



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 26

An Act to amend the Act respecting the Régie du logement and the Civil Code

Introduction

**Introduced by
Madam Louise Harel
Minister of Municipal Affairs and Greater Montréal**

**Québec Official Publisher
2001**

EXPLANATORY NOTES

This bill amending the Act respecting the Régie du logement grants exclusive jurisdiction to the rental board over any offer to lease out a dwelling precedent to the signing of the lease. It creates the function of clerk, to which it assigns limited jurisdiction, and broadens the jurisdiction of special clerks.

Other amendments introduce rules applicable to the conciliation process and authorize the Régie du logement to dispose of certain applications on the basis of the record. The Régie is also authorized to hold hearings by telephone conference or videoconference or by means of any other technology that allows the parties, the witnesses and the commissioners to communicate with each other.

A new remedy is introduced to allow the cancellation of a lease if an order issued by the Régie du logement or an agreement arrived at during conciliation is not complied with.

Amendments to the Civil Code clarify the rules applicable where a lessee wishes to avoid resiliation of the lease by paying the overdue rent before the judgment is rendered. Moreover, new Civil Code provisions regulate the collection of personal information before and on the signing of a lease and prohibit the lessor from requiring any amount of money whatsoever from a prospective lessee.

Other amendments to the Civil Code allow a lessee to apply to the court for the fixing of the rent following a reduction in the amount of taxes or in the cost of energy.

Lastly, the bill proposes amendments to shorten the period during which a lessor may give notice to the lessee of modifications to the conditions of the lease.

LEGISLATION AMENDED BY THIS BILL :

- Civil Code of Québec ;
- Act respecting the Régie du logement (R.S.Q., chapter R-8.1).

Bill 26

AN ACT TO AMEND THE ACT RESPECTING THE RÉGIE DU LOGEMENT AND THE CIVIL CODE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

ACT RESPECTING THE RÉGIE DU LOGEMENT

1. The Act respecting the Régie du logement (R.S.Q., chapter R-8.1) is amended by inserting the following section after section 4 :

“4.1. The board is composed of commissioners who hear and dispose of the applications under its jurisdiction.

However, certain applications may, to the extent provided for in this Act, be heard and disposed of by a special clerk or a clerk.”

2. The said Act is amended by inserting the following sections after section 5 :

“5.1. To facilitate an agreement between the parties, the board, with the consent of the parties, may designate a conciliator to meet with the parties at any time before the hearing.

“5.2. Conciliators are designated from among the commissioners or the personnel members of the board appointed for that purpose by the chairman.

“5.3. Unless the parties consent thereto, nothing that is said, written or recorded during a conciliation session may be admitted as evidence before a court of justice. It is the conciliator’s duty to so inform the parties.

“5.4. A conciliator may not be compelled to disclose before a court of justice anything revealed to or learned by the conciliator in the exercise of his or her functions, or to produce before a court of justice any document recorded, prepared or obtained in the exercise of his or her functions.

Notwithstanding section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person may have access to a document contained in the conciliation record or to the transcript of a recording.

“5.5. Any document produced by a party during a conciliation session shall be returned to the party unless the party requests that it be filed in the record kept by the board.

“5.6. Any agreement arrived at during conciliation shall be recorded in writing and be signed by the conciliator and the parties.

The agreement, if homologated by a commissioner, is enforceable as a decision of the board.

“5.7. The conciliator may terminate a conciliation session if the conciliator considers it unlikely that the parties will arrive at an agreement.

“5.8. A commissioner may not hear and dispose of an application after acting as a conciliator in the same matter.”

3. Section 6 of the said Act is amended by replacing the first paragraph by the following paragraph :

“6. The commissioners are appointed by the Government in the number determined by the Government.”

4. Section 18 of the said Act is amended by replacing “or the commissioners” in the last line of the first paragraph by “, the commissioners, the special clerks or the clerks”.

