



Prince Edward Island

Legislative Assembly

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Assemblée législative

Commissaire à l'information et
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Peter Bevan-Baker, MLA
Third Party House Leader
Legislative Assembly of PEI
Hon. George Coles Bldg., 2nd Floor
175 Richmond Street
Charlottetown, PE

October 16, 2024

Sent Via Email

Dear MLA Bevan-Baker,

Re: Consultation on draft proposed *Rental Registry Act*

I write further to my email of October 4, 2024, and our prior email exchange regarding the above-noted matter. As you are aware, pursuant to clause 50(1)(d) of the *Freedom of Information and Protection of Privacy Act*, I have the authority to comment on the implications for freedom of information and protection of personal privacy of proposed legislative schemes. Thank you for consulting with our office on the proposed draft *Rental Registry Act*.

Let me start by stating that I understand the motivation behind this proposal, and am not opposed to a mechanism to help better protect tenants in the difficult world of rising rents that we live in. However, having said that, it is my position that any such scheme should be undertaken with a view to ensuring that the tenants' privacy is not being unintendedly compromised in the efforts to protect them from potential rental violations by landlords. I have had an opportunity to carefully review the draft proposed *Rental Registry Act*, and I have some privacy concerns about how it is currently being presented.

I note that there have been recent news reports regarding a consultant report from Stantec that was provided to Government in or about 2021 regarding a rental registry. I would like to state at the outset that I have not reviewed that report, and make my comments solely on my review of the proposed draft legislation you provided to me.

Proactively Disclosing Tenants' Personal Information

Under the proposed legislation, section 6 would require all landlords to provide, for each rental unit, the owner's name and contact information (including a mailing address, email address and telephone number), the address of the rental unit (for each individual unit if in a multi-unit building), a description of the rental unit, the rent associated with the rental unit, services or facilities included in the rental amount, and any information prescribed in the regulations.

I do not have privacy concerns about the requirement for landlords to provide their name, mailing address, telephone number or email address to the Registrar when registering a rental unit. The proposed legislation does not require this information to be made publicly available, only provided to the Registrar. Also, as the landlords are renting the units, which is a business transaction, this information would generally be disclosed in the usual course of doing business.

My primary concern is about the privacy of tenants' information. In the proposed draft legislation, the Registrar will be required to post some of this information online, making it available to the public. More specifically, subsection 8(3) states that "... the Registry shall be available for public inspection electronically online, including through the internet, and in any other manner during the time that the Registrar determines." The specific information to be included is the address of the rental unit, the rent payable for the rental unit, the services or facilities included in the rent, and any information prescribed in the regulations.

As there are currently no regulations, I cannot comment on what "any other information prescribed" might entail, or whether there may potentially be privacy or other concerns with it. However, I do have privacy concerns regarding the remainder of the required information (i.e. addresses, rent for each unit, and included services and facilities) being available to the public.

Although the information does not have names of tenants, many people are identifiable by their home address. Further, there is information associated with that address, such as the amount of rent payable for that address and any included services or facilities (such as included utilities, parking spaces, snow removal, etc.), which would be considered financial information. If a person is identifiable by their address, the information associated with that address would also be information about an identifiable individual. Financial information is considered sensitive personal information when associated with an identifiable individual. Posting this information to the internet or otherwise allowing it to be available for inspection by the general public means financial information associated with identifiable individuals will be publicly available.

From several statements made in the media recently, the consensus seems to be that the majority of landlords appear to be complying with the provisions of the *Residential Tenancy Act*, and the purpose of the proposed legislation and a Rental Registry is to address the few who are not. There seems to also be some acknowledgement that there are provisions in the *Residential Tenancy Act* to address non-compliance, but the issue is insufficient oversight of that legislation and insufficient enforcement of compliance.

The result of a publicly available Rental Registry would be the Registrar proactively disclosing personal information about private individuals (tenants) to the general public. Proactively disclosing this kind of personal information about all tenants in the province seems like a rather disproportionate mechanism to address the lack of compliance of a few landlords and/or the insufficient oversight and enforcement of the *Residential Tenancy Act*. Such disproportionate measures could be considered an unreasonable invasion of personal privacy of tenants.

