



COMMUNITY WORKSHOP/Legal Aid Services & Family Law

Prestige Lakeside Resort & Convention Centre | Nelson
701 Lakeside Drive | Nelson, BC | V1L 6G3

Tuesday | October 25 | 2011

AGENDA

Time	Session	Speaker
08:00-09:00	Breakfast & Registration	
09:00-09:15	Opening Prayer & Welcome	Donna Wright Baljinder Gill
9:15-11:00	Update on Recent Developments in Family Law & Child Protection Law	Linda Thiessen Sandra Smail, Family Duty Counsel
11:00-11:15	Break	
11:15-12:45	Small group discussion-Interactive scenarios based on Amelia's story	Linda Thiessen
12:45-13:30	Lunch	
13:30-14:45	An Overview of LSS Services and Resources	Mike Delaney – Aboriginal Services and resources Branka Matijasic – Intake Services Baljinder Gill – PLEI
14:45-15:00	Coffee break	
15:00-16:00	Local community partners and other resources, Click Law, Pov Net	Mike Delaney Sherri Bond, Janet Sawyer Janet Freeman
16:00 –16:15	Closing	Mike Delaney

Community and Publishing Services

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COMMUNITY WORKSHOP/Legal Aid Services & Family Law

St. Eugene Golf Resort Casino |Cranbrook
7777 Mission Road | Cranbrook, BC | V1C 7E5

Thursday | October 27 | 2011

AGENDA

Time	Session	Speaker
08:00-09:00	Breakfast & Registration	
09:00-09:15	Opening Prayer & Welcome	Herman Alpine John Simpson
9:15-11:00	Update on Recent Developments in Family Law & Child Protection Law	Linda Thiessen Sandra Smail, Murielle Matthews
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4:00-4:15	Closing	John Simpson

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Nelson Community Workshop – Legal Aid Services and Family Law

October 25, 2011

PRESENTATION OUTLINE

Linda Thiessen

1. *New Family Law Rules – BC Supreme Court*

- The Family Justice Reform Working Group report in 2005 outlined a new vision for family law in BC touching on a range of family justice services and processes that should be available to people in BC experiencing family breakdown
- One of the recommendations of the report was creating simpler family court rules to provide a more accessible and streamlined process for family cases in Supreme Court
- The rules were drafted by a committee of senior judges and family lawyers and came into effect July 1st, 2010
- LSS has worked with the Attorney General to develop resources to help the public understand and follow the new family rules

2. *Community Advocate Support Line (CASL) service*

- A senior lawyer provides legal advice, information and support to advocates working on behalf of clients
- Assistance is offered on legal matters such as housing, welfare, family law, employment insurance and employment law, benefits such as CPP disability, consumer and debt and bankruptcy issues

3. *The Simplified Family Tariff and proposed Simplified CFCSA Tariff*

- A priority of LSS has been to streamline administrative processes so that lawyers can focus more resources on client services
- One initiative was to simplify the tariff which outlines how lawyers are paid when they handle a family legal aid case
- The simplified tariff makes it easier for LSS and lawyers to explain to clients the range of services that are included in a legal aid referral
- The simplified family tariff came into effect June 29, 2010 and it provides a basic number of hours to the lawyer and much more discretion for the lawyer to decide how to use those hours to benefit the client suited to the client's particular needs

4. *The proposed new Family Relations Act – highlights of the White Paper*

- The Attorney General began a review of the Family Relations Act in 2006
- Goals of this review were to modernize the law, support cooperative approaches to resolving family law issues and create a statute that is easy to understand

- The review began with research into family law reform underway in other jurisdictions and recommendations for reform made by family law experts
- The Attorney General issued the White Paper to allow the public an opportunity to comment on the proposed new family law by October 2010
- Feedback from the White Paper was considered to finalize the new family law before the bill is introduced in the Legislative Assembly of BC
- Lawyers with the Attorney General are now drafting the legislation which will not become law until it is introduced by the government and passed by the legislature
- The anticipated date for the introduction of this legislation is unknown to the general public at present
- After the legislation is passed into law there will be a 12 month implementation period to allow service providers to update their systems to accommodate the new legislation



Amelia

Where she lives:

