CHAPTER NINETEEN: LANDLORD AND TENANT LAW

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I. INTRODUCTION

Landlord tenant law was written to protect the rights and identify the responsibilities of both landlords and tenants. The *Residential Tenancy Act*, SBC 2002, c 78 [RTA] and *Residential Tenancy Regulation* [RTR], BC Reg 477/2003 as well as the rules of procedure are amended occasionally; check the Residential Tenancy Branch (RTB) website (www.gov.bc.ca/landlordtenant) to get 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) Arbitrators without an oral hearing (RTA, s 55(4)). Landlords will have to submit detailed documentation to an Arbitrator, who will render a decision based on paper evidence only. Never ignore a notice to end tenancy.

- Under s 55(4), monetary orders for rent in arrears may also 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 an Arbitrator and will only address situations where the law is very clear.

Administrative Penalties

- Under s 94(1) of the RTA, penalties of up to $5,000 per day may be imposed for contravening the RTA, the Regulation, or an order. Administrative penalties are rarely, if ever, imposed and according to the RTB guidelines, such penalties are to be used only in response to "serious, repeated non-compliance."

Timelines

- The Rules of Procedure for dispute resolution are revised occasionally. The latest edition took effect on June 28, 2014. It is important to be aware of timelines. For example, the RTB must receive the applicant's documents that are to be used at a hearing no later than 14 days before the dispute resolution proceeding, while the respondent's documents must be received no later than 7 days before the dispute resolution proceeding. This is strictly enforced and while the RTB may forward late documents to the Arbitrator, Arbitrators can choose not to accept them.

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.

Security Deposits

- Landlords can charge security deposits, and an additional deposit for pets. Neither may be more than ½ the monthly rent, and must not exceed more than one month's rent in total. They 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.

- A move-in and move-out Condition Inspection Report 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 photographs during both move-out and move-in inspections

Rent

- The RTA states that a tenant must pay their rent in full and on time, regardless of whether the tenant believes the landlord has fulfilled their obligations.

- 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 **in writing**, 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 RTR s 22, unless the landlord applies for a greater increase as regulated under RTR s 23, or the tenant agrees in writing to a greater rent increase. Limits on rent increases continue to apply at the end of fixed-term tenancies.

- Tenants cannot apply at the RTB for an extension of time to pay rent, except under very limited circumstances such as where the tenant withholds rent for the payment of emergency repairs. Tenants can talk to an Information Officer about what might constitute an emergency repair but an Information Officer cannot authorize the withholding of rent. Always get the Information Officer's name.

NOTE: Many of the forms referred to in this chapter are available at the RTB web site. Please refer to **Section XIX: Forms Available on the RTB Web Site** for a complete list of available forms or visit http://bit.ly/1FjmXzc 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*, SBC 2002, c 77 [MHPTA].

Subject to any applicable limitation period and to RTA s 60, a landlord or tenant may start 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). The limitation period is generally two years. Common monetary claims brought to the Residential Tenancy Branch (RTB) for dispute resolution by tenants are:

- for the return of the security and/or pet deposit;

- to dispute a proposed rent increase;

- to cancel a notice to end tenancy;

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

- for compensation where the landlord has seized the tenant's possessions

Landlords commonly bring claims:

- for unpaid rent owed by the tenant;

- to obtain an Order of Possession (to regain possession of a rental unit);

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

- for compensation for damage caused by a tenant.

Claims at the RTB can be up to $25,000. 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.

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

a) Legislation and Regulations

Residential Tenancy Act, SBC 2002, c 78 [RTA].
Website: www.bclaws.ca/civix/document/id/complete/statreg/02078_01

Residential Tenancy Regulation, BC Reg 477/2003, [RTR].
Website: http://www.bclaws.ca/civix/document/id/complete/statreg/477_2003

- 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, SBC 2002, c 77 [MHPTA].
Website: www.bclaws.ca/civix/document/id/complete/statreg/02077_01

Manufactured Home Park Tenancy Regulation BC Reg 481/2003
Website: www.bclaws.ca/civix/document/id/complete/statreg/481_2003

b) Resources and Policy Guidelines

TRAC Tenant Resource & Advisory Centre
Website: www.tenants.bc.ca

Provides a variety of publications relating to tenant law, including the *Tenant Survival Guide* (also available online as a wikibook, via the Clicklaw website: wiki.clicklaw.bc.ca/index.php/Tenant_Survival_Guide) Other print materials are available in the following 19 languages: English, French, Arabic, Burmese, Chinese Simplified, Chinese Traditional, Filipino, Japanese, Karen, Kinyarwanda, Korean, Oromo, Portuguese, Punjabi, Persian, Spanish, Swahili, Tigrinya, and Vietnamese.

Residential Tenancy Branch

Main Office

400 - 5021 Kingsway
Burnaby, B.C. V5H 4A5
Website: www.rto.gov.bc.ca
Office Hours: M-F 9:00 am - 4:00 pm

Information line:
Metro Vancouver 604-660-1020
Victoria 250-387-1602
Elsewhere in BC 1-800-665-8779
Fax: 604-660-2363
E-mail: HSRTO@gov.bc.ca

Downtown Satellite Office

520 Richards Street
Vancouver, B.C. V6B 3A2
Office Hours: M-F 9:00 am – 11:30 am
(closed on the last Tuesday of every month)

Downtown Eastside Satellite Office

Four Corners
390 Main Street
Vancouver, B.C. V6A 2T1
Office Hours: M-F 12:30 pm - 4:00pm

Vancouver Island

Suite 101 – 3350 Douglas Street
Victoria, B.C. V8Z 3L1
Office Hours: M-F 9:00 am - 4:00 pm

NOTE: The main office in Burnaby is a full service office. The Richards Street and Downtown Eastside are satellite offices and do not handle money. Dispute applications can only be filed there by low income applicants who are eligible for a fee waiver. Those offices are staffed with information officers.

- The RTB website (www.gov.bc.ca/landlordtenant) contains forms, legislation and RTB interpretation guidelines, and includes the following useful publications:

  Residential Tenancy Branch Dispute Resolution Rules of Procedure
  Website: http://bit.ly/1Igbqmg

  Residential Tenancy Information Sheets
  Website: http://bit.ly/1KTmo6l

  Residential Tenancy Act: A Guide for Landlords and Tenants in British Columbia, (B.C. Office of Housing and Construction Standards, rev. April 2011). The guide is available in English, French, Punjabi, and Chinese Traditional.
  Website: http://bit.ly/1SixTX7

  Manufactured Home Park Tenancy Act: A Guide for Landlords and Tenants in British Columbia (BC Office of Housing and Construction Standards, rev. January 2011). This Guide is available in English.
  Website: http://bit.ly/1SixTX7

  RTB Policy Guidelines: detailed information on common problem areas; drafted by RTB Arbitrators.
  Website: http://bit.ly/1ei1NfH

B.C. Housing

Suite 101 - 4555 Kingsway
Burnaby, B.C. V5H 4V8
Website: www.bchousing.org

Toll-free: 1-800-257-7756

- Information for tenants living in public, subsidized housing.

