CHAPTER THIRTEEN: LANDLORD AND TENANT LAW

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CHAPTER THIRTEEN: LANDLORD AND TENANT LAW

I. INTRODUCTION

Landlord tenant law was written to protect the rights and identify the responsibilities of both landlords and tenants. The Residential Tenancy Act, S.B.C. 2002, c.78 (RTA) and Residential Tenancy Regulation [RTR], B.C. Reg. 477/2003 as well as the rules of procedure are amended occasionally; check the Residential Tenancy Branch (RTB) website (www.rto.gov.bc.ca) to ensure that you are working with the most up to date information.

A. Common Problems

The following points are pertinent to the most common problems experienced between tenants and landlords:

Direct Request

- Once the time for a tenant to dispute a notice to end tenancy is passed, orders of possession may be granted to landlords by Residential Tenancy Branch (RTB) Dispute Resolution Officers without an oral hearing (Residential Tenancy Act, s. 55.4). Landlords will have to submit detailed documentation to a Dispute Resolution Officer, who will render a decision based on paper evidence only. Never ignore a notice to end tenancy.

- Also under s. 55.4, monetary orders for rent in arrears may be granted without an oral hearing when the tenant's time to dispute the notice has passed.

Early Resolution

- The Residential Tenancy Branch may provide forms of dispute resolution other than hearings, for example early resolution by RTB staff. Tenants should request that the Information Officer phone the landlord when the situation is an obvious one (e.g. a landlord cannot lock out a tenant). The Information Officer will not take on the role of a Dispute Resolution Officer and will only address situations where the law is very clear.

Administrative Penalties

- Administrative penalties have been strengthened (RTA, s. 94.1); penalties of up to $5,000 per day may be imposed for contravening the Act, the Regulation, or an order. Note however that administrative penalties have yet to be awarded in any case and according to the residential tenancy branch guidelines, such penalties are to be used only in response to "serious, repeated non-compliance".

Timelines

- The rules of procedure for dispute resolution are changed occasionally. It is important to be aware of timelines. For example, documents to be used at a hearing must now be served to the Dispute Resolution Officer five days before the dispute resolution proceeding. This is strictly enforced and the RTB will not forward late documents to the Dispute Resolution Officer.

Illegal Fees

- A landlord cannot ask a tenant to pay an application fee. If a landlord does this as a business practice, the tenant should report this to the director of the RTB, who can launch an investigation. A successful investigation could result in administrative penalties of up to $5000 per day being imposed on the landlord.

Security Deposits

- Landlords can charge security deposits for pets (no more than ½ the monthly rent), and can charge fees for replacing keys, garage door openers, access cards and other related items, but the fee charged cannot be more than the actual cost of the item.

- Move-in and move-out inspection reports must be completed by all landlords and tenants. It is extremely important that tenants take part in inspections for their own protection. It is very useful to take dated photo graphs.

Rent

- A tenant may withhold the last month's rent if the tenant has been given a notice to end tenancy for landlord's use of property (e.g., major renovations, demolition, conversion to condos or co-ops), instead of paying the last month's rent and then waiting for the landlord to repay the required one month's compensation

- If a landlord keeps a tenant's security deposit for longer than 15 days after the end of the tenancy and the tenant has moved out and given the landlord their forwarding address, the landlord can be ordered to pay the tenant double the amount of the security deposit.

- Rents may be increased only once per year and only by the amount permitted by the Residential Tenancy Regulation, s. 22. Unless the landlord applies for a greater increase under the Regulation, or the tenant agrees in writing to a greater rent increase.

- Tenants can no longer apply at the Residential Tenancy Branch for an extension of time to pay rent, except under very limited circumstances such as where the tenant withholds rent for the payment of repairs. Tenants should never withhold rent unless ordered to do so by a Dispute Resolution Officer or unless they have spoken to an Information Officer who is clear in authorizing the action (e.g. for emergency repairs). Always get the name of the Information Officer.

NOTE: Many of the forms referred to in this chapter are available at the Residential Tenancy Branch web site. Please refer to **Section XIX: Forms Available on the RTB Web Site** for a complete list of available forms or visit www.rto.gov.bc.ca to download them.

B. General

The primary sources of landlord-tenant law in British Columbia are the Residential Tenancy Act [RTA], and the Manufactured Home Park Tenancy Act, S.B.C. 2002, c.77 [MHTA].

Subject to any applicable limitation period and to RTA s. 60, a landlord or tenant may commence an action or claim in debt or for damages against the other party in respect of a right or obligation under the RTA or a tenancy agreement (s. 58). Common monetary claims brought to the Residential Tenancy Branch (RTB) for dispute resolution by tenants are for:

- the return of the security deposit;

- the refund of an illegal rent increase;

- compensation for losses due to breaches of the contract such as loss of quiet enjoyment or lack of repairs; and

- resolution of a dispute where the landlord seeks to illegally evict a tenant or has seized the tenant's possessions.

Landlords commonly bring claims for:

- unpaid rent owed by the tenant;

- financial loss due to a tenant moving without proper notice or over-holding at the end of a tenancy;

- the retention of a security deposit for property damage; and

- compensation for damage caused by a tenant.

Claims at the RTB can be up to $25,000 (recently increased from $10,000). If a claim is over that amount, the amount above the $25,000 figure must be waived in order to file at the RTB. A claim for more than $25,000 must be filed at the British Columbia Supreme Court. It should be noted that the $25,000 RTB limit may be increased again at some point; however, no increase has yet been determined or finalized.

NOTE: References throughout the RTA and this text will refer to the "court", but in most instances, applications will be heard at the RTB by way of dispute resolution. In practice, most applications result in the appointment of a Dispute Resolution Officer at the RTB pursuant to s. 61(1) of the RTA.

1. Governing Legislation, Regulations, Policy Guidelines, and Resources

a) Legislation and Regulations

Residential Tenancy Act, S.B.C. 2002, c.78 [RTA].
Web site: www.qp.gov.bc.ca/statreg/stat/R/02078_01.htm

- Table of Legislative changes that have been made to the RTA
  Web site: www.qp.gov.bc.ca/statreg/stat/tlc/edition1/tlc02078.htm

Residential Tenancy Regulation, B.C. Reg. 477/2003, [RTR].
Web site: www.qp.gov.bc.ca/statreg/reg/R/ResTenancy/477_2003.htm

- For the current status of the RTA and RTR, refer to CCH British Columbia Real Estate Law Guide, Robert J. Maguire, Rose H. McConnell, loose-leaf (Toronto, ON: CCH, undated).

Manufactured Home Park Tenancy Act, S.B.C. 2002, c.77 [MHTA].
Web site: www.qp.gov.bc.ca/statreg/stat/M/02077_01.htm

b) *Resources and Policy Guidelines*

Tenant Resource & Advisory Centre
Web site: www.tenants.bc.ca

- Provides a variety of publications relating to tenant law, including the Tenant Survival Guide, which is available in several languages.

Residential Tenancy Branch - Lower Mainland Location

400 - 5021 Kingsway Avenue
Burnaby, B.C. V5H 4A5

Information line: (604) 660-1020
Fax: (604) 660-2363

E-mail: HSRTO@gov.bc.ca
Web site: www.rto.gov.bc.ca

- The RTB web site contains forms, legislation and RTB interpretation guidelines, and includes the following useful publications:

  Residential Tenancy Branch Rules of Procedure
  Web site: www.rto.gov.bc.ca/content/legislationRules/default.aspx

  Residential Tenancy Fact Sheets
  Web site: www.rto.gov.bc.ca/content/publications/factSheets.aspx

  Residential Tenancy Act: A Guide for Landlords and Tenants in British Columbia, (B.C. Branch of Housing and Construction Standards, rev. June 2006).
  Web site: www.rto.gov.bc.ca/documents/RTAGuidebook.pdf

  RTB Policy Guidelines: detailed information on common problem areas; drafted by RTB Dispute Resolution Officers.
  Web site: www.rto.gov.bc.ca/content/publications/policy.aspx

B.C. Housing
Suite 601 - 4555 Kingsway Avenue
Burnaby, B.C. V5H 4V8

Toll-free: 1-800-257-7756

Web site: www.bchousing.org

- Information for tenants living in public, subsidized housing.

c) *Books*

Allan Wotherspoon, Annotated British Columbia Residential Tenancy Act, (Aurora, ON: Canada Law Book, 2005).

C. *Definitions*

The following are interpretations of the definitions that are set out in s. 1 of the RTA. For the exact wording of the definitions, refer to the Act itself.

1. Tenancy Agreement

An agreement, whether written or oral, express or implied, having a predetermined expiry date or not, between a landlord and tenant respecting possession of residential premises and occupation of a room or premises in a hotel. An agreement can be deemed to be in effect even before a tenant assumes occupancy.

2. Landlord

Includes a lessor, sublessor, owner, or other person permitting the occupation of residential premises, including his or her heirs, assignees, personal representatives and successors in title and a person, (other than a tenant occupying the premises) who is entitled to possession.

3. Tenant

Includes a hotel tenant, the estate of a deceased tenant, and where the context requires, a former or prospective tenant. Otherwise "tenant", "persons in possession", and "occupants" are not defined in the RTA. Presumably a tenant is a person entitled to exclusive possession, and while the definition of a tenant includes a hotel tenant, it does not include a common law licensee. See RTB Policy Guideline 9: Tenancy Agreement and Licenses to Occupy.

4. Residential Property

A building, or related group of buildings, in which one or more rental units or common areas are located, the parcel or parcels on which the building, related group of buildings or common areas are located, and any other structure located on the parcel or parcels.

5. Standard Terms

The standard terms of a tenancy agreement prescribed in the regulations.

6. Assisted and Supported Living Tenancies

Assisted and supported living tenancies are rental accommodation where hospitality or personal care services are provided by or through the landlord. These tenancies are not currently covered by the RTA. There are five mandatory services to be provided in Assisted Living. These hospitality services are: meal services, laundry services, social and recreational opportunities and a 24 hour emergency response system.

Personal care services include:

- regular assistance with the activities of daily living, including eating, mobility, dressing, grooming, bathing or personal hygiene, central storage of medication, distribution of medication, administering medication or monitoring the taking of medication;

- maintenance or management of cash resources or other property;

- monitoring of food intake or of adherence to therapeutic diets;

- structured behaviour management and intervention; and

- psychosocial rehabilitative therapy or intensive physical rehabilitative therapy.

In assisted living, the operators provide one but not more than two personal assistance areas and typically provide ADLs and medications.

Tenants and landlords entering into assisted/supported living arrangements need to sign tenancy agreements, and also need to sign separate service agreements specifying which services are included and on what terms. A service agreement should cover:

- the personal care and hospitality services provided to each occupant of the rental unit;
- the amount payable for these services and the date when it is due;
- the landlord's entry into the rental unit to provide services; and
- whether there is a requirement for other occupants and guests to pay for services that are not needed.
- Fees for these services should not be part of a lump-sum monthly bill, but should be outlined separately. A landlord will be permitted to increase the price of services if the tenant agrees, or on three months' notice.
- A landlord will not be permitted to withdraw or restrict services if they are essential, or material terms of the agreement.

II. RESIDENTIAL TENANCY ACT COVERAGE

A. *Premises and Persons Subject to the RTA*

1. Effective Date

The RTA applies to all residential tenancy agreements entered into or renewed after the date the RTA came into force (1984).

2. No Contracting Out

An agreement, or a term in an agreement, which purports to exclude the application of the RTA is of no effect. Where a term in an agreement conflicts with the RTA or the Regulation, the term is void. Essentially, neither landlords nor tenants can contract away rights legislated under the RTA.

3. Crown

Generally, the RTA applies to the Crown.

4. Infants

Tenancy agreements entered into by persons under the age of 19 are enforceable under s. 3 of the RTA.

5. Hotel Tenants and Landlords

Hotel tenants are fully covered by the RTA if the hotel is the tenants' primary residence. There are a few rules that apply only to hotel tenants and landlords, namely:

- s. 29(1)(c) permits entry into a hotel tenant's room without notice for the purposes of providing maid service, as long as it is at reasonable times;

- s. 59(6) which permits an individual occupying a room in a residential hotel to apply to a Dispute Resolution Officer, without notice to any other party, for an interim order stating that this Act applies to that living accommodation.

See Policy Guideline 9: Tenancy Agreements and Licences to Occupy.

6. Subsidized Housing

Persons living in publicly subsidized housing paying rent on a scale geared to their income are excluded from the rent increase provisions.

B. Excluded Premises and Agreements

1. Tenancies, Co-tenancies and Licenses to Occupy

The RTA sets out the rights and obligations of landlords and tenants. When a tenancy starts, there should be a tenancy agreement in place. A tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Each landlord must prepare a written tenancy agreement that complies with the RTA.

The RTA does not apply to living accommodation owned or operated by an educational institution and provided by that institution to its students or employees or living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of the accommodation.

The question may arise as to whether or not a person living in a rental unit is a tenant, a co-tenant, a tenant in common or an occupant. Residential Tenancy Policy Guidelines 9: Tenancy Agreements and Licenses to Occupy and Guideline 13: Rights and Responsibilities of Co-tenants may provide helpful guidance.

Traditionally, the test to distinguish a tenancy from a license is whether or not the occupant has exclusive possession of the premises, taking into account the facts of each case and the intention of the parties.

When a person is sharing a residence with the owner, factors indicating a license include:

- no separate kitchen and bathroom (s. 4);

- the absence of a written tenancy agreement;

- the provision of meals;

- laundering and cleaning services provided by the facility;

- no locks on the doors;
- no security deposit;
- lack of exclusive possession; or
- the facility is part of a special program and the housing is temporary in nature.

The determination of whether there is a tenancy depends on the circumstances of each case and can only be made by a Residential Tenancy Branch dispute resolution officer at a dispute resolution hearing.

Licensees' rights and obligations are governed by common law. A licensee can be asked to leave (i.e. be evicted) without specific reason, but the licensor must give reasonable notice (written or verbal). This can be as short as a few days. Over two weeks or a month is almost always reasonable.

A person who has had his or her personal property seized should consider taking the position that he or she is a tenant and apply to the Residential Tenancy Branch for dispute resolution seeking an order for return of personal property. If the dispute resolution officer finds that the RTA does not apply then the application will be dismissed. Seizing a licensee's personal property is not lawful unless the licensor already has a court order. A licensee not covered by the RTA may have a remedy under the common law, the Hotel Keeper Act, R.S.B.C 1996, c. 206, the Commercial Tenancy Act, R.S.B.C. 1996, c. 57 (under which "tenant" is defined as including "occupant"), or the bylaws authorized by these statutes.

If the licensee has been locked out or has had goods seized without notice, the remedy is to ask a community police officer for assistance or go to Small Claims Court for an order for return of goods and/or an order for monetary compensation. The Hotel Keeper Act provides that a hotel keeper has the right to distrain (i.e. the right to seize belongings without first getting a court order) the occupant's belongings for non-payment of rent. See also local health, safety, fire, and lodging house bylaws, which may afford some protection to the hotel keeper.

2. Non-Profit Housing Cooperatives

Residential premises where a non-profit housing cooperative is the "landlord" and a member is the "tenant" are excluded from the application of the RTA; instead, the co-op relationship is governed by the Cooperative Association Act , S.B.C. 1999, c. 28 (see RTA, s. 4(a), and *Burquitlam Cooperative Housing Assoc. v. Romund* (1976), 1 B.C.L.R. 229 (Co. Ct.)). Where the person paying rent is **not** a member of the cooperative, and the cooperative or a cooperative member is the landlord, those premises may be subject to the RTA if the arrangement appears to fit the definition of a tenancy, as opposed to a license.

NOTE: A tenant in possession of a strata title lot (i.e. a condominium), whose landlord is the owner of the title and a member of the strata, is subject to both the RTA and the Strata Property Act. This is a frequent source of problems for tenants. See RTB Policy Guideline 21: Repair Orders Respecting Strata Properties.

3. Twenty-Year Term

Section 4(i) of the RTA provides that the Act does not apply to a tenancy agreement for a term of over 20 years.

4. Holiday Premises

The RTA does not apply to summer cottages, winter chalets, or other similar recreational premises rented on a seasonal basis (s. 4(e)).

5. Manufactured Home Owners

The RTA does not apply to tenancy agreements to which the Manufactured Home Tenancy Act applies, i.e. owners of manufactured homes who rent the site on which their homes sit (RTA, s. 4(j)). If a person rents both a manufactured home and the pad it sits on, he or she is covered by the RTA.

6. Assisted and Supported Living Tenancies

Assisted and supported living tenancies are not covered by the Act. In addition to a tenancy agreement as required for regular tenancies, tenants must negotiate and sign a separate agreement specifying services, costs, and other terms.

7. Others Not Covered (RTA, s. 4)

- People living in accommodations owned or operated by educational institutions if the institution provides the accommodation to its students;
- people living in jail;
- people staying at emergency shelters and transitional housing; and
- people covered by the Community Care Facility Act, S.B.C. 2002, c. 75; the Continuing Care Act, S.B.C 1996, c. 70; the Hospital Act, R.S.B.C 1996, c. 200; or the Mental Health Act, R.S.B.C 1996, c. 288.

C. Discrimination Against Tenants

A landlord must not discriminate against a (prospective) tenant based on a lawful source of income, such as government income assistance. The remedy is a complaint under s. 21 of the B.C. Human Rights Code, R.S.B.C. 1996, c. 210 [HRC]. Section 10(1) of the HRC also prohibits a person from denying tenancy or from discriminating with respect to a term of the tenancy against a person or class of persons because of their race, sexual orientation, colour, ancestry, place of origin, religion, marital status, physical or mental disability, or sex. Poverty is a not a protected ground. Note also, that pets are not covered under discrimination rules. See **Chapter 19: Human Rights** for more information.

There are two exceptions:

1. Shared Accommodations

The law does not always apply when cooking, sleeping or bathroom facilities are shared.

