



To answer the question regarding community housing headleases: it is my view that neither the current Residential Tenancies Act, nor the Bill, needs to be amended specifically regarding the termination of head tenancies and subtenancies.

As the committee knows, there is a fairly common arrangement in community housing where a head-landlord grants a head-tenancy to a community housing provider (CHP), which then grants a sub-tenancy to a resident. For convenience I'll refer to CHPs in my answer, but this arrangement need not involve a CHP; another sort of organisation or person can be in the same position.

Under the current Act, termination of a head-tenancy also terminates a sub-tenancy. Per s 81(4)(a):

*A residential tenancy agreement terminates if any of the following occurs—*

*(a) a person having superior title (such as a head landlord) to that of the landlord becomes entitled to possession of the residential premises*

A head-landlord may initiate termination proceedings in any of the usual ways under the Act, typically by giving a termination notice to the CHP (with grounds, or without). If after the notice vacant possession is not returned to the head-landlord (i.e. the resident remains in the premises), the head-landlord can apply in the usual way to the tribunal for termination orders. The CHP may or may not contest the proceedings, depending on the grounds if any. If an order is made, it will terminate both the head-tenancy and the sub-tenancy. If the order is enforced by a warrant of possession, anyone at the premises – whether the resident, or the CHP – will be evicted and possession returned to the head-landlord.

So, the existence of sub-tenancy is no bar to the termination of the head-tenancy, and with it the sub-tenancy. Indeed, a CHP could receive a termination notice and do nothing – not even notify the resident – and the head-landlord would have their usual course of action: apply to tribunal, get an order, get vacant possession.

On the other hand, if a CHP receives termination notice, does not inform the resident, and the resident's sub-tenancy is terminated and the resident is evicted with little or no notice, the resident may have an action against the CHP for breach of quiet enjoyment under the sub-tenancy. For that reason, a sensible CHP would notify the resident of the proceedings, discuss the CHP's intentions (i.e. whether they will contest the proceedings) and, if they are not contesting the proceedings, how the CHP can help the resident move out with minimal disruption and loss. The CHP does not need to give a termination notice of its own to have this discussion with the resident.

None of this presents a legal impasse or problem in need of a legislative amendment. Likewise if the Bill (or a similar Bill) were passed and head-tenants could initiate termination proceedings only with grounds.