5. Section 19 of the said Act is replaced by the following section :

“19. The members of the personnel of the board are appointed in accordance with the Public Service Act (chapter F-3.1.1).”

6. Section 28 of the said Act is amended by replacing “respecting the lease of a dwelling” at the beginning of subparagraph 1 of the first paragraph by “respecting the lease of, or offer to lease out, a dwelling and its services, accessories and dependencies”.

7. Section 30.1 of the said Act is amended

(1) by inserting “or clerk” after “special clerk”;

(2) by adding the following paragraph at the end :

“However, only a personnel member who is an advocate or notary may be appointed as special clerk.”

8. Section 30.2 of the said Act is replaced by the following section :

“30.2. A special clerk may dispose of any application or motion

- (1) for the fixing of the rent or for a ruling on a modification of the term or a condition of a lease under articles 1947 and 1947.1 of the Civil Code ;
- (2) for the fixing of the rent under articles 1950 and 1954 of the Civil Code ;
- (3) to contest an adjustment of the rent under article 1949 of the Civil Code ;
- (4) for a special mode of service ;
- (5) for the issue of a summons to appear ;
- (6) for the reduction of the time for service of a summons to appear ;
- (7) relating to the procedure or time for the communication of a statement or report in lieu of testimony ;
- (8) for the postponement of a hearing in accordance with the rules of procedure ;
- (9) for the transfer of a case, for proof and hearing, to an office of the board other than the office that would normally have jurisdiction under the rules of procedure ; or
- (10) for the awarding of costs as prescribed by the regulations.

A special clerk may also dispose of any application or motion within the jurisdiction of a clerk.”

9. Section 30.3 of the said Act is replaced by the following section :

“30.3. At the time fixed for the hearing, if one of the parties is absent although the parties were duly notified or if the parties are present and consent thereto, a special clerk may dispose of any application or motion

(1) the sole object of which is the recovery of rent or the resiliation of a lease, or both the recovery of rent and the resiliation of a lease, on the ground that the lessee is more than three weeks late in paying the rent ;

(2) the sole object of which is the re-establishment of the rent ;

(3) the sole object of which is the remittance of the rent deposited, provided that the application or motion is brought by the lessor on the ground that the lessor has performed his or her obligations or that the person to whom the rent must be paid has been identified or found ; or

(4) for the homologation of an agreement arrived at through conciliation or the homologation of any agreement or transaction whether or not arrived at during conciliation.”

10. Section 30.4 of the said Act is replaced by the following sections :

“30.4. In the exercise of his or her functions, a special clerk may, on his or her own initiative, require that an application or a motion, or any related document, be served anew by a specified mode of service.

A special clerk may also preside a pre-hearing conference.

“30.5. A clerk may dispose of any application or motion

(1) the sole object of which is the recovery of rent or the resiliation of a lease, or both the recovery of rent and the resiliation of a lease, on the ground that the lessee is more than three weeks late in paying the rent, if the lessee did not file a written contestation within the time prescribed by this Act ;

(2) for a special mode of service ;

(3) for the issue of a summons to appear ; or

(4) for the awarding of costs as prescribed by the regulations.

“30.6. In the exercise of his or her functions, a clerk may, on his or her own initiative, require that an application or a motion, or any related document, be served anew using a specified mode of service.

“30.7. A special clerk or a clerk has, in the exercise of his or her functions, all the powers, duties and immunities of a commissioner.

“30.8. A special clerk or a clerk may, in the interests of justice, refer any matter to a commissioner.”

11. Section 31 of said Act is repealed.

12. Section 60 of the said Act is replaced by the following section :

“60. Before rendering a decision, the board shall allow all interested parties to be heard. Notice of the proof and hearing shall be given in the manner provided in the rules of procedure.”

13. The said Act is amended by inserting the following sections after section 60 :

“60.1. Applications the sole object of which is the recovery of rent or the resiliation of a lease, or both the recovery of rent and the resiliation of a lease, on the ground that the lessee is more than three weeks late in paying the rent must be contested in writing.