Landlord BC
Website: www.landlordbc.ca
E-mail: info@landlordbc.ca
Direct: 1-888-330-6707

Vancouver members (formerly BCAOMA):
203 - 1847 West Broadway
Vancouver, British Columbia V6J 1Y6
Telephone: 604-733-9420
Fax: 604-733-9420

Victoria and province-wide members (formerly ROMS BC):
830B Pembroke Street
Victoria, British Columbia V8T 1J9
Telephone: 250-382-6324
Fax Local: 250-382-6006
Fax Toll-Free: 1-877-382-6006

c) Books

Margaret Carter-Pyne, *Residential Tenancy Law in British Columbia: Everything you need to know to prevent a disaster* (Victoria, BC: Sunnymead Publishing, 2009).

- A useful resource for students and tenants in preparing for a hearing.

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

- This is a loose-leaf volume updated once or twice annually.

C. Definitions

The following are interpretations of the definitions that are set out in Section 1 of the RTA. For the exact wording of the definitions, refer to the RTA 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 rental unit) who is entitled to possession.

3. Tenant

Includes a tenant's primary residence, 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 tenant whose primary residence is in a hotel, 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 are prescribed in the Schedule attached to the Regulations.

6. Assisted and Supported Living Tenancies

Assisted and supported living tenancies are rental accommodations where hospitality or personal care services are provided by or through the landlord. Only an Arbitrator, through the dispute resolution process, can determine whether a housing situation is exempt from the RTA. However, registered assisted living facilities are generally exempt from the RTA. Supported housing facilities might be 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 tenancies, the operators provide one or two personal assistance services such as regular assistance with activities of daily living, medication services or psychosocial supports. More information on assisted living services can be found at the website of the Assisted Living Registry at www.health.gov.bc.ca/assisted/residents/.

Residents and landlords entering into assisted/supported living arrangements sign tenancy agreements, and also 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 first came into force (1984). The RTA was modernized in 2004.

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 *Residential Tenancy Regulations*, 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) permits an individual occupying a room in a residential hotel to apply to an Arbitrator, without notice to any other party, for an interim order stating that the RTA 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. They are also excluded from s 34 of the RTA, which deals with assignment and subletting. Not all subsidized housing is directly operated by the B.C. Housing Corporation. For a list of subsidized housing options, visit www.bchousing.org/Options/Subsidized_Housing/Listings

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. However, even if the landlord does not prepare such a written tenancy agreement, the tenant is still protected by all of the standard terms contained in the Residential Tenancy Regulation.

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. It also does not apply to living accommodations 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 rental unit, taking into account the facts of each case and the intention of the parties.

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

- sharing a kitchen or bathroom with the owner (this refers to the *owner* of the building, not the owner's agent) (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 RTB Arbitrator 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 Arbitrator 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*, RSBC 1996, c 206, the *Commercial Tenancy Act*, RSBC 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, he or she could ask a police officer for assistance or sue in Small Claims Court for an order for the return of goods and/or 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 give some protection to hotel keepers.

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* , SBC 1999, c 28 (see RTA, s 4(a), and *Burquitlam Cooperative Housing Assoc. v Romund* (1976), 1 BCLR 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 rental units may be subject to the RTA if the arrangement appears to fit the definition of a tenancy, as opposed to a license.

More information can be found at the website of the Co-operative Housing Federation of BC at www.chf.bc.ca.

3. Strata Lots

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.

4. Twenty-Year Term

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

5. Holiday Premises

The RTA does not apply to living accommodation occupied primarily as vacation or travel accommodation (s 4(e)).

6. Manufactured Home Owners

The RTA does not apply to tenancy agreements to which the *Manufactured Home Park 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.

7. Assisted and Supported Living Tenancies

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

8. 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 staying at emergency shelters and transitional housing; and
- people covered by the *Community Care Facility Act*, SBC 2002, c 75; the *Continuing Care Act*, SBC 1996, c 70; the *Hospital Act*, RSBC 1996, c 200; or the *Mental Health Act*, RSBC 1996, c 288.

9. Residential Tenancy Branch Information Line

- Call the Residential Tenancy Branch information line (604-660-1020 or 1-800-665-8779) if you are unsure whether the rental units come under the RTA.

C. Discrimination Against Tenants

Although poverty is not a protected ground, a landlord must not discriminate against a (prospective) tenant based on a lawful source of income, such as Income Assistance or similar benefits. The remedy is a complaint under s 21 of the B.C. *Human Rights Code*, RSBC 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. 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 kitchen and bathroom facilities are shared with the owner of that accommodation.

2. Adults Only

A landlord cannot refuse to rent to adults because they have 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 fixed-term lease. Students should not sign a fixed-term tenancy that exceeds the time they plan to study. Signing a fixed-term tenancy 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 received their deposits from their ex-landlords.

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 students in a row, leading to confusion about who is entitled to the security deposit or the furniture.

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, but note that landlords are **not** obligated to provide them in writing.

After establishing the tenancy and before the tenant moves their personal possessions into the rental unit, the RTA requires the landlord and tenant to jointly conduct a condition inspection and fill out and sign the RTB's Condition Inspection Report. The condition inspection should focus on verifying that the plumbing, electrical and appliances work; mould, and water marks are identified; and all telephone, cable and internet connections are present and functional. The tenant should take photographs at the initial move-in inspection, as well as the move-out inspection. The landlord must provide the tenant with a copy of the Condition Inspection Report within 15 days.

Fees for cable and internet should be negotiated before the tenancy commences, and included in the Tenancy Agreement.

The Residential Tenancy Branch provides a fillable and printable Tenancy Agreement at www.rto.gov.bc.ca/documents/RTB-1.pdf. TRAC's website has more information as well as translations of the Tenancy Agreement forms into Punjabi, and Simplified and Traditional Chinese at www.tenants.bc.ca/other-languages.

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 for repaying the initial security and/or pet damage 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 Something 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.

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 sharing a kitchen or bathroom with the landlord, the parties can seek remedies 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 RTA s 13(2). These requirements are available at the UBC Law Library, in the LSLAP resource files, or on the RTB website (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 the tenant's favour 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 met.