- Moon River, B.C.
- Population – 1300 residents in town, 1700 in region (20 kms radius from town)
- 250 people of Aboriginal ancestry in region
- Two reserves with band offices nearby, 200 year round, on-reserve residents
- 130 newcomers to Canada live in town

Economy:

- Resource based (fishing, logging, pulp mill)
- Fishery closed from time to time due to low salmon returns, and mill shut down two years ago when world demand collapsed for products
- Unemployment rate is high and many people have used up their benefits and are now on social assistance – 30% of the adult population (18-64) would like to work but are unemployed

Community services:

- A daycare, a school, a health clinic staffed by a nurse practitioner, a library open two days a week, a small RCMP detachment with victim services, a community meeting hall
- Public transit non-existent except for bus to nearest city, which makes three trips a day, each way. The bus trip has many stops and takes about an hour and a half each way, longer in winter weather.

Legal Services:

- Nearest courthouse, legal aid office, pro bono clinic and funded advocacy services 80 kms away; a lawyer from the city visits one day a week by appointment only

Social and Health Issues:

- Families under stress– high unemployment rate affects ability to get adequate food, clothing and shelter
- High crime rates - for both violent and non-violent offences with significantly higher than average rates among young offenders
- Education levels - lower than average high school and post secondary completion, with much lower outcomes for Aboriginal community



- Health – increasing rates of diabetes and obesity in both youth and adult populations, higher than average depression and other mental health issues, addictions to drugs and alcohol and gambling, FASD/FAE, unplanned pregnancies, HIV

Amelia's life:

- Aged 24, mother of 3 children – 2, 4 and 6. Finished Grade 10 at local school. Amelia has a dependency on prescription drugs.
- Married to Walter, aged 28, father of 2 and 4 year olds – Walter uses drugs and alcohol and is abusive and threatening to Amelia in front of the children. Police have been called to the house many times and on one occasion found the two year old alone on the street. Eventually the Ministry of Social Development took the children into care until Amelia could assure them the situation was stable at home. She had to sign an agreement with the Ministry and they were returned to her care after a day.
- Walter was charged with assaulting Amelia and ordered to stay away from her and from the home.
- Walter's parents live in the nearby city and want access to their grandchildren. She refused access. Walter is now living with them and Amelia does not trust them. She wants to keep Walter and his family away from the children. Walter lost his job at the mill due to his alcohol and drug issues. He is currently not working and his Unemployment Insurance has run out.
- Sam, Amelia's former boyfriend, is the father of the 6 year old. Sam and Amelia had an on and off relationship after the six year old was born, finally separating when their son was one year old. Sam orally agreed to pay child support of \$100 a month but he never paid anything and disappeared two years ago. Recently she discovered his Facebook page that he now lives in Edmonton where he has a job working on the oil rigs and earns \$8,000 gross per month.
- Amelia has no family support network near her. The only support is from her friends. Her family does not believe Amelia's claims of abuse and assault from Walter. They are encouraging Amelia to stay with Walter because they feel it is better to have someone than no-one.
- Amelia keeps two part-time jobs to make ends meet – cashier and hotel chambermaid. Gross income - \$3,100 per month. She rents the main floor of a house.
- The house is infested with bed bugs and the walls are mouldy. She complained to her landlord, but he has done nothing about these problems. The youngest child has asthma and Amelia has learned that this might be caused by mould and toxic dust from the bugs. The community health nurse visited the home recently and is very concerned about the living conditions.
- Amelia is behind one month in rent and has debts she cannot pay
- Amelia was recently arrested after being found stealing batteries for her kids toys at the local grocery store



- The landlord is threatening to evict Amelia after complaints from the tenant in the basement about noise and visits from the police.
- Since she juggles two jobs and needs to pick up and drop off the kids at day care and school, she cannot travel anywhere far from home during work days. The cost for daycare is \$1,000.00 per month.
- She would like to move to Calgary to be near her parents. She also wants to go back to school and complete grade 12.
- Her physical and emotional health is deteriorating day by day.

Amelia worries about:

- Losing the kids
- Walter's abusive behaviour
- Walter's grandparents getting access
- Lack of money and support
- Her family's health

Family Law – Walter

Amelia mainly looked after the children's needs when Walter and Amelia lived together. The 2 and 4 year old are Walter's biological children. Walter loves the children and is especially close to the 6 year old. He enjoys playing with the children and they love him and miss him a lot.

