken into account the fact that the cost of repair and maintenance is already an element in the rents that tenants pay. Perhaps its most significant effect is that it now reconciles the law with actual renting practice and the reasonable expectations of the parties.

The tenant's interest in a repair-free and decent home is given far more recognition in this Act than in the *Termination of Tenancies Act* of 1970 which left the question of repair and maintenance to private arrangements between the parties. It is also an improvement on the earlier *Landlord and Tenant Acts* of 1948-1961 which merely prohibited landlords from letting any dwelling-house not "in fair and tenantable repair" at the date of the letting.[29] However, although the Act has now placed the duty to repair on a much more fair and realistic basis, two reasons may be suggested as to why in its present form it will not significantly change day-to-day renting practice.

23. *Supra*, Footnote 1
24. Section 7 (a)(ii). This section presumably supercedes sections 105-106 of the *Property Law Act* 1974 under which the landlord has a similar duty in the case of leases of three years or less but the duty to repair is cast on the tenant in leases of more than three years.
25. Section 7(a)(iii).
26. Section 7(a)(iv). See, e.g., *Health Acts* 1937-74 (Qld.), Sections 77-95.
27. Section 7(b)(i)-(iii). This essentially reproduces the provisions in section 106 (1)(b), *Property Law Act* 1974 (Qld.).
28. For example, clauses 1(d)-(f), R.E.I.Q. Tenancy Agreement which imposed the repairing duty on the tenant even though he may not necessarily have been responsible for the damage. The new version of these clauses in the Redrafted R.E.I.Q. Tenancy Agreement now reflects the more equitable reallocation of repair and maintenance duties in the *Residential Tenancies Act* 1975.
29. Section 35, *Landlord and Tenant Acts* 1948-61.

In the first place, it requires all rented premises to be in a *repair-free* condition. Although clearly aimed at improving standards of rental accommodation it is a rather unrealistic expectation. It costs more than a cheap wish declared in an Act of Parliament to update the thousands of rented premises—many in substandard condition—to the single repair-free standard contemplated in the Act.[30] This part of the Act is doomed to failure unless, for instance, sufficient enforcement agencies are established to police its observance and serious penalties are imposed on any offending landlord.[31] None of these back-up features are found in the Act. It seems not unlikely that it will thus be more probably honoured in the breach than in its observance. It would have been far more realistic if the Act had merely required existing substandard rented premises to be rehabilitated and maintained in a condition *fit for human habitation*.

In the second place and as seen earlier, the tenant has no *effective* remedy against a landlord who blatantly ignores the new statutory duty. He has only the rather dubious choice of either accepting the living condition of the rented premises as it is or of quitting the premises under his new statutory right to terminate the tenancy. The Act does not give him any of the other remedies available to tenants in the Canadian Provinces and in many parts of the United States.[32] Thus he is not given such remedies as the right to withhold rent, the right to abate the rent in proportion to the state of disrepair, etc.[33] All that the Act has in effect done is to place him in an accept-it-or-leave-it situation, which is not much of a choice considering the great shortage of repair-free rented premises.

(2) Right of Entry and Inspection of the Premises

Under the Act the landlord has the right to enter the tenant's premises for any one of four purposes, viz, (a) to inspect the state of repair, (b) to carry out repairs to the premises; (c) to show the premises to a prospective purchaser or tenant; and (d) to carry out statutory requirements affecting the condition of the premises.[34] This right of entry undoubtedly impinges on the tenant's privacy and his use and enjoyment of the rented premises. It can be justified only on the

30. See generally, Note "The Fitness and Control of Leased Premises in Victoria", 7 *Melb. Univ.* L. Rev. 258 (1969).
31. See generally, Gribetz & Grad, "Housing Code Enforcement: Sanctions and Remedies", 66 *Columbia* L. Rev. 1254 (1966).
32. Bradbrook Report, 21-26.
33. Because it is the landlord who now has the duty to repair the tenant is entitled to repair the damage himself and sue the landlord for the costs: Brooking & Chernov, *Tenancy Law and Practice in Victoria* (1972), 113. He may, alternatively, sue the landlord for breach of the duty to repair. In the same way he may expend a reasonable sum on repairs and deduct it from future rent. Such a deduction will be a defence to an action for non-payment of rent: *Lee-Parker* v. *Izzet* [1971] 1 W.L.R. 1688, discussed in [1973] *LAG Bulletin* 142, 173; *Knockholt Pty. Ltd.* v. *Graff* [1974] Q.R. 88. He may have no such right, however, if his lease is governed by a clause like clause 3(b) of the R.E.I.Q. Tenancy Agreement which forbids any "compensation or reduction in the rent" by the tenant for "damage or failure breakdown or other cessation" of services. (The clause remains unchanged in clause 3(b) of the Redrafted R.E.I.Q. Tenancy Agreement). These are, however, illusory remedies because they involved considerable expense and, as will be seen later in the text, will certainly lead to either a steep rent rise or eviction. In truth, therefore, repair remedies vested in the tenant cannot be effectively exercised unless there are also provisions safeguarding him from both retaliatory rent increases and eviction.
34. Section 8. This section presumably replaces section 107 of the *Property Law Act* 1974 which differs from section 8 in a number of respects. See text below.

basis that the landlord has a vital interest in the preservation and protection of his property, especially if it is his responsibility to repair and maintain the premises in a condition fit for human habitation. Even so, however, restrictions must be imposed on the landlord's exercise of his right of entry so as to reduce interferences with the tenant's enjoyment of his home to the lowest possible minimum.

The legislature attempted to balance the competing interests of landlord and tenant by imposing two restrictions on the landlord's exercise of his right of entry, viz, by requiring the landlord to give "reasonable notice" in writing of his intention to enter and by restricting his actual entry to "reasonable" hours of the day.[35] Such restrictions may be said to be realistic and reasonable in that they are flexible and reflect a commonsense approach to the matter.

However, the legislature removed some of the safeguards to the tenant's privacy in antecedent Acts. Thus under section 107 of the *Property Law Act* 1974 but not under the 1975 Act two days' written notice had to be given before any entry could be made and in the case of an entry for the purpose of carrying out repairs, the repairs had to be carried out "without undue interference" with the tenant's use and occupation of the premises.[36] Moreover, the legislature did not enact a provision like section 59 of the earlier *Landlord and Tenant Act* 1948-1961 which in effect expressly prohibited a landlord's resort to his powers of entry as a means of harassing his tenant. In a sense, therefore, the landlord's right of entry in the Act has been enlarged in the interests of flexibility but the legislature has to that extent exposed the tenants' interests in the privacy and uninterrupted enjoyment of his home to landlords who may use their powers to harass the tenant and his family.

Account has also to be taken of two situations in which the Act does not require the landlord to give any notice, viz, in cases where he believes on reasonable grounds that the entry is required to protect the premises from "imminent or further damage" or where he similarly believes that "the well-being of the tenant requires it".[37] Few would quarrel with a landlord's claim to have the right to immediately enter his premises to protect it from a tenant wilfully or wantonly causing damage to the premises. In such a situation the tenant can hardly expect that his claim to privacy should even be taken into account. It seems patently absurd, however, to allow the landlord an unrestricted right to enter his tenant's home just because he believes on reasonable grounds that "the well-being of the tenant requires it". The provision is so amazingly wide and incredibly vague that it will allow many a landlord to enter his tenant's premises without having to observe the restrictions on his right of entry. The expression could, for instance, entitle *any* entry to inspect the state of repairs because most landlords believe such inspections to be in their tenant's well-being. One likely effect is that it will nullify those restrictions.