I would also note that because the proposed Rental Registry is about landlords and the rental units, not tenants directly, tenants do not have a right to opt out or choose not to have their personal information disclosed to the general public. This is also against the principles of personal privacy.

Potential Alternatives to Proactively Posting Personal Information

While I understand the desire to protect tenants, the proposed mechanism seems to be a bit of an imbalanced way to accomplish this result. I am wondering if perhaps there is a less privacy-intrusive method of accomplishing the desired objective. One of the obvious ways would be for government to provide better oversight and enforcement of compliance with the *Residential Tenancy Act*.

Another option could be a legislative scheme where the Registrar collects all of the required information and monitors it, but does not proactively publish it (e.g. make it available to the general public via the internet or for general public inspection upon request). The legislation could have a specific provision permitting a new tenant to request the previous tenant's rent and what service and facilities were included in the previous tenant's rent, but with a requirement that the new tenant seeking to access this information include evidence of a new rental agreement, in writing (e.g. a signed rental agreement, or an acknowledgement in writing from the landlord and new tenant that a verbal tenancy agreement has been entered into between them).

In this scenario, the personal information of the previous tenant would be less sensitive because it is no longer considered current financial information, and it would be relevant to the determination of the new tenant's rights. Both of these factors would weigh in favour of disclosure not being an unreasonable invasion of the personal privacy of the previous tenant, and would still go to the protection of the new tenant's rights to not be charged a rental rate in excess of that allowable under the *Residential Tenancy Act*. Further, if the information is only disclosed to the new tenant, and only upon that tenant providing proof of intention to enter into a rental agreement with the landlord, the Registrar would be disclosing the information to an affected party with a need to know the information, rather than proactively disclosing personal information of tenants to the general public.

Scope of Information Collected

I have a further concern about the provision [6(2)(g)] that requires an application for registration to also include "any additional information required by the Registrar". This is a rather broad provision, which allows the Registrar to require a landlord applicant to provide whatever information the Registrar asks for, without having to justify why the information is needed. Basically, it allows the Registrar to require information be provided without also requiring the Registrar to have a legitimate reason for requiring it. There are no parameters around this, and it could include personal information. This means the Registrar could be collecting more (personal) information than is needed for the purposes of enforcing the

legislation, and a landlord applicant would have no choice but to provide it in order to be compliant with the legal requirements of the proposed Act. The inclusion of this provision could result in the Registrar engaging in unauthorized collection of personal information, which would be contrary to the *Freedom of Information and Protection of Privacy Act* principles and provisions.

Notice to Tenants

As a final note, if this legislation goes forward, I would recommend that if landlords are going to be required to provide a copy of the rental agreements to a Registrar, that there be a notice added to the standard rental agreement stating that a copy will be provided to the Registrar under the *Rental Registry Act*, for the purpose of monitoring the landlord's compliance with the *Residential Tenancy Act*. I would further recommend that any such notice also notify the tenants that the address of the rental unit, rent, and included services and facilities will be available to the public (and the mechanism, e.g. posted online) or made available to a subsequent tenant, as the case may be.

Written Rental Agreements

I would also note that the current provisions of the proposed legislation require landlords to provide a copy of the most recent rental agreement with their application to the Rental Registry. However, the *Residential Tenancy Act* does not require a rental agreement to be in writing. Rather, if one is not in writing, there are standard provisions in the *Residential Tenancy Act* that are deemed to be included in all rental agreements, whether in writing or verbal. Since a rental agreement is not currently required to be in writing, any notification as described above should be incorporated into the *Residential Tenancy Act* in these deeming provisions.

I have a few other observations about the proposed legislation that are not specifically related to access to information and privacy, but I will send those to you in separate correspondence.

Thank you again for consulting our office on this matter and allowing us the opportunity to respond.

Sincerely,



Denise N. Doiron

Information and Privacy Commissioner