“60.2. The written contestation must be filed with the board within 10 days of service of the application.

If no contestation is filed within the prescribed time, a decision may be rendered, upon proof of service of the application, on the sole basis of the documents and the sworn statement filed in the record.

A contestation may be filed at any time until a decision is rendered.

“60.3. The board shall notify the lessor, in the manner provided in the rules of procedure, of any contestation filed pursuant to sections 60.1 and 60.2.

“60.4. If appropriate in the circumstances, the commissioner or the special clerk may, on his or her own initiative or at the request of a party, hold a hearing by telephone conference or videoconference or by means of any other information technology that allows the parties, the witnesses and the commissioner or special clerk to communicate with each other.”

14. Section 62 of the said Act is amended by replacing “writ of subpoena issued by the board and served” by “summons to appear issued by a commissioner, a special clerk, a clerk or an advocate and served”.

15. The said Act is amended by inserting the following section after section 63:

“63.1. With the consent of the parties, the commissioner may suspend the proof and hearing for a period not exceeding 30 days to allow conciliation before a conciliator designated by the board to take place. The conciliation period may be extended by the commissioner, with the consent of the parties, if the commissioner is of the opinion that this would enable the parties to come to an agreement.

If conciliation is unsuccessful, the proof and hearing shall resume as soon as practicable.

Sections 5.2 to 5.8 are applicable to conciliation under this section.”

16. Section 78 of the said Act is repealed.

17. Section 89 of the said Act is amended by replacing the first paragraph by the following paragraph:

“89. Where a decision has been rendered against a person who, owing to surprise, fraud or any other reason considered sufficient, was unable to file a written contestation, appear or submit evidence, that party may apply for the revocation of the decision.”

18. The heading of Title III of the said Act is replaced by the following heading :

“CIVIL LIABILITY AND PENALTIES”.

19. The said Act is amended by inserting the following section after the heading of Title III:

“111.1. In addition to the penalties provided for in sections 112 to 115, non-compliance with an order of the board or with an agreement arrived at during conciliation gives rise to the same remedies at law as provided for in article 1863 of the Civil Code for non-performance of an obligation by the other contracting party.”

CIVIL CODE

20. Article 1883 of the Civil Code of Québec (1991, chapter 64) is amended by replacing “before judgment” by “before the judgment granting the resiliation becomes enforceable”.

21. The said Code is amended by inserting the following articles after the heading preceding article 1894 :

“1893.1. The only information considered necessary within the meaning of the Act respecting the protection of personal information in the private sector

(1) as regards the collection of information before entering into a lease, is

— the name, date of birth, address and telephone number of the prospective lessee, and

— if the prospective lessee is currently bound by a lease on a dwelling, the name, address and telephone number of the lessor and the number of months or years for which the prospective lessee has been occupying that dwelling ; and

(2) as regards the collection of information on entering into a lease, is

— the name, date of birth, address and telephone number of the lessee, and

— if a parking space is assigned to the lessee, the registration plate number of the lessee’s vehicle.

The violation of the rights arising from this article may give rise to punitive damages.

“1893.2. A lessor may not require the payment of any amount of money by a prospective lessee on any account.”

22. Article 1942 of the said Code is amended by replacing “six months” in the first paragraph by “five months”.

23. Article 1947 of the said Code is amended by adding “, subject to article 1947.1” after “conditions” at the end.

24. The said Code is amended by inserting the following article after article 1947:

“1947.1. If there has been a reduction in the amount of municipal or school taxes or in the cost of energy applicable to the immovable in which the dwelling is situated and the lessor does not avail himself of the provisions of article 1942 or, where applicable, of article 1947 within the prescribed time, the lessee may apply to the court for the fixing of the rent within one month after the expiry of the prescribed time.”

FINAL PROVISION

25. The provisions of this Act come into force on the date or dates to be fixed by the Government.