Walter is not working and lives with his parents. He regularly smokes marijuana and occasionally uses cocaine and sometimes binge drinks with his friends on weekends. One night after drinking, Walter tried to force his way back into the house. When Amelia refused to let him stay he shoved her and she fell into the kitchen cupboards cutting her cheek. The children saw this and started crying. The downstairs neighbour called the police and Walter was taken away in handcuffs and charged with assault. There is a no contact order in place.

Amelia's parents do not think Amelia should have separated from Walter. She wants to move to Calgary to be near them. She wants to upgrade her education so she can get a better job. Amelia's parents have only seen the children a couple of times because travelling to Vancouver Island seems too far away to them.

1. Would a court give Amelia sole custody?
2. Is a court likely to let Walter see the children? Does it matter that he is not the biological father of the oldest child?
3. Would Walter have to pay child support for all the children?
4. Will the court let Amelia move with the children to Calgary?
5. How can LSS help?
6. Where else in the community can she turn for help?

Family law - Grandparents

Walter's father and mother live on reserve. Walter's father used to hit his mother and drank a lot when Walter was little. Walter's father is Aboriginal and he suffered abuse at a residential school.

Walter's father joined AA 10 years ago and hasn't had a drink since then. He no longer hits Walter's mother. Walter's father has become very involved with and proud of his Aboriginal culture. He has learned he has a talent for carving and is learning his Aboriginal language. He wants his grandchildren to learn about their culture. Both Walter's father and mother regret how things were for Walter growing up and are very worried about the living conditions for their grandchildren.

Amelia worries about her children being with the grandparents. Amelia doesn't know them very well because Walter always blamed them for his problems.

1. Would Walter's parents be able to get custody of the children?
2. Do Walter's parents have the right to see the children?
3. How can the children's Aboriginal heritage to be honoured?
4. How can LSS help?
5. Where in the community can she or the grandparents turn for help?

Child Protection

Amelia has been working 2 jobs for months and is exhausted when she gets home. The oldest child has helped her with the younger two. He has learned how to prepare simple foods and Amelia can rely on him to feed the kids.

Amelia has been depressed since separating from Walter and asked her doctor to prescribe anti-depressants. She was sleeping when her 2 year old wandered out into the street. The downstairs neighbour called the police and MCFD placed the 2 year old in an emergency foster home. Amelia begged them to return him the next day. Amelia signed a letter of expectations to get her child returned and she has promised to make changes in her living conditions.

The house is infested with bed bugs and mouldy walls. Amelia called the landlord to complain but nothing has been done. The community health nurse is concerned because the youngest child has asthma. Amelia can't afford to move. Amelia has started sleeping much of the time when she is at home.

1. What can Amelia do to make the landlord deal with the bed bugs and mould?
2. Would Amelia be eligible for legal aid to help her deal with MCFD?
3. How can LSS help?
4. Where else in the community can she turn for help?

Family law – Sam

Sam has had almost nothing to do with his 6 year old son since he moved to Edmonton 3 years ago. He promised to pay Amelia \$100 a month child support for his son but has never paid anything. Amelia discovered on his Facebook page that Sam is making \$8,000 a month working on oil rigs near Edmonton. This made Amelia furious.

Although the 6 year old is close to Walter he knows Walter is not his real father. He can remember spending time with his “real” dad and he dreams about being closer to him. Amelia wants to move to Calgary to be near her parents but she worries that Sam will start asking to see his son and causing her even more problems.

1. How can Amelia get Sam to pay child support?
2. Does Sam have the right to see his child if he demands to see him?
3. Does paying child support have anything to do with access rights?
4. How can LSS help?
5. Where else in the community can she turn for help?

Landlord and Tenant

Amelia's home is infested with bed bugs and mould. She complained to the landlord but he hasn't done a thing. The youngest child has asthma and after a recent visit a public health nurse is concerned. Amelia is afraid to do anything because the downstairs tenant has complained to the landlord about noise.

The kids often make a lot of noise – especially when Amelia is passed out on her anti-depressants. Amelia finds it easier to sleep and forget her problems. Amelia has few friends and since Walter left she doesn't talk to many people. She is afraid that her kids will be taken from her and her world will fall apart if she starts confiding in anyone.

