



Strengthening Tenants' Rights:

CLASSIC Law's Impact on Residential Tenancy Law



Overview

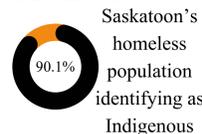
- CLASSIC is the only option for free legal representation for residential tenancy matters in Saskatchewan
- *The Residential Tenancies Act* (“RTA”), governs the Office of Residential Tenancies (“ORT”), a tribunal that adjudicates residential tenancy disputes
- Without CLASSIC, tenants who are unable to afford representation do not have their positions advocated for by legal professionals—which impacts how the law is developed
- 32 CLASSIC appeals/judicial reviews were coded & analyzed to track legal developments.
- CLASSIC’s most significant developments were to the legal understanding of procedural fairness and s.70(6) of the RTA.



Why Representation Matters

Housing is Important

- Residential tenancy law is connected to human rights, dignity, and the social need for home
- Eviction is associated with homelessness and negative social, economic, and health effects
- Housing law inequalities is disproportionately felt by those who experience marginalization



Impacts the Individual

- Landlords are disproportionately represented
- Represented parties are more likely to win
- Representation helps parties understand the legal system, provides emotional support, and facilitates “dignified participation” and empowerment



Develops the law

- Administrative tribunals are not strictly bound to their previous decisions, but the common law applies, subject to the RTA
- ORT appeals or judicial reviews advances the common law and creates binding precedent
- Disproportionate landlord representation has slowly influenced the law to favour landlords
- CLASSIC helps combat residential tenancy law being advanced solely through arguments drafted to benefit landlords.
- This creates balance in the law, which is critical as landlords and tenants’ interests are distinct.
- CLASSIC advances arguments for those more likely to be overlooked in the legal system



Theme 1: Procedural Fairness

Degree of Fairness Owed

- ORT proceedings require a high degree of procedural fairness—partially due to the possibility of an eviction, one of the “harshest orders” the ORT is able to make
- Shelter is a basic and essential need for people to live
- ORT procedures must match the procedural fairness owed

Sufficient Reasons

- ORT hearing are informal, but there is a legal duty to provide written decisions with sufficient reasons
- Insufficient reasons may be a failure of procedural fairness or a substantive issue under judicial review
- Sufficient reasons help parties understand the decision and know it was made fairly and from proper considerations of evidence and legal principles
- Sufficient reasons do not create a labours burden— reasons must summarize the evidence and arguments, explain factual findings and the acceptance of certain evidence, and allow the reader to know why the decision was made
- One should not lose their home without knowing why

Participatory Rights

- One of the most essential procedural fairness rights
- ORT must accommodate disabilities impacting participation
- Participation promotes s.70(6) as the person has the best position to discuss just and equitable factors
- ORT procedures must provide a reasonable opportunity to participate. Technology issues and high volume of hearings should not limit someone’s right to participate

Bias

- ORT procedures that suggest bias included: 1. the frequent superficial treatment of s. 70(6), which disproportionately disadvantages tenants 2. Support given to landlords, but not tenants 3. High number of hearings per day, frequent insufficient reasons, and a failure to accommodate tenants
- While *obiter*, these comments signal to the ORT that its practices are being scrutinized to ensure fairness. This sets a foundation to continue arguing for a finding of bias if procedures don’t change

Theme 2: s.70(6) Justice + Equity

Nature of the Analysis

- s.70(6) of the RTA is a context and fact specific analysis
- A legal basis for an order is not enough, it must also be just and equitable given the circumstances
- An insincere or superficial analysis will be insufficient to meet this duty – it must be a meaningful analysis

Sufficient Reasons

- Most of the cases involving insufficient reasons were due to insufficient s.70(6) considerations
- Whether the ORT decides the just and equitable factors will impact the order, they must explain their reasoning
- The reasons must reflect the tenant’s specific circumstances and how it impacted the s.70(6) analysis
- CLASSIC’s caselaw reviewed multiple ORT decisions that did not mention s.70(6) or used standardised messaging, demonstrating superficial treatment
- Reasons should establish what equitable factors were considered, and if the ORT doesn’t refer to factors in their decision, it may suggest they weren’t considered

Relevant Factors

- CLASSIC’s caselaw provides an outline of s.70(6)’s legal test
- Factors to consider include: tenancy length, history and circumstance of rent arrears, the tenant’s source of income, circumstances of any family members living with the tenant, if it is winter, and if a disability impacted the ability to provide relevant information
- The ORT has a positive duty to ask questions relating to s. 70(6), even if the person is absent. Tenants are frequently absent from their hearing, but this ensures the justice and equity of their situation are not disregarded
- S. 70(6) is not about bad faith or gross inequity. Rejecting these comparisons protects the purpose of s.70(6)

Conclusion

- Apart from individual impacts, CLASSIC has played a significant role in developing residential tenancy law
- CLASSIC’s tenant centred arguments have provided legal balance and tenant protection
- CLASSIC has shaped how procedural fairness is understood, which contributes to better ORT decision making and protection of tenants’ participatory rights
- CLASSIC has furthered the s.70(6) test, one of the most significant provisions for tenants. This helps uniformity of justice and equity considerations and creates clear marking of an insufficient consideration
- Developing the law sets standards to know when the ORT has failed to meet its legal duty
- Future self-reps benefit from the law developed by CLASSIC
- **CLASSIC is a necessary organization to ensure tenants continue to have the option for free legal representation and to provide checks and balances against landlord advocacy and unfair ORT practices**

2024-2025 CLASSIC Stats

Total Files	1,083
Total Appeals/JR	170
Residential Tenancy Files	191
Full-time Lawyers	4



Veronica Dirk-Pothier

“ This is no way to run a poker game, much less a quasi-judicial hearing involving a matter as essential as shelter ”
-Justice Danyliuk

“ a hearing officer’s discretion is not simply that of a beleaguered bureaucrat, charged with making quick decisions ”
-Justice Elson

“ I have certainly been left with the impression that landlords and tenants are not treated even-handedly by all hearing officers ”
-Justice Danyliuk (in Obiter)

References