(3) Rent Increases

The Act has in effect conferred upon the landlord the right to increase the rent of a periodic tenant at short notice. All he has to do is to give a month's notice in writing of his intended rent increase regardless of whether the tenant has only a

35. Proviso in section 8(1).
36. These provisions, however, apply subject to any agreement between the parties (section 197, *Property Law Act* 1974) and in practice they are likely to be contracted out in standard form leases.
37. Section 8(2).

weekly or other type of periodic tenancy.[38] The Act thus reversed a recent decision of the Supreme Court of Queensland which applied the common law rule that the rent of a periodic tenancy could not be validly increased by the mere issue of a notice of increase.[39]

The requirement that a month's notice should be given of any intended rent increase is quite consistent with rental practice in so far as a periodic tenant is usually given such notice whenever his landlord wishes to increase the rent. Apart from that, however, it may be queried whether a month's notice is really sufficient to enable a tenant to find suitable alternative accommodation should the proposed rent increase be too much for him to pay. Three month's notice would have been far more reasonable especially in times as the present where there is a shortage of rental housing.[40]

Apart from the notice requirement there is nothing in the Act that can be regarded as a legal restraint on rent increases. That the legislature is clearly not in favour of rent control of any kind may be inferred from the fact that it has virtually allowed the landlord to raise the rent of his periodic tenant at any time by any amount he can get from the tenant and he may increase it as frequently as he chooses to do so.[41] It does not even impose restraint on the landlord whose rent increase is highly excessive or based on purely vindictive motives. The legislature may be said to have, to that extent, denied the security of home life to the periodic tenant in Queensland.[41(a)]

This state of the law in Queensland is a complete departure from the policy of restraint reflected in the *Landlord and Tenant Act* of 1948-1961 which imposed strict control on rent increases. It also provides a sharp contrast to the far more reasonable position in certain Australian States,[42] the Canadian Provinces[43] and England[44] where there are at least some checks and restraints to safeguard tenants from avaricious and unreasonable landlords whose rent increases are excessive.

38. Section 9. This was described as a "rent variation" section (see also [1975] *Parl. Debates*, 13th November, (1898) a term which is strictly accurate because it also enables the landlord to reduce his rent in the same way if he wishes to do so. In reality, however, it is nothing but a section to enable rents to be increased. The writer proposes to label it for what it is. The section does not apply to a fixed term tenancy, but in the case of fixed term tenancies in the Redrafted R.E.I.Q. Tenancy Agreement the rent may, under clause 1(a) of that Agreement, be "subsequently varied" at times to be specified in the blank space provided in that clause. It may be, however, that the word "varied" is too vague and the proviso may be void for uncertainty. There is nothing in Part VIII of the *Property Law Act* 1974 on the subject of rent increases.
39. *Mitchell* v. *Wieriks; ex parte Wieriks* [1975] Qd. R. 100; Noted, (1975) 49 *A*.L.J. 81.
40. See Sackville Report, 85-86, where a six weeks' notice was recommended as being a reasonable time.
41. Rent control was in fact abolished by the *Termination of Tenancies Act* 1970. It was not reintroduced in any form in the *Property Law Act* 1974 or the Act under discussion.

41(a) British Columbia Report, 47-55; see generally, Gorsky "An Examination and Assessment of the Amendments to the Manitoba Landlord and Tenant Act", 5 *Manitoba* L.J. 59; 270 (1972). See discussion on evictions, *infra*.

42. For example, *Substandard Housing Control Acts* 1973-75 (Tas.); *Excessive Rent Acts* 1962-66 (S.A.). The Rental Investigation Bureau in Victoria has power to negotiate for a reduction in rent on a tenant's behalf: see generally, Bradbrook Report, 79-106, which contains an interesting discussion of rent control in Victoria, New South Wales and South Australia. See also, Bradbrook, "An Empirical Study of the Need for Reform of the Victorian Rent Control Legislation", 2 *Monash Univ.* L. Rev. 82 (1975).
43. For example, *The Residential Rent Review Act* 1975 (Ontario); *Landlord and Tenant (Amendment) Act* 1974 (No. 2) (Br. Columbia).
44. *Rent Acts* 1968-74 (England). See generally, Partington, *Landlord and Tenant; Cases Materials and Text* (Weidenfeld & Nicolson, 1975).

(4) Destruction of the Premises

Under section 14 of the Act both the landlord and the tenant have the right to terminate the tenancy if the premises or a substantial part of it has been so destroyed or damaged as to become unfit for occupation as a dwelling-house. The party wishing to exercise this right must give the other notice in writing within one month from the date of such destruction or damage. The notice will have the immediate effect of back-dating the termination to the date of destruction or damage. The benefit of the section is unavailable to the tenant if the destruction or damage is caused by his "act or default" or that of his servant, agent or any other person whom he had consented to be in the house.[45]

The section has the effect of removing an anomalous consequence of the concept of a lease at common law, viz, the tenant is strictly liable to pay rent and observe all his lease covenants for the whole term no matter what happens to the premises. This is because at common law the lease has conferred on him nothing but an "estate" in the land which continues for the whole term notwithstanding that the premises have been so damaged or destroyed as to be completely uninhabitable during the term.[46] This effect of the common law had remained part of the landlord and tenant law in Queensland until now although in practice its harsher effects had been eliminated by an appropriately drafted "destruction" clause in many standard form leases.[47] The section is thus a significant and long overdue reform of an iniquitous rule.

Apart from that, however, there are at least four aspects of the section calling for adverse comment because of its landlord-oriented effect. First, there is no provision for a proportionate reduction in rent in cases where only an insubstantial part of the premises has become unfit for habitation so that the right of termination under the section does not arise. In such an event the tenant is still strictly obliged to pay the full rent even though he is clearly getting less value out of the premises. There may be situations, moreover, where circumstances compel a tenant to continue occupying premises so substantially damaged as to give him a right of termination under the section and yet he remains strictly liable to pay the full rent. To be fair to the tenant the legislature should have allowed rent to be apportioned in circumstances where the tenant continues in occupation of such premises regardless of whether the right to terminate the lease has arisen.[68]

Second, the lease should have been made automatically terminable upon the premises being so totally or substantially destroyed or damaged as to render it unfit for habitation. As it is, however, a tenant could still be liable for rent for the residue of the term if he fails to give the requisite notice because of ignorance or sheer forgetfulness or if he purports to give it *after* one month from the date of the destruction or damage. Such traps for the unwary tenant hardly accord

45. Section 14. This is a novel section, there being no corresponding provision in the *Property Law Act* 1974 or in any other antecedent legislation on this branch of the law in Queensland. The section only applies to tenancies of "dwelling-houses", thereby effectively excluding business tenancies and even tenancies of holiday homes (section 6). Thus tenants in such categories are still exposed to the absurd situation at common law whereby they remain legally bound to pay rent and to observe all other duties under the tenancy agreement for the full duration of the tenancy even though the rented premises had been completely destroyed or damaged.
46. *Paradine* v. *Jane* (1647) Abyn 26; *Matthey* v. *Curling* [1922] 2 A.C.180.
47. For example, clause 3(a), R.E.I.Q. Tenancy Agreement, now replaced by clause 3(a) of the Redrafted R.E.I.Q. Tenancy Agreement which in effect paraphrased the provisions in section 14 of the *Residential Tenancies Act* 1975.
48. See Bradbrook Report, 16.

with the principle underlying the section, viz, that rent should cease to be payable for premises which have become unfit for habitation.

Third, it seems both perversely penal and unnecessary to bar a tenant from terminating the lease just because the destruction or damage had been technically caused by some act or default of his or that of his agent, invitee, etc. It enables a landlord to capriciously hold to the lease a tenant no longer able to use the premises as his home and who will have to rent accommodation elsewhere. This is even though he is already fully answerable for the landlord's losses, including loss of rent for the residue of the term. Such a provision is hardly likely to encourage a tenant to refrain from irresponsible conduct nor will it have any effect on the landlord's remedies against a tenant legally liable for the destruction or damage. Thus even assuming a situation where the damage is not recoverable under the landlord's insurance policy because of the tenant's liability the landlord will nevertheless be legally entitled to recover from the tenant damages which will include, as said before, loss of rent for the residue of the term. In fact a proviso to the section already safeguards the landlord's rights and remedies in such a situation.