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. Also, the payment of money may point to the fact that a contract has been entered into. It should be noted that since this is simply an agreement to agree, the RTA does not yet apply. At this point, any money paid is a processing fee, holding deposit, or administration fee. Section 15 of the RTA prohibits fees to consider or process an application for tenancy.

If the money paid is part payment of rent or 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 DLR (3d) 426 (BCSC). 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 rental unit.

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 RTA and MHPTA both restrict parties from contracting out of requirements of those Acts and from adopting terms that are contrary to the Acts. The changes in the tenancy agreement must be in writing, and be signed and dated by both parties. Some requirements, such as 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 an Arbitrator determines the terms are reasonable and not unconscionable, as defined within s 3 of the RTR, any purchaser of the reversion will be bound by the former owner's collateral contract. A remedy for the new landlord would be found in an action against the seller. Generally speaking, oral 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 must or must 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 RTA. Terms contrary to the RTA 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 Arbitrator 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 RTA 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, if 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*, RSBC 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 standard Residential Tenancy Agreement, available online (http://bit.ly/1eiaQNL). This 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 26(3)(a)).

Some included requirements of the RTA state that the tenant:

- must maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and other areas of the property to which the tenant has access;
- 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 for each of the security deposit and/or 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 RTA or the regulations;

b) the term is unconscionable; or

NOTE: The RTR defines "unconscionable" for the purposes of s 6(3)(b) of the RTA 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* **RSBC** 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, regardless of the number of pets.

f) Prescribing Terms

Terms and conditions that must or must not be included in every written tenancy agreement, or an application for an agreement, may be prescribed by an order-in-council and may prescribe different terms for different classes of tenancy agreements. As discussed above, the RTR 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 rental units are reasonably fit for occupation; and
- the rental units are maintained in a state of decoration and repair that complies with housing health and safety standards required by law.

(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 delivers up the rental unit in a reasonably clean condition and in a reasonable state of repair, reasonable wear and tear excepted; and
- he or she gives one full month's notice in writing when terminating the agreement. (see **Section IX.B.1: Form and Basic Requirements**).

(3) Court-Implied Terms

The usual terms that a court may insert in a tenancy agreement, 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 assigned to them in the tenancy agreement; and
- to keep and deliver up the rental unit in good repair.

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 for it. 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 of the RTR. Landlords must give tenants a copy of the signed condition inspection report within seven days after the condition inspection is completed.

NOTE: RTA s 23, Condition Inspection Report: start of tenancy, and s 24: consequences if report requirements are not met, 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 or pet damage 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 RTA (e.g. the payment of rent and the obligation to leave the rental unit in the same condition they were received). A security deposit is a deposit which may cover a variety of costs to the landlord: see *Balfour v. Thomson*, Vancouver Registry F771652 (BC Co Ct). A security deposit does not include: a post-dated cheque for rent, a pet damage deposit, or a fee prescribed under RTR ss 6 and 7. See RTB Policy Guideline 29: Security Deposits.

A landlord can only request a security 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 at the time the tenant moves in with a pet, or at the time a tenant acquires a pet.

B. Requirements Under the RTA

1. Amount

A security deposit demanded or received must not exceed one half of the monthly rent (RTA, s 19(1)). Only one security deposit can be required for each rental unit (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 fails to pay the security deposit within 30 days.

2. Inspection Reports

The RTA requires landlords and tenants to do move-in (ss 23 and 24) and move-out (ss 35 and 36) condition inspection reports. The rights to the security deposit of a landlord or tenant who does not participate in the condition inspection process may be extinguished.

C. Return 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**, or the landlord must file for dispute resolution to retain the deposit, 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 Arbitrator 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 31/2013 - 0.00% compounded annually
- Jan 1/2008 - Dec 31/2008 - 1.50% compounded annually
- Jan 1/2006 - Dec 31/2007 - 0.50% compounded annually
- Jan 1/2002 - Dec 31/2005 - 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 - 3.00% compounded annually
- Jan 1/95 - Dec 31/95 - 3.50% 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 - 3.50% compounded annually
- Jan 1/91 - Dec 31/91 - 8.25% compounded annually
- Jan 1/90 - Dec 31/90 - 9.00% 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 - 8.00% per annum
- April 1/83 - June 30/84 - 8.00% compounded annually
- June 1/80 - March 31/83 - 12.00% compounded annually
- Dec 1/74 - May 31/80 - 8.00% 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 damage deposit or both.

The RTB website provides a Deposit Interest Calculator which calculates the interest payable on a security deposit during any specific time period: www.rto.gov.bc.ca/content/calculator/calculator.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 for it (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;
- Bank service fees for NSF cheques plus a maximum late fee of $25; and
- Parking fees.

VI. REPAIR AND SERVICE

A. Duty to Provide and Maintain Rental Unit 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, housing and safety standards required by law, and having regard to the age, character and location of the rental unit. It must be suitable for tenant occupation. 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 so identified in the tenancy agreement.

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 an Arbitrator'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.

When a tenant goes to the RTB to request a repair order, they may also request for a rent reduction until the repair is complete.

2. Tenant

Tenants must maintain "ordinary health, cleanliness and sanitary standards" in their rental unit. Tenants must also repair damage caused to the rental unit 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 rental unit 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 an Arbitrator 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 some municipalities, for example, Vancouver, the City of North Vancouver, and New Westminster. Tenants should check with the municipality to see if there is a Standards 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 may result in a formal report 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: There is a **risk** attached to calling a City Inspector. The inspection could result in the municipality ordering the suite vacated, resulting in an eviction for the tenants.

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 rental units. 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. Sometimes there is a discrepancy between what a tenant, landlord, and RTB might consider 'emergency' repairs. **Before a tenant conducts any repairs, he or she should call the Residential Tenancy Branch, speak to an Information Officer, and make note of the Officer's name and what the Officer tells them.** The specific types of repairs that may qualify as emergency repairs are urgent, necessary for the health, safety or preservation of property AND concern:

- 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;
- electrical system repair.

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 an Arbitrator 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 it 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) or (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.

E. Bedbugs

Bedbugs are an increasing problem in British Columbia, particularly in the West End and Downtown Eastside of Vancouver. Bedbugs are small (about 1/5 inch long) parasites that tend to live in and around bed frames, cracks in walls, along baseboards, and under carpet edges. They are active at night, coming out to feed on sleeping people before returning to their crevices and crannies. Bedbugs are extremely difficult to get rid of, and the extermination process can be frustrating for both landlords and tenants.