1. Can Amelia force the landlord to deal with the bed bugs and mould?
2. Is Amelia entitled to withhold the rent because of the bugs and mould?
3. Can the landlord evict Amelia because the kids are noisy?
4. How can LSS help?
5. Where else in the community can she turn for help?

Debt

Amelia was at Zellers when she put batteries in her handbag. She had never stolen anything before. The store called the police when Amelia got caught and she was charged with theft under \$500. They also sent her a letter telling her that she must pay \$800 for shoplifting or they will sue her in small claims court.

Amelia's rent is overdue more than a month and she worries about eviction. Amelia has a credit card debt of \$1,000 and she hasn't been able to make payments. She struggles to pay the daycare costs of \$1,000 a month for the two younger children.

1. Will Amelia get legal representation for the criminal charge?
2. Should Amelia pay the store \$800 because they caught her shoplifting?
3. How can LSS help?
4. Where else in the community can she turn for help?



Legal Services Society

Aboriginal Services & Resources and Community Engagement

| Goal |

To engage rural, remote and Aboriginal communities and to adapt current LSS programs and services to accommodate circumstances and situations unique to Aboriginal Peoples and their cultures.

| Gladue in a Nutshell |

Gladue rights apply to all Aboriginal people whether they are status or non-status Indian, First nations, Metis or Inuit and whether they live on or off reserve. Gladue refers to the special consideration that judges must give Aboriginal offenders during sentencing or the setting of bail. Gladue rights inform the judge that they must keep in mind the fact that Aboriginal offenders face special circumstances and all options other than jail must be considered. The sentence should be designed to help the offender address the issues that got them into trouble with law in the first place. This is called a **Community Sentence**, designed to rehabilitate the offender and help the whole community heal.

Gladue does not mean that an offender will automatically be given a community sentence. In some circumstances, the judge may have no option but to sentence a person to jail. The judge should continue to apply the same Gladue principles when deciding the length of imprisonment or bail conditions.

LSS is raising awareness and providing training to lawyers, community organizations and intermediaries, to develop a better understanding of Gladue rights. The LSS publishing team has also developed a **Gladue Primer**, as part of our initiative to educate the community and service providers. For more information, please contact Pamela Shields, who is our Aboriginal Services Program Manager, at 604.601.6000 or by at Pamela.shields@lss.bc.ca



| First Nations Court |

The court is led by Judge Buller-Bennett and sits in New Westminster once every month. Aboriginal offenders who plead guilty can be heard by Judge Buller-Bennett at the sentencing stage and she will work with the community and the offender to develop a “healing plan.”

First Nations Court hears criminal and related child protection matters. The goal is to take a First Nations Perspective and justice is viewed with a holistic and restorative approach.

LSS is raising awareness and providing support to the court. A Legal Information Outreach Worker (LIOW) works with the court to enhance the intake application process and provide information to offenders and the communities they impact. LSS also works closely with the First Nations Clinic and the Native Court Worker Program.

Expanded Duty Counsel Service is provided by LSS for First Nations Court. For more information, please contact Rob Fredrickson at 604.825.1861.

| Legal Aid |

Legal Aid coverage is available for all Aboriginal clients, but they have to be financially eligible and the issue must be one that is covered by LSS. If you have a client looking for criminal, family and / or CFCSA matter, please encourage them to apply for legal aid. A legal aid intake worker will determine their eligibility and will provide them with assistance.

For Aboriginal People, if the offence interferes with the offender’s ability to follow a traditional livelihood of hunting and fishing, this may be covered by legal aid.

| Duty Counsel |

LSS has duty counsel services available in all courthouses throughout the province. For Aboriginal clients, we have **expanded duty counsel services**. LIOWs can be found in the following locations to help with the application process and to provide legal information and resources.

- Shewey, Vancouver
- First Nations Court New Westminster
- Williams Lake
- Port Hardy



| Aboriginal Community Legal Workers |

Aboriginal Community Legal Workers are paralegals who are supervised by a lawyer and can provide legal advice. We have two Aboriginal Community Legal Workers in the following locations.