Fourth, the *landlord* is not barred from relying on the right of termination under that section even though the destruction or damages has been caused by his act or default or that of his agent, invitee, etc. For instance the premises could have become so dilapidated as to be unfit for habitation as a result of the landlord's neglect to repair and maintain it and yet under the section such a landlord would be able to rely on his own default to terminate the lease. In contrast to this privileged position enjoyed by the landlord, the tenant at fault is, as seen above, barred from the benefit of that section. It is interesting to note that although the landlord is liable to the tenant for breach of his statutory duty to repair he is not obliged to rebuild the premises.[49] On the other hand the tenant at fault would be liable for what could amount to the costs of restoration.[50] Such double standards cannot be justified. It could have been easily avoided by either allowing *both* parties to rely on his own default or by deleting the bar presently applicable only to the tenant at fault.

(5) Assignment and Subletting

Under the Act the tenant may only assign or sublet his lease with his landlord's prior written consent.[51] The extent of the tenant's ability to alienate his interest is also made dependent on whether he has a fixed terms of six months or more. The Act prohibits a landlord from unreasonably withholding his consent where the tenant has such a tenancy and wishes to assign all his interests or sublet the whole of his premises.[52] In such cases the restriction on the landlord's otherwise absolute power to withhold consent operates "notwithstanding any agreement between the landlord and tenant."[53] NO such restriction is imposed on the landlord's power to withhold consent where the te-

49. Proviso in section 7. See Duncan, "Residential Tenancies Act 1975: Commentary, Comparison and Criticism" [1976] 3 *Queensland Lawyer* 27, 33.
50. See *Strang* v. *Gray* (1952) 55 W.A.L.R. 9.
51. Section 15(1). Compare section 12(1), *Property Law Act* 1974 which implies into *all* leases containing a coverant against assignment, etc., a proviso to the effect that consent is not to be unreasonably withheld. Contracting out of the proviso is expressly disallowed. This provision is inconsistent with section 15 of the Act under discussion and presumably is to that extent superceded by the latter.
52. Section 15(2).
53. Section 15(4).

nant has less than a fixed term of six months or where the tenant proposes to sublet only part of the premises.[54]

It is to be observed that in making all assignments and subleases subject to the landlord's approval the Act has in fact cut down on the tenant's common law right to freely alienate his interests by assignment, sublease or other transfer, such right being a mere incidence of the estate granted to him.[55] This is particularly true of oral leases although in the case of written leases the Act has merely elevated to legislative status what has become a standard clause making assignments and subleases subject to the landlord's prior written consent.[56]

Such restraint on the tenant's otherwise unrestricted power of alienation can be justified on the ground that it is necessary to safeguard the landlord's property from being rented out to persons whom the landlord would normally reject as "bad tenants" because of reasons such as their impecuniousity, bad housekeeping or just their propensity to create a nuisance or annoyance to neighbouring residents. On the other hand, some restraint should also be imposed on the landlord's power to withhold consent, as it would be unfair to allow a landlord to withhold consent capriciously. The legislature showed recognition of this need for restraint in so far as it prohibited him from withholding consent unreasonably where the tenant has a term of six months or more and wishes to assign all his interests or to sublet the whole of the premises.

It would, however, be hard to justify the legislature's discrimination against all other tenants whose right to assign and sublet is made subject to their landlords' absolute decision. It may be thought that the interests of such tenants are too short-termed and transitional to be subjected to the complicated processes of assignments and subleases and would not justify the costs and expenses involved. Such an explanation, however, is hardly acceptable. Firstly, costs and expenses are invariably borne by tenants. In any event, the Act in its present form does not allow a landlord to capriciously withhold consent to a proposed assignment or subletting by a tenant who has a tenancy for six months but with only a month or less to expire. A tenant in such a position has no less a transient interest than that of a monthly or other periodic tenant so that it would be inconsistent to discriminate against the latter purely on this ground.

It may be closer to the truth that insufficient regard has been given to the fact that in the context of short-termed residential tenancies every proposed "subletting" by the tenant is a potential abandonment of the lease.[57] The tenant in such a situation is no longer able or willing to continue renting the premises and either because of forgetfulness, ignorance or plain misconception he has not given any notice to quit or has given an invalid one. He has, however, some suitable person willing to replace him and thereby cut losses the landlord might otherwise incur if the premises were merely abandoned without notice.

In allowing the landlord to arbitrarily reject the "subletting" in such a situation, however, the legislature has in effect taken away the tenant's common law right on the one hand and at the same time given the landlord absolute power to hold him to his lease. As a result the tenant who abandons the lease remains

54. Section 15(3).
55. See generally, Woodfall on *Landlord and Tenant*, 26th ed., vol. 1, 840.
56. For instance, clause 1(1), *R.E.I.Q. Tenancy Agreement*, now replaced by clause 1(j) of the Redrafted R.E.I.Q. Tenancy Agreement which makes the tenant's right to assign and sublet "subject to the provisions of the "Residential Tenancies Act 1975".
57. The highly technical and unreal distinction between an assignment and a subletting does not really enter the mind of the average tenant who acts without legal advice and regards a substitution of tenants as a "subletting".

trapped in liability—the landlord can hold him accountable for any loss of rent which may have been actually brought upon himself by his own capricious refusal to accept the "subletting".[58]

(6) Mitigation of Damages

The Act introduces into the landlord-tenant relationship a contractual doctrine relating to mitigation of damages. Under section 16 of the Act a "landlord or tenant entitled to claim from the other damages for loss caused by a breach of a tenancy agreement or provisions of [the] Act has the same duty to mitigate his damage as that which applies generally under the law of contract".[59] The section is clearly based on similar provisions in recent Canadian legislation.[60]

The main aim in this section is to abolish a rather startling consequence of the notion that a lease is an estate in land, viz, the landlord is under no duty to mitigate his loss as making reasonable efforts to relet premises abandoned by his tenant.[61] He is legally entitled to stand by and sue the abandoning tenant for rent as it falls due.[62] The situation is particularly unfair to the abandoning tenant where in fact abandonment of the lease may be, as seen above, a direct result of the landlord's capricious refusal to consent to an assignment of the lease. This is in contrast to the position in contract whereby if one party is in breach the other has a duty to mitigate the resulting damages.

Section 16, however, will not operate to change the effect of the common law under which landlords may freely allow abandoned premises to remain idle. This is because the section as it is worded relates only to the situation where the landlord is claiming damages for the tenant's abandonment.[63] In such a case the landlord has elected to accept that the abandonment has brought the lease to an end and section 16 states that his claim to damages is subject to the duty to mitigate his damages. This may be, for instance, by making reasonable efforts to relet and thus cut his loss of rent. Such effect of section 16, however, amounts to no more than a restatement of existing law clarified by the High Court in *Buchanan* v. *Byrnes*.[64]

The section does not apply to the situation where the landlord cannot or does not wish to claim damages from the abandoning tenant but merely elects to sue for rents as they fall due. This, however, is the very situation that section 16 was

58. See discussion below.
59. Neither the *Property Law Act* 1974 nor any other antecedent landlord and tenant legislation in Queensland has such a provision.
60. *Landlord and Tenant Acts* 1970-1975 (Ontario), Section 92; *Landlord and Tenant (Residential Tenancies) Act* 1973 (Newfoundland); section 4; *Residential Tenancies Act* 1975 (New Brunswick), section 11.
61. [1975] *Parl. Debates* (Qld.), 13th November, 1898, where the Minister introducing the Bill said, "At present where premises are abandoned by a tenant prior to the expiry of the tenancy, there is no obligation upon the landlord to mitigate his damages. This appears as an unreasonable distinction between the obligation to mitigate damages applicable to a simple contract under contract law and the total absence of such an obligation under the law of landlord and tenant. The provisions of the Bill will alter the common law by providing that a landlord ... will have the same duty to mitigate his damages, by, for example, re-letting the premises". See generally, McCormick, "The Rights of the Landlord Upon Abandonment of the Premises by the Tenant" 23 *Mich.* L. Rev. 211(1925).
62. *Maridakis* v. *Kouvaris* (1925) 5 A.L.R. 197, noted (1975) 2 *Monash University* L. Rev. 115.
63. British Columbia Report, 136-139; see Ontario Final Report, 129-131.
64. (1906) 3 C.L.R. 704. The effect of this decision has been possibly given a wider application than is justified: see *Hughes* v. *N.L.S. Pty. Ltd.* [1966] W.A.R. 100; *Highway Properties Ltd.* v. *Kelly, Douglas & Co. Ltd.* (1971) 17 D.L.R. (3d) 710.