1. Landlord Obligations

Under s 32(1) of the RTA, landlords must maintain the property in a state of repair that complies with health standards and is suitable for human occupation. Although bedbugs are not a public health risk (they do not transmit infectious diseases), they are still considered a pest and an infestation creates unsuitable living conditions. Some municipalities, such as Vancouver, have Standards of Maintenance bylaws that require landlords to get rid of pest infestations. If a landlord is refusing to treat the infestation, a tenant can call their municipality for an inspection and for an order that the building be treated. Each municipality's bylaws will vary, so it is best to call city hall.

Landlords are obligated to bear the cost for treatment of an infestation, provided the tenant cooperates with treatment (see Tenant Obligations below). In Vancouver, the Health Bylaw mandates that only a trained and certified person can spray pesticides in a multiple-unit dwelling. The landlord should not, and legally **cannot**, do it themselves. There are also other requirements in the Health Bylaw, such as notification in writing 72 hours prior to spraying. The pesticide technician should also adhere to the label on the pesticide bottles.

2. Tenant Obligations

Under s 32(2) of the RTA, the tenant is also obligated to maintain the property in a sanitary condition. This includes notifying the landlord of any suspected infestation. Upon discovery of a bedbug infestation, the tenant is obligated to cooperate with the landlord in treating the infestation. If tenants do not cooperate, they could be found liable for the cost of treatment, or be evicted. The landlord is obligated to get rid of the infestation **unless** it can be **proven** the tenant brought the bedbugs with them when they moved in.

If a landlord refuses to have the suite or building treated, the tenant can apply to the RTB for an order compelling the landlord to do so, or as noted above can get an order from a city inspector. Vancouver Coastal Health no longer does inspections, but is available to answer questions over the phone at 604-675-3800.

VII. RENT INCREASES

A. Rent Increases and Notice

Landlords can raise rents by a set amount each year and can apply 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**. The maximum allowable increase changes each January 1st; for 2015 the rate is 2.5%.** Check the webpage titled Rent Increases (http://bit.ly/1cWKrDB) on the RTB website to find the maximum rent increase allowed for the succeeding year. The increase can occur every 12 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 an Arbitrator ordered increase). If a landlord collects a rent increase that does not comply with the RTA, the tenant may deduct the entire 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 approved 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. 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 RTA (additional rent increase) if one or more of the following conditions are met:

- after the rent increase under s 22 of the RTR, the rent is significantly lower compared to similar units in the same geographical area;
- the landlord has completed significant repairs or renovations that could not have been reasonably foreseen and will not recur within a reasonable period (s 23(1)(b) of the RTR);
- 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.

The rent increase formula for Manufactured Home Parks is 2% plus inflation plus the proportionate amount of the increases to regulated utilities and local government levies.

B. Hidden Rent Increases

The tenant can apply to an Arbitrator 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. for cable television or laundry that was previously free), **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, without decreasing the rent proportionately).

If the Arbitrator 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 Arbitrator can provide relief (e.g. 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, QUIET ENJOYMENT AND PRIVACY

A. Right of Entry

Section 29 of the RTA provides that a landlord may not enter a rental unit 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 rental unit;
- 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. Note that the clock starts ticking when the tenant receives the notice to enter, not the time when the landlord gives it. The 24 hours starts right away when a landlord hand delivers the notice; 3 days later when it is delivered by fax or by posting on the tenant's door, or five days later when sent by regular or registered mail;
- the landlord has an Arbitrator'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.

Arbitrators may not be particularly generous in assessing noise complaints. While tenants have a right to quiet enjoyment, they also have a duty not to disturb other tenants or landlords who also have a right to quiet enjoyment. There is no reciprocal right. However, a landlord may end a tenancy for Cause with one month's notice if a tenant unreasonably disturbs the landlord or other occupants of the building.

C. Duty to Provide Access

Under RTA, ss 30(1) and (2), but subject to s 31, once a tenant has taken possession of a rental unit, a landlord is not allowed to change the locks to the rental unit or property without first getting the tenant's permission and providing a new key. The landlord cannot change the locks or alter the means of access to the rental unit without the tenant's permission. On the request of a tenant at the beginning of a new tenancy agreement, the landlord must re-key or change the locks to the rental unit: see **Section IV: Moving In**. A landlord cannot restrict access if a tenant has failed to pay rent.

1. Tenant: Changing the Locks

If the landlord changes the locks in contravention of s 31 of the RTA, the Arbitrator may grant an order authorizing the tenant to change the locks. Also, if a tenant applies for dispute resolution, an Arbitrator 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 Arbitrator is satisfied that the landlord may contravene s 31. It should be noted that changing a lock without an order can be grounds for eviction. To change the lock legally, the tenant must follow the procedure set out in 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 (TERMINATION/EVICTION)

A. Types: End of Tenancy Agreements

Section 44 of the RTA lists the situations where a tenancy can end. A residential tenancy agreement continues, unless the tenant or landlord gives the other party notice in writing, or the tenancy agreement states a move-out date when the tenancy is signed.

*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 clear month** after it is received by the landlord. Additionally, it must take effect no earlier than 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 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, and rent must be paid throughout the notice period; notice given on May 31st would be effective to end the tenancy on June 30th. Note that the landlord must receive the tenant's notice to end tenancy before the final month's rent is due. When it is given is less relevant than when it is received.

- Where there is a fixed term tenancy, notice will be effective no earlier than **one clear 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 requests that the breach be corrected. If after a **reasonable time**, the landlord has not corrected the breach, the tenant can end the tenancy one day after the landlord receives notice in writing.

C. Landlord Gives Notice

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.

The landlord can give notice to end tenancy for non-payment of rent, then after **5 days** have passed, go to the RTB and make a direct request for an order of possession without a hearing.

2. Cause to End Tenancy (RTA, s 47)

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

- the conduct of the tenant or invitee significantly interferes with or disturbs other occupants of the property or the landlord;

- the tenant or guest 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 rental unit to a future tenant or purchaser;

- the act or omission of a tenant or guest seriously impairs the health, 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 rental unit is required under an order by a provincial, regional, or municipal government authority;

- the tenant purports to assign or sublet the residential rental unit without the consent of the landlord; or

- the tenant or a person permitted on the residential property by the tenant is engaged in illegal activity that has caused damage to or jeopardized the property (see **Section IX.A.6: Illegal Activity**).

3. Landlord's Notice: End of Employment with 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 (consists only of spouse, child or parent of the landlord or spouse) 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 fixed-term tenancy 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 rental unit in a manner that requires it to be vacant (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: 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 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 MHPTA, 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
- jeopardize 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 an Arbitrator's order to have the tenant evicted immediately, without a one month notice, if the tenant's conduct is serious enough to justify the end of tenancy earlier (RTA s 56).

See RTB Policy Guideline 32: Illegal Activities.

