

## **Landlords and Criminality**

Gladys Holmes

Let me preface this blawg by acknowledging that there is a plethora of misconduct on both ends of the landlord-tenant relationship. Landlords are not the absolute villains that many tenants depict them to be, and tenants are not the righteous squatters that landlords portray.

Regardless of where you sit on the spectrum, equal or at ends, the fundamental principle remains that access to adequate housing is a human right.<sup>1</sup> A significant component of housing adequacy is safety,<sup>2</sup> and the introduction of that responsibility arguably lies with the landlord at the beginning of the rental relationship.

Imagine the various circumstances for entering a tenancy – the first time leaving your childhood home; fleeing violence; transitioning from homelessness; family size expanding; family size decreasing. With the ever-changing dynamic of global societies, the list of possibilities for entering a tenancy is extensive. Continue to imagine entering your new abode only to realize that there is a severe and possibly life-threatening pest infestation. Vermin, bugs, and bats! Oh my! Organizing alternative housing is convoluted when there are processes to follow and arrangements to be made, so you stay.

You stay and, in doing so, expose yourself to risk.

Among a myriad of health complications, the end result could be death. Whether a tenant is exposed to rodents carrying Hantavirus or physically injured from a bite, tenants should not have to look at illness and/or death from pests as concomitants of renting. Having shelter should not put you at a higher risk of harm.

Pests are known transmitters of disease. As recent as 2017, fleas spread an outbreak of plague localized in Madagascar, and bats in 2020 are inferred to have been the source of a global pandemic.<sup>3</sup> Understanding the scientific implications of disease ecology and transmission of disease directly implies that pests endanger human life.

The possible outcome of pest infestation necessitates an implicit understanding of a landlord's responsibility to ensure their future tenants' safety and well-being. If a landlord is aware of a pest infestation, should they be held criminally responsible for commencing tenancy, knowing that it could endanger human life?

---

<sup>1</sup> *Policy on human rights and rental housing*, (Ontario Human Rights Commission: 2009) at 4 (<https://www-deslibris-ca.uml.idm.oclc.org/ID/222033>).

<sup>2</sup> *Ibid* at 90.

<sup>3</sup> Jiumeng Sun et al, "COVID-19: Epidemiology, Evolution, and Cross-Disciplinary Perspectives" (2020) 26:5 *Trends Mol Med* at 43; "Plague ecology and transmission" (July 31, 2019), online: *Center for Disease Control and Prevention* <<https://www.cdc.gov/plague/transmission/index.html>>; A. Galy et al, "The plague: An overview and hot topics" (2018-11) 39:11 *La revue de Médecine Interne* at 863 (10.1016/j.revmed.2018.03.019).

The problem arises if a landlord were to knowingly rent a property with an ongoing infestation. If, for example a property is rented out under the guise that it is not infested when it is, the end result is still the same, regardless of deception. So long as there was a pre-existing awareness, or *mens rea*, properties should not be available to rent in the public interest of health and safety. Failure to address the pests and knowingly renting out the property creates a dangerous situation and establishes the *actus reus* of the offence.<sup>4</sup>

The purpose of utilizing the Criminal Code of Canada specifically towards landlords who are not adequately maintaining their property to be pest-free upon tenancy aligns with the criminal purpose of protecting citizens from evil, injurious or undesirable effect upon the public.<sup>5</sup> For landlords who rent out premises knowing of a current infestation, the Criminal Code for negligence would apply, but a question arises; is the act in question unreasonably negligent in a wanton and reckless manner? Would a reasonable person have foreseen the act to endanger and risk human life and would it be a marked departure or a marked and substantial departure?

With 8.3 million cats and 8.2 million dogs estimated to be owned as Canadian pets,<sup>6</sup> a large percentage of Canada's population is comprised of pet owners. Legal pet ownership in Winnipeg through by-law 92/2013 necessitates licencing, requiring a pet owner to obtain rabies vaccination and submit proof to reduce animal-to-human disease transmission.<sup>7</sup> It would be reasonable to then assume that most Canadians would be aware of the severity of disease transmission. Thus, a reasonable person would foresee the inevitability that animal exposure could lead to disease transmission. Additionally, holding a landlord to the same standard of the average reasonable person should be evaluated. Landlords are a relationship of economic benefits and therefore should be held to a higher extent than the average layman.

*R. v. Miller* opened the door in 1983 to the possibility of criminal guilt for omissions.<sup>8</sup> By employing a reasonable person analysis to establishing a negligent act, an *actus reus*, in addition to a landlord having prior knowledge of the cause of the negligence, the *mens rea* element, section 219(1) for criminal negligence applies. An objective liability offence in nature, S.219(1) specifies that "[e]very one is criminally negligent who (a) in doing anything, or (b) in omitting to do anything that it is his duty to do, shows wanton or reckless disregard for the lives or safety of other persons. (2) For the purposes of this section, **duty** means a duty imposed by law."<sup>9</sup>

---

<sup>4</sup> Simon N. Verdun-Jones, *Criminal law in Canada*, 7<sup>th</sup> ed (Toronto: Nelson Education Ltd., 2020) at 40; Supreme Court of Canada Reference re Validity of Section 5 (a) Dairy Industry Act (Margarine Reference), [1949] S.C.R. 1 at 49.

<sup>5</sup> *Supra* note 4 at 2.