clearly intended to cover. Largely as a result of bad drafting therefore, the anomalous effect of the common law lingers on as part of the law in Queensland. What is clearly required to effect the change is a provision expressly placing the landlord under a duty to make efforts to relet premises abandoned by his tenant.[65]

IV. The Eviction Process

From the landlord's point of view he should be completely free to evict his tenant and recover his premises speedily and with a minimum of difficulty, it being a typical complaint of landlords that the tenant is "overprotected" by the law and the eviction procedure too cumbersome.[66] To the tenant, on the other hand, the security of his home life should not be disrupted by arbitrary eviction and the eviction process should accord him fair treatment. To what extent then can the Act be said to have taken into account "the legitimate interests" of both parties? This will now be discussed below by a close look at the landlord's eviction powers and the eviction procedure in the Act.

(1) The Landlord's Power to Evict Without Just Cause

Nothing in the Act restricts the landlord from evicting his tenant at any time that it pleases him to do so. This indeed provides a radical contrast with the recent position as governed by the *Termination of Tenancies Act* 1970, an Act to abolish rent control in Queensland but under which the landlord could not evict periodic tenants of residential premises unless he had just cause to do so.[67] That Act set out a list of circumstances that would provide just cause for evicting a tenant. In failing to restore the restrictions on the landlord's freedom to terminate periodic tenancies the Queensland legislature in effect denied tenants the security of tenure which had been conferred on them in antecedent Acts.[68] One obvious result is that tenants of periodic residential tenancies are now virtually defenceless against capricious or vindictive evictions.[69] The tenant loses his home once he has been given a proper notice to quit. It matters little that he has been living in the premises for many years or that he has been faithfully performing all his duties as a tenant.

The full extent of the landlord's eviction powers may be put into two broad categories, viz, (a) situations where he can evict without any forewarning to the tenant and (b) those where he can evict at short notice.

(a) Eviction Without Notice

Under the usual forfeiture clause invariably found in standard form leases the landlord has the power to summarily evict without notice if the tenant is in breach of *any* covenant, regardless of however minor or technical the covenant

65. British Columbia Report, 138-139. But see Ontario Final Report, 130-131.
66. [1974] *Parl. Debates (Qld.)* 23rd October, 1563; [1975] *Parl. Debates* (Qld.), 13th October, 1899.
67. As seen earlier in footnote 41, restrictions on the landlord's eviction powers in the *Termination of Tenancies Act* 1970 were first abolished by the *Property Law Act* 1974. This meant that the Queensland tenant enjoyed security of tenure until 1st December 1975.
68. The security of tenure provisions in the 1970 Act were a re-enactment of similar provisions dating back to the *Landlord and Tenant Act* of 1948.
69. Fixed term tenants do enjoy reasonable security of tenure but fixed term tenancies of residential premises are now commonly limited to six months so that such tenants are usually no better off than periodic tenants.

or breach may be.[70] The severity of such an eviction power is mitigated somewhat in that the tenant is entitled to certain procedural safeguards with the effect that he will not be caught unaware that he is in fact in breach of his covenant.[71]

For reasons unknown to the writer, however, these safeguards are unavailable to the residential tenant and nothing in the Act under discussion has corrected the rather anomalous discrimination against this category of tenants.[72] One obvious consequence is that their landlords continue to have the wide powers of summary eviction previously outlined. Landlords are furthermore legally entitled without any notice to enter the home of residential tenants in breach of any covenants and have them physically, *albeit* "peaceably" evicted from the premises.[73] The fact that a tenant may not even have any previous warning of the eviction is immaterial nor does it matter that he may have no immediate alternative accommodation to go to.

Another situation in which a landlord may evict without notice arises when a tenant continues in possession on the day after his fixed term has expired. Until the landlord accepts his tender of a period's rent he occupies the premises as a tenant at the landlord's will—or a tenant at sufferance if there is no evidence of the landlord's willingness to his overholding. He becomes a trespasser if the landlord decides not to accept him as a tenant. Whether he is a trespasser of tenant at will or at sufferance is completely dependent on the landlord's decision. Whatever it is, the landlord has the power to evict him without notice for he is not strictly a tenant in the eyes of the law.[74]

70. For example, clause 3(c) *R.E.I.Q. Tenancy Agreement*. There is no forfeiture clause in the Redrafted R.E.I.Q. Tenancy Agreement. For purposes of the present discussion the writer proceeds on the basis that this so-called "forfeiture clause" is really an eviction clause in so far as every "forfeiture" of a lease is an eviction of the tenant. In cases where the tenant never had a fixed term with the usual "forfeiture" clause or where he has been given an informal and oral tenancy, section 107(d) of the *Property Law Act* 1974 gives the landlord a similar eviction power. That section authorises such eviction as soon as the tenant's rent is in arrear for one month regardless of whether the landlord has formally demanded it. The waiting period is two months in cases where the power is resorted to on the ground of the tenant's breach of any of his otherduties in the tenancy agreement.
71. Under section 124 of the *Property Law Act* 1974, the landlord has to give notice to the tenant specifying the breach and requiring the tenant to remedy it "within a reasonable time". This section does not affect the tenant's right to equitable relief against "forfeiture" for non-payment of rent: section 124(7).
72. The relief is also excluded from *inter alia*, leases for a term of one year or less, leases of mining and agricultural land and leases of licensed houses under the *Liquor Act* 1912-1973 [section 124 (6)]. There is nothing in the Parliamentary Debates on the *Property Law Act* 1974 or on the *Residential Tenancies Act* 1975 to indicate reasons for the discrimination against tenancies of such leases. Compare, Report of the Law Reform Commission, 1973 (Queensland), No. 16 (hereinafter Q.L.R.C. 16), 86, where the forfeiture of a lease without relief was acknowledged as likely to lead to "the most serious injustice" and reference was also made to *Baier* v. *Heinemann* [1962] Qd. R. 192, 204, where Gibbs J. described the law in Queensland as "seriously defective" in that respect. It is also interesting to note that similar statutory safeguards in other States do not discriminate against any category of tenants: section 146, *Property Law Act* 1958 (Vic.); section 81, *Property Law Acts* 1969-1973 (W.A.); section 15, *Conveyancing and Law of Property Act* 1884 (Tas.); section 19, *Landlord and Tenant Act* 1936 (S.A.); section 129, *Conveyancing Acts* 1919-1972 (N.S.W.).
73. Self-help eviction has not been abolished but remains part of the eviction process in Queensland: see section 20 of the Act under discussion; section 107(d) of the *Property Law Act 1974 expressly authorises self-help eviction in circumstances set out within the section. The tenant peaceably evicted for non-payment of rent is entitled to equitable relief against forfeiture: see footnote 71, above. But see, Bradbrook Report, 59-60, which recommended that such an eviction method should be abolished.*
74. *See generally, Hill and Redman, Law of Landlord and Tenant*, 14th ed., 22-29; Hammond and Davidson, *Law of Landlord and Tenant (N.S.W.)*, 3rd ed., 2-4.