D. Landlord and Tenant Agree in Writing

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

E. 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. When the landlord gives notice, it must 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 45(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 deemed 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.

A tenant's notice to end tenancy must be in writing and must include:

- the tenant's signature;
- the date the tenant signed it;
- the address of the rental unit; and
- the date the tenant is moving out.

If a notice to end tenancy does not comply with the RTA, s 52 requirements, an Arbitrator 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 Arbitrator 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 one of the Notice to End a Residential Tenancy forms put out by the RTB. Tenants and landlords can agree to use the Mutual Agreement to End Tenancy form, but tenants should add a clause barring the landlord from claiming damages.

2. Length of Notice and Limitation Periods

The RTA 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 Branch 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 Branch 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, 30 days after the tenant receives the demand for payment, treat any unpaid amount as unpaid rent (RTA, 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 RTA 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 rental period (RTA, s 47). Practically speaking, the full month requirement means notice must be received 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. The minimum notice of one month does not apply if the tenant is engaging in illegal activity.

c) Landlord's Use of Property

Section 49 of the RTA requires that a landlord give at least **two month** 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

Under the RTA, s 50, 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 day 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 fixed-term tenancy.

A tenant may end a tenancy early if they believe the landlord has not complied with a material term of the tenancy agreement, regardless of whether they have a fixed-term tenancy agreement or a month-to-month tenancy agreement. The tenant must first write the landlord describing the problem, stating they believe it is a breach of a material term of the tenancy agreement, asking the landlord to fix the problem and stating that if the problem is not fixed by a reasonable deadline [stated in the letter] they will end the tenancy early. The tenant must give the landlord a chance to fix the problem. If the landlord does not fix the problem by the deadline, the tenant may end the tenancy by writing the landlord a second letter stating they are ending the tenancy. The tenant may not end the tenancy until the landlord has received the second letter.

A landlord may end a tenancy early by applying to the Residential Tenancy Branch for dispute resolution, seeking an order ending the tenancy early and an Order of Possession. The usual rules about service and notice to the tenant apply. The landlord must prove the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the safety, rights or interests of the landlord or another occupant;
- engaged in illegal activity that has caused or could cause damage to the property, disturb or threaten the security, safety or physical well-being of another occupant, or jeopardize a lawful right or interest of another occupant or the landlord; or
- caused major damage to the property or put the landlord's property at significant risk.

At the dispute resolution hearing, the landlord must provide convincing evidence that justifies not giving full notice and demonstrate it would be unreasonable or unfair to wait for a notice to take effect.

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. But, 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.

An Arbitrator 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 if: 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 an Arbitrator's order (s 66(2)). **Personal hardship is not a reason for more time.**

NOTE: An Arbitrator 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 can apply for a delayed order of possession in the alternative that the eviction is upheld. To do so, the tenant should explain why a short order would cause them hardship and why an extended order would not prejudice the landlord. Particular attention should be paid to the landlord's financial interests.

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.

F. Failure of a Tenant to Deliver Up the Rental Unit; Regaining Possession

A tenant must deliver up possession at the end of the tenancy. After tenancy ends, 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 landlord's claim 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 RTB respecting his or her right to possess or occupy the rental unit. 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 a Dispute Resolution hearing. If a tenant is served with an Order of Possession but fails to comply, a landlord may then seek a writ of possession 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 rental unit by employing a court bailiff to change the locks and remove the tenant.

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 be found on the Notice to End Residential Tenancy form.

Landlords can, in some circumstances, obtain an Order of Possession without attending a hearing. An Arbitrator may issue the order directly where the tenant has failed to dispute a Notice to end Tenancy for unpaid rent within the time limits (s 55(4)).

G. 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 rental units 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 rental unit 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 rental unit has 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 rental unit was abandoned. A landlord can consider a unit abandoned only after rent has not been paid for one month. In rare circumstances, the landlord may refuse to consider the rental unit 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 rental unit. However, the landlord may not be able to determine if there is abandonment without re-entering the rental unit; 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 rental unit 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 Regulations*, sets out guidelines to assist the landlord to dispose of abandoned personal property, and/or assist 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 rental unit, and to keep the particulars of the disposition and inventory for two years. In addition, the personal property, once removed from the rental unit, must be kept in a safe place for a period of not less than 60 days if the property is considered to be worth five hundred dollars or more (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 REGARDING TENANCY

A. General

The formal dispute resolution process may be avoided if an Information Officer is willing to phone one of the parties in order to explain the law, resulting 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 an Arbitrator and will only explain the Legislation.

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 Arbitrator 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 on the Residential Tenancy Branch web site.

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*, RSBC 1996, c. 430, s 3. (Currently the monetary limit is $25,000.)

2. Arbitrator

Arbitrators are like judges and base their decisions on evidence and arguments presented by the parties at the dispute resolution hearing. The Arbitrator is not bound by other Arbitrator's decisions but is bound by legal precedent established by the court. The Arbitrator makes the decision based on the merits of the case. An Arbitrator has authority to arbitrate disputes referred by the director to the Arbitrator, and any matters related to disputes that arise under the RTA or a tenancy agreement. Arbitrators may assist the parties, or offer the parties an opportunity to settle their dispute. They can record agreements reached by the parties, sign off on the agreement, and record the settlement 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 Arbitrator to settle a dispute must complete an Application for Dispute Resolution form. The form is available at an RTB office or a Service BC office or online at the RTB website. 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 rental unit 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 "Details of the Dispute". 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: Rule 3 of the RTB *Rules of Procedure* (Ministry of Housing, 2005; available at http://bit.ly/1Igbqmg sets out how to serve the Application for Dispute Resolution, and how to submit and exchange documents. the time limits within which the parties and the Arbitrator must receive the documents to be used as evidence at the hearing. For applicants, the easiest way to comply with this rule is to attach all relevant documents to the initial application form. Evidence can be faxed to the RTB at 1-866-341-1269. (Applications cannot be submitted via fax).

Rule 3.14 governs evidence not submitted with the Application, and sets out that such evidence must be received by the other party and the Branch not less than 14 days before the hearing. In calculating the 14 days, the first and last day must be excluded. If the due date for service to the Branch falls on a day the office is closed, the limit is extended to the next day the office is open. If the date for service to the other party falls on a holiday, the limit is extended to the next non-holiday day. If evidence is not available within the deadline for service, under Rule 3.17 the Arbitrator has the discretion to determine whether or not to accept it.