- Donna Moon, Nanaimo
- Maggie Matilipi, Port Hardy

| Publications and Fact Sheets |

Aboriginal Child Protection Fact Sheets

- Understanding Aboriginal Child Protection / Removal Matters
- Understanding Aboriginal Delegated Agencies
- Understanding Court Orders and Hearings

Wall Charts / Wallet Cards

- Aboriginal Child Protection Process: Information for Aboriginal Parents and Communities
- Your Right to Get a Lawyer (Aboriginal child protection wallet cards)

Aboriginal Criminal Law Fact Sheets

- Are You Aboriginal? Do You Have a Bail Hearing? Are You Being Sentenced for a Crime? Do You Know About First Nations Court?

Aboriginal Publications

- Benefits, Services, and Resources for Aboriginal Peoples
- How to Make a Will and Settle an Estate: A Guide for First Nations People Living on Reserve
- Social Assistance on Reserve in BC

Binders

- Aboriginal People and the Law in British Columbia (binder)

Aboriginal Resource Website

This new websection enhances our website by highlighting reference links to additional resources outside of LSS that will assist Aboriginal People address their legal issues.



Legal
Services
Society

British Columbia
www.legalaid.bc.ca

It also contains a Frequently Asked Question (FAQ) Section which is a list of questions and /or common legal issues faced by Aboriginal communities, along with the resources that exist to address those issues.

The Aboriginal Resource Website is broken down as follows:

- Aboriginal Legal Issues
- Aboriginal publications
- Who can help
- Gladue rights
- First Nations Court

To order publications, please follow the LSS Publications link:

http://www.lss.bc.ca/publications/subject.aspx?s_id=2

| Additional Resources |

Gladue and First Nations Court Fact Sheet:

http://www.lss.bc.ca/publications/pub.aspx?p_id=350

Are You Aboriginal? Do you have a bail hearing? Or are you going to be sentenced for a Crime? This publication is on line or can be ordered from the Legal Aid Ontario at:

www.legalaid.on.ca

Toll free: 1-800-668-8258

In Toronto: 416-979-1446

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Family coverage

| General Policy |

To qualify for legal aid representation, an applicant must:

- Be financially eligible, and
- Have a family law problem covered by the family coverage guidelines:
 - need an initial, or a change to the current, custody or access order where there is a risk of harm or violence to the client or to his or her child or children;
 - have custody of a child or children who have been unlawfully held by the access parent/party;
 - have been permanently or repeatedly denied access to a child or children;
 - need a physical restraining order or other legal assistance to protect themselves or their child or children from harm or violence;
 - need a non-removal order to prevent the other parent from permanently moving their child or children out of the province. The threat must be real and imminent, and involve a permanent change of residence;
- Be eligible for coverage provided through the exception review process.

| Who is covered |

When the legal issue involves children, an applicant must be a:

- parent (including a same-sex parent),

OR

- party to the proceeding who is a:
 - member of the children's immediate or extended family,
 - relative or individual who has lived with the children in a parental or custodial relationship,

OR

- member of the community who has a cultural or traditional responsibility towards the children (this applies to emergency referrals only).

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal aid representation.

| Exception |

Youth under the age of 18 who are wards of the Ministry of Children and Family Development (MCFD) are not eligible for legal aid representation. In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

| Exception reviews |

An application dealing with a matter under the Family Relations Act can be sent for an exception review if:

- the applicant has a mental or physical disability and is unable to represent him or herself. There must be a significant barrier that will create an injustice if the applicant is not represented;

OR

- a significant injustice can only be avoided by the appointment of counsel;

OR

- the applicant is traumatized by past abuse such that he/she is unable to represent him or herself.

Considerations:

- the applicant's issue is a matter of significance;
- the outcome will benefit the applicant if the case is successful;
- there will be a reasonable likelihood of success for the applicant if the case goes to court;
- the applicant does not have other viable options, other than legal representation, to deal with the issue.

CFCSA

| General Policy |

To qualify for legal representation, an applicant must:

- be financially eligible; and
- have a CFCSA problem covered by the CFCSA coverage guidelines.

An applicant must be:

- a parent (including parents in a same-sex relationships),

OR

- a party to the proceeding who is a:
 - member of the children's immediate family,
 - relative or individual who has lived with the children in a parent or custodial relationship,

OR

- member of the community who has a cultural or traditional responsibility towards the children.

An applicant does not have to permanently reside in BC or hold Canadian citizenship to qualify for legal representation.