In reality, however, most residential tenancies begin as a short fixed term, usually six months, and thereafter become converted into an overholding periodic tenancy. Thus immediately after the expiry of the initial fixed term and and until when his next tender of rent is accepted every such residential tenant is exposed to the risk of eviction without notice in the event that his landlord should suddenly refuse to accept him as an overholding tenant. Nothing in the Act corrects this precarious position of the overholding tenant.[75]

(b) Eviction at Short Notice

The landlord's power to evict his tenant upon the issue of an eviction notice may be either an eviction by notice without showing just cause or an eviction by notice showing just cause.[76]

In the first category all that is required of the landlord is that he should serve the tenant with written notice that he "delivers up possession" of the premises at the end of *one month* from the date the notice is served.[77] No reason need be given in such a notice nor need the landlord have any. This is the power which every landlord has over his periodic tenant regardless of how long the tenant might have been renting the same premises and it is equally unaffected by the fact that the tenant may be faultless in his duties. The case of an eviction by notice showing just cause has already been briefly discussed under the heading of sanctions and remedies, viz, the landlord must have a section 7(b) justification to evict.[78] It need only be added here that this type of eviction notice differs from the other in two respects, viz, particulars of the tenant's breach must be set out in the notice and only *fourteen days'* notice is required.

The requisite length of a *tenant's* notice to quit with or without just cause is fourteen days[79] so that the landlord's minimum period of notice in either of the two abovementioned categories may be said to be "balanced" against that of the tenant's notice. This apparent equality is, however, besides the point. The fact is that unless a shorter eviction notice is meant to punish a tenant in default—an abhorent notion in itself—there is no real justification for two different minimum lengths of eviction notice depending on whether or not the landlord has just cause. Regardless of whether the tenant is at fault, he requires more than two weeks or even a month in most cases to find alternative accommodation suitable to his needs.[80] The landlord, on the other hand, has no real reason for evicting a tenant at short notice except in an emergency situation or where the tenant is wilfully or wantonly damaging the premises.[81] Such practical con-

75. There is also nothing in the *Property Law Act* 1974 to safeguard the position of the overholding tenant at that point of time.
76. Conventional textwriters and commentators use the time-honoured term "notice to quit" to label what is in reality an eviction notice. The present writer notes that an "eviction" is any "dispossession or turning out of the tenant" by law: see Trickett, *The Law of Landlord and Tenant in Pennsylvania* (1973), vol. 1 (Stern, ed.) 336. The *Oxford English Dictionary*, vol. 3, defines the term to include both the recovery of land by legal process and the dispossession of another. A landlord's notice relates to both senses of the term and is therefore more correctly labelled an "eviction notice".
77. Section 17(3)(b).
78. See above.
79. Section 17(3)(a).
80. Compare, Sackville Report, 78-79; 103, where it is recommended that tenants be given a minimum of four weeks' notice and that the period be increased by seven days for each completed period of six months that the tenant is in occupation of the premises after the first year of the tenancy, twelve weeks being the maximum limit recommended.
81. The legislature showed appreciation of this point in so far as it required the landlord to give at least a month's notice to terminate a periodic tenancy whereas the tenant is allowed to give the much shorter period of fourteen days: section 17(3).

siderations are, however, not reflected in the Act.

The minimum notice under the Act is much more acceptable when compared with the superceded provisions of Part VIII of the *Property Law Act* 1974 in so far as the minimum notice under that Act could be as short as a week,[82] hardly sufficient time for any tenant to find alternative accommodation. On the other hand similar provisions in the *Landlord and Tenant Acts* 1948-1961 (re-enacted in the *Termination of Tenancies Act* 1970) were far more realistic in that they required landlords to give longer eviction notices in cases where the tenant had been renting for a long time.[83] When compared with such provisions those in the Act under discussion can be said to have accommodated the tenant's needs.

Several comments may also be made on the modes for service of eviction notices set out in the Act. These are in section 19 of the Act which in effect provides that an eviction notice may be served in any one of three main ways, viz, (i) by personal delivery to the tenant, any apparent occupier or the person who usually pays the rent; (ii) by ordinary post to the tenant's last known address; and (iii) by pinning it to a conspicuous place in any part of the rented premises. The Act, however, provides that the landlord may serve his notice in any manner "otherwise than as provided" in the section.[84] The landlord is thus free to choose a mode of service least cumbersome to him regardless of whether the tenant will actually receive the notice. For instance, he may choose to rely on the mode of service contained in the tenancy agreement even though it means that the notice may be left addressed to the tenant at his address shown in the agreement—one sure way not to reach the tenant since such an address is usually the tenant's previous address.

The range of methods of service available to the landlord under the Act may be contrasted with the position in antecedent Acts under which personal service was required.[85] The alternative modes of service were only allowed in the event that the tenant was evading personal service or could not otherwise be found. Even then the landlord had to obtain a special court order for the substituted mode of service. The present Act has thus significantly improved the landlord's position.

The section cannot, on the other hand, be regarded as having advanced the tenant's needs in so far as it will not ensure that he actually gets the landlord's notice. In fact, it does not accord him the same free choice conferred on the landlord so far as it concerns the modes of serving his notice to quit. Such a notice must be served personally on the landlord or his agent.[86] Thus the tenant will not be regarded as having effectively served his notice to quit if he sends it by ordinary post or serves it on the person (other than the landlord or his agent) to whom he normally pays the rent. Nor is the notice validly served if left at the landlord's address. The section has plainly adopted double standards of acceptable service.

There is again evidence of double standards when section 19 is compared with section 23(4) which prescribes the requisite manner for serving a complaint and summons. Personal service is required under the latter section and if service is by post it must be registered. Substituted service is only allowed if a special

82. Section 133, *Property Law Act* 1974. See also, section 137 of the Act which merely requires notice of a "reasonable period" in the case of tenancies other than a weekly, monthly, yearly, or "other periodic tenancy subject to the provisions" of the Act.
83. Section 42, *Landlord and Tenant Acts*, 1948-61.
84. Section 19(3). The landlord who wishes to serve his notice in some other way will usually spell it out in his tenancy agreement.
85. Section 41(4), *Landlord and Tenant Acts* 1948-61.
86. Section 19(1)(a).

order is obtained. The intention in that section is obvious—it is to ensure that the tenant has a good chance to receive the complaint and summons. It may be asked why the same standard of service is not required of the landlord's eviction notice. After all the eviction notice will often times be the first and only indication to the tenant that he has to find alternative accommodation within the very near future. Most tenants in fact actually vacate after receiving an eviction notice and for that reason alone section 19 would have been more soundly based if it had required landlords to adopt a mode of service that would most effectively reach the tenant. In that way there would be no increase in the number of cases where a tenant defends a complaint and summons on the ground that he had not been served with any eviction notice.

One clear effect of section 19 is that whilst it will enable the landlord to serve eviction notices with minimum effort there is every possibility that its provisions may be readily transformed in practice into a mere token effort to meet the tenant's need to be *actually* informed of an impending eviction.

(2) Eviction Procedure

Not unlike antecedent landlord-tenant legislation the Act prescribes a summary procedure for the eviction of tenants, thereby offering a cheap and expeditious alternative to other existing eviction procedure.[87] As will be seen below the procedure has been streamlined in several aspects and made far more efficient than the previous procedural structure so that alternative procedure will be more likely to eventually grow out of their usefulness.[88]

The structure of the summary procedure in the Act consists of three discernible features, viz, (a) the basic procedure, (b) the magistrate's discretion, and (c) the provisions for claiming rent in arrears, costs, etc. It is proposed to discuss the procedure accordingly.

(a) The Basic Procedure

In the typical straight-forward case the tenant is served with a complaint and summons giving him just five days to enter an appearance should he wish to defend the eviction action.[89] If he fails to do so within that period the landlord may immediately apply for a possession order from a stipendiary magistrate in chambers or a clerk of the court if the former is not available.[90] In an undefended case a warrant for possession may be issued only after seven days from the date of the possession order. The tenant is entitled to defend the action if he applies for a "rehearing" of the complaint within those seven days.[91] The warrant is issued authorising a warrant officer to reject the tenant "forthwith (by force if necessary")[92] if he does not come forward within that period.