You should also take special notice of the rules regarding how days of service are calculated. Documents sent by mail are deemed "received" five days later, while documents dropped through a mail slot or taped to a door are deemed "received" three days later. Please note that the RTB does not copy evidence for parties. 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 an RTB office can file applications at a local Service BC office. Online applications require a credit card payment, so parties applying to waive the filing fee cannot use this method. The Richards Street and Downtown Eastside offices only accept applications where a fee waiver applies. Those offices do not handle money payments. The application will not be accepted until the applicant has paid $50 (by cash, or 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 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 RTB created a Monetary Order Worksheet which must be completed when applying for a monetary order. The worksheet number is available online at: http://bit.ly/1ToyRm9.

The limitation period for designation of an Arbitrator (i.e. for filing the claim at the RTB) is **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 participatory 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.

NOTE: It is possible that a tenant will receive a Notice of Direct Request in circumstances where they should receive a hearing (e.g. all arrears paid in 5 days, application for dispute resolution filed, legitimate dispute on merits). In such a case, it is imperative that the tenant immediately write to the RTB and request a dispute resolution hearing. The tenant should explain why their case is not appropriately addressed through the direct request process.

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 online at http://bit.ly/1Igbqmg. The Information Officer may assist landlords and tenants by providing information about the procedure for resolving disputes, but will not help complete forms. An Arbitrator may make any finding of fact or law that is necessary or incidental to making a decision or an order under the RTA. The Arbitrator makes decisions based on the merits of the case and is not bound by previous Arbitrator decisions but is bound by court decisions. The Arbitrator 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 Arbitrator will not consider issues that are not contained in the application.

The dispute resolution policy guidelines are also available online. These are useful for preparing for a hearing, but they are **NOT** binding on Arbitrators. Most RTB hearings are now conducted via telephone. However, there are still some face-to-face hearings.

a) Telephone Hearings

Parties should use a landline telephone in a quiet place where they will not be interrupted and avoid dropping the call on their cell phone. Parties should not try to call more than 5 minutes before the start of the hearing, as they will most likely not get through. The same is true if a party tries to call in more than 5 minutes after a hearing has started. The hearing will proceed even if one party gets disconnected during the call. It is important that parties check they have the correct telephone code. If a hearing has been adjourned or continued from an earlier hearing, the code will be different than the previous one.

Telephone hearings are scheduled for one hour exactly. If the hearing is not finished at this time, the Arbitrator may extend the hearing or schedule another conference call to continue the hearing. This may be several weeks or months after the first hearing. It is important that parties be focused on the outcome they wish to achieve and that their documents are carefully numbered so that time is not wasted searching for documents and other evidence.

b) Face-to-Face Hearings

All evidence should be submitted prior 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).

c) Evidence

If possible, it is best to include all evidence with the initial application. However, if this is not possible, the RTB must receive a copy of all of the applicant's evidence no less than 14 days prior to the hearing; the respondent's evidence must be received no less than 7 days prior to the hearing. Evidence can be faxed to the RTB at 1-866-341-1269. Rule 3.14 is particularly important here. 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 not less than 14 days prior to the hearing. This includes documents, photos, videos, audio tapes, and the like. To rely on digital evidence (photos, videos or audio), per rule 3.10, a party must first check whether the other party and the RTB are able to access the digital evidence. Digital evidence must be provided to the RTB on USB memory stick, CD or DVD for their permanent files and must also be accompanied by a printed description. Each party must also deliver a copy of all evidence to the RTB and the other party in accordance with Rule 3.14 as above. The Arbitrator will usually refuse to look at anything not exchanged in advance of the hearing pursuant to Rule 3.17, which says that if the documents or other evidence are not served on the other party as required:

a) the party must show that the evidence is relevant and that it was not available at the time they filed or when they served their other evidence;

b) the Arbitrator has discretion to determine whether to accept the evidence if it does not unreasonably prejudice the other party, and both parties must have the opportunity to be heard as to whether the evidence ought to be accepted;

c) if the evidence is accepted, the other party will have an opportunity to review it, therefore the Arbitrator must rule whether to adjourn, in accordance with Rule 6.3 and 6.4 which establish the criteria for adjourning a hearing.

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

The RTB's definition of "days" is as follows, taken from the *Dispute Resolution Rules of Procedure*, located on the RTB's website at
www.rto.gov.bc.ca/documents/RoP.pdf

a) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday

b) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open

c) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded

d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included

Evidence should be clearly marked and numbered so that all parties involved in a telephone conference can easily locate the relevant documents when necessary.

For a face-to-face hearing, it is still a good idea to bring extra copies of important documents to the hearing itself, in case the Arbitrator, or the other party, does not have copies handy. Original photos and documents that are presented to the Arbitrator 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 Arbitrator, but they may demand the originals. If a witness cannot attend, the Arbitrator may accept affidavits (however, written statements may 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 Arbitrator subpoena that witness.

The Arbitrator 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 Arbitrator 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 Arbitrator (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 or, for a telephone hearing, include it in the evidence the applicant submits to the RTB. 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.

4. The Arbitrator's Decisions

The Arbitrator may render a decision at the end of the hearing and will make a written decision following the hearing. Pursuant to s 77(1), 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 Arbitrator's order is final and binding but may be reviewed in limited circumstances (s 79). See **Section X.E: Review of Arbitrator's Decision** for details.

5. Amendments to Decisions/Orders

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

The RTB continues to amend its 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, Arbitrators will not be required to consult the Guidelines.

C. Enforcing the Arbitrators 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 serving a document at a tenant's workplace rather than at their new home.

1. Enforcing a Monetary Order

The Arbitrator 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 rental unit owned by the landlord that the order is against, the Arbitrator may direct the tenant to deduct the award from the rent (RTA, s 65(1)(b)). Rent should not be withheld unless the decision explicitly states this is allowed. 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.

2. Enforcing a Repair Order

If a landlord fails to make repairs as ordered by an Arbitrator, 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 rental unit 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 rental unit on the date specified on the order, the Order of Possession 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 to the Supreme Court. Once the documents are filed and stamped in the Supreme Court, the landlord may contact a court bailiff service. The Writ of Possession is then ready to be executed by the court bailiff.

Under s 9 of the *Sheriff Act*, **RSBC** 1996, c. 425, the landlord is required to give a deposit to the court bailiff against the costs of the execution of the writ. This deposit varies depending on the size of the rental unit. For example, $1,100 for a one-bedroom and $3,000 for a five-bedroom house will be required as a deposit for executing a seizure.

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

The bailiff consults with the landlord to discuss attempting a "soft" eviction, which gives the tenant a chance to vacate on their own; this is generally what occurs. Tenants are generally allowed three to four days to vacate under a "soft" eviction.

If the bailiff executes a "hard" eviction, the bailiff enters the rental unit and removes the belongings, as well as the tenant if necessary. It is the responsibility of the bailiff to ensure that all of the tenant's belongings are safe and secure in storage. The bailiff may seize tenant's possessions to sell in order to compensate the bailiff for the cost of the eviction.