<sup>6</sup> "Latest Canadian Pet Population Figures Released" (January 28, 2019) online: *Canadian Animal Health Institute* <<https://www.cahi-icsa.ca/press-releases/latest-canadian-pet-population-figures-released>> [<https://perma.cc/J4JV-TQSH>]

<sup>7</sup> "Pet Licenses" (November 19, 2020), online: *Winnipeg.ca* <[https://www.winnipeg.ca/cms/animal/licenses/pet\\_licensing.stm](https://www.winnipeg.ca/cms/animal/licenses/pet_licensing.stm)> [<https://perma.cc/PQ4B-UASY>]; "The city of Winnipeg by-law no.92/2013" (July 19, 2017), online: *Winnipeg.ca* <<http://clkapps.winnipeg.ca/dmis/docext/viewdoc.asp?documenttypeid=1&docid=6054&doctype=o>> [<https://perma.cc/5394-7Z5A>].

<sup>8</sup> *Supra* note 4 at 39; *R. v. Miller* [1982] UKHL 6, [1983] 2 AC 161, [1983] 1 All ER 978.

<sup>9</sup> *Criminal Code*, RSC 1985, c C-46, s. 219

If a tenant becomes ill, the charge may escalate to causing bodily harm by criminal negligence. As dictated in s.221, the penalty becomes either **(a)** an indictable offence and liable to imprisonment for a term of not more than 10 years; or **(b)** an offence punishable on summary conviction.<sup>10</sup>

Should the inevitability of death come before due time, and a tenant's pest exposure brings death, the Code offers justice by s. 220, criminal negligence causing death. A landlord "who by criminal negligence causes death to another person is guilty of an indictable offence and liable **(a)** where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and **(b)** in any other case, to imprisonment for life."<sup>11</sup> Penalties for a violation of s.220 range upwards of imprisonment for life.<sup>12</sup>

Understanding the current state of the law dictates that the legal duty imposed should specifically include landlords. The express inclusion of landlords to maintain their property to a standard free of pests should exist with the provision to refrain from renting when aware of a current infestation. Moreover, there is precedent for applying to situations where a property manager fulfills landlord duties, holding them guilty of an offence committed by someone else.<sup>13</sup> A property manager acting as an agent on behalf of a landlord arguably perpetuates the endangerment a tenant would face on the principle of failing to intervene.<sup>14</sup> Failure to act could render a property manager liable as a party to an offence.

Though applying criminal negligence towards property maintenance with a penalty for endangering life seems sensible, most disputes proceed through an administrative process such as a Landlord Tenant Board (the Board) presides over disputes. In Ontario, section 168 prescribes that the Board had exclusive jurisdiction for all applications.<sup>15</sup> If a tenant has a problem and wants recourse, they must first go before the Board to rectify the issue(s) before them.<sup>16</sup>

Policy implications serve as an incentive for landlords to take property maintenance seriously. Though injustice is relatively easy to bear, the sting comes from justice.<sup>17</sup> Landlords would no longer be merely liable and facing a monetary penalty but would be found guilty on criminal charges where the penalty severity increases. The concept is reminiscent of *R v Big M Drug Mart* where the *Lord's Day Act* was still in force.<sup>18</sup> In the time before Big Mart brought an action before the Courts, and the *Act* was abolished, businesses would knowingly break the law to remain open Sundays, pay a fine, and carry on

---

<sup>10</sup> *Ibid* at s. 221.

<sup>11</sup> *Ibid* at s. 220.

<sup>12</sup> *Ibid*.

<sup>13</sup> *Supra* note 4 at 41.

<sup>14</sup> *R. v. Nixon* (B.C.C.A.), [1990] B.C.J. No. 1581 at 5.

<sup>15</sup> *Residential Tenancies Act*, 2006, S.O. 2006, c. 17, s 168.

<sup>16</sup> *Ibid*.

<sup>17</sup> H. L. Mencken, *Prejudices: third series*, (New York: A.A. Knopf, 1922) at 101.

<sup>18</sup> *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 at para 2.



maintaining their daily practice of business. As Final Fantasy Tactic gamers have read before, “if the penalty for a crime is a fine, then that law only exists for the lower class.”<sup>19</sup>

Currently, the Board’s remedial process takes primacy over civil litigation. Moreover, if a tenant has a problem and wants recourse, they must first go to the Board to rectify the issue(s) before them. The Board’s processes stipulate that the tenant is to apply to the Board for a landlord breach of obligations under s.59(1) then under s.55(1).<sup>20</sup> This current standard is frankly low and inadequate; pest-free housing that does not endanger human life is a necessity. The current remedial action process is longwinded, but under criminal law, the burden of proof should fall to the Crown. In *R. v. Vinokurov*, 2001 ABCA, the onus was on the Crown to establish that the accused had prior knowledge.<sup>21</sup> In landlord negligence, this onus would similarly go to the Crown. Unlike a balance of probabilities, proving this beyond a reasonable doubt would be challenging to quantify. Testimony from either past tenants, neighbours from within the multi-dwelling unit, or perhaps pest-control companies who have previously assessed the property would help establish prior knowledge. Additionally, the criminal component allows for the idea of victim support, where victims of criminal landlord negligence could potentially access local services, including funding for interim housing.

Overall, it must be reiterated that pest infestations impede on the human right to housing. Knowledge of an infestation and the continuance of rental business as usual infringes upon the human right to housing and should face criminal liability. Pests are the squatters that need immediate action of eviction. Landlords must have an obligation with more severe consequences for failure to act. Questions for further exploration include researching how similar contexts of other businesses such as machine rental, car rental, etc., are held criminally responsible. Criminal liability serves a powerful deterrent.



22

---

<sup>19</sup> Video game: *Final Fantasy Tactics* (Square Enix, formerly Squaresoft, 1997).

<sup>20</sup> *The Residential Tenancies Act*, C.C.S.M. c. R.119, s.55(1), s.59(1).

<sup>21</sup> *R. v. Vinokurov*, 2001 ABCA 113 at para 7.

<sup>22</sup> Imagine sourced from <https://9gag.com/gag/aB8yRx2> referencing *Parks and Rec* S05E05.