In the average undefended case, therefore, it should take the landlord no

87. Many provisions in the summary procedure set out in the Act are based on similar provisions in the *Property Law Act* 1974 which in turn were substantially re-enacted from the procedural provisions in the *Termination of Tenancies Act* 1970.
88. The landlord may still elect to evict his tenant in a Supreme Court action although it would be a cumbersome and expensive process not frequently resorted to for that reason. Likewise, as seen earlier, he may still lawfully rely on self-help eviction methods. The summary procedure would be, however, the most common mode for evicting tenants because it is a relatively simple, inexpensive and expeditious process.
89. Section 23(1).
90. Section 25(1). The clerk must be a person who is also a justice of the peace.
91. Section 28(1).
92. Section 26(1). The warrant is usually issued to a local police officer.

more than two weeks to get the tenant out of the premises from the expiry date of an eviction notice. In a defended case a date has to be set for the hearing and the process may take about five weeks before the tenant can be ejected by court warrant.[93]

The procedure is clearly framed with the basic features of a machinery designed to expedite matters in the many routine undefended cases. Even in the occasional contested case the court will only be concerned with the cut-and-dry issue of who is entitled to possession of the premises. The landlord wins the case as long as he can prove due determination of the tenancy and proper service of the complaint and summons. Where eviction is based on the newly created right of termination he has merely to go one step further and show that the tenant in fact breached his duty. The tenant can only fault the proceedings on technical and procedural matters for the court will not be concerned with the "merits" of his case nor will it be interested in his complaint that the landlord has himself violated his own duties however flagrant that may be.[94]

The procedure is available to the landlord where the tenancy has been terminated by effluxion of time, by an eviction notice or by forfeiture of the lease.[95] As seen earlier in this paper the legislature discriminated against residential tenants in that it excluded them from the benefit of procedural safeguards against forfeiture. In extending the summary procedure in the Act to cases where a tenancy has been terminated by forfeiture the legislature has compounded the discrimination against such tenants in that even if the safeguards against forfeiture were available to them they would still have to overcome the expense of having to commence separate proceedings in the Supreme Court, the magistrate court having no such equitable jurisdiction.[96]

This streamlined procedure in the Act will positively render it much easier and quicker for landlords to obtain an eviction by court order if only because it greatly facilitates the routine "over-the-counter" handling of undefended eviction cases.[97] There is indeed deadly accuracy in the description of such a system by the Queensland Law Reform Commission as "a useful procedure somewhat akin to that for obtaining summary judgment in civil actions."[98]

(b) Magistrates' Discretion to Postpone Eviction

The Act empowers the magistrate to postpone the issue of a warrant for possession but this discretionary power is restricted to cases "where the circum-

93. Accord, J.B. Thomas, "The Residential Tenancies Act 1975" [1976] *Queensland Law Society Journal* 51 at p.56. Compare, however, the observation that it would take approximately three months to evict a tenant under the (now repealed) *Termination of Tenancies Act* 1970: J.B. Thomas, "The Termination of Tenancies Act 1970", an unpublished lecture delivered at the Second Joint Symposium, Queensland Law Society, March 1971.
94. See Gibbons, "Residential Landlord-Tenant Law: A Survey of Modern Problems with Reference to the Proposed Model Code", 21 *Hastings* L.J. 369.
95. Section 20. This section is based on section 4 of the *Termination of Tenancies Act* 1970.
96. It is interesting to note that the Queensland Law Reform Commissioners regarded it as "neither necessary nor wise" (Q.L.R.C. 16, p. 92) for the *Termination of Tenancies Act* 1970 to extend its summary procedure to include leases determined by forfeiture. This view, however, was partly motivated by their observation that a summary proceeding could be held up and unnecessarily delayed in the event that the defendant tenant applied to the Supreme Court for relief against forfeiture (*ibid*). They were not apparently concerned that the summary procedure in that Act would effectively deprive many tenants from relief against forfeiture because they would not be able to afford the heavy expenses involved in a separate action for relief in the Supreme Court.
97. *Powell on Real Property* (1968), vol. 2, 374, sec. 253.
98. Q.L.R.C. 16, 92, para. 145.

stances of the case make it appear ... proper to do so".[99] In any event the postponement may not be for any longer than fifteen days from the date of the possession order.[100] It would be too speculative to suggest what could be meant by the word "proper" but it seems quite likely that it is too narrow to be synonymous with "just" and would not allow a magistrate to take the tenant's hardship into account.[101]

Nothing in the Act allows the magistrate to stay proceedings or to extend the time for the execution of a possession warrant. This omission is a considerable departure from the antecedent *Landlord and Tenant Acts* 1948-61 which gave magistrates such powers to draw upon for the better administration of justice in every case.[102]

(c) Recovery of Rent in Arrears, Litigation Costs, Counter-claim, etc.

The Act allows a landlord to claim rent in arrears[103] in the same action and if he is successful in his main action (as would commonly be the case), he may also claim court costs.[104] It does not, however, allow the tenant to counter-claim for damages. Thus the tenant will still have to commence a separate action in the Supreme Court if he wishes to vindicate any grievance against the landlord. Such an action will be of rare occurrence in actual practice because of such factors as the prohibitive costs involved, extensive delays and the tenant's general ignorance of his legal rights.[105]

The Act has in effect perpetuated a procedural process that is far from being just. What is required is a summary procedure to enable the same court to dispose of all the parties' claims by way of counter-claim, set-off, defence, etc., thereby cutting out the present need for a multiplicity of proceedings to resolve all disputes between landlord and tenant.[106] What the Act has actually erected, however, is a system that allows the landlord to activate the eviction procedure against his tenant even though he may himself be in flagrant violation of the tenant's rights. Moreover it allows the landlord an opportunity in the same eviction procedure to recover rent in arrears whilst it offers no compensating opportunity of any kind to the tenant. Such a procedural process may be efficient but it cannot be regarded as just and equitable.

99. Section 26(7). This power is also available to the clerk of the Court who made the order.
100. *Ibid.*
101. Compare, section 49, *Landlord and Tenant Acts* 1948-61 which required the magistrate to take into consideration any hardship that the tenant might suffer if he were evicted. The magistrate had the power to refuse to make an eviction order even though the landlord had established his ground for eviction.
102. See sections 50 and 51, *Landlord and Tenant Acts* 1948-61 which empowered the magistrate to, *inter alia*, adjourn proceedings, stay or suspend judgment executions, postpone the date for eviction proceedings and to extend the time for a warrant execution for such period as he thought fit.
103. Section 27(1). This provision was first introduced in the *Termination of Tenancies Act* 1970 section 9, and re-enacted in section 147, *Property Law Act* 1974.
104. Section 33. Compare section 62, *Landlord and Tenant Acts* 1948-61, which disallowed costs in eviction proceedings under the Act.
105. See generally, Cass and Sackville, *Legal Needs of the Poor* (1975), Research Report for the Australian Government Commission of Inquiry into Poverty, pp.72-88. See also, footnote 15, *supra*.
106. See G.R. Gibbons, "Residential Landlord-Tenant Law; A Survey of Modern Problems with Reference to the Proposed Model Code" 21 *Hastings* L.J. 369, 371-380 (1970).

V. An Evaluation and Overview of the Act

Can the Act be said to have, as a whole, fairly balanced the diametrically conflicting interests of landlord and tenant or is it yet another "backward and landlord-oriented"[107] legislation? In the writer's opinion it cannot be seriously regarded as anything more than a one-sided legislation with almost all of its important provisions tailored to serve the interests of landlords with apparently little regard for the tenants' basic housing needs. This obviously harsh criticism is warranted whether the Act is evaluated in the context of the parties' expectations in the everyday landlord-tenant relationship or whether it is seen against the background of antecedent legislation on landlord-tenant relations in Queensland. Nor is the Act placed on a more respectable pedestal when compared with recent enlightened legislation on the subject in other common law jurisdictions.