NOTE: Sometimes third parties who are not named in the order (i.e. roommates) have their 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) Role of the Police

Neither the police nor the RCMP has the authority to evict tenants. However, a court bailiff can forcibly evict a tenant on behalf of the landlord. The police may attend the occasion to prevent the breach of peace but they cannot play any role in evicting the tenant, however, the police will attend and remove the tenant if required to do so by the court bailiff.

D. Serving Documents: Giving and Receiving Notice under the 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. If 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 posting or faxing, or leaving it in a mailbox (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 Arbitrator or the court may order the document 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, s 88(a)(b)). Alternate forms of service where service is not possible (due to absence from his or her rental unit 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. If 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 posting, faxing or leaving it in a mailbox (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 Arbitrator 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.

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 should name the property owner, so a tenant should 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 an Arbitrator

If a party is successful in his or her Application for Review, that person will receive a written decision from the Arbitrator ordering 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 setting a date to reconvene for a new hearing. This Arbitrator'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 Arbitrator'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 s 89(2).

E. Review of Arbitrator's Decision

1. Application for Review of Arbitrator's Decision

Under the RTA, s 79(1), 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 Arbitrator'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. Note 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.

NOTE: Applying for review of an arbitrator's decision may prevent a party from later applying to court for judicial review of the original decision. This is because the reviewing court may only review the final review or reconsideration decision, rather than the original decision. This may be the case even though the grounds of review under the RTA are narrower than the grounds of review in a judicial review. Parties should therefore exercise caution when deciding whether to pursue a review at the RTB; see *Sereda v Ni*, 2014 BCCA 248.

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).

Review applications do **not** act as stays of proceedings; a stay must be requested separately through the Supreme Court.

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 Arbitrator 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 Arbitrator's decision permitting review must be served on the other side within three days of receiving the decision. 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 Arbitrator's Decisions**).

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

An Arbitrator's decision can also be reviewed by the Supreme Court of B.C. under the *Judicial Review Procedure Act*, **RSBC** 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 a very serious 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 an Arbitrator 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 and act quickly. The Community Legal Assistance Society (604-685-3425) is available to assist with judicial reviews of Arbitrators' decisions, and is especially interested in helping with potential test cases.

NOTE: Losing a judicial review may result in an award of costs, meaning that the losing party must pay the legal costs of the other party.

5. Filing Complaints to the RTB

Complaints about information officers, dispute resolution hearings, or general services of the RTB must be put into writing and mailed to the Executive Director of the RTB:

P.O. Box 9844 Stn Prov Govt
Victoria, B.C. V8W 9T2

Complaints can also be made to the BC Ombudsperson. More information can be found at www.ombudsman.bc.ca. Note that the BC Ombudsperson does not review decisions; they can only investigate complaints where a person feels that RTB staff has treated them unfairly.

XI. MOVING OUT

A. Tenant Obligations

- Give proper notice;

- participate in move-out condition inspection;
- leave the unit clean;
- repair damage caused (above normal wear and tear), including damage caused by guests or pets above normal wear and tear levels; and
- remove all possessions from the rental unit and the residential property.

B. Landlord Obligations

- Give proper notice;
- schedule and participate in the move-out condition inspection and provide the tenant with a copy of the condition inspection report; and
- return security deposit and pet damage deposit or file to retain them in accordance with the RTA (see **Section V.C: Refund of Security Deposit and Pet Damage Deposit**).

C. Condition: 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 Tenancy

If a tenant moves out before their fixed term ends without finding another tenant approved by the landlord to take over the fixed term tenancy, the tenant may be responsible for the landlord's advertising and administrative costs incurred in finding 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 tenancy.

NOTE: A landlord cannot evict a tenant except for cause during the term of a fixed-term tenancy. A landlord may not give a notice before the end of the fixed term even if the property is sold or the landlord's family wishes to move into the rental unit.

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)). A tenant may apply for an Arbitrator's order where a landlord has unreasonably withheld consent: see RTA s 65(1)(g). Section 34(3), stipulates that a landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease.

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) are exempt from these assignment and sublet provisions. Generally this means a subsidized housing tenant cannot assign or sublet a rental unit.

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 the security deposit to a different person. See s 90 of the RTA regarding 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 DLR (3d) 710 (SCC). 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 the 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 (an Arbitrator 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 rental unit (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 rental unit for trespass, assigning, or subletting the rental unit. 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 rental unit. 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.

Abandonment is cause for ending a tenancy, but regardless of the wording of the tenant's notice, or the wording of the acceptance of surrender, or the absence of a notice, abandonment 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 is 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: 1) the length of the unexpired term at the time of frustration, and 2) the possibility of an alternative use of the rental unit.

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 rental unit other than in accordance with the RTA, the landlord has a duty to re-rent the rental unit at a reasonable price. Failure to do so may result in reduced compensation. See RTB Policy Guideline 5: Duty to Mitigate Loss.

e) 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)). 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 for a monetary claim for damages. Note that a landlord may distrain the tenant's goods where the tenant has abandoned the rental unit.

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 rental unit (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. 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 rental unit 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

An Arbitrator may award "compensation" to an innocent party (a tenant or landlord) 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. This does not apply to an illegal squatter.

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 rental units. If several tenants seek a joint hearing, under the RTA, an Arbitrator 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. 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 SPA as it relates to landlords and tenants.

A. The Law Under the Strata Property Act

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 SPA 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 s 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. If a strata lot is tenanted, the tenant should be fined;

- s 131 provides that the strata corporation may collect fines levied against a tenant from a landlord/owner, but cannot fine the landlord/owner directly. 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, sets out "fees" that landlords can charge provided they do not contradict s 131 of the SPA;

- s 133 allows for the strata corporation to also recover reasonable costs of remedying a contravention of the bylaws from the person whom they fined pursuant to s 130;

- 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 the 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 is given to answer the complaint, including a hearing if requested by the tenant. 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".

NOTE: As a practical matter, it may be difficult for a Strata Corporation to evict a tenant, despite ss 137-138 because the Residential Tenancy Branch has been unwilling to recognize a Strata as a "Landlord" as defined in the RTA.

Part 8 of the SPA 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. The landlord must provide a Form K to the tenant. It is important the tenant reads the bylaws before signing, as the tenant may be liable for a contravention.

NOTE: A helpful web site that contains the consolidated SPA, regulations, highlights and information bulletins is available at www.fic.gov.bc.ca/?p=strata_property/index. The web site for the Condominium Home Owners Association of B.C. (CHOA) also holds valuable information at www.choa.bc.ca.