Where an applicant is financially eligible and his or her children have been removed or are at risk of being removed, coverage is provided.

An applicant is not eligible for legal aid if he or she is in the care of the Ministry of Children and Family Development (MCFD). In such cases, MCFD will arrange for counsel through the Ministry of Attorney General.

If legal representation is denied, an applicant may request a coverage review or a financial eligibility review.

About Clicklaw

What is Clicklaw and who is involved

What is Clicklaw

Clicklaw is a website aimed at enhancing access to justice in British Columbia. It features legal information and education, but it is not a site of laws. Instead, Clicklaw features legal information and education designed for the public from 24 contributor organizations, as well as selected others.

Clicklaw's mission is to provide equitable access to quality legal information, education and help for British Columbians

What you can do on Clicklaw

Clicklaw is organized by what brought you to the site.

Have a legal problem? You can find practical information about your legal rights a responsibilities and options to solve legal problems. Looking for legal help? You can find those who can help with legal problems on the HelpMap.

Want to learn about the law? You can access resources that help you learn & teach about the laws that affect British Columbians and how the legal system works.

Interested in law reform? You can access resources that feature reform & research of laws and legal innovations in British Columbia.

What is on Clicklaw and what is not Clicklaw links to laws and cases but that's not the main purpose of the site. Instead, the resources available through Clicklaw were designed to be used by the public and those helping the public access legal information. Featured are public legal information and education resources contributed directly to the site by 24 contributor organizations. Selected resources from other organizations are being added to the site by the Clicklaw team, guided by the Clicklaw content criteria a guidelines.

Suggest a resource or service

Don't see a resource or service on the site that you think should be here? Suggest a resource to add to Clicklaw.

Clicklaw is evolving

In April 2009, Clicklaw launched as a beta website. Within the first few months, we did some usability testing and received lots of great feedback from people using Clicklaw. Based on that information, we made some enhancements to make Clicklaw easier to use and more helpful.

Here are six things we introduced in April 2010:

- Additional resources: We added over 200 new resources to the Solve Problems section to fill gaps in the legal information available.
- Clicklaw subtopics: We added subtopics to resources to improve the experience of browsing on Clicklaw.
- Resources in languages other than English: We made it easier to find resources on Clicklaw that are in languages other than English.
- Common questions: There are now over 100 "common questions" on the site, featuring resources that are good starting points for information on common legal problems.
- What's new: A blog highlighting new resources is now featured on the Clicklaw homepage.
- Facebook & Twitter: Clicklaw has arrived on Facebook and Twitter!

We're continually working on improving the site and adding more features and resources. See what's coming for Clicklaw in the months ahead. Let us know what you think about Clicklaw by:

- taking our short feedback survey
- contacting the Clicklaw team
- offering a comment about Clicklaw on the Clicklaw project blog

Who is involved

Clicklaw is sponsored by a network of organizations in British Columbia that provide or support public legal education and information (PLEI). Clicklaw is operated by the Courthouse Libraries BC and was developed with a project grant from the Law Foundation of BC. Learn about all the organizations and moot^o involved in Clicklaw.



Important information about bed bugs provided by TRAC

- 1 Tenant must tell landlord about the bed bug problem as soon as it is possible, if the tenant is informing about the problem after the infestation, landlord can charge the cost from the tenant.
- 2 Tenant must ask the landlord to provide the treatment
- 3 It is always good to present the problem in writing
- 4 If landlord is bringing somebody to look at your house for treatment, tenant has to let them in, if they don't allow that person to come in, the tenant can be evicted
- 5 Tenant must comply with the treatment. Tenant can be evicted if does not cooperate. If landlord can get the treatment done fast, Tenant might not want to insist on proper written notice (i.e delay treatment)
- 6 If landlord does not respond in timely manner, tenant should put it in writing at that stage(Page 32 Tenant survival guide)
- 7 If Tenant is going is going for hearing, they can make a request to issue a order for rent reductions, repairs and proper treatment.
- 8 In the case of fixed term lease, you cannot break the lease until you let the land lord know.
- 9 Tenant should not throw out the beds. Tenant can buy encasements instead for both boxspring and mattress. Bed bugs can die inside the casements. Lot cheaper than buying new beds.

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