In terms of the parties' expectations what a landlord ideally wants is the unrestricted freedom to increase rent to any amount he can get for his rental property, the equally unrestricted power to evict his tenant any time he feels like it and an efficient and inexpensive procedure to facilitate eviction. The Act in its combined operation with Part VIII of the *Property Law Act* 1974 gives him just that—he can freely increase the rent of his periodic tenant at short notice, he can no less freely evict the same tenant regardless of however vindictive, capricious or ill-motivated the eviction may be and, at the same time, the eviction procedure provided by the Act is both expeditious and inexpensive. Indeed few landlords can expect or ask for more in an Act of Parliament in today's prevailing period of consumerism.

What the Act has given to the tenant provides a striking contrast. His *basic* expectations are fairly obvious—he needs a home in a condition reasonably fit for human habitation and relative to his rents and he needs to be safeguarded against unjust evictions and excessive rent increases. The Act has conferred on him the right to rented premises in good repair and in a condition for human habitation. He is however not given any *effective* remedy against landlords who violate this right. He does have the new statutory right to terminate the lease and quit the premises but with the growing shortage of rented premises in good condition that remedy may turn out to be rather illusory. It in effect allows a landlord to say to his aggrieved tenant, "Take it as it is or find better accommodation elsewhere—if you can". The Act may thus be said to have short-changed the tenant on this one expectation.

Even on other and less fundamental aspects of the residential landlord-tenant relationship the legislature has shown itself to be quite biased against the tenant. Four of the more conspicuous instances of this landlord-oriented character of the Act outlined in the present paper may be summarised in here. First, the tenant is under an absolute duty not to cause any nuisance, disturbance or annoyance[108] to his neighbours but the landlord is free to intrude into the privacy of the tenant's home at any time so long as his presence at the tenant's home may be justified on the patently absurd excuse that he reasonably believes it to be "in the tenant's interest". This rather drastic erosion of the tenant's interest in an undisturbed enjoyment of the premises is fortified by the fact that nothing in the Act requires the landlord to grant the tenant an unqualified right to quiet en-

107. "Rent Act labelled Unfair to Tenants"; *Sunday Mail*, Brisbane, 11 January, 1976, p.10.
108. Section 7(b)(iii). These provisions also require the tenant to "ensure" his invitees do not make a nuisance of themselves to neighbouring residents.

joyment[109] of the premises and by the fact that the Act does not safeguard the tenant from the type of landlord who may resort to his wide powers of entry as a means of harassing tenants.

Second, although the landlord is completely free to dispose of his property in the rented premises to some other person who becomes landlord of the premises regardless of the tenant's wishes,[110] the tenant has to obtain the landlord's consent before he can get some other person to replace him. The landlord may arbitrarily refuse to give his consent and yet the tenant is not at liberty to abandon the premises because the landlord may allow the premises to lie idle and yet hold him liable for rent until such time as when the tenancy has been duly terminated.

Third, the landlord is allowed to serve his eviction notice in any manner most convenient to him regardless of whether the tenant may be, as a result, least likely to receive the notice and may consequently have insufficient time to find alternative accommodation suitable to his needs. The tenant, on the other hand, is required to serve his notice to quit by personal delivery to the landlord or his agent, a requirement understandably designed to safeguard the landlord's financial interests and with the effect of ensuring that he does not lose money for failure to find another tenant to rent the premises.

Fourth, quite apart from setting up a more expeditious and inexpensive statutory eviction procedure the legislature conferred several procedural advantages on the landlord. Thus his eviction notice need not expire on the last day of a period of a periodic tenancy;[111] his acceptance of rent after expiry of an eviction notice is not to be regarded as a waiver;[112] his complaint may be amended at the hearing if it is defective in substance or in form;[113] he is entitled to claim double rent from the tenant who overholds after expiry of his own notice to quit;[114] claims for rent in arrears may be made in the same eviction action;[115] and he is immune from liability in trespass arising out of any irregularity or informality in an eviction authorised by the Act.[116]

The tenant, on the other hand, is given no comparable procedural advantage apart from a qualified right to a rehearing within seven days after an eviction order in an undefended case. He may not counter-claim for damages in an eviction action and, very importantly, he is no longer entitled to equitable relief against forfeiture except in cases involving non-payment of rent. In short, the Act has not merely perpetrated the procedural iniquities in the eviction process;

109. Section 7(a)(i) requires the landlord to "allow the tenant during the tenancy quiet enjoyment of the dwelling-house". This provision could be read to mean that the landlord is now deemed to give an unqualified covenant for quiet enjoyment. It seems more likely, however, that it will be read down so as to be no more than the landlord's usual covenant for quiet enjoyment in the standard form lease which is qualified and limited to interruptions by persons lawfully claiming through or under him: For example, clause 2(b), R.E.I.Q. Tenancy Agreement which remains unchanged in the Redrafted R.E.I.Q. Tenancy Agreement. See generally *Report on Obligations of Landlords and Tenants* 1975, The Law Reform Commission (No. 67) (Eng.), 8-16.

110. The landlord's right of alienation is too long taken for granted and should be borne in mind in any discussion of the tenant's right of alienation.

111. Section 18. This was first enacted in section 17, *Termination of Tenancies Act* 1970 and re-enacted in different form in section 113, *Property Law Act* 1974. It changes the strict common law rule that an eviction notice must expire on the last day of a period of the tenancy: *Lemon* v. *Lardeur* [1946] K.B. 613.

112. Section 10(3). This section is traceable to section 58 of the *Landlord and Tenant Acts* 1948-61. For the common law rule see, e.g.; *Matthews* v. *Smallwood* [1910] 1 ch. 777.

113. Section 22.

114. Proviso to section 10(1), in effect incorporating section 139, *Property Law Act* 1974.

115. Section 27.

116. Section 31, a re-enactment of section 151, *Property Law Act* 1974. Compare, section 14, *Termination of Tenancies Act* 1970.

it has placed the landlord in a far more advantageous position than before.

The extent to which the legislature has been unfavourable towards the tenant becomes much more obvious when account is taken of other problem areas in law and practice not dealt with in the Act.[117] These are predominantly areas in which tenants are more often than landlords the victims of iniquity and the legislature's failure to regulate such areas does in more than one sense emphasise the landlord-favoured character of the Act.

The most glaring instance concerns the landlord's retention of security deposits, it being a common complaint of tenants who vacate their premises that many landlords refuse to refund their security deposit on oftentimes vague and questionable excuses.[118] In a great many cases landlords have already used the money as their own, a factor partly explaining their reluctance to refund the money. There is nothing in the Act, however, to safeguard the tenants' money from some of the worst abuses of such landlords.[119] Another instance is in the fact that the Act is confined to renters who are "tenants" in the technical sense that they have an estate in land; it does not apply to those who are mere "licensees" in law.[120] This archaic, technical and unrealistic distinction between tenants and licensees perpetuated in the Act has the logical but hardly justifiable effect of depriving the benefits of such legislation from the more transient and lowly class of renters traditionally labelled as "lodgers", "boarders", "roomers" etc., and who are somehow apparently regarded as an unworthy group to deserve legislative safeguards.[121]

Other neglected areas include the fact that the tenant continues to be technically liable to covenants in the lease notwithstanding the assignment of all his interests;[122] the fact that rents paid in advance of the due date are not rent but merely "payments in gross" and may have to be repaid if the premises are bought by an unpaid reversioner;[123] the fact that rents paid in advance are not apportionable so that the tenant will not be entitled to a refund of the "unused" portion of his rent in the event that the lease is terminated the day after such rental payment.[124] These are but some of the many iniquities and anomalies in the existing legal structure not affected by the Act but which a legislature more sympathetic to tenants could have taken the opportunity to remove.