B. The New Civil Resolution Tribunal Act *(*CRTA*)*

The *Civil Resolution Tribunal Act*, SBC 2012, ch 28 [CRTA] was enacted in May of 2012 and is expected to come fully into force by the autumn of 2015 with the establishment of a Civil Resolution Tribunal [CRTA]. The CRT will have jurisdiction to hear a wide variety of strata disputes. It is anticipated that this new tribunal will facilitate the early resolution of disputes between condo owners and strata councils. According to the BC Ministry of Justice, the CRTA will handle a limited range of Small Claims matters as well as strata disputes regarding issues such as:

- non-payment of monthly strata fees or fines;
- unfair actions by the strata or by a majority owner;
- unfair enforcement of strata bylaws;
- financial responsibility for repairs;
- irregularities in meetings, voting, minutes or other matters;
- interpretation of the legislation, regulations or bylaws;
- issues regarding the common property

Certain issues will continue to be heard in BC Supreme Court. The CRT will not handle matters involving land, nor those involving more complex administrative matters. Some examples of matters the CRT will **not** handle:

- ordering the sale of a strata lot;
- court orders respecting rebuilding damaged real property;
- dealing with developers and phased strata plans;
- appointment of an administrator to run the strata corporation;
- applications to wind up a strata corporation;
- allegations of conflicts of interest by council members;

XIV. ASSISTED AND SUPPORTED LIVING TENANCIES

The RTA does not cover Assisted Living nor most Supported Living Tenancies. In September 2013, the B.C. Law Institute published a report after a three-year review regarding drafting legislation on Assisted Living and Residential Care tenancies. *The Report on Assisted Living in British Columbia* is available online at www.bcli.org/publication/report-on-assisted-living-in-british-columbia.

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.

More information on assisted living services can be found at the website of the Assisted Living Registry at www.health.gov.bc.ca/assisted/residents/.

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*, RSBC 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 prospective tenant should perform a company search in order to determine if the company is incorporated. See **Chapter 22 Small Claims Procedure** for more information on how to do a company search. A prospective tenant may also want to do a title search at the Land Title Office to determine whether he or she is dealing with the registered owner or a tenant looking to sublease.

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 the circumstances must be considered.

3. Pre-Incorporation Contracts

A company is not bound by 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. It is important for a prospective tenant to read the contract to determine what type of relationship they are entering into. 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. If the contract refers to a "joint venture," then it is probably NOT a lease; a joint venture creates liabilities in the tenant and does not grant exclusive possession or an interest in the land.

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 *Law and Equity Act* s 59 3(a);

b) A lease over three years should be registered (but 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 OLR 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 otherwise provided for, 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

A commercial landlord may distrain (seize personal property for non-payment of rent), while a residential landlord may not (regardless of any rental arrears). 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 rent arrears or if new rent arrears accrue.

D. Occupier's Liability

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

1. Landlord's Liability for Injuries in 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,* SBC 2002, c 77 [MHPTA] 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.

A landlord may authorize assignment or sublease of a manufactured home park site in a tenancy agreement. The agreement should also include information about the proportionate amount of increases to regulated utilities and local government levies. The inflation rate for each calendar year is available on the RTB website. See the *Manufactured Home Park Tenancy Regulations*, BC Reg 481/2003 [MHPTR].

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 permits occupation of the manufactured home site under a tenancy agreement on the landlord's behalf; the owner's heirs, assignees, personal representatives and successors in title; a person, other than a tenant whose manufactured home occupies the manufactured home site, who is entitled to possession of the manufactured home site and exercises any of a landlord's rights under a tenancy agreement or the MHPTA 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 proof of third party liability insurance held by the mover as security against damages caused by the move of a home into a park (MHPTA, 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 (MHPTA, s 17). Security deposits held by landlords before the effective date of the MHPTA 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 (MHPTA, s 89(2)(k); MHPTR*, 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. Some non-refundable fees are permissible (e.g. a $25 charge for late payment of rent or NSF cheques) as long as the fees are identified in the tenancy agreement.

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 plus the proportionate increase in local government levies and regulated utilities (MHPTA, s 36(1)(a) and see MHPTR). A landlord may apply to an Arbitrator 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 MHPTA for an additional rent increase above the rent increase formula, but can only do so under certain circumstances: see MHPTR, 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 (MHPTA, s 35(2)).

c) Timing

A rent increase cannot be imposed for at least 12 months after whichever of the following applies (MHPTA, 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 MHPTA.

F. Manufactured Home Park Rules and Committee

In accordance with Part 3 of the MHPTA 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 MHPTR, s 23(8), which must be decided by majority vote.

A park committee, or if none exist, 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 (MHPTR, 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 MHPTA 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 the MHPTA or the regulations. Any attempt to avoid or contract out of the MHPTA or regulations is of no effect (MHPTA, 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 the MHPTA 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 MHPTA, 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

A tenancy agreement 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 (MHPTA, 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 (MHPTA, s 37(1)):

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

  s 38 (tenant's notice); s 39 (landlord's notice: non-payment of rent); s 40 (landlord's notice: cause); s 41 (landlord's notice: end of employment); s 42 (landlord's notice: landlord's use of property); or, 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 MHPTA, 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 tenancy agreement is frustrated; or
- an Arbitrator 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. **See Section IX.C Required Notice at 1, Form and Basic Requirements**

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 (MHPTA, 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 the MHPTA 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 Branch and apply for 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 (MHPTA, 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)).

4. Landlord's Notice: Cause

Refer to s 40(1) of the MHPTA; it is similar to the RTA section regarding 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 subsequently end the tenancy with ten days written notice to the landlord: see MHPTA, 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)** (MHPTA, s 45).

I. Moving Out

Landlords may require a tenant to provide proof of third party liability insurance held by the mover as 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 MHPTA;
- rights and obligations under the terms of a tenancy agreement that are required or prohibited under this MHPTA;
- 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 MHPTA 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 (MHPTA, s 53(1)).

XVII. INCOME ASSISTANCE, TAXATION, AND RENTAL HOUSING

A. Shelter Aid for Elderly Renters (SAFER)

The SAFER program is a rental assistance program administered by BC Housing. It is intended to help senior citizens (i.e. people over 60). Applicants must 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, $2,550; couple, $2,750; shared, $1,776. For those living outside the Metro Vancouver, the rates are: single, $2,223; couple, $2,423; shared, $1,776.

The maximum monthly rent allowed in the SAFER program for a single person in Metro Vancouver is $765 per month (i.e. if you pay any amount higher than $765, SAFER will still assume that $765 is the amount paid), or $825 per month for a couple (rates are lower for those outside 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 are available in English and Chinese. Application forms may be obtained