2. Adults Only

A landlord cannot refuse to rent to one because one has children, unless the building or manufactured home park is reserved for people over 55 years old.

D. Application Fees

A potential landlord cannot ask a renter or potential renter for an application fee. If one has paid an application fee and the landlord will not give it back, one can apply for dispute resolution to have it returned. Applicants will need to know the landlord's proper name and address, and have proof that the fee was paid: see RTA, s. 15.

E. Foreign Students

Foreign students should consider how long they plan on studying before signing a lease. Students should not sign a lease that exceeds the time they plan to study. Signing a lease that extends beyond one's intended study period can put a tenant into breach, and may result in having to pay liquidated damages and/or any loss of rent incurred by the landlord.

Many foreign students have problems getting back their damage deposits, as some landlords take advantage of the fact the students will be returning overseas after their tenancy ends. As a result, students should make arrangements to appoint someone as their agent if they have to head overseas and have not yet received their damage deposits back from their ex-landlords. Contact the RTB to appoint an agent.

Some foreign students take furnished rooms by paying "take-over fees" to purchase the furniture and continue the rental agreement. The initial tenancy agreement may have been "taken over" by a dozen or more students in a row, leading to confusion about who is entitled to the damage deposit or who owns the furniture. Recommend that students avoid these informal arrangements.

III. TENANCY AGREEMENTS

A. Protecting the Tenant

A third party should accompany a potential tenant during a rental unit showing, so there is a witness as to the landlord's representations made during the showing. **Important: Get the landlord's promises in writing** if possible, though keep in mind that the landlord is under no obligation to provide written promises.

Be sure to complete the condition inspection, with a focus on verifying that the plumbing, electrical and appliances work; mold, and water marks are identified; and all telephone, cable and internet connections are present and functional. Ask for a copy of the report. The landlord must provide it within 15 days. Negotiate fees for cable and internet before renting.

B. General

The "leasehold" or tenancy interest is an estate (a bundle of property rights) of limited duration, which is created and acquired by the "tenant" when a person capable of granting that interest does so. Such a person (usually called the owner or landlord) conveys to the tenant the right of "exclusive possession". The interest that the landlord retains is called the "reversion", and full possession reverts back to the landlord on the termination of the tenancy.

The landlord can sell his or her reversion to someone else, who becomes the new landlord and property owner. The tenancy follows the property, not the initial owner, so a tenancy agreement is still binding on a new owner, who is responsible to repay the initial security deposit when the tenancy ends (RTA, s. 93).

1. Two Methods of Creating a Tenancy Relationship

a) By Formal Contract

A tenancy interest is granted by a contract known as a tenancy agreement or lease. Often the parties will enter into an express agreement (see **Section III.C: Contractual Nature of the Tenancy Agreement**). The executed tenancy agreement governing the tenant's possession may be written, or oral, or both (see the s.1 definition of "tenancy agreement"). To be enforceable, the elements of a complete contract (offer, acceptance, and consideration) must be present (see **Chapter 9: Consumer Protection**).

b) By Implied Contract

Every tenancy agreement entered into on or after January 1, 2004 must be prepared in writing by the landlord (RTA, s. 12(1)).

Notwithstanding this obligation to prepare the agreement in writing, where a tenant is already in possession of the unit, or where rent has been paid, the law may imply the existence of a valid tenancy agreement (see **Section III.C.2: Terms, Covenants, and Conditions**). This type of rental agreement is quite common because many tenancies are entered into on the basis of an application form, or verbal consensus, without the existence of any written contract. A "tenancy agreement" may be found to exist, notwithstanding the fact that:

i) there is no written tenancy agreement;

ii) a previously existing agreement has expired or terminated; or

iii) there was no previous agreement of any kind.

If the person in possession pays rent or a deposit and the landlord accepts the payment with the intention of creating a tenancy, an agreement is created.

2. Where Other than a Tenancy is Created

An agreement or circumstances may create something other than a tenancy. A person may be a tenant at will, a tenant on sufferance, a licensee, or a mere occupant.

For residential tenancies, the termination provisions of the RTA probably operate to abolish by implication the tenancy at will and tenancy on sufferance. For information on licensees see Policy Guideline 9: Tenancy Agreements and Licenses Terms.

An occupant or person in possession who is not a tenant has no agreement with the landlord concerning that possession or occupation. In the case of a licensee or occupant living in a home by permission of a main tenant (when the landlord/owner lives off-site), the main tenant is responsible for all obligations, including paying rent (and utilities if required). If the licensee or occupant is in the landlord's own home, the landlord must pursue remedies against the licensee or occupant in Small Claims Court.

3. Formal Requirements

a) *Essential Elements of the Agreement*

A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004 (RTA, s. 13(1)). A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all the requirements in s. 13(2). These requirements are available at either the UBC Law Library, in the LSLAP resource files, or on the RTB web site (see contact information in **Section I.B.1.b: Resources and Policy Guidelines**, above).

Where these elements are absent, vague, or unclear, the agreement may be void (as a result, no interest would be created). However, if the tenant is in possession and has paid money (i.e. rent) then there **is** a tenancy agreement. If a tenancy has been created (i.e. the tenant has possession and is paying rent), any vague terms of the tenancy agreement can be framed in favour of the tenant using the principle of *contra proferentem* (i.e. the agreement will be strictly construed against the party seeking to rely on the contract), and perhaps even principles of statutory interpretation. The law seeks to recognize and validate the relationship where possible – even where the requirement to have a written tenancy agreement has not been complied with.

b) *Valid Lease for Over Three Years*

To be valid, a lease for a term of over three years must be in writing and signed by both parties.

Under the Statute of Frauds, R.S.B.C. 1989, c. 56, a lease for a period exceeding three years will be void, and the interest purported to be created will not pass, unless the lease is in writing and signed by the person conveying the interest. If the lessee has carried out substantial repairs or is otherwise subject to the doctrine of partial performance, the lease may be saved. Notwithstanding that the lease fails, so long as rent is paid and accepted, a periodic yearly tenancy is created.

c) *Registration of Lease Over Three Years*

Under ss. 1, 23, and 29 of the Land Title Act, R.S.B.C. 1996, c. 250 an unregistered lease for a period exceeding three years is only enforceable as between the parties to the agreement. For a **purchaser** of the reversion (property) to be bound by the lease, it must be registered, or he or she **must have notice** of it prior to the completion and execution of the purchase documents. These requirements must be met or the lessee's interest fails. A lease or tenancy agreement for a period not exceeding three years need not be registered for the assignee to be bound. If the purchaser/assignee acquires title subject to a lease of which he or she had no notice, he or she may sue the vendor. Also, s. 5(2) of the Property Law Act, R.S.B.C. 1996, c. 377 requires the landlord to deliver a registerable lease (if more than three years duration) unless the contrary is agreed to in the lease.

4. Agreements for Lease (Also Known as Agreements to Lease, or Agreements for Tenancy)

"Agreements for tenancy" are executory contracts in which the lessor promises that he or she and the lessee will enter into a written tenancy agreement at a later date. For an executory contract to have effect, generally the agreement must be in writing and must

contain the essential elements of a lease. While the law states that the agreement must be in writing, this requirement is not always enforced. Consequently oral agreements may be considered valid. In addition, the payment of money may point to the fact that a contract has been entered into. It should be noted that because this is simply an agreement to agree, the RTA does not yet apply. At this point, any money paid is as a processing fee, holding deposit, or administration fee.

If the money paid is part payment of rent or part payment of the security deposit (as distinct from a processing fee, holding deposit or administration fee), it is important to clearly identify that on the receipt at the time of payment (see definition of a security deposit). Until the tenant comes into possession, he or she has only a contractual interest, which applies only to "tenancy agreements". Thus, failure to give the tenant possession is a breach of contract and **not** a violation of a property interest or breach of a tenancy covenant. When the tenant acquires possession, the agreement for lease is treated as a lease agreement, and the court may order the lessor to execute a lease (specific performance): see *Horse and Carriage Inn Ltd. v. Baron*, [1975] 53 D.L.R. (3d) 426 (B.C.S.C.). Recording the initial exchange of money as "rent" or as "security deposit" is important to create a basic tenancy agreement in situations where there is only an "agreement to agree" in place, and where the tenant is not yet in possession of the premises.

C. Contractual Nature of the Tenancy Agreement

1. Freedom of Contract and the Agreement

Throughout the establishment and duration of the agreement, the parties are generally free to add and alter the terms, covenants and conditions as they see fit – subject to restrictions imposed by common law and statute (e.g. prohibition of contracts for an illegal purpose, **unconscionable terms**, or contracts in restraint of trade). The changes in the tenancy agreement must be in writing, and be signed and dated by both parties. Some requirements, like hot water and locks on doors, are automatically included in every tenancy agreement even if the tenancy agreement does not specifically mention them. A unilaterally altered or newly included term may be unenforceable where there is no consideration for it.

a) Collateral Contract

The parties may enter into additional or subsequent oral or written contracts, separate from the tenancy agreement, that involve a change in the way the terms of the tenancy agreement are carried out (e.g. agreement by the tenant to do repairs in return for paying a reduced amount of rent). The terms of the tenancy agreement still exist; they must be performed as stipulated when the collateral contract is fully performed or is otherwise terminated (e.g. one party dies or goes away). If a Dispute Resolution Officer determines the terms are reasonable and not unconscionable, as defined within s.3 of the Residential Tenancy Regulation, the purchaser of the reversion will be bound by the former owner's collateral contract. Remedy for the new landlord would be found in an action against the seller. Generally speaking, collateral contracts are hard to prove. If something is important, it should be recorded in writing.

2. Terms, Covenants, and Conditions

a) Covenants and Conditions

A covenant in a tenancy agreement consists of a promise by a person that a certain thing shall or shall not be done (the RTA eliminates the word "covenant" and uses the more modern word "term"). A "Material Term", as used in the RTA, is a term

going to the root of the relationship and the tenancy agreement. Landlords and tenants may agree to any term they wish, as long as it is not unconscionable or contrary to the Act. Terms contrary to the Act may not be identified in some cases until dispute resolution, and a tenant is free to argue that a term violates the RTA and should therefore be void. The Dispute Resolution Officer will take this into consideration when determining reasonableness. For more information, see RTB Policy Guidelines 8: Unconscionable and Material Terms.

A condition creates an obligation that arises in the event a certain thing does or does not happen. "Conditions precedent" are conditions that must be performed or satisfied before other obligations arise. "Conditions subsequent" cause existing obligations to cease when the conditions subsequent occur or are satisfied.

b) Express, Implied and Statutory Terms

Valid **express** terms or conditions override any **implied** terms or "usual terms" that might otherwise apply at common law. For residential tenancies, the RTA deems some express terms to be unenforceable (see **Section III.C.d: Reasonable Terms** below). The Act also establishes statutory terms, deemed to be terms in every agreement, that override any express or implied term to the contrary. For tenancies not governed by the RTA, a court will find implied obligations and "insert" the usual terms, where the parties have failed to expressly agree to certain matters.

c) Express Terms and Obligations

Parties may write their own tenancy agreement with their own terms, or may use a standard form tenancy agreement to which they can add their own extra terms. Parties may also adopt a lease in conformity with the Land Transfer Form Act, R.S.B.C. 1996, c. 252, p. 2.

The RTA requires that all tenancy agreements include standard terms outlining key statutory rights and responsibilities of the tenant and landlord (see RTA s.12, and the Schedule to the Regulation). The standard terms cover repairs, payment of rent, rent increases, security deposits, assignment or sub-let, occupants and invited guests, entry of the residential premises by the landlord, locks, ending the tenancy, and the application of the RTA. To assist landlords and tenants, the Ministry created a sample Residential Tenancy Agreement, available online at www.rto.gov.bc.ca/documents/RTB-1.pdf. This sample Residential Tenancy Agreement incorporates suggestions put forward by landlord and tenant stakeholders, and includes the prescribed terms found in the Schedule of the Regulation.

For residential tenancies, the following express terms are **void** and **unenforceable**:

- a term purporting to hold that the RTA does not apply to the agreement (s. 5(1));
- that the rent remaining for the term of the agreement becomes due and payable if a tenant fails to comply with a term of the tenancy agreement (s. 22) (i.e. "accelerated rent terms" are not permitted); or
- that the landlord can seize the tenant's personal property for rent owing (s. 80(2));

Some included requirements of the Act state that the tenant:

- shall provide and maintain premises in a certain state of decoration and repair;
- shall not assign or sublet without the landlord's written consent, where the agreement is for a period of six months or more; and
- shall not pay more than one-half of one month's rent as a security deposit / pet damage deposit.

Similarly, terms in a short form lease that are inconsistent with the RTA are unenforceable. The parties may, however, enter into a separate collateral agreement under which a clause requiring the tenant to perform repairs is binding on the tenant, so long as there is separate consideration.

d) Reasonable Terms

Changes in the RTA allow more ability to agree to any term landlords and tenants wish, than the repealed Act did.

However, a term of tenancy is **unenforceable** if (RTA, s. 6):

a) the term is inconsistent with this Act or the regulations;

b) the term is unconscionable; or

NOTE: The RTR defines "unconscionable" for the purposes of s. 6(3)(b) of the Act as follows: a term of a tenancy agreement is "unconscionable if the term is oppressive or grossly unfair to one party".

c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

See Policy Guideline 8: Unconscionable and Material Terms.

e) Pets

In B.C. there is no law that allows tenants to have a pet. RTA s. 18 allows a tenancy agreement to include terms that prohibit pets, or restrict the size, kind or number of pets a tenant may keep on the residential property. In order to keep a pet one needs to have a term in one's tenancy agreement that allows pets. If a tenancy agreement doesn't allow pets and a tenant gets one anyway, the landlord can tell the tenant to remove it. If the tenant refuses, the landlord may be able to give an effective eviction notice. RTA s. 18 is subject to the rights and restrictions under the Guide Animal Act R.S.B.C. 1996, c 177, s. 4, which states that landlords must not deny tenancy or impose discriminatory terms on a person with a disability who intends to keep a guide animal in the rental unit.

(1) New Pet: Where Permitted

The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day where the landlord permits the tenant to keep a pet after the start of a tenancy (RTA, s. 23(2)). Failure of the tenant or landlord to participate in the inspection may extinguish the right of the

failing party to the rights relating to the pet deposit (s. 24(1)). The landlord can request a pet damage deposit not greater than ½ of a month's rent.

f) Prescribing Terms

Cabinet may prescribe terms and conditions that shall or shall not be included in every written tenancy agreement, or an application for an agreement, and may prescribe different terms for different classes of tenancy agreements. As discussed above, the RTA sets out in its schedule those terms that must be included in every tenancy agreement.

g) Implied Obligations and Usual Terms

(1) Landlord's Obligations

A landlord must ensure that:

- the tenant is given vacant possession on the starting date of the tenancy;
- the tenant has quiet enjoyment;
- the premises are reasonably fit for occupation; and
- the premises are maintained in a state of decoration and repair that complies with housing health and safety standards.

(2) Tenant's Obligations

A tenant must ensure that:

- he or she pays the rent or other fees on time and conducts him or herself in a manner consistent with protecting the landlord's rights and interests;
- he or she does not commit voluntary and permissive waste, keeping the premises in the condition they were in when acquired, reasonable wear and tear excepted;
- he or she delivers up the premises in a reasonably clean condition and in a reasonable state of repair, reasonable wear and tear excepted; and
- he or she gives reasonable notice when terminating the agreement. In practice, this usually means the tenant must give one full month's notice in writing (see **Section IX.B.1: Form and Basic Requirements**).

(3) Court-Implied Terms

The usual terms that a court may insert in a lease, where express provision is lacking and statutory terms do not apply, include a tenant's undertaking:

- to pay rent;

- to pay taxes and utilities not payable by the landlord;
- to allow the landlord to enter and view the state of repair; and
- to keep and deliver up the premises in good repair.

The landlord covenants that the tenant shall have quiet enjoyment and a lease in registrable form where the term exceeds three years.

h) Statutory Terms in the RTA: Duties and Prohibitions

For residential tenancies subject to the RTA, the common law implied obligations apply, unless their subject matter is superseded by one of the RTA's obligations.

i) Rent Increases for Additional Occupants

A rental increase for a new occupant can only be imposed if the contract specifically allows. Disputes most often arise upon the birth of a baby, so renters should consider whether they might have children before signing a contract with a new occupant increase clause.

IV. MOVING IN

A. Condition Inspection: Move In

The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day (RTA, s. 23 (1)). Both the landlord and the tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report. The RTA requires that certain standard information be included on a condition inspection report. Generally the landlord should use RTB official forms, which contain all of the information required by law. Landlords can use their own forms so long as the forms used contain all the information required in s. 20. Landlords must give tenants a copy of the signed condition inspection report promptly and in any event within seven days after the condition inspection is completed.

NOTE: Section 23, condition inspection report: start of tenancy, and s. 24: consequences if report requirements are not met, of the RTA do not apply to a landlord or tenant in respect of a tenancy that started before January 1, 2004.

1. Landlord

The landlord must make the inspection and complete and sign the report even if the tenant refuses to participate. The right of a landlord to claim against a security deposit or pet deposit for damage to residential property is extinguished if the landlord does any of the following acts or omissions contained in RTA ss. 23 and 24(2):

- fails to offer the tenant at least two opportunities for the inspection;
- does not participate in the inspection; or
- does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

2. Tenant

The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the landlord has complied with s. 23(3), given two opportunities for inspection, and the tenant has not participated on either occasion.

B. Re-keying Locks for New Tenants

At the request of a tenant at the start of a new tenancy, the landlord must re-key the locks or other means of access given to the previous tenant, and pay all costs associated with the changes. If the landlord at the end of the previous tenancy altered the locking system, the landlord need not do so again (RTA, s. 25).

C. Duty to Provide a Copy of the Agreement

Section 13(3) of the RTA provides that within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

V. SECURITY DEPOSITS

A. General

A requirement that a tenant pay a security deposit is an express term of the model agreement. Security deposit is defined in s. 1 of the RTA very broadly. It can include money or property or almost any other item of value to be held by a landlord for the purpose of securing the performance of a tenant's obligations under the agreement and the Act (for example: the payment of rent and the obligation to leave the premises in the same condition they were received). A security deposit is a non-refundable fee or deposit which may cover a variety of costs to the landlord: see *Balfour v. Thomson*, Vancouver Registry F771652 (B.C. Co. Ct.). A security deposit does not include: a post dated cheque for rent, a pet damage deposit, or a fee prescribed under s. 97(2)(k).

See RTB Policy Guideline 29: Security Deposits.

A landlord can only request a security deposit or pet damage deposit from a tenant as a condition of entering into a tenancy agreement, not after the agreement has been formed. However, pursuant to s. 20, if a landlord permits a tenant to keep a pet on the residential property the landlord may require the tenant to pay a pet damage deposit in accordance with s. 19.

B. Requirements Under the RTA

1. Amount

A security deposit demanded or received must not exceed one half of the amount payable as monthly rent (RTA, s. 19(1)). Only one security deposit can be required for each premise (s. 20(b)). A landlord can also ask for an additional ½ month rent as a pet damage deposit (s. 19(2)). The tenant may, **with the landlord's permission**, set off all or part of a security deposit against the rent that is due from him or her (s. 21). Any excess security deposit paid (more than ½ of the amount payable as rent at the beginning of the tenancy) to the landlord may be set off by the tenant, presumably without the landlord's permission (s. 19(2)). Failure to pay a lawful security deposit is a ground for ending the tenancy (s. 47(1)(a)). The landlord may give a one-month end of tenancy notice if the tenant has failed to pay the required security deposit within 30 days.

2. Inspection Reports

The RTA requires landlords and tenants to do move-in and move-out condition inspection reports. A landlord or tenant who does not participate in the condition inspection process will lose their rights to the security deposit.

C. Refund of Security Deposit and Pet Damage Deposit

When a tenant moves out, he or she must provide his or her landlords with a forwarding address in writing. The security deposit must be returned to the tenant, **with interest**, within 15 days after the date at which the tenancy ends, or the date the landlord receives the tenant's forwarding address, which **must be in writing, whichever is later**.

If a landlord does not comply with s. 38(1) of the RTA (fails to return deposits within 15 days, and fails to file for dispute resolution) and the tenant still has a valid right to the deposit, (the tenant may apply for dispute resolution) the landlord may not make a claim against the security deposit or any pet damage deposit, **and must pay the tenant double the amount of the security deposit, pet damage deposit**, or both (s. 38(6)).

Interest on a security deposit is calculated from the date the tenant pays the deposit to the day before the security deposit is paid back to the tenant. If the deposit is disputed at dispute resolution, the interest is calculated from the date the tenant paid the deposit up until the date the Dispute Resolution Officer orders its return (usually the date of the hearing).

Interest on a security deposit is calculated as follows. For each one-year period beginning on January 1, the rate will be 4.5% below the prime lending rate of the principal banker to the province on January 1st of that year, compounded annually. The current and past rates are:

- Jan 1 /2009- Dec 31 /2009- 0.00% compounded annually
- Jan 1 /2008- Dec 31 / 2008- 1.50% compounded annually
- Jan 1/2007- Dec 31/2007- 0.50% compounded annually
- Jan 1/2006 - Dec 31/2006 - 0.50% compounded annually
- Jan 1/2005 - Dec 31/2005- 0.00% compounded annually
- Jan 1/2004 - Dec 31/2004 - 0.00% compounded annually
- Jan 1/2003 - Dec 31/2003 - 0.00% compounded annually
- Jan 1/2002 - Dec 31/2002 - 0.00% compounded annually
- Jan 1/2001 - Dec 31/2001 - 3.00% compounded annually
- Jan 1/2000 - Dec 31/2000 - 2.00% compounded annually
- Jan 1/99 - Dec 31/99 - 2.25% compounded annually
- Jan 1/98 - Dec 31/98 - 1.50% compounded annually
- Jan 1/97 - Dec 31/97 - 0.25% compounded annually
- Jan 1/96 - Dec 31/96 - 3.0% compounded annually
- Jan 1/95 - Dec 31/95 - 3.5% compounded annually
- Jan 1/94 - Dec 31/94 - 1.00% compounded annually
- Jan 1/93 - Dec 31/93 - 2.75% compounded annually
- Jan 1/92 - Dec 31/92 - 3.5% compounded annually
- Jan 1/91 - Dec 31/91 - 8.25% compounded annually
- Jan 1/90 - Dec 31/90 - 9.0% compounded annually
- Jan 1/89 - Dec 31/89 - 7.75% compounded annually
- Jan 1/88 - Dec 31/88 - 5.25 % compounded annually
- Feb 1/87 - Dec 31/87 - 5.25% compounded the last day of that period
- July 1/84 - Jan 31/87 - 8.0% per annum
- April 1/83 - June 30/84 - 8.0% compounded annually

- June 1/80 – March 31/83 - 12.0% compounded annually
- Dec 1/74 – May 31/80 – 8.0% compounded annually

NOTE: A tenant has only one year from the time the tenancy ends to supply the landlord with his or her forwarding address. If the tenant fails to forward the address within the one year limit the landlord may retain the security or pet deposit or both.

The RTB web site has a program that can be downloaded that calculates the interest payable on a security deposit during any specific time period, which can be found at www.rto.gov.bc.ca/content/calculator/default.aspx.

NOTE: A landlord does not have to return a deposit within 15 days if the tenant's right to the return of the deposit (pet or security) has been extinguished for failing to participate in the condition inspection procedures.

NOTE: A pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

D. Extra Deposits and Non-Refundable Fees

The RTA allows landlords to charge a deposit for additional access devices (a device so long as it is not a tenant's only means of entry to one's building).

Administration fees for returned cheques ($25) or moving between rental units on a single property can only be charged if the tenancy agreement specifically allows (RTR, s. 7(1)(d)).

1. Allowable Non-Refundable Fees

- Direct costs of replacement keys;
- Direct costs of any additional keys that a tenant requests;
- Service fees charged by banks for NSF cheques (max. $25); and
- Parking fees.

VI. REPAIR AND SERVICE

A. Duty to Provide and Maintain Premises in Repair

1. Landlord

Sections 32(1)(a) and (b) of the RTA provide that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenants. With respect to a landlord's obligation to repair, the RTR Schedule states that the landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant.

A landlord is responsible for repairing:

- the rental structure, and roof;

- heating, plumbing, electricity;
- locks, walls, floors, ceilings;
- fire doors, and fire escapes;
- intercoms, elevators; and
- anything else included in a tenant's rent.

If a landlord is required to make a repair to comply with the above obligations, the tenant should be advised to notify the landlord of the need for repair (preferably in writing). If the landlord refuses to make the repair, the tenant may seek a Dispute Resolution Officer's order. If the tenant fails to notify the landlord and substantial damage results from the lack of repair, the tenant may have breached his or her duty.

2. Tenant

Tenants must maintain "ordinary health, cleanliness and sanitary standards" in their premises. Tenants must also repair damage caused to the premises and property (this includes common areas) by their or their pet's wilful or negligent acts or omissions, or those of a person permitted by him or her on the premises or property (RTA, s. 32(3)). **There is no duty to repair reasonable wear and tear** (s. 32(4)).

B. Withholding Rent

A tenant cannot withhold rent because of repairs needed unless a Dispute Resolution Officer gives an order permitting it. Another way to seek repairs can be through the local municipality's Standards of Maintenance bylaw however this is only the case in Vancouver and possibly in North Vancouver. Tenants should check with the municipality to see if there is a Standard of Maintenance bylaw in place. A tenant can call a local municipality and ask for a free inspection if the repair problem relates to structural defects (requiring a building inspector), health problem (e.g. mould or pests), or fire problem (e.g. fire inspection for fire exits, smoke alarms). The inspection will result in a report and/or order for the inspection and may require the landlord to conduct repairs. The inspection report can also be important evidence to present at an RTB dispute resolution when seeking a Repair Order or an Order for reduction in rent.

NOTE: A tenant who suspects his or her suite is illegal should not call a City Inspector.

"Premises" are restrictively defined as a dwelling unit, with the exception of land rented as space for a mobile home. See RTB Interpretation Policy Guideline 1: Landlord and Tenant – Responsibility for Residential Premises.

C. Emergency Repairs

Before advising any tenant on this course of action, an advocate should be aware that this is a rather complicated area. To qualify, the repairs must fall into the categories below, and must be urgent and necessary for the health and safety of persons or the preservation and use of the property and premises. Pursuant to s. 33, a tenant may conduct emergency repairs without going to dispute resolution if the landlord fails to make repairs within a reasonable time after a tenant has made a reasonable effort on two or more occasions to contact the landlord. The specific types of repairs that may qualify as emergency repairs are:

- major leaks in the pipes or roof;

- damaged or blocked water or sewer pipes or plumbing fixtures;
- malfunction of the central or primary heating system;
- defective locks that give access to the residential premises; and
- repairing of electrical systems.

Other prescribed circumstances have not yet been proclaimed.

Emergency repair is a complicated area. Tenants must follow the exact procedure under s. 33(3) of the RTA or the landlord can make a claim against the tenant. All steps taken should be documented fully. Emergency repairs usually constitute a large repair bill and should only be undertaken by the tenant in the clearest of circumstances. When in doubt, apply first to a Dispute Resolution Officer for a Repair Order, refer to a Property Use Inspector, or investigate local Standards of Maintenance bylaws.

D. Terminating or Restricting Services or Facilities

A service or facility, as defined in s. 1 of the RTA, includes: furniture, appliances and furnishings; parking and related facilities; cable television facilities; utilities and related services; cleaning or maintenance services; maid services; laundry facilities; storage facilities; elevator facilities; common recreational facilities; intercom systems; garbage facilities and related services; and heating facilities or services.

Sections 27(1)(a) and (b) of the RTA provides that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation, or providing the service or facility is a material term of the tenancy agreement.

Section 27(2) of the RTA provides that a landlord may terminate or restrict a service or facility other than one referred to in ss. 27(1)(a)(b) if the landlord gives 30 days written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. The tenant may dispute the restriction or termination on the basis that the service being restricted or terminated constitutes an essential service.

See RTB Policy Guideline 22: Termination or Restriction of a Service or Facility.

VII. RENT INCREASES

A. Rent Increases and Notice

Landlords can raise rents by a set amount each year and can apply for dispute resolution for rent increases above that amount (RTA, s. 43(1)). A tenant may also agree to pay a greater increase than the percentage permitted; this agreement must be in writing. If the tenant does not agree then the landlord is required to go through the dispute resolution process. The percentage for allowable rent increases is the inflation rate (Consumer Price Index, or "CPI") plus 2 percent. **For any rent increase given in 2008 or 2009, the allowable amount is the inflation rate plus 2% = 3.7%**. Check the RTB website, under the September heading in the "News" section, to find the maximum rent increase allowed in a given year. The increase can occur every twelve months of the tenancy with the time period running from the date of the last rent increase for that tenant or the date the rental agreement was entered into (s. 42(1)). A tenant may not apply for dispute resolution to dispute a rent increase that complies with s. 43(1) (permitted increase or a Dispute Resolution Officer order increase). If a landlord collects a rent increase that does not comply with the RTA, the tenant may deduct the

increase from the rent. The tenant should communicate the reason for the deduction to the landlord before taking this form of action.

The landlord must give written notice of a rent increase at least three full months before the increase becomes effective (s. 42(2)). If the notice of rent increase is not in writing in the prescribed form, it is invalid and of no effect. If the landlord gives notice of less than three months, or if the increase is to take effect less than 12 months from when the tenant moved in, or from when the tenant's rent was last increased, the landlord does not have to issue a new notice because the original notice will self-correct and will take effect on the earliest lawful date, provided it is otherwise correct. The tenant should notify the landlord about any self-correcting dates.

A landlord may apply under s. 43(3) of the Act (additional rent increase) if one or more of the following conditions are met:

- after the rent increase allowed under s. 22, the rent is significantly lower compared to similar units;
- the landlord has completed significant repairs or renovations (s. 23(1)(b));
- the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property; or
- the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

Under 2006 amendments, the same formula (CPI plus 2 percent) will be used to calculate allowable rent increases on manufactured home park tenancies, effective immediately.

B. Hidden Rent Increases

The tenant can apply to a Dispute Resolution Officer under s. 27 of the RTA, if the landlord:

- starts to charge the tenant for a service or facility previously included in the rent (e.g. starts to charge for cable television or laundry that was previously free of charge); or
- takes away a service or facility previously enjoyed by a tenant (e.g. stops providing cable television or laundry that was previously included in the rent).

If the Dispute Resolution Officer considers that the failure or reduction has resulted in a substantial reduction of the use and enjoyment of residential premises or of the service or facility, the Dispute Resolution Officer can provide relief including: allowing the tenant to pay less rent, or ordering the service or facility restored.

See also RTB Policy Guideline 22: Termination or Restriction of a Service or Facility.

VIII. RIGHT OF ENTRY AND DUTY TO ENSURE QUIET ENJOYMENT AND PRIVACY

A. Right of Entry

Section 29 of the RTA provides that a landlord may not enter a premise except where:

- an emergency exists and the entry is necessary to protect life or property;

- the tenant consents at the time of entry;
- the tenant gives either written or verbal consent to enter for a specific purpose one month or less prior to entry;
- where the occupation is by a hotel tenant, the entry is for the purpose of providing maid service at reasonable times;
- the tenant abandons the premises;
- the landlord gives written notice of entry for a specified "reasonable purpose" between 30 days and at least 24 hours before the time of entry (s. 29(1)(b)). The landlord must arrange a specific time between 8 a.m. and 9 p.m. to enter, unless otherwise agreed by the tenant;
- the landlord has a Dispute Resolution Officer's order authorizing the entry; or
- the landlord is conducting a monthly inspection for illegal activity, and has given written notice under s. 29(1)(b).

B. Quiet Enjoyment

Section 28 of the RTA provides protection of tenant's right to quiet enjoyment. A tenant's right includes but is not limited to:

1. reasonable privacy;
2. freedom from unreasonable disturbance;
3. exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with s. 29 (landlord's right to enter rental unit restricted); and
4. use of common area for reasonable and lawful purposes, free from significant interference.

Dispute Resolution Officers may not be particularly generous in assessing noise complaints.

C. Duty to Provide Access

Under RTA ss. 30(1) and (2), but subject to s. 31, a landlord is not allowed to change the locks to the premises or property without first getting the permission of the tenant and giving him or her a new key. The landlord cannot change the locks or alter the means of access to the premises without the permission of the tenant.

On the request of a tenant at the beginning of a new tenancy agreement, the landlord must re-key the rented or leased premises: see **Section IV: Moving In**.

1. Tenant: Changing the Locks

If the landlord changes the locks without providing notice to the tenant, in contravention of s. 31 of the RTA, the court may grant an order authorizing the tenant to change the locks. Also, if a tenant applies for dispute resolution, the court can grant permission to allow the tenant to change the locks, and give the tenant the right to withhold a copy of a key from the landlord if the court is satisfied that the landlord may contravene s. 31.

NOTE: Changing a lock without an order can be grounds for eviction: see RTA s. 31(2).

D. Cash Payment Rules

Section 26(1) provides that a landlord must provide a tenant with a receipt for rent paid in cash. If a tenant makes a cash payment and receives no receipt, the tenant should send a letter to the landlord confirming the payment, or pay with a witness present.

E. Personal Property: Non-Payment of Rent

Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not seize any personal property of the tenant, or prevent or interfere with the tenant's access to the tenant's personal property (RTA, s. 26(3)). The only exceptions are if the landlord has a court order authorizing the action, or if the tenant has abandoned the rental unit and the landlord complies with the regulations: see RTA ss. (4)(a) and (b).

IX. END OF TENANCY AGREEMENT (TERMINATION/EVICTION)

A. Types: End of Tenancy Agreements

Section 44 of the RTA lists the situations where a tenancy can end. Generally, a residential tenancy agreement continues, unless the tenant or landlord takes the appropriate steps to end it.

B. Tenant Gives Notice (RTA, s. 45)

A tenant can end the tenancy by giving notice. (See the required form of notice below, **Section IX.B.1: Form and Basic Requirements**)

- Where there is a periodic tenancy, notice will be effective in terminating the tenancy no earlier than **one month** after it is received by the landlord. Additionally, it must take effect on the day before the day of the month (or other period on which the tenancy is based) that rent is payable under the tenancy agreement. E.g. If rent is normally payable on the first of the month, notice to end the tenancy given on January 1st will be effective in terminating the tenancy agreement no earlier than February 28th; notice given on May 31st would be effective to end the tenancy on June 30th.

- Where there is a fixed term tenancy, notice will be effective no earlier than **one month** after it is received by the landlord. Additionally, it must be no earlier than the date specified in the tenancy agreement as the end date of the tenancy, and must be the day before the day in the month (or in the other period on which the tenancy is based) that rent is payable under the agreement.

- If a landlord breaches a material term, the tenant must first give written warning that a term has been breached and that they intend to end the tenancy agreement. The notice becomes effective to end the tenancy agreement if, after a **reasonable time**, the landlord has not corrected the situation.

1. Non-Payment of Rent (RTA, s. 46)

A landlord may give notice to end a tenancy if rent is unpaid on any day after the day it is due. If the tenant pays the overdue rent within five days after receiving a notice under s. 46 the notice has no effect.

Until recently, if the tenant did not respond, the landlord was required to attend a residential tenancy board hearing to obtain an order of possession to evict the tenant. Now however

the landlord can give notice to end tenancy for non-payment of rent and after 10 days have passed go to the residential tenancy board and get an order of possession without a hearing.

2. There Has Been Cause (RTA, s. 47)

A variety of circumstances can qualify as cause to end a tenancy:

- the conduct of the tenant or invitee is unreasonably disturbing the quiet enjoyment of the other occupants in the property;
- the tenant or invitee causes extraordinary damage;
- the tenant's occupancy causes damage exceeding reasonable wear and tear and he or she has not taken steps to repair the damage;
- the tenant fails, within 30 days of entering the agreement, to give an agreed upon security deposit or pet deposit;
- the tenant knowingly misrepresents the premises to a future tenant or purchaser;
- the act or omission of a tenant or invitee seriously impairs the safety or other lawful right or interest of the landlord or other occupant in the property;
- there are an unreasonable number of occupants in a rental unit;
- the tenant is repeatedly late paying rent;
- a tenant fails to comply with a material term;
- a vacating of the premises is required under an order by a provincial, regional, or municipal government authority respecting health, safety, building, or fire prevention and zoning standards;
- the tenant purports to assign or sublet the residential premises without the consent of the landlord; or
- the tenant or a person permitted on the residential property by the tenant is engaged in certain specified illegal activity (see **Section IX.A.6: Illegal Activity**).

3. Landlord's Notice: End of Employment with the Landlord (RTA, s. 48)

A landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if the rental unit was provided to the tenant for the term of the caretaker's (tenant's) employment, the tenant's employment as a caretaker is ended, and the landlord intends in good faith to rent or provide the rental unit to a new caretaker, or manager.

4. Landlord's Use of Property (RTA, s.49)

Notice to end tenancy may be given by the landlord where:

- the landlord sells the property and the purchaser asks the landlord, in writing, to give the tenant notice because he or she intends to occupy the property (RTA, s. 49(5)(c)) (i.e. the purchaser intends to move in);
- the landlord or a member of his or her immediate family intends to occupy the property (s. 49(3)); or
- the landlord has all the necessary permits and approvals required by law, and intends to demolish the property, convert it into a strata lot or co-op, enter into a lease greater than 20 years, convert it into non-residential property or a caretaker's premises for more than six months, or intends to renovate the property (s. 49(6)).

A landlord who gives notice to end a tenancy under s. 49 must pay the tenant, on or before the effective date of the notice an amount that is equivalent to one month's rent as compensation (s. 51(1)).

NOTE: Immediate family includes spouse, child or parent only.

NOTE: If the landlord does not take steps within a reasonable time to use the property for the reason stated on the eviction notice, the landlord must pay the tenant double the monthly rent payable under the tenancy agreement (s. 51(2)). The landlord's use (for an immediate family member, etc.) must be for at least six months after the effective date of the notice, to prevent landlords from simply moving a relative in for a month.

5. Illegal Activity

A landlord can give an eviction notice to a tenant for illegal activity. The standard of proof for ending a tenancy under this heading is based on a balance of probabilities. Under RTA, s. 47(1)(e), and MHTA, s. 40 (1)(d), the illegal activity must be of a sufficient nature to:

- cause or be likely to cause damage to the landlord's property;
- adversely affect or be likely to adversely affect the quiet enjoyment, security, or safety of another tenant of the residential property; or
- jeopardized or be likely to jeopardize a lawful right or interest of another occupant or the landlord.

NOTE: In these situations a landlord may also apply for a Dispute Resolution Officer's order to have the tenant evicted immediately if the tenant's conduct is serious enough to justify the end of tenancy with a full month's notice (RTA s.56).

See RTB Policy Guideline 32: Illegal Activities.

6. Landlord And Tenant Agree In Writing

According to s. 44(1)(c), the landlord and tenant can consent in writing to end a tenancy.

C. *Required Notice*

1. Form and Basic Requirements

For a notice to end a residential tenancy to be effective, it must be in writing and must be signed and dated by the landlord or tenant giving notice, include the address of the rental unit, state the effective date of the notice, and state how to challenge the eviction (RTA, s. 52). A landlord must state the grounds for ending the tenancy; tenants giving notice are not required to provide any such grounds (RTA, s. 5(1) or (2)). An official form is available from the Residential Tenancy Branch. **A landlord must use RTB approved forms** (s. 52(e)) when giving notice to end a tenancy in order for it to be effective. A mailed notice is presumed to be received in five days, while a posted notice is received three days after being posted. Generally before a landlord issues a notice to end tenancy for cause, the landlord should give the tenant some written warnings in relation to the conduct at issue and a reasonable opportunity to adjust his or her conduct.

If a notice to end tenancy does not comply with the RTA requirements as set out in s. 52, a Dispute Resolution Officer may set aside a notice, amend a notice, or order that the tenancy end on a date other than the effective date shown. A notice to end tenancy can be amended if the Dispute Resolution Officer is satisfied that the person receiving the notice knew or should have known the information that was omitted from the notice, and in the circumstances it is reasonable to amend the notice (s. (68)(2)). Dates are self-corrective, so a notice is not void simply because a landlord proposes to have the tenancy end on a date sooner than the RTA allows. Tenants should never ignore a notice, even if they believe it is drafted incorrectly.

A simple way for a landlord to give notice is to use the Notice to End a Residential Tenancy form put out by the RTB. Tenants and landlords can agree to use the Mutual Notice to End Tenancy form, but tenants should add a provision barring the landlord from claiming damages.

2. Length of Notice and Limitation Periods

The Residential Tenancy Act sets out when a landlord may issue a notice to end tenancy and the length of the notice period. Time limits to apply to the Residential Tenancy for dispute resolution are also set out. Certain time limits may be extended in exceptional circumstances. See Residential Tenancy Policy Guideline 36: Extending a Time Period, which sets out information regarding the meaning of exceptional circumstances.

a) Non-Payment of Rent

If the rent goes unpaid, a landlord can give a 10 day Notice to End Tenancy for Unpaid Rent or Utilities following the day the rent was due (RTA, s. 46). The tenant may pay all the rent due within five days of receiving the notice to render the notice void, or dispute the notice by applying for dispute resolution within five days of receiving the notice. If they do nothing then the landlord can go to the Residential Tenancy Board and make a Direct Request for an order of possession without a hearing. Tenants should request a receipt for the rent payment if they are concerned that the landlord will try to evict them anyway.

If a tenant fails to pay the utilities, the landlord can give written notice demanding payment, and then within 30 days treat any unpaid amount as unpaid rent (s. 46(6)).

NOTE: A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under the Act to deduct from

rent. However, tenants need to file for dispute resolution in this situation, and not simply ignore the notice.

b) *Cause*

The minimum notice given by a landlord where there is cause is **one month**, effective on the last day of the ensuing pay period (RTA, s. 47). Practically speaking, the full month requirement means notice must be given the day before rent is due, so notice given on May 31 is effective to end the tenancy on June 30, but notice given June 1 would be effective to end the tenancy only on July 31. A tenant may **dispute** a notice under this section by applying for dispute resolution **within 10 days** after the date the tenant receives the notice.

c) *Landlord's Use of Property*

Section 49 of the RTA requires that a landlord give at least **two months** notice if he or she wishes to take back the property for personal use: see s. 49(2). **A tenant has 15 days to apply for dispute resolution to challenge the notice.**

d) *End of Employment as a Caretaker*

Where the ground for eviction is end of employment as a caretaker or manager of the premises (RTA, s. 48), the tenant must file for dispute resolution to dispute the Notice to End Tenancy within 10 days of receiving it (s. 48(5)). The notice period must be at least one month after the date the tenant receives notice, not earlier than the last day the tenant is employed by the landlord, and the day before the day in the month, or in the period on which the tenancy is based, that rent, if any, is payable under the tenancy agreement.

e) *Early End to Tenancy*

Pursuant to s. 50 of the RTA, if the landlord gives a tenant a notice to end a periodic tenancy under s. 49, a tenant may end a tenancy early by giving 10 days notice for a date earlier than that specified by the landlord at any time during the period of notice and pay rent up to the end of that 10 days. This does not apply to tenants in a lease.

3. Disputing a Notice to End Tenancy

a) *By a Landlord*

If the tenant wants to end a month-to-month tenancy, he or she can always give one month's written notice "on or before the last day of a rental payment period to be effective on the last day of an ensuing rental payment period" (e.g. give notice no later than May 31 to move out on June 30). The landlord cannot dispute the tenant's notice. However, if the tenant's notice does not comply with the rules under the RTA (ss. 45(1) and 45(2)), the tenant may have to pay an extra month's rent.

b) *By a Tenant*

Under s. 59 of the RTA, a tenant may dispute a Notice to End a Residential Tenancy from the landlord by applying to the RTB and filing an application for dispute resolution to set aside the notice within the following time limits:

- under s. 46 (unpaid rent): five days;
- under s. 47 (for cause): 10 days; and
- under s. 49 (landlord use of property): 15 days.

A Dispute Resolution Officer may extend a time limit established by the RTA only in exceptional circumstances. In respect to a notice given by a landlord for non-payment of rent (s. 46(4)(a)), time limits can only be extended in one of the following circumstances: the landlord has provided written permission for an extension, or the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under a Dispute Resolution Officer's order (s. 66(2)). **Personal hardship is not a reason for more time.**

NOTE: A Dispute Resolution Officer must not extend the time to apply for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

NOTE: A tenant should **never** ignore notice to end tenancy. If the tenant does not dispute a notice within the time limit, the landlord may apply for an Order of Possession with a hearing.

D. *Failure of a Tenant to Deliver Up the Premises; Regaining Possession*

There is an implied obligation or statutory requirement that a tenant must deliver up possession upon the ending of the tenancy. After the end of the tenancy, there is no "agreement" and the over holding tenant is usually found to be a licensee or mere occupant. A new tenancy agreement could be created (e.g. by the landlord accepting and providing a receipt for payment of rent), but otherwise the occupant of residential premises is liable to a claim by the landlord for compensation for "use and occupation" (RTA, s. 57(3)). The landlord may join the "tenant" as third party if sued by a prospective tenant for failure to give vacant possession (s. 57(4)). The landlord must not take actual possession of a rental unit that is occupied by an over holding tenant unless the landlord has a writ of possession issued under the B.C. Supreme Court Rules of Court.

A tenant, occupant, or landlord may obtain an order from the court respecting his or her right to possess or occupy the premises. A landlord may apply for an Order of Possession whether or not a tenant has disputed the Notice to End Tenancy he or she was given. A landlord may not regain possession after a tenancy agreement has ended unless the tenant vacates, or has abandoned the unit, or (where the tenant remains in possession) unless the landlord obtains an Order of Possession through dispute resolution and then a writ of possession by order from the B.C. Supreme Court (or Registry; see Section **X.C.3: Enforcing an Order of Possession**). What this means is that a landlord may not change the locks, or lock out a tenant, without judicial backing. The landlord must receive an Order of Possession, a writ of possession and take back possession of the premises by employing a bailiff to change the locks and remove the tenant.

Landlords can, in some circumstances, obtain an Order of Possession without attending a hearing. A Dispute Resolution may issue the order directly where the tenant has failed to dispute the notice to end tenancy within the time limits (s. 55(4)).

A landlord can apply for an Order of Possession at any time after the notice to end the tenancy is given, provided that the notice to end the tenancy was given by the tenant (s. 55(2)(a)). Typically, the landlord will request this order at the dispute resolution hearing. If the landlord gives the notice to end, he or she can apply for the Order of Possession only after the tenant's limitation period to file for dispute has expired (s. 55(2)(b)). This may be five, 10, or 15 days depending on the reasons for ending the tenancy. A list of reasons can also be found on the Notice to End Residential Tenancy form.

E. Abandonment and End of Tenancy; Surrender

At common law, abandonment does not necessarily bring about a surrender (end) of the tenancy. A landlord can re-enter and re-let the premises as the tenant's agent. If the landlord conducts him or herself in a manner consistent with ending the interest, the tenancy is "surrendered"; the landlord's intentions are not critical. If the tenancy is not surrendered, the landlord may sue the tenant for the debt of rent as it is due, and is not limited to damages for loss suffered up until the end of the tenancy (although in certain circumstances, a landlord may bring about a surrender and still sue for damages to the end of the unexpired term). For month-to-month tenancies, any such losses will be minimal.

Abandonment of the premises by the tenant is one of the automatic grounds for ending a residential tenancy agreement (RTA, s. 44(1)(d)). This most commonly arises when the landlord decides the premises have been abandoned and the tenant will want to dispute the end of the tenancy and the landlord's finding of abandonment. Please note that the landlord's duty to mitigate and re-rent, and the landlord's right to remove the tenant's goods depend on a finding that the premises were abandoned. In rare circumstances, the landlord may refuse to consider the premises abandoned, and a tenant may want to insist that the landlord wrongfully disregarded certain circumstances that constituted abandonment.

The landlord's covenant to ensure quiet enjoyment, and to comply with s. 29 entry procedures, continues while the agreement exists, i.e. while there is no abandonment. The landlord can enter where the tenant abandons the premises. However, the landlord may not be able to determine if there is abandonment without re-entering the premises; if there is no abandonment and the landlord has improperly entered, he or she has breached s. 29. The landlord could enter under the emergency provision, or if he or she is certain that substantially all the tenant's chattels have been removed; otherwise, the landlord should give written notice of entry for a reasonable purpose. Alternatively, the landlord could apply for an Order of Possession if he or she believes the premises have been abandoned but wants clear legal grounds to establish the right to enter the suite. This may also require that a Notice to End a Residential Tenancy be formally served.

Part 5 of the Residential Tenancy Regulation, sets out guidelines to assist either the landlord to dispose of abandoned personal property, or the tenant to recover such property.

1. Abandonment of Personal Property

Section 24 of the RTR deals with the situation where the tenant has vacated the residential premises at the end of the tenancy but leaves personal property behind. The main issue is whether the tenant has "given up possession" of the property. A landlord may consider that a tenant has abandoned personal property if the tenant leaves the personal property in residential premises that:

a) he or she has given up possession of, or that he or she has vacated after the tenancy agreement has ended or after the term of the tenancy agreement has expired; or

b) for a continuous period of one month, the tenant has not ordinarily occupied and remained in possession of, and in respect of which he or she has not paid rent, or from which the tenant has removed substantially all of his or her personal property, and

either gives the landlord an express oral or written notice of the tenant's intention not to return to the residential premises, or by reason of the facts and circumstances surrounding the giving up of the residential premises, could not reasonably be expected to return to the residential premises.

The major problem with these criteria is that they are very general. Is the absence temporary (e.g. hospitalization) or permanent? What length of time constitutes a temporary absence?

Section 24(3) of the RTR permits the landlord to remove personal property from residential premises that have been abandoned. This includes removing personal property from storage lockers, etc. If the landlord decides property has been abandoned, the landlord is required by s. 25(1)(b) of the RTR to make and keep an inventory of such property as soon as the property has been removed from the premises, and to keep the particulars of the disposition and inventory for two years. In addition, the personal property, once removed from the premises, must be kept in a safe place for a period of not less than 60 days (see the RTR for exceptions, e.g. where the personal property is of no value). Under s. 25(2) of the RTR, the landlord may sell or dispose of the property stored in compliance with s. 25(1) of the RTR. The purchaser of such property obtains marketable title, free of all encumbrances, but landlords should be very cautious before selling a tenant's property, and should follow the regulations carefully. For example, problems will arise if a landlord sells a tenant's "abandoned" furniture if it turns out that the furniture was only leased.

Some tenants may have little of value in their residences, and should be aware that the RTR allows landlords to dispose of property with a value of less than $500 (s. 25(2)(a)).

The landlord must exercise reasonable care and caution to ensure the personal property does not deteriorate and is not damaged, lost, or stolen (RTR, s. 25(1)). A tenant may file a claim for his or her personal property at any time before it is disposed of under ss. 25 or 29 of the RTA. **Practically speaking, any claim for return of abandoned property, or for compensation for lost, damaged, or abandoned property must be brought as soon as possible if there is to be any likelihood of success**.

X. DISPUTE RESOLUTION OF TENANCY DISPUTES

A. General

The formal dispute resolution may be avoided if an Information Officer is willing to phone one of the parties in order to explain the law, and this results in the dispute being resolved without the parties having to go through the dispute resolution process. For example, an Information Officer might call a landlord and tell him or her that landlords are required by law to provide rent receipts if the tenant pays rent in cash. The Information Officer will not take on the role of a Dispute Resolution Officer and will only explain obvious points of the law.

Dispute resolution is the formal method of resolving disputes between landlords and tenants. Any party going to dispute resolution may be represented by an agent (e.g. a law student), barrister, or solicitor, and should advise the RTB of this before the hearing. The Dispute Resolution Officer may exclude an agent if proper notification was not provided. To understand the procedure, advocates should read the dispute resolution Rules of Procedure that are available from the LSLAP resource centre or on the Residential Tenancy Branch web site. The amendments do allow for other forms of dispute resolution, such as mediation or settlement conferences, however, so far other forms of dispute resolution have not been used, although they may become more popular in the future.

1. Disputes Covered by Dispute Resolution

Virtually all claims that may arise between tenants and landlords are eligible for dispute resolution (see RTA, s. 58). A court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to dispute resolution under the RTA. The exceptions are as follows:

- the application was not filed within the application period specified under the RTA;
- the dispute is linked substantially to a matter that is before the Supreme Court; or
- the monetary claim exceeds the monetary limit prescribed in the Small Claims Act, R.S.B.C. 1996, c. 430, s. 3. (Currently the monetary limit is $25,000.)

2. Dispute Resolution Officer

Dispute Resolution Officers are like judges and base their decisions on evidence and arguments presented by the parties at the dispute resolution hearing. The Dispute Resolution Officer is not bound by legal precedent and decides based on the merits of the case. A Dispute Resolution Officer has authority to arbitrate disputes referred by the director to the Dispute Resolution Officer, and any matters related to disputes that arise under the RTA or a tenancy agreement. Dispute Resolution Officers can also mediate a dispute, and sign off on the agreement between the two parties and record the settlement as a decision or order. Except as otherwise provided by the RTA, a decision of the director is final and binding (s. 77(3)).

B. Dispute Resolution Procedure

1. Applying for Dispute Resolution

A landlord or tenant who wants a government-appointed Dispute Resolution Officer to settle a dispute must complete an Application for Dispute Resolution form. The form is available online, at the RTB website, or from LSLAP. Note that there are separate forms for the landlord and the tenant. An applicant who is a tenant would fill in and include:

- his or her legal name and current address;
- the address and legal name of the owner of the property (the landlord);
- the premises noted in the tenancy agreement;
- the relevant code of the RTA that deals with the problem (these are provided on the back of the dispute resolution form);
- the part of the form that says "full particulars". It is better to write down too much than too little, since insufficient information could be grounds for the respondent to request an adjournment; however, save specific details for the hearing;
- that he or she wants the landlord to pay back the $50 filing fee; and
- copies of the background material being provided as evidence for the case.

NOTE: Rules 3.1 and 3.5 of the RTB Rules of Procedure (Ministry of Housing, 2005; available at www.rto.gov.bc.ca/documents/2005.pdf) requires that all documents

the tenant or landlord wishes to present to the Dispute Resolution Officer at the hearing must be sent to the other side and to the Residential Tenancy Branch at least five clear days before the hearing. (For applicants, the easiest way to comply with this rule is to attach all relevant documents to the initial application form.) If the time between the filing of the dispute and the dispute resolution proceeding does not allow for this five day requirement to be met then they must be served two clear days before the dispute resolution proceeding (Rule 3.5 b) of the RTB Rules of Procedure). You should also take special notice of the rules regarding how days of service are calculated. Documents sent by mail are "received" five days later, while documents dropped through a mail slot or taped to a door are "received" three days later. In addition, a tenant or landlord must have at least three copies of any evidence they wish to present to the Dispute Resolution Officer. Please note that the RTB will only make copies of evidence for those who are in need and the evidence for which copies are sought must be crucial to the dispute. See the Rules for further information.

An Information Officer at the RTB must check the form. This is best done in person. Clients who cannot go to the main RTB can file applications at a local government access office. Online applications are now possible but a credit card payment is required, so parties applying to waive the filing fee cannot use this method. The application will not be accepted until the applicant has paid $50 in cash, or by money order or certified cheque payable to the Minister of Finance. Any corrections or clarifications will need to be completed as well. People on income assistance or whose incomes fall below the low-income guidelines can apply to the RTB to have the fee waived if they provide proof of their income status. The applicant is usually informed of the date of the hearing within 24 hours.

The limitation period for designation of a Dispute Resolution Officer (i.e. for filing the claim at the RTB) is now **two years** from the end of the tenancy to which the dispute relates (RTA, s. 60).

2. Direct Request

A landlord may make a Direct Request for an order of possession when he or she has issued a 10 day notice to end tenancy for non-payment of rent, and the tenant has neither paid the rent nor contested the notice. An order can then be granted without the need for a hearing. The Direct Request process may be expanded, in the future, to cover other circumstances where a landlord serves a notice to end tenancy. Check on the RTB website for updates. Because of the Direct Request process it is very important that tenants never ignore a notice to end tenancy.

3. The Dispute Resolution Hearing

Hearings are a formal process, though less formal than court. The RTB uses the dispute resolution Rules of Procedure, which are contained in a twelve-page booklet available at any RTB and online at the RTB web site. The Information Officer may assist landlords and tenants by providing information about the procedure for resolving disputes, but usually will not help complete forms. A Dispute Resolution Officer may make any finding of fact or law that is necessary or incidental to making a decision or an order under the RTA. The Dispute Resolution Officer makes decisions based on the merits of the case and is not bound by legal precedent. The Dispute Resolution Officer considers all of the evidence and makes a decision based on the RTA, the common law, and the facts. The hearings are generally informal and parties may speak for themselves or through representation. Since hearings deal with specific issues that the applicant raised in his or her application, the Dispute Resolution Officer will not consider issues that are not contained in the application.

All evidence should be brought to the hearing, since adjournments will not be granted without good cause. Evidence can be in the form of:

a) any witnesses who provide relevant information;

b) all documents including letters, receipts, photographs; and

c) affidavits (sworn statements in writing).

Rule 3.4 is particularly important. It states that copies of any documents not filed with the application, but which the applicant wishes to present as evidence at the hearing, should be filed with the RTB and served on the respondent as soon as possible, and at least two days prior to the hearing. This includes documents, photos, videos, audio tapes, and the like. If an applicant relies on electronic evidence, he may need to provide the necessary equipment at the hearing. Each party must also deliver a copy of all evidence to the RTB for the Dispute Resolution Officer to look over at least two days before the hearing. The Dispute Resolution Officer will usually refuse to look at anything not exchanged in advance of the hearing pursuant to Rule 11.5, which says that if the documents or other evidence are not served on the other party as required:

a) the Dispute Resolution Officer must rule on whether the documents are relevant;

b) if the documents are relevant, the other party will have an opportunity to review and make an argument that the matter be adjourned; and

c) the Dispute Resolution Officer must rule whether to adjourn, in accordance with Rule 6.5, and give a reason(s) for granting or refusing the adjournment.

The practical result of these rules is that Dispute Resolution Officers will often refuse to look at any evidence that was not exchanged before the hearing as required.

It is still a good idea to bring extra copies of important documents to the hearing itself, in case the Dispute Resolution Officer, or the other party, does not have copies handy. Original photos and documents that are presented to the Dispute Resolution Officer cannot be returned later to the party, but they can be subpoenaed into the Supreme Court for judicial review. Copies of documents can be given to the Dispute Resolution Officer, but they may demand the originals. If a witness cannot attend, the Dispute Resolution Officer may accept affidavits (however, written statements will suffice) and may take testimony over the phone. If a party thinks a witness has something to contribute to his or her case but the witness refuses to cooperate, the party can then request in advance or at the hearing that the Dispute Resolution Officer subpoena that witness.

The Dispute Resolution Officer may then decide to adjourn the hearing and subpoena the witness for the hearing when it reconvenes. The party requesting the subpoena is required to serve it on the person being subpoenaed. The Dispute Resolution Officer also has the power to compel witnesses to give evidence under oath and/or to produce records that may be of importance to the hearing. Where a witness fails to comply with these procedures, he or she may be subject to a finding of contempt on application to the Supreme Court by the Dispute Resolution Officer (RTA, s. 76(3)).

The applicant should always bring proof of service (i.e. proof that the other side received the Notice of Hearing package) to the hearing. The proof of service will have to be presented if the respondent does not attend – to prove that the applicant served the Notice of Hearing on the respondent. The person who served the documents should be at the hearing or should have provided an affidavit of service to the applicant.

Conference call hearings are becoming more common. Applicants should use a landline telephone in a quiet place where they will not be interrupted and to avoid dropping the call on their cell phones. The hearing will proceed even if one party gets disconnected during the call.

4. The Dispute Resolution Officer's Decisions

The Dispute Resolution Officer may render a decision at the end of the hearing or may reserve the decision. The decision or order must be given within 30 days of the hearing date (RTA, s. 77(1)). Pursuant to s. 77(1), a Dispute Resolution Officer **shall** make the decision or order available, **and shall provide written reasons**. The written decision and reasons must be provided within 30 days. If a party completes a form requesting correction of a technical error, omission, or clarification within 15 days of the decision being given, such amended decision or clarification must be provided within 30 days.

The Dispute Resolution Officer's order is final and binding but may be reviewed in very limited circumstances (s. 79). See **Section X.E: Review of Dispute Resolution Officer's Decision** for circumstances and process.

5. Amendments to Decisions/Orders

On a Dispute Resolution Officer's initiative, or at the request of a party, the Dispute Resolution Officer may correct technical errors, or, within 15 days, may clarify a decision, reason, or inadvertent omissions in a decision or order. By request, the Dispute Resolution Officer may also require that notice be given to the other party. The Dispute Resolution Officer shall not exercise this power unless the Dispute Resolution Officer considers it just and reasonable in the circumstances (RTA, s. 78(3)). The forms to be completed are the Request for Correction or Clarification or Application to Review an Order.

Dispute Resolution Officers continue to draft RTB Policy Guidelines on key issues under the RTA. There are now over 30 detailed RTB Policy Guidelines available that ensure more consistency in dispute resolution decisions, and which should be reviewed in preparation for any hearing. However Dispute Resolution Officers will not be required to consult the Guidelines.

C. Enforcing the Dispute Resolution Officer's Order

NOTE: If a successful party has any concerns about the ability to serve an order, he or she should request an order under RTA s. 71(1) permitting alternate means of service. An example of such an order would be one that permits posting of a document on the tenant's door rather than serving it personally.

1. Enforcing a Monetary Order

The Dispute Resolution Officer may order the tenant or landlord to pay a monetary amount or to bear all or part of the costs of dispute resolution (RTA, s. (67)). **Enforcement of the order is the sole responsibility of the applicant.** If the monetary order is in favour of a **tenant** still living in the premises owned by the landlord that the order is against, it may be deducted from the rent (RTA, s. 65(1)(b)). If the monetary order is in favour of a **landlord** still holding part or all of the security deposit paid by the tenant, it may be deducted from the tenant's security deposit. If neither of these situations applies, one should give the other party a written request for payment stating the amount owing and requesting payment by the date on the order or within a reasonable time.

If the other party still does not pay, the order can be filed in the Small Claims Court. There are also other enforcement procedures specific to Dispute Resolution Officers' orders.

2. Enforcing a Repair Order

If a landlord fails to make repairs as ordered by a Dispute Resolution Officer, the tenant can apply for an order requiring compliance. The order to comply may include an order that the landlord reduces the rent until the repairs are complete.

3. Enforcing an Order of Possession

The purpose of an Order of Possession is to gain vacant possession of the rental premises. The landlord should first give a copy of the Order of Possession to **each person** named in the order. The best way to do this is to hand the copy to the other parties personally or by registered mail. The RTA also permits for the Order of Possession to be posted on the tenant's door. The tenant should be asked to move out of the premises within the time period given in the order. If a tenant does not comply with the order, the landlord must **not** attempt to physically remove the tenant by his or her own means (RTA, s. 57(1)(2)), as this is unlawful. Bailiff services, described below, can be used to lawfully remove the tenant.

a) Use of Bailiff Services

In the event that the tenant does not comply with the order and does not vacate the premises on the date specified on the order, it can be filed in the Supreme Court of B.C. Registry. The landlord must fill out a Writ of Possession and an Affidavit (re: service) and take these completed forms with the Order of Possession from the RTB to the Supreme Court. The Writ of Possession and Affidavit forms are provided to the landlord by the office when the Order of Possession is granted. Once the documents are filed and stamped in the Supreme Court, the landlord should contact a bailiff service. The Writ of Possession is then ready to be executed by the bailiff service. Private bailiff services are licensed by the Province.

Under s. 9 of the Sheriff Act, R.S.B.C. 1996, c. 425, the landlord is required to give a deposit to the bailiff against the costs of the execution of the writ. This deposit varies depending on the size of the premises and the amount of belongings being seized. For example, around $1,100 will be required as a deposit for executing a seizure of a one-bedroom house. If the bailiff is successful in getting the debtor to pay the money, the bailiff receives costs paid and the landlord's deposit will be returned, along with the money owing. Each bailiff service should be contacted to find out the amount of the required deposit as well as the conditions of the deposit.

b) Bailiff's Procedure for Executing a Writ of Possession

The writ is usually executed within a couple of days after the landlord contacts the bailiff service. Bailiffs may attend at any time during their usual work hours, which are Monday to Friday between 9:00 a.m. and 5:00 p.m. In urgent situations, the bailiff will also attend on Saturday. The bailiff will not attend on a Sunday. The bailiff service does not contact the tenant prior to the date that they attend to seize the belongings – where the object is the seizure of property, this would not be in the interests of either the bailiff or the landlord. If the tenant was notified, it is likely that he or she would vacate immediately with their belongings.

A bailiff is authorized to enter the premises with a Writ of Possession and remove the belongings, as well as the tenant, if necessary. If the tenant is not at the premises, bailiffs generally remove the belongings and place them outside of the

premises at the curb. The only goods that are transferred to storage are those that can ultimately be sold. It is the responsibility of the bailiff service to ensure that all of the tenant's belongings are safe and secure in storage. Therefore, the storage facility must be insured. With respect to the cost of storage (per day), the bailiff must use the "reasonable" test to determine whether the amount is fair. If the amount is exorbitant, the tenant can challenge this payment.

Part 5 of the Court Order Enforcement Act, R.S.B.C. 1996, c. 78 [COEA] sets out the law with respect to the exemption of goods.

Section 71(1) of the COEA outlines what goods and chattels are exempt from seizure. These include: necessary clothing of the debtor and the debtor's dependants; household furnishings and appliances that are of a value not exceeding a prescribed amount; one motor vehicle that is of a value not exceeding a prescribed amount; tools and other personal property of the debtor, not exceeding in value a prescribed amount, that are used by the debtor to earn income from the debtor's occupation; medical and dental aids that are required by the debtor and the debtor's dependants; and any personal property prescribed by the regulations that is of a value not exceeding a prescribed amount.

Pursuant to s. 2 of the Court Order Enforcement Exemption Regulation, B.C. Reg. 28/98, the prescribed amounts of exemption are as follows: $4,000 for household furnishings and appliances; $5,000 for one motor vehicle if the debtor is not a maintenance debtor or $2,000 for one motor vehicle if the debtor is a maintenance debtor; and $10,000 for tools and other personal property of the debtor that are used by the debtor to earn income from the debtor's occupation.

The tenant may, within two days of the seizure or notice of it (after the items have been seized), select the property up to a value of $4,000. The bailiff then provides an inventory to the tenant of the goods selected as the exemption as well as an inventory of the remaining goods in storage (COEA, s. 73(2)). In addition, the COEA requires that the acting bailiff provide information to the tenant regarding the services and advice available under the Debtor Assistance Act, R.S.B.C 1996, c. 93 (COEA, s. 73(1)(b)). If the bailiff believes the selected items are worth more than $4,000, the tenant must be notified in writing and an appraiser is then appointed to assess the value of the goods (ss. 74 and 75).

In a situation where all of the tenant's belongings do not total $4,000, the bailiff carries out the execution as above. However, if the tenant is present at the time, the goods are selected as part of the $4,000 exemption and left with the tenant outside of the premises. It is the tenant's responsibility to move the goods to another location. If the tenant is not present at the time of the seizure, the bailiff removes the items and leaves those that are "valueless" on the street. However, the items that can be sold are kept in a storage facility. The tenant can make a claim for his or her $4,000 exemption within two days. If the tenant does not respond to any notices, the items are sold pursuant to the Warehouse Lien Act, R.S.B.C. 1996, c. 480, s. 4.

Bailiffs use one of two methods to collect money for the landlord. The bailiff will either:

- seize and hold the goods while awaiting payment (and charge the tenant any additional costs incurred); or

- seize and sell the goods after the appropriate amount of time (the goods would likely be sold if the tenant does not respond to the notice of seizure).

NOTE: Sometimes a third party who is not named in the order (i.e. a roommate) has his or her goods seized together with the tenant's. It is important to inform the Bailiff as soon as possible what goods do not belong to the tenant. These goods can usually be returned to the third party if he or she is not named in the order.

c) Costs to the Tenant

The costs that may be charged to the tenant include:

- statutory fee for the service (Supreme Court Rules of Court, B.C. Reg. 75/98, Schedule 2, s. 2);
- wages for bailiff services (hourly);
- storage costs; and
- any additional time or expenses on file incurred from time of seizure to time of either return of goods to tenant or sale of goods.

The tenant must pay the amount owing to the bailiff to retrieve his or her belongings.

D. Serving Documents: Giving and Receiving Notice under RTA

1. Service to Tenant

A notice, process, or document may be served personally on a tenant or by:

a) sending the document by ordinary or registered mail to the tenant at the address where he or she lives;

b) leaving the document in a mailbox or mail slot at the address where the tenant lives;

c) giving it to an adult person who apparently lives with the tenant;

d) posting it to a door or other conspicuous place at the address where the tenant lives; or

e) transmitting a copy by fax to a fax number provided by the tenant.

The document is deemed "received" when it is personally served. When the document is served by an alternate means, it is deemed to have been received on the fifth day after the date of mailing, or on the third day after leaving it in a mailbox, posting or faxing (RTA, s. 90).

NOTE: These are rebuttable presumptions. If the respondent does not attend the hearing, service will come into question, and anything short of personal service may not guarantee a successful hearing if the other party does not show up.

Sliding the documents under a door or emailing them does not constitute service. The RTB Dispute Resolution Officer or the court may order the document must be served in any manner considered necessary, and may order that the document has been sufficiently served on a specified date (RTA, s. 71).

2. Service to Landlord

A notice, process, or document is given to a landlord by having it served personally on the landlord or the landlord's agent, or by mailing it to the landlord or the landlord's agent (RTA, ss. 88(a)(b)). Alternate forms of service where service is not possible (due to absence from his or her premises or business or evasion) are:

a) giving it to an adult person who apparently lives with the landlord (s. 88(e));

b) leaving it in a mailbox or mail slot at the address at which the person carries on business as a landlord (s. 88(f));

c) posting it to a door or other conspicuous place at the address at which the landlord lives or carries on his or her business (s. 88(g)); or

d) transmitting a copy by fax to a fax number provided by the landlord (s. 88(h)).

The document is "received" when it is personally served. When the document is served by an alternate means, it is deemed to have been received on the fifth day after the date of mailing, or on the third day after leaving it in a mailbox, posting, or faxing (s. 90).

NOTE: These are rebuttable presumptions. If the respondent does not attend the hearing, service will come into question, and anything short of personal service may not guarantee a successful hearing if the other party does not show up.

The RTB Dispute Resolution Officer or the court may order the document to be given in any manner considered necessary, and may order that the document has been sufficiently served on a specified date (s. 71).

3. Documents for Dispute Resolution (Notice of Hearing Package)

A copy of the Application and the Notice of Hearing must be provided to the respondent within three days of filing the application (RTA, s. 59(3)). This is done by serving the hearing documents package as prepared by the RTB. Do not separate the forms yourself, as this is not what you serve.

A landlord must (s. 89) serve the Notice of Hearing package on the tenant by:

- leaving a copy with the tenant in person; or
- by sending a copy by registered mail to the address at which the tenant lives.

If the tenant cannot be served either way, an order for alternate service of hearing documents should be made under s. 89(1)(e).

A tenant must (s. 89) serve the Notice of Hearing package on the landlord by:

- leaving a copy with the landlord, or an agent of the landlord, in person; or
- by sending a copy by registered mail to the address at which the landlord resides, or at which the landlord carries on business.

When the tenant does not know who may actually be responsible as landlord, it is safest to name and serve all parties who could possibly have a liability. Monetary orders must name

the property owner, so a tenant may need to do a title search. The applicant has to prove the documents were properly served.

4. Documents on Application for Review of a Decision or Order of a Dispute Resolution Officer

If a party is successful in his or her Application for Review, that person will receive a written decision from the Dispute Resolution Officer permitting the review to proceed. This may be nothing more than an amended decision, or it may be a decision confirming suspension of the previous order and suggesting a date to reconvene for a new hearing. This Dispute Resolution Officer's decision (permitting review) must be served on the other side within three days of being received by the person who applied for review. The same method of service must be used as outlined immediately above for a Notice of Hearing package (see RTA ss. 86 and 61(5) and **Section X.B.4: The Dispute Resolution Officer's Decisions**).

5. Other Exceptions to General Service of Documents

An application by a landlord for an order of possession for the landlord or landlord's application for an order ending tenancy early must be given to the tenant under special rules: see RTA 89(2).

E. Review of Dispute Resolution Officer's Decision

1. Application for Review of Dispute Resolution Officer's Decision

Pursuant to s. 79(1) of the RTA, an application may be made for Review of the Decision or Order, only if:

a) the party was not able to attend the original hearing due to circumstances that could not be anticipated and were beyond his or her control;

b) there is new and relevant evidence that was not available at the time of the original hearing; or

c) a party has evidence that the Dispute Resolution Officer's decision or order was obtained by fraud.

The Application for Review does not include an oral hearing. The written application for review must therefore be complete and exact, with all necessary documents attached. It is important to understand that an Application for Review is not an opportunity to re-argue the facts of the case.

NOTE: There is a filing fee, which cannot be recovered, but which can be waived under the same circumstances for which the original application fee can be waived.

2. Time Limits for Launching a Review

There are strict time limits in the RTA for launching a review. For orders of possession (s. 54), unreasonable withholding of consent, and notice to end tenancy for non-payment of rent the time limit is **two business days**. For a notice to end a tenancy agreement other than under s. 46, repairs or maintenance under s. 32, and services or facilities under s. 27, the time limit is five days. For other orders, the time limit is 15 days (s. 80).

Applications for review do not act as stays of proceedings; a stay must be requested separately.

3. Successful Application for Review

If a party is successful in his or her Application for Review, that person will receive a written decision from the Dispute Resolution Officer permitting the review to proceed. This may be nothing more than an amended decision, or it may be a decision confirming suspension of the previous order and suggesting a date to reconvene for a new hearing.

The Dispute Resolution Officer's decision permitting review must be served on the other side within three days of being received by the person who applied for review. The same method of service must be used as outlined above for a Notice of Hearing package (see **Section X.D.3: Documents for Dispute Resolution**. See also: RTA, s. 81, and **Section X.B.4: The Dispute Resolution Officer's Decisions**).

4. Review by the Supreme Court of B.C.

A Dispute Resolution Officer's decision can also be reviewed by the Supreme Court of B.C. under the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241. The RTA contains a privative clause (s.84.1) which narrows the scope of the review. It is not a trial *de novo*. The court may overturn a decision where an error has been made that "goes to jurisdiction"; if the RTB has exceeded its statutory authority, either because a violation of procedural fairness has occurred, or because it has made an error of fact or law, then the court can intervene to correct the error. When a decision is overturned by the court, the case is usually returned to a Dispute Resolution Officer to be reheard. Due to the complexity of operating in the Supreme Court, a lawyer should be involved for a Supreme Court review. It is important to get legal advice soon and to act quickly.

The Community Legal Assistance Society (604-685-3425) is available to assist with appeals of Dispute Resolution Officers' decision, and is especially interested in helping with potential test cases.

XI. MOVING OUT

A. Tenant Obligations

- Give proper notice;
- participate in move-out condition inspection;
- leave the unit clean; and
- repair damage caused (above normal wear and tear), including damage caused by guests or pets above normal wear and tear levels.

B. Landlord Obligations

- Give proper notice;
- participate in move-out condition inspection; and

- return security deposit and pet damage deposit in accordance with the RTA (see **Section V.C: Refund of Security Deposit and Pet Damage Deposit**).

C. Conditional Inspection: Moving Out

The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit, or on another mutually agreed day (RTA, s. 35(1)). The landlord must offer the tenant at least two opportunities for the inspection and must complete the inspections report in accordance with the RTR. Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the RTR – within 15 days of the date the condition inspection is completed or the date the landlord receives the tenant's forwarding address **in writing**, whichever is later.

1. Landlord

Unless the tenant abandons a rental unit, the right of the landlord to claim against a security or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant at least two opportunities for the inspection or does not participate on either occasion, or having made an inspection with the tenant does not complete the condition inspection report and give the tenant a copy of it in accordance with the RTR.

2. Tenant

The right of a tenant to the return of a security deposit or a pet damage deposit, or both is extinguished if the landlord complies with RTA s. 35 (provides two opportunities for inspections), and the tenant has not participated on either occasion (s. 36(1)).

D. Breaking a Fixed-Term Lease

If a tenant moves out before their fixed term ends without finding another tenant to take over the fixed term lease, the tenant may be responsible for the landlord's advertising and administrative costs needed to find a new tenant, as well as rent (at the tenancy agreement rate) until the unit is rented or the fixed term expires.

NOTE: Refer to the tenancy agreement, as some agreements will have move-out clauses that will express what a tenant's obligations will be upon breaking their fixed term lease.

1. Right to Assign or Sublet and Duty to Obtain Consent

According to s. 34 of the RTA, a tenant may assign or sublet his or her interest in a tenancy agreement with the consent of the landlord; in other words, the landlord's consent is always required for an assignment or subletting of the agreement. However, the landlord must not be arbitrary or unreasonable in withholding consent if the tenant has a fixed term tenancy of six months or more (s. 34(2)). Section 34(3), stipulates that a landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease.

A tenant may apply for a Dispute Resolution Officer order where a landlord has unreasonably withheld consent: see RTA s. 65(1)(g).

Those in month-to-month tenancies may be able to make an s. 34 application if their tenancy agreement was initially for a fixed term and then converted into a month to month.

Public housing tenants or tenants receiving a rent subsidy (those renting premises owned by the Crown, or by a non-profit organization receiving rental subsidy by agreement with the Crown, or whose landlord is the B.C. Housing Management Commission) can only assign or sublet where the landlord consents at the time.

Permitting an occupation by way of a license contract does not constitute assignment or subletting. The contract must actually create a license, and not a sub-tenancy.

See RTB Policy Guideline 19: Assignment and Sublet.

XII. THE COMMON LAW, TENANCIES, AND THE RTA

Since a tenancy agreement has elements of both contract and interest in land, privity of contract and privity of estate exists between the parties to the agreement. Covenants relating to either the estate or the agreement are enforceable between such parties. Where either the reversionary (landlord) or the tenant assigns his or her interest, privity of estate only exists between the assignee and the remaining original party. Terms and covenants that run with (touch and concern) the land are enforceable between these parties. One of the more common situations involving a covenant running with the land is where a security deposit is paid to a landlord, and the property is then subsequently sold. After the building is sold to the second landlord, the security deposit obligations carry over to that second person. So a tenant who had lived in the building all along would be able to claim return of his or her security deposit from a new landlord, even though the tenant had originally paid that security deposit to a different person. See s. 90 of the RTA for specific mention of covenants that run with the land.

A sub-lessee has neither privity of estate nor contract with the head landlord, but is still bound by all the covenants in the original lease.

Covenants in leases are independent at common law, so that one party's breach does not relieve the other party of performance obligations, unless the lease is forfeited. The innocent party in a tenancy breach situation is under no duty to mitigate damages under the common law of property. However, s. 7(2) of the RTA invokes a clear-cut duty to do so in a residential tenancy (see also RTB Policy Guideline 5: Duty to Mitigate). For commercial tenancies (to which the RTA does not apply) the courts have begun to view them as contracts with all attendant rights and obligations, including the duty to mitigate where the plaintiff is seeking damages under contract (as opposed to property) law; see *Highway Properties Ltd. v. Kelly, Douglas & Co. Ltd.* (1971), 17 D.L.R. (3d) 710 (S.C.C.). However, there appears to be no duty to mitigate where the landlord does not accept the tenant's repudiation of the lease, and simply sues for rent as it comes due under the principles of property law. Should this situation arise, clients are strongly advised to consult an experienced lawyer.

A. Common law and Residential Tenancies

Subject to the RTA, the common law respecting landlord and tenant applies (RTA, s. 91).

1. General Effects of Breach of the Agreement

The common law rules of contract respecting the effect of one party's breach of a material term on the other party's performance obligations apply to a residential tenancy agreement (RTA, s. 91; see also Chapter 10: Consumer Protection). Thus, material terms are dependent, and the innocent party is entitled to withhold performance. However, withholding rent because a landlord has breached a material term is barred by RTA. A tenant may withhold rent only as permitted by the RTA.

Under contract rules, a party may not be able to repudiate a contract due to another's breach of a non-material term, but a right of "forfeit" can arise under tenancy common law. Under s. 45(3) of the RTA, where the landlord breaches a material term, the tenant may elect to treat the agreement as ended (a court may have to decide whether a term is "material"). The

landlord may end the tenancy only in accordance with the RTA, because of abandonment, or due to an agreement. The RTA does not abolish the doctrines of privity of estate and contract, but it enables a person having a reversionary interest (i.e. a landlord) and a "person in possession" to enforce against each other all conditions and terms, whether material or not, contained in the tenancy agreement for the possessed premises (s. 83(4)).

See also RTB Policy Guideline 8: Unconscionable and Material Terms.

2. Status of Other Statutes and Legal Doctrines

a) Interesse Termini*: Tenant Rights before Possession*

At common law, where an agreement for lease is entered into, or a tenancy agreement executed, and a tenant has not entered and taken possession, that tenant has only an *interesse termini*, i.e. contractual rights. The tenant may not exercise rights incidental to the possession of property by suing a person in possession of or upon the premises for trespass, assigning, or subletting the premises. However, s. 16 of the RTA provides that property and contractual rights under a residential tenancy agreement take effect at law from the date specified in the tenancy agreement as the commencement of the term of the tenancy agreement. The tenant may obtain an order respecting his or her right to possess or occupy the premises. Problems will arise when another tenant has come into possession; the tenant with the earlier commencement date may prevail over the later tenant, but the tenant in possession will probably be allowed to remain in possession.

b) *Implied Surrender: Abandonment*

At common law, a lease may be ended by "surrender" due to conduct of the parties, consistent only with a "merging" of the tenancy interest back into the landlord's (owner's) estate. Surrender occurs, for example, where the tenant abandons and the landlord repossesses and re-rents. Generally, no further rent or compensation for the unexpired portion of the tenancy may be claimed on surrender. However, following *Highway Properties Ltd. v. Kelly, Douglas & Co. Ltd.* (above), claims for lost rentals are allowed, provided the landlord notifies the tenant that the surrender is accepted subject to rights to claim for lost future rent. However, in the event of dispute resolution, Dispute Resolution Officers are not bound by precedent.

Abandonment is cause for ending a tenancy, but regardless of how the notice by the tenant or the acceptance of the surrender is worded, it gives rise to the landlord's duty to mitigate.

c) *Frustration*

At common law, the doctrine of frustration of contracts does not apply to a conveyance of an estate (e.g. a lease). However, there are cases that have considered how the doctrine might apply to a lease or tenancy agreement where the thing transferred is completely destroyed (e.g. a suite in an apartment destroyed by fire or water).

The doctrine of frustration now applies to residential tenancy agreements (RTA, s. 92) and commercial leases (Commercial Tenancy Act, s. 30). If some unforeseen event occurs that prevents the agreement from being performed, it will be considered to have been frustrated and is thereby terminated at the time of the event. Frustration will rarely be found where the event appears to be largely self-

induced (and the result of acts or omissions which might themselves constitute a breach of covenant, e.g. a municipal closure order made pursuant to a fire bylaw where the landlord failed to install sprinklers). If the event is totally self-induced, the perpetrator will not be able to establish frustration. Two factors to consider beyond the normal contract law concerns are:

- the length of the unexpired term at the time of frustration; and
- the possibility of any alternative use of the premises.

d) Mitigation of Damages: Duty to Re-rent

Residential landlords and tenants have a duty to mitigate their damages where either has a claim against the other for losses due to the other's breach of the agreement (RTA, s. 7(2)). Where a tenant ends the tenancy illegally, or vacates or abandons the premises other than in accordance with the RTA, the landlord has a duty to re-rent the premises at a reasonable price. Failure to do so may result in a reduced award or compensation.

See RTB Policy Guideline 5: Duty to Mitigate Loss.

e) Distress and the Right to Distrain the Tenant's Personal Goods

Under the RTA, a landlord has no right to distrain (i.e. seize) a residential tenant's personal goods for default in rental payment, nor may the landlord seize a tenant's personal goods to satisfy another claim or demand, unless the seizure is made by a person authorized by a court order or an enactment (s. 26(3) and (4)).

NOTE: If a landlord seizes goods contrary to s. 26(3), the tenant may apply to the court for an order to return the property, or in the alternative, a monetary claim for damages.

B. Damages, Debts, Compensation, and Specific Performance

Where an enforceable term or condition has been breached, a number of remedies are available. The availability of remedies is restricted, however, by the type of breach (i.e. material term, or not) and conduct involved.

1. Termination (Ending the Tenancy)

A term's breach may entitle the innocent party to put an end to the agreement, and either regain possession (landlord) or vacate the premises (tenant). Compensation or damages, in addition to termination, may also be available. However, it is risky to assume a breach is fundamental enough to put an end to an agreement, for if the party who makes that assumption is wrong, they may be held to be in breach and liable for damages. It is better to have such matters adjudicated.

2. Damages

A person suffering loss due to the breach of an express, implied, or statutory term may apply for damages through dispute resolution under s. 58(1) of the RTA, or, if not precluded by the RTA, by civil action in Small Claims or Supreme Court (Notice of Claim or Writ of Summons). Damages may be available where the tenant harms or destroys property. See RTB Policy Guideline 16: Claims in Damages.

3. Debt

Under s. 6 of the RTA, action for debt may be taken for rent arrears, e.g. where there is an early ending of the tenancy by the tenant and loss of rent.

4. Duty to Mitigate

Under s. 7(2) of the RTA, any time a monetary claim arises between landlord and tenant, both have a duty to mitigate damages (i.e. minimize losses). For example, if a tenant breaks a lease that was for a fixed term of one year, the landlord could sue the tenant for the balance of the rent payments. Nonetheless, the landlord has a duty under s. 7(2) to try to minimize his or her loss by re-renting the premises as soon as possible, rather than just suing the tenant for the whole year's rent. See RTB Policy Guideline 5: Duty to Mitigate Loss.

5. Compensation

A court may award "compensation" to an innocent party who has suffered direct loss due to a "contravention" of the RTA by the other party.

Persons merely in possession can enforce a covenant or condition of a residential tenancy agreement, take the above action, or be acted against.

Specific performance may also be an applicable remedy.

Section 95 is a penalty section, which states that breaches of the listed sections (mostly landlord breaches) are punishable by fine. While it would appear that there has been little resort to this offence section, it may be prudent to advise landlords of this potential consequence of a breach (see **Section X.A.1: Disputes Covered by dispute resolution**).

C. Class Action

A class action is an action taken by one or more persons on behalf of a number of people who have a common interest in that action. Where the matter involves more than one person with a common interest, an order may be made affecting all persons who have the same common interest. Note that for hidden rent increases, the RTB may limit the application of its order to one or more of the affected premises. If several tenants seek a joint hearing, under the RTA, a Dispute Resolution Officer may hear the cases jointly without the consent of the landlord.

XIII. STRATA LOTS (CONDOMINIUMS)

The Strata Property Act, S.B.C. 1998, c. 43, [SPA] and the Strata Property Regulation, B.C. Reg. 43/2000, [SPR] govern strata properties. The SPA replaced the Condominium Act, R.S.B.C. 1996, c. 61. Persons renting a residential condominium are tenants under the RTA. Such tenants are also subject to Parts 7 and 8 of the SPA. Below is a brief description of the Act as it relates to landlords and tenants.

A. The Law under the Strata Property Act, S.B.C. 1998 c. 43

The definition section refers to both "landlord" and "tenant". A tenant is a person who rents all or part of a strata lot, and includes a sub-tenant, while a landlord can include a tenant who rents to a sub-tenant.

Part 7 of the Act covers bylaws, rules, fines, and eviction (ss. 119 - 138):

- s. 120 provides for standard form bylaws, which can be amended;

- s. 123 states that a bylaw prohibiting pets does not apply to a pet already living with a tenant when the bylaw is passed. This section also deals with age bylaws. Tenants can be well-served by reviewing the Human Rights Code to see if the bylaw is enforceable (see 121(1)(a) of the SPA as it relates to age. Specifically, see section 10 of the Human Rights Code;

- s. 124 states that bylaws can provide for a voluntary dispute resolution process and statements or documents made only for the purpose of such voluntary dispute resolution cannot be used later at Court or dispute resolution;

- s. 125 gives the strata corporation the power to make rules governing use, safety and condition of the common property and assets;
- s. 130 permits fines to be levied if a tenant or his or her guest contravenes a bylaw or rule; see section 133, which speaks to maximum amount of fines. See section 7.1 of the Regulations for maximum amounts.

- s. 131 provides that if the landlord/owner pays a fine levied against the tenant, the tenant owes the landlord/owner the amount paid; section 7 of the RTA, also sets out "fees" that landlords can charge provided they do not contradict s.131 of the SPA.

- s. 134 states that the strata corporation may, for a reasonable length of time, deny a tenant the use of a recreational facility that is common property if the tenant (or guest of tenant) has contravened a bylaw or rule relating to the recreational facility;

- s. 135 states that the strata corporation must not impose fines or deny the use of recreational facilities unless the particulars of a complaint have been given in writing and reasonable opportunity to answer the complaint, including a hearing if requested by the tenant, has been given. The strata corporation must also give prompt notice in writing of any decision it reaches concerning a fine or denial of recreational facility; this is a technical section. Often strata corporations do not comply with it very well and technical defenses are available on a close reading of the section and the correspondence on the file.

- s. 137 permits a landlord to issue a one-month Notice To End Tenancy under RTA s. 47 for "a repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant"; and

- s. 138 permits the strata corporation to issue a one month Notice To End Tenancy under RTA s. 47 for "a repeated or continuing contravention of a reasonable and significant bylaw or rule… that seriously interferes with another person's use and enjoyment of a strata lot, the common property or the common assets".

Part 8 of the Act governs "rentals" (ss. 139-148):

- s. 141 permits a strata corporation to pass a bylaw restricting rentals by: prohibiting rentals entirely; limiting the number or percentage of units that may be rented; or limiting the period of time for which units may be rented (i.e. requiring fixed term tenancies);

- s. 142 provides that "restrictions" do not apply to prevent rental of a unit to a member of the owner's family; "family" is defined in the Regulations, s. 8.1;

- s. 143 contemplates a "grandfather" clause allowing present tenants to remain until the end of their tenancy;

- s. 144 permits an owner to apply for exemption from a rent restriction bylaw in cases causing hardship to the owner; "hardship" is not defined, and will depend on the facts of the case. Mere financial difficulty is often not enough;

- s. 145 provides that if a tenant is renting without knowledge of a rental restriction bylaw, the tenant may end the tenancy agreement without penalty by giving notice to the landlord within 90 days of finding out about the bylaw. Also, the tenant can claim reasonable moving expenses in such a situation to a maximum value of one month's rent;

- s. 146 requires a landlord to give a prospective tenant (before renting) a copy of the current bylaws and rules, and a Notice of Tenant's Responsibilities in the prescribed form. Within two weeks of renting, the landlord must give the strata corporation a copy of the Notice of Tenant Responsibilities signed by the tenant. If the landlord fails to comply with s. 146, the tenant is still bound by the bylaws and rules, but may choose to end the tenancy within 90 days of finding out. The tenant can claim reasonable moving expenses to a maximum value of one month's rent;

- s. 147 allows an owner to assign to a tenant some or all of the powers and duties of a landlord under the Strata Property Act, but this must be done in writing and copied to the strata corporation; and

- s. 148 defines a "long term lease" as a lease for a set term of three years or more. Such a lease confers the powers and duties of the landlord onto the tenant for the term of the lease. The landlord must not deal with his or her interest in the strata lot during a long-term lease in a way that would unreasonably interfere with the rights of the tenant.

SPA Form K is a notice of tenant's responsibilities:

- A landlord can force a tenant to sign Form K, which means a tenant must follow the strata bylaws.

NOTE: A helpful web site that contains a consolidated Act, regulations, highlights and information bulletins is available at: www.fic.gov.bc.ca/responsibilities/strataowners/overview.htm

XIV. ASSISTED AND SUPPORTED LIVING TENANCIES

The RTA does not yet cover assisted Living and Supported Living Tenancies.

Hospitality service may include meal services, laundry services, social and recreational opportunities or a 24 hour emergency response system. Personal care services would include assistance with eating, grooming, bathing, etc.; storage and distribution of medications; supervision of cash and property; nutrition monitoring; behaviour management; or psychosocial rehabilitation. Tenants and landlords entering into assisted/supported living arrangements need to sign tenancy agreements, and also need to sign separate service agreements specifying which services are included and on what terms. A service agreement should cover:

- the hospitality services and personal care services provided to each occupant of the rental unit;

- the amount payable for these services and when it is due;

- the landlord's entry into the rental unit to provide services; and

- whether there is a requirement for other occupants and guests to pay for services that are not needed.

Fees for these services should not be part of a lump-sum monthly bill, but should be set out separately from the rental fee. A landlord can increase the rent if the tenant agrees, or once a year by a percentage permitted by

law. The landlord must give the tenant three whole rental months' written notice before the effective date of the rent increase. A landlord will not be permitted to withdraw or restrict rental services if they are essential, or if they constitute material terms of the rental agreement.

XV. COMMERCIAL TENANCIES

As contracts, tenancy agreements constitute commercial relations. The Commercial Tenancy Act, R.S.B.C. 1996, c. 57, governs that aspect of tenancy. Special laws, rules, and procedures have been established for premises and tenancy agreements characterized as residential. Landlord and tenant matters not subject to the RTA, or exempted from particular provisions, are covered by the Commercial Tenancy Act.

See RTB Policy Guideline 14: Type of Tenancy: Commercial or Residential.

A. Relationship of Landlord and Tenant

1. In General

Before entering into an agreement, a tenant should find out who owns the property and who rents the property to ensure that the new tenant is not leasing from a current tenant – see **Section XV.A.2: Assignment and Subletting**, below. A tenant should ensure that he or she does not enter into an agreement with a company that is not yet incorporated – see **Section XV.A.3: Pre-Incorporation Contracts**, below.

A new tenant should find out how the property is zoned to ensure lawful use of the property. Also, using the property for a different purpose than that outlined in the lease is a breach of the agreement. To vary the lease, both parties must consent.

2. Assignment and Subletting

When the tenant's interest is conveyed to a third party for the remainder of the term, the lease is said to have been assigned. The assignee becomes a tenant of the landlord.

If the premises are to revert to the original tenant before the full term of the lease, a sub-lease is created. Note that a landlord-tenant relationship exists between the landlord and sub-tenant. If both parties live in the unit, payment of rent by a new tenant to the original tenant may also create a sub-tenancy.

Most leases require the landlord's consent before an assignment or sublet is made. Such clauses usually specify that the landlord's consent will not be unreasonably withheld. If the landlord does withhold his or her consent unreasonably, the tenant may proceed without consent, with litigation as the likely outcome. Tenants should decide if they want to deal with that or if they want to commence litigation on their own right to obtain an order that they can proceed. A landlord's wish to charge higher rent or to prevent the tenant from receiving a premium by subletting are not reasonable grounds for withholding consent.

The onus is on the tenant to show that the landlord's refusal is unreasonable. There are no fixed rules governing reasonable or unreasonable withholding of consent. The landlord can charge a fee for the tenant to sublet or assign the rental property, and that does not negate the landlord's consent. The lease itself and all other circumstances of the case must be considered.

3. Pre-Incorporation Contracts

A company is not bound by any contracts it enters into before incorporation. Where a person enters into a contract in the name of a company before that company's incorporation, that person may be liable for breach of warranty. To avoid difficulty, the lease should be entered into personally with the right to assign the lease to the company once incorporated.

4. Partnerships

A partner enters into contracts on behalf of all partners for any transaction that is in the ordinary course of business. Thus, a lease entered into in the firm's name is binding on the firm and its partners.

B. The Agreement

1. Distinction between Lease and License

A license is a purely contractual relationship. It gives the licensee no interest in the licensor's real property. Restaurants that operate in department stores are usually run as a licensee liquor arrangement, for example.

The courts distinguish leases from licenses by examining whether the parties intended to grant exclusive possession to the occupants, or merely permission to occupy subject to the rights of the owner. Words in the agreement such as "lease", "landlord" or "tenant" are, in the absence of a contrary statement, conclusive evidence of an intention to create a lease. Exclusive possession of the tenant does not require absolute exclusion of the landlord.

2. Distinction between Lease and Agreement to Lease

A lease is an immediate conveyance of land (though possession may be postponed) while an agreement for lease requires the parties to execute a lease at a later date. However, where the tenant is in possession, an agreement to lease may be construed as a lease.

3. Requirements for a Valid Agreement

a) A lease or agreement to lease greater than three years in length must be in writing to satisfy the Statute of Frauds requirements;

b) Any lease over three years should be registered (though there is no legal obligation to do so);

c) While a seal is no longer required for Land Title Office registration, if one of the parties to a lease is a corporation, its seal should be affixed to ensure the agreement is binding on the corporation, and to avoid any argument that the agreement was made without consideration; and

d) The agreement must state the tenant's right to exclusive possession as well as some indication of the premises being leased; the duration of the lease; the parties to the lease; the amount of rent; and covenants, conditions, exceptions or reservations.

4. Description of Premises

To avoid having the lease struck down for uncertainty, there must be a description of the property adequate to identify it. An ambiguous description may be supplemented by parole evidence.

5. Common Areas and Easements

Driveways, walkways, parking and delivery areas, lawns, lobbies, elevators, corridors, interior mall space, and common washrooms are normally common areas in which the tenant does not have exclusive possession. However, the tenant is often required to pay a share of the costs for the maintenance of these areas. The lease agreement may also provide the tenant with an easement, subject to restrictions on how and when the common areas may be used.

6. Fixtures

A fixture is annexed or fastened to the real property. They are either tenant's fixtures, and therefore removable, or landlord's fixtures, which are permanent. Tenant's fixtures are annexed for the purposes of the tenant's trade, ornamentation, or convenience. Landlord's fixtures are installed by the landlord, previous tenants, or by the present tenant. They have become part of the realty and their removal would constitute waste: see *Stack v. Eaton* (1902), 4 O.L.R. 335 (Div. Ct.).

C. Rent and Security Deposit

1. Security Deposits

In commercial leases, security deposits are intended to cover damages for breach of a covenant or condition or to ensure a tenant will go into possession. The landlord's covenant to repay the deposit is collateral to the lease, and personal to the landlord. Thus, if the landlord sells, his or her successor is not bound to repay the deposit.

2. Rent

Technically, rent is a contractual payment for the use of property. Commercial leases often also include additional rents such as a percentage of the tenant's sales or profits, and the tenant's portion of common expenses.

By defining additional rents as part of the rent, the landlord gains the right to end the lease for non-payment of these amounts. Unless provided for otherwise, it is the tenant's duty to seek out and pay the landlord. The tenant also bears the risk of a late payment if he or she uses the mail.

3. Net Lease Concept

Most commercial leases operate on the net lease concept. This means that fixed rent (dollars-per-square foot or dollars-per-month) is to be net to the landlord, with the tenant paying for all costs in operating the leased premises as additional rent. Thus, substantial payments can be made as "additional rent" to cover the tenant's portion of the landlord's expenses. This concept is also known as "triple net".

4. Taxes

Unless the lease provides otherwise, the landlord is liable for all realty taxes. If the lease calls for the tenant to pay the taxes, the landlord may sue the tenant if taxes are in arrears.

5. Seizure of Personal Property for Non-Payment of Rent

Another difference between commercial and residential tenancies is that a commercial landlord may distrain (seize personal property for non-payment of rent), while a residential landlord may not, no matter what sort of rental arrears exist. The personal property being distrained must be located in the rented premises and the landlord must give notice before seizing the property. The tenant will suffer a penalty if he or she removes the goods to prevent distrainment. Distrainment keeps the tenancy alive. Usually the month after distrainment the tenant will be evicted if there remain arrears of rent or if new arrears of rent accrue.

D. Occupier's Liability

NOTE: For specific details, see the Occupier's Liability Act, R.S.B.C. 1996, c. 337 [OLA]. The OLA, s. 6 speaks to sub-tenancies.

1. Landlord's Liability for Injuries in the Demised Premises

The landlord has no statutory or common law duty to maintain the demised premises unless provided for in the lease agreement. Contractual liability of the landlord is to the tenant alone, not to his or her family, guests, or customers. Moreover, as the landlord is not an occupier, he or she is not liable in tort.

However, where the landlord is under a duty to maintain the premises, s. 6 of the OLA puts the landlord in the same position as the occupier of the premises. Where the landlord fails to maintain the premises and an injury results, the landlord will be held liable. The landlord is considered an occupier with regards to common areas. His or her duties are set out in s. 3 of the OLA.

2. Tenant's Liability for Injuries in Demised Premises

The tenant is considered an occupier, and inherits all duties that go along with that designation. A tenant should take reasonable care to inspect, notify the landlord, and give warning to an invitee of any unusual danger in the common areas. Where an occupier can foresee that a trespasser may enter the property, there is a duty to treat the trespasser with common humanity.

E. Termination of Tenancy

1. In General

If the landlord terminates because of the tenant's default, the landlord's damages are generally based on the landlord's anticipated loss for the balance of the lease term. However, landlords are expected to mitigate their losses and so they are not always at liberty to claim damages for the remainder of the lease term. See *Highway Properties Ltd. v. Kelly, Douglas & Co. Ltd.* (above). (There appears to be no duty to mitigate where the landlord does not accept the tenant's repudiation of the lease, and simply sues for rent as it comes due under the

principles of property law. Should this situation arise, clients are strongly advised to consult an experienced lawyer.)

There may also be damages available for work done to the property, the cost of re-renting, and the like. In a falling rental market, a tenant may be held responsible for the landlord's losses in acquiring a new tenant at a lower rent. The landlord must look for another reasonable tenant.

2. Rent Acceleration

An agreement may contain a clause for rent acceleration. Rent is usually accelerated by 3 months, meaning for example that if you owe one month's rent of $2,000, at the end of tenancy that becomes $6,000.

3. Bankruptcy and Insolvency

A trustee in bankruptcy can take over for a tenant and break the lease with fewer penalties than the tenant.

4. Personal Liabilities

If a personal guarantee is included in the lease agreement, the tenant will be held personally responsible for monies owed when their company is insolvent. However, personal guarantees do not necessarily require a determination of insolvency in order to obligate a tenant.

Also, there are issues for a guarantor and a covenantor regarding when liability accrues. Sometimes the guarantor is made a party to the lease (as one of the tenants), as well.

XVI. MANUFACTURED HOMES (FORMERLY "MOBILE HOMES")

A. General

In 2004, the Manufactured Home Park Tenancy Act, S.B.C. 2002, c.77 [MHTA] was given effect in order to meet the unique needs of landlords of manufactured home parks and owners of manufactured homes who rent the site on which their homes sit. If one rents both the manufactured home and the pad it sits on, the tenant is covered by the RTA, and therefore has the same legal rights as other tenants in British Columbia.

After January 1, 2007, a landlord may authorize assignment or sublease of a manufactured home park site in a tenancy agreement, and manufactured home park owners will be permitted to increase rent by the rate of inflation plus two percent. The inflation rate for each calendar year is available on the RTB website. The Manufactured Home Park Tenancy Regulations, B.C. Reg. 481/2003 [MHTR] supplement the MHTA.

B. Definitions

1. Common Area

A Common Area is defined as any part of a manufactured home park the use of which is shared by tenants or by a landlord and one or more tenants.

2. Landlord

Includes the owner of the manufactured home site; the owner's agent or another person who on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement; their heirs, assignees, personal representatives and successors in title; a person, other than a tenant whose manufactured home occupies the manufactured home site is entitled to possession of the manufactured home site, and exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the manufactured home site.

3. Manufactured Home

Means a structure, whether or not ordinarily equipped with wheels, that is designed, constructed or manufactured to be moved from one place to another by being towed or carried, and used or intended to be used as living accommodation.

4. Manufactured Home Site

This is a site in a manufactured home park, rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home.

C. Moving In

Landlords may require a tenant to provide third party liability insurance held by the mover as proof of security against damages caused by the move of a home into a park (MHTA, s. 29).

Prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement.

D. Deposits

1. Security Deposits

A landlord cannot require or accept a security deposit in respect of a manufactured home site tenancy. If a landlord accepts a security deposit from a tenant, the tenant may deduct the amount of the security deposit from rent or otherwise recover the amount (MHTA, s. 17). Security deposits held by landlords before the effective date of this Act may be retained until the end of the tenancy. A landlord who does not return or file a claim against the deposit at the end of tenancy could be required to pay the tenant double the amount of the deposit.

2. Pets

Landlords may not charge pet damage deposits.

3. Fees

a) Prohibited Fees (MHTA, s.89 (2)(k); MHTR, s. 3)

A landlord must not charge:

- a guest fee, whether or not the guest stays overnight; or

- a fee for replacement keys or other access devices if the replacement is required because the landlord changed the locks or other means of access.

b) Refundable Fees

So long as an access device is not a tenant's sole means of access to the manufactured home park, a landlord may charge a refundable fee for that device. The fee cannot be greater than the direct cost of replacing the access device.

E. During the Tenancy

1. Rent Increases

a) Amount

Landlords are able to increase rent annually by a percentage equal to the Consumer Price Index (CPI) plus 2 percent (MHTA, s. 36(1)(a) and see MHTR). See the RTB website for allowable amounts. A landlord may apply to a Dispute Resolution Officer for approval of a rent increase in an amount that is greater than the amount calculated under the regulations.

NOTE: A landlord may apply under s. 36 of the Act for an additional rent increase above the CPI, but can only do so under certain circumstances: see MHTR, s. 33(1).

b) Notice

A landlord must give a tenant notice of a rent increase at least three months before the effective date of the increase, the notice of increase must also be in the approved form. If the increase does not meet these two requirements, the notice takes effect on the earliest date that it does comply (MHTA, s. 35(2)).

c) Timing

A rent increase cannot be imposed for at least 12 months after whichever of the following applies (MHTA, s. 35(1)):

- if the tenant's rent increase has not previously been increased, the date on which the tenant's rent was first established; or
- if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this act.

F. Manufactured Home Park Rules and Committee

In accordance with Part 3 of the MHTA and the associated regulations, the landlord and tenants of a manufactured home park may establish and select the members of a park committee. A park committee must make all of its decisions by unanimous agreement of all members of the committee, except resolutions regarding secret ballots made under MHTR, s. 23(8), which must be decided by majority vote.

A park committee, or if there is no park committee, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects (MHTR, s. 30):

- it promotes the convenience or safety of the tenants;
- it protects and preserves the condition of the manufactured home park or the landlord's property;
- it regulates access to or fairly distributes a service or facility; or
- it regulates pets in common areas.

The rule must not be inconsistent with the Act or the regulations. A rule established, or changed is enforceable against a tenant only if (s. 30(3)):

- the rule applies to all tenants in a fair manner;
- the rule is clear enough that a reasonable tenant can understand how to comply with the rule;
- notice of the rule is given to the tenant in accordance with s. 29 (disclosure); and
- the rule does not change a material term of the tenancy.

G. *Tenancy Agreements*

Landlords and tenants may agree to any term so long as the term is not an attempt to avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or regulations is of no effect (MHTA, s. 5). Furthermore a term will not be enforced if it is found to be unconscionable, or the term is not expressed in a manner that clearly communicates the rights and obligations under it. The rights and obligations established by or under this Act are enforceable between a landlord and tenant under a tenancy agreement.

1. Liability for Non-compliance

If a landlord or tenant does not comply with the MHTA, the regulations, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results (s. 7 (1)).

NOTE: The innocent party always has a duty to mitigate their losses.

2. Specific Terms

a) Pets

Landlords may prohibit pets or restrict the size, kind or number of pets, and establish rules for pet ownership. Guide animals and existing pets are exempt from the provisions.

b) Tenant's Right to Quiet Enjoyment

A tenant is entitled to quiet enjoyment including but not limited to the following (MHTA, s. 22):

- reasonable privacy;
- freedom from unreasonable disturbance; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

H. Ending a Tenancy

A tenancy ends only if one or more of the following applies (MHTA, s. 37(1)):

- the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

  a) s. 38 (tenant's notice);

  b) s. 39 (landlord's notice: non-payment of rent);

  c) s. 40 (landlord's notice: cause);

  d) s. 41 (landlord's notice: end of employment);

  e) s. 42 (landlord's notice: landlord's use of property); or

  f) s. 43 (tenant may end tenancy early).

NOTE: Each of these sections sets out notice requirements. It is important that any notice given meets the form and content requirements set out in MHTA, s. 45.

- the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the manufactured home site on the date specified as the end of the tenancy;
- the landlord and tenant agree in writing to end the tenancy;
- the tenant agreement is frustrated; or
- a Dispute Resolution Officer orders that the tenancy is ended.

1. Tenant's Notice

a) Periodic

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

b) Fixed Term

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

c) Material Term Breach

If the landlord breaches a material term, the tenant may end the tenancy by giving the landlord notice to end the tenancy effective on a date that is after the date the landlord receives the notice.

2. Failure to Pay Rent

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives notice (MHTA, s. 39(1)). Notice given under this section must comply with the form and content requirements found in s. 45. A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent, if rent is paid within five days of receiving the notice to end tenancy, or if the tenant disputes the notice by applying for dispute resolution. If however the tenant does not dispute the notice and does not pay the amount owed the landlord can go to the residential tenancy board and get an order of possession without a hearing.

3. Landlord's Use

A landlord may end a tenancy agreement by giving notice to end the tenancy agreement if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park (MHTA, s. 42(1)). A notice to end a tenancy under this section must end the tenancy effective on a date that is not earlier than 12 months after the date the notice is received and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and if the tenancy agreement is a fixed term tenancy agreement, is not earlier than the date specified as the end of the tenancy. A tenant may be entitled to 12 months rent compensation where a landlord gives a tenant notice under s. 42 (s. 44 (1)); the 2007 amendments make the 12 month compensation payable immediately upon notice.

4. Landlord's Notice: Cause

Refer to s. 40(1) of the MHTA; this section is very similar to the RTA section in relation to Landlord's Cause.

NOTE: Notice in this section must end tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

5. Disputing Notice

Notices of termination or eviction can be disputed by applying for dispute resolution, but must be done so within the following set time limits that start running after the date the tenant receives the notice:

- non-payment of rent: five days;
- landlord's cause: 10 days; and
- landlord's use of property: 15 days.

6. Moving Out Early After Receiving a Notice

If a landlord gives a tenant notice to end a periodic tenancy under s. 42 (landlord use of property), the tenant may end the tenancy early: see MHTA, s. 43.

7. Required Form

In order to be effective, a notice to end tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice, give the address of the manufactured home site, state the effective date of the notice, except for a notice under s. 38(1) or (2) (tenant's notice), state the grounds for ending the tenancy, and **when given by a landlord be in the approved form (RTB Form)** (MHTA, s. 45).

I. Moving Out

Landlords may require a tenant to provide third party liability insurance held by the mover as proof of security against damages caused by the move of a home out of a park.

J. Dispute Resolution

Disputes between landlords and tenants may be resolved by applying to dispute resolution. The following are typical examples:

- rights and prohibitions under the Act;
- rights and obligations under the terms of a tenancy agreement that are required or prohibited under this act;
- tenant's use, occupation or maintenance of the manufactured home site; and
- the use of the common areas or services.

A dispute between landlord and tenant generally has to be dealt with in dispute resolution unless the claim is for more than the monetary limit under the Small Claims Act, the application was not filed within the application period before the Supreme Court, or the dispute is linked substantially to a matter that is before the Supreme Court.

See s. 52(1) on starting dispute resolution proceedings. Proceedings can be started by either the landlord or the tenant filing an application for dispute resolution with the director. The application must be in the approved form and include full particulars of the dispute, and be accompanied by the fee; it is possible for this fee to be waived.

NOTE: If the Act does not state a time by which an application for dispute resolution must be filed, it must be filed within two years of the date that the tenancy to which the matters relates ends or is assigned (MHTA, s. 53(1)).

XVII. INCOME ASSISTANCE, TAXATION, AND RENTAL HOUSING

A. Shelter Aid for Elderly Renters (SAFER)

The SAFER program is a rental assistance initiative offered by B.C. Housing. It is intended to help senior citizens (i.e. people over 65 years of age). However, those between 60 and 65 also qualify, so long as they are not on income assistance. Applicants must also be Canadian citizens, authorized to take up permanent residence in Canada, or Convention refugees. Applicants must have lived in B.C. for at least one year prior to applying. An applicant must also be paying over 30 percent of his or her income towards rent. Gross monthly income requirements for Metro Vancouver residents are: single, $2,333; couple, $2,517; shared, $1,625. For those living outside the Metro Vancouver, the rates are: single, $2,033; couple, $2,217; shared, $1,625.

The maximum monthly rent allowed in the SAFER program for a single person is $700 per month (i.e. if you pay any amount higher than $700, SAFER will still assume that $700 is the amount paid), or $755 per month for a couple (rates are lower for those outside the Metro Vancouver). The B.C. Housing web site has a calculator program to determine if an applicant will qualify.

Residents of subsidised housing, cooperative housing, and manufactured homes (unless they are renting both the trailer home **and** the pad) do not qualify for the SAFER program.

More information and application forms are available from B.C. Housing. Application forms may be obtained from the B.C. Housing web site at www.bchousing.org, or contact:

B.C. Housing
Suite 601 - 4555 Kingsway Avenue
Burnaby, B.C. V5H 4V8
Toll-free: 1-800-257-7756
Lower Mainland: (604) 433-2218

B. BC Housing Corporation's Family Rent Reform, the Rental Assistance Program

The Rental Assistance Program provides eligible low-income, working families with at least one dependant child with cash assistance to help pay their rent. In April, 2008, B.C. relaxed the eligibility requirements in order to help more families. B.C. Housing increased the maximum income level to $35,000, and increased the benefit, the allowable rent, and the age of a child. A child up to age 25 now qualifies as dependant as long as the chid is attending school. A child of any age with mental or physical infirmity is accepted as a dependant.

For more information and application forms, see www.bchousing.org/programs/RAP, or contact **B.C. Housing** (above).

XVIII. ILLEGAL SUITES

Municipalities all over the Lower Mainland are attempting to regulate illegal suites. At the present time, most legalization programs have been a dismal failure. The policy guidelines are municipality-specific, so clients should be directed to their municipal offices to find out what the specific enforcement policies are for their municipality.

The City of Vancouver implemented a policy on illegal suites in March 2004. City Council formally approved changes to the Zoning and Development By-law which make it possible to have a secondary suite in every detached single family home in the City of Vancouver. In addition, Council also approved the relaxation of various building code standards to facilitate the secondary suite process.

The City will continue to respond to complaints received from neighbours or tenants regarding illegal suites. Where legitimate complaints are received, homeowners will have to apply to make the suite legal. In the case of houses with multiple suites, Council policy limits the house to a principal dwelling and one secondary suite. The application process is described online, and can be accessed at:
www.vancouver.ca/commsvcs/licandinsp/licences/ssp/process.htm.

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If a city inspector determines that a suite should be closed down, the landlord will be given 30 days notice to evict the tenant. That notice will begin to run from the day on which rent is next due (i.e. the first of the month). Regardless of the legality of the suite however, the RTA still applies. A tenant may be entitled to more than the 30 days notice given by the municipality, and may therefore have a claim against the landlord if the proper notice is not given. See RTB Policy Guideline 20: Illegal Contracts.

XIX. FORMS AVAILABLE ON THE RTB WEB SITE

Current forms are available at the RTB web site at: www.rto.gov.bc.ca/content/formsFees/default.aspx
Ensure clients are using the most recent forms. Some applications require fees (a standard Application for dispute resolution costs $50); see www.rto.gov.bc.ca/documents/RTB-123.pdf for specific fees. Waivers are available for low-income applicants.

A. Entering Into a Tenancy

1. **Residential Tenancy Agreement - RTB 1**
   The Residential Tenancy Branch is of the opinion that this Residential Tenancy Agreement accurately reflects the Residential Tenancy Act and accompanying regulations. The RTB makes no representations or warranties regarding the use of this Agreement. A landlord and tenant may wish to obtain independent advice regarding whether this agreement satisfies their own personal or business needs.

2. **Manufactured Home Site Tenancy Agreement - RTB 5**
   The Residential Tenancy Branch is of the opinion that this Manufactured Home Site Tenancy Agreement accurately reflects the Manufactured Home Park Tenancy Act and accompanying regulations. The RTB makes no representations or warranties regarding the use of this agreement. A landlord and tenant may wish to obtain independent advice regarding whether this agreement satisfies their own personal or business needs.

3. **Condition Inspection Report - RTB 27**
   Landlords and tenants or their representatives can use this form to record the condition of a rental unit at the time of move-in and at the time of move-out by the tenant.

4. **Schedule of Parties - RTB 26**
   If the form you are completing does not have enough room for additional applicants or respondents, use this Schedule of Parties to continue. It is to be filed with your completed application.

B. Rent Increases

1. **Notice of Rent Increase - Residential Rental Units - RTB 7**
   Landlords must use this notice to notify tenants of rent increases.

2. **Notice of Rent Increase - Manufactured Home Site - RTB 11**
   Park owners must use this notice to notify tenants of site rent increases. This notice is not used where a tenant rents a manufactured home - as well as the site - under the single tenancy agreement.

3. **Application for Additional Rent Increase - RTB 16**
   A landlord must use this form to apply for a Dispute Resolution Officer's approval for a rent increase in an amount greater than the amount specified in the Residential Tenancy Act, the Manufactured Home Park Tenancy Act and associated regulations.

4. **Schedule of Parties - RTB 26**
   If the form you are completing does not have enough room for additional applicants or respondents, use this Schedule of Parties to continue. It is to be filed with your completed application.

C. Dispute Resolution

1. **Tenant's Application for Dispute resolution - RTB 12**
   Tenants must complete and file this form to request a hearing before a Dispute Resolution Officer to resolve a residential tenancy dispute. To submit the Application form over the web, fill out the Online Application for dispute resolution form.

2. **Landlords's Application for Dispute resolution - RTB 12**
   Landlords must complete and file this form to request a hearing before a Dispute Resolution Officer to resolve a residential tenancy dispute. To submit the Application form over the web, fill out the Online Application for dispute resolution form.

3. **Application to Waive Filing Fee - RTB 17**
   A person bringing a dispute to dispute resolution may use this form to request that the Residential Tenancy Branch waive the fee for filing an Application for dispute resolution.

4. **Application for Substituted Service - RTB 13**
   Landlords and tenants must use this form to request a Dispute Resolution Officer order documents be served in a method other than those required by the Residential Tenancy Act.

5. **Tenant's Request to Join Applications for Dispute Resolution - RTB 19**
   Tenants may use this application to request that the Director of the Residential Tenancy Branch order that two or more dispute resolutions be heard together. Dispute resolutions may be joined when the matters to be determined are related and it makes sense that the matters be joined.

6. **Landlord's Request to Join Applications for Dispute Resolution - RTB 18**
   Landlords may use this application to request that the Director of the Residential Tenancy Branch order that two or more dispute resolutions be heard together. Dispute resolutions may be joined when the matters to be determined are related and it makes sense that the matters be joined.

7. **Schedule of Parties - RTB 26**
   If the form you are completing does not have enough room for additional applicants or respondents, use this Schedule of Parties to continue. It is to be filed with your completed application.

D. Dispute Resolution Decisions and Orders

1. **Application to Review Dispute Resolution Officer's**
   Decision or Order - RTB 2

Landlords and tenants may use this form to apply to the Director or the Residential Tenancy Branch for review of a Dispute Resolution Officer's order or decision.

2. **Request for Correction or Clarification - RTB 6**
   Tenants and landlords may use this form to request that a Dispute Resolution Officer clarify a decision or deal with any obvious error or inadvertent omission.

3. **Request/Approval for Release of Originals - RTB 9**
   Use this form to request the return of original evidence used in a residential tenancy dispute resolution hearing.

4. **Application for Substituted Service - RTB 13**
   Landlords and tenants must use this form to request a Dispute Resolution Officer order documents be served in a method other than those required by the Residential Tenancy Act.

5. **Schedule of Parties - RTB 26**
   If the form you are completing does not have enough room for additional applicants or respondents, use this Schedule of Parties to continue. It is to be filed with your completed application.

E. End of Tenancy

1. **Notice to End Tenancy - Residential Unit - RTB 3**
   A landlord must use this notice to end a tenancy agreement, unless the tenancy is a fixed-term agreement that contains a predetermined expiry date and the tenant has agreed to vacate, or the landlord and tenant have agreed in writing to end the tenancy.

2. **12 Month Notice to End Tenancy for Conversion of Manufactured Home Park - RTB 31**
   Landlords must use this form to end a Manufactured Home Site Tenancy.

3. **Mutual Agreement to End a Tenancy - RTB 8**
   Tenants and landlords may use this form to voluntarily end residential tenancies.

4. **Notice of Final Opportunity to Schedule a Condition Inspection - RTB 22**
   A landlord must use this form where a tenant was not available at the date(s) and time(s) first offered by the landlord for a condition inspection, and where the landlord was not available at an alternate time proposed by the tenant.

5. **Schedule of Parties - RTB 26**
   If the form you are completing does not have enough room for additional applicants or respondents, use this Schedule of Parties to continue. It is to be filed with your completed application.

F. Condition Inspection

1. **Condition Inspection Report - RTB 27**
   Landlords and tenants or their representatives can use this form to record the condition of a rental unit at the time of move-in and move-out by the tenant.

2. **Notice of Final Opportunity to Schedule a Condition Inspection - RTB 22**
   A landlord must use this form where a tenant was not available at the date(s) and time(s) first offered by the landlord for a condition inspection, and where the landlord was not available at an alternate time proposed by the tenant.

3. **Schedule of Parties - RTB 26**
   If the form you are completing does not have enough room for additional applicants or respondents, use this Schedule of Parties to continue. It is to be filed with your completed application.

G. *Other Forms*

1. **Affidavit - RTB 15**
   Landlords and tenants may use this document to swear that the respondent(s) to a residential tenancy dispute was served.

2. **Certificate of Service - RTB 21**
   Landlords and tenants may use this document to swear that the respondent(s) to a residential tenancy dispute was served.

3. **Notice Terminating or Restricting a Service or Facility - RTB 24**
   A landlord must use this form to terminate or restrict a service or facility to a rental unit or manufactured home site.

4. **Request for Consent to Assign a Manufactured Home Site Tenancy Agreement - RTB 10**
   Use this form if you are a manufactured home owner and you are requesting the park owner's consent to assign your site tenancy agreement to the purchaser of your manufactured home.

5. **Request for Consent to Sublet a Manufactured Home Site Tenancy Agreement - RTB 25**
   A manufactured home owner may use this form to request a park owner's consent to sublet a site tenancy agreement to the renter of the manufactured home.

6. **Writ of Possession - RTB 14**
   A formal instruction from the Supreme Court of British Columbia for a bailiff to enforce an Order of Possession issued by a Dispute Resolution Officer.