When evaluated in its historical context the Act again shows up its landlord-oriented character. It represents a complete swing from earlier legislation which

117. These areas are also unaffected by the provisions of the *Property Law Act* 1974.
118. [1975] *Parl. Debates* (Qld.), 13th November, 1900; 1904; 1906; 1908. See generally, Bradbrook Report, 41-46.
119. The Small Claims Tribunals set up by the *Small Claims Tribunals Acts* 1973-75 have jurisdiction over tenants' security deposits and they are within reach of most residential tenants because of their informality and, more importantly, because there are virtually no legal costs involved. These tribunals, however, deal with such grievances at the remedial level. What is required is preventive legislation such as recent Canadian legislation regulating security deposits: see the discussion in Bradbrook Report, *loc. cit.*.
120. See generally, *Claude Neon Ltd.* v. *M.M.B.W.* (1969) 43 A.L.J.R. 69, for the highly technical and esoteric distinction between a lease and a licence.
121. The Sackville Report, 59-60, recommended the extension of tenants' rights to this wider class of renters. This is not unprecedented. Section 7A of the *Landlord and Tenant Act* 1948-61 extended the benefits of its provisions to such renters even though they were not "tenants" in the eyes of the common law.
122. See generally, *Woodfall on Landlord and Tenant*, 26th ed., vol. 1, 851; 862-863.
123. *De Nichols* v. *Saunders* (1870) L.R. 5 C.P. 589; *Harrison* v. *Petkovic* [1975] V.R. 79.
124. *Ellis* v. *Rowbotham* [1900] 1 Q.B. 740; *Hildebrand* v. *Lewis* [1941] 2 All E.R. 584. A proviso in section 18 of the Act does allow apportionment of rent but it is only applicable where the expiry of an eviction notice does not coincide with the last day of a period of the tenancy.

tended to disregard the landlord's interests. The first substantive legislation in this branch of the law, the *Landlord and Tenant Act* of 1948, imposed rent control and gave tenants full security of tenure and a wide range of other safeguards.[124(a)] The next major legislation, the *Termination of Tenancies Act* of 1970, removed rent control and many of the safeguards in that Act although it preserved the provisions protecting tenants against vindictive and capricious evictions.[125] Thereafter almost all safeguards for the tenant were repealed by the *Property Law Act* of 1974 and, as we have seen above, the Act under consideration has not restored these safeguards but has mainly "tidied" and "topped" up the landlord-oriented features of the 1974 Act and thereby emphasised the bias against tenants. To get an idea of the extent to which the safeguards in the 1948 Act have been stripped away one has only to compare the contrasting position of a tenant today with that of his counterpart under the 1948 Act.

Under the earlier Act the tenant was protected from excessive rent increases and he could virtually only be evicted for defaulting in his duties as a tenant or if the landlord wished to use the premises for himself.[126] There were provisions protecting him from harassment and vindictive conduct by the landlord who was also prohibited from black-listing tenants or discriminating against tenants with children.[127] Premiums were prohibited[128] and all rent receipts had to be issued.[129] As seen earlier, landlords were not allowed to let premises unless they were in good condition.[130] The requisite length of an eviction notice was related to the length of time the tenant had been renting the premises;[131] such notices had to state reasons for eviction[132] and served on the tenant personally;[133] the summary courts were given wide powers to stay or postpone any eviction proceeding and required to consider the hardship of the parties.[134] None of these safeguards, however, are now part of the law in Queensland so that the tenant today is in a sense not unlike his counterpart in feudal days when they were completely dependent on the goodwill of the lords of their land.

Compared with recent legislative reforms of landlord-tenant law in other common law jurisdictions the Act is, as a whole, conspicuously conservative in nature and represents a retrograde step in an overall progressive move towards modernised, realistic and equitable law.

Comparison with legislative reforms in Ontario in particular would be relevant here since they were considered by the Queensland Law Reform Commission which prepared the working paper for the recent *Property Law Act*.[135]

124(a) See Jacobs & Freeman, *Landlord and Tenant Practice and Procedure* (1948), Introduction, where it was said of the 1948 Act, "In the present legislation there may be seen, not only temporary price control but a permanent intention to ensure that security of home life, the principal ingredient of a democracy, shall not be disrupted by a mere caprice of another person".

125. Section 18, *Termination of Tenancies Act* 1970. The section was, however, subject to any contrary agreement as a result of which it was religiously contracted out in standard form leases.
126. See generally, section 41, *Landlord and Tenant Acts* 1948-61.
127. Sections 31-34.
128. Section 27.
129. Section 38.
130. *Supra.*, footnote 30.
131. *Supra.*, footnote 82.
132. Section 45, *Landlord and Tenant Acts* 1948-61.
133. Section 41(4)-(4b), *Landlord and Tenant Acts* 1948-61.
134. Sections 50-51, *Landlord and Tenant Acts* 1948-61; *supra.*
135. Q.L.R.C. 16, Commentary, 4. But see, [1975] *Parl. Debates (Qld.)*, 13th November, 1912. There was no working paper or other report preceding the Act under discussion: letter from the current Minister for Justice and Attorney-General, 1st September 1976. For a discussion of the recent legislation in Ontario, see generally, Lamont, *Residential Tenancies*.

Unlike the legislature in Queensland, the Ontario legislature not only radically revamped the basic legal framework and all major features in this branch of its law; it also introduced the concept of rent review (as opposed to rent control) to safeguard tenants from the excesses of avaracious landlords.[136] More importantly, a recent amendment to its *Landlord and Tenant Act* 1970 gave tenants protection against vindictive and capricious evictions.[137] In other words, the trend of legislation in Ontario is towards a more fair law for tenants whereas the Queensland Act perceptibly represents the reverse.

The sweeping reforms in Ontario are not peculiar to that Province but represent a typical trend in other Canadian Provinces, in England, the United States and, to some extent, New Zealand.[138] The position in England is reflected by the provisions of the *Rent Acts* 1968-1974 in which residential tenants are provided with the kind of safeguards readily adopted by the Canadian Provincial legislatures but cautiously eschewed by the legislature in Queensland.[139] The tenants' position in New Zealand is safeguarded by legislation such as the *Rent Appeal Act* 1973 and the recent *Property Law Amendment Act* 1975 which are somewhat along similar lines to the Canadian legislation.[140] The Queensland Act indeed stands out as the product of a landlord-minded legislature when compared with such progressive legislation in the other common law jurisdictions.

Thus the Act as a whole cannot by any current standards be seriously accepted as anything more than a one-sided legislation designed to advance the interests of property owners and oblivious to the housing needs of tenants at a time when consumerism is pervading the landlord-tenant relationship and the lease is regarded as no more than a packaged-deal contract for housing services.[141] It is a cruel hoax indeed to describe it as a legislation "designed ... to recognise the legitimate interests of all parties involved in the residential landlord and tenant relationship".[142] It seems more accurate to describe it as nothing more than a landlord's charter.

136. *The Residential Premises Rent Review Act* 1975 (Ontario).
137. *Landlord and Tenant Act* 1970-75 (Ontario), sections 98 and 103.
138. See generally, Bradbrook Report. Blumberg & Robbins, "Beyond URLTA: A Program for Achieving Real Tenant Goals" 11 *Harvard Civil Rights Civ. Lib.* L. Rev. 1 (1976); Sinclair, *Survey of Landlord and Tenant Law* (1973), New Brunswick (Unpub.).
139. See generally, Farrand, *The Rent Act 1974*, (Sweet & Maxwell, 1975); Tiplady, *Housing Welfare Law* (Oyez, 1975), chapters 8-9; *Report on Obligations of Landlords and Tenants* 1975, The Law Commission (No. 67) (Eng.). Ontario Final Report, chapter 25; British Columbia Report, chapter 4.
140. See generally, Davis "Rent Appeal Act 1973" (1974) 6 *N.Z. Univ.* L. Rev. 198; —, "The Property Law Amendment Act 1975" (1976) 7 *N.Z. Univ.* L. Rev. 92.
141. *Javins* v. *First National Realty Corpr.* 428 F. 2d 1071 (1970); *Commonwealth* v. *Monumental Properties, Inc.* 329 A. 2d 812 (1974), noted, 48 *Temple* L.Cl. 820 (1975).
142. *Supra*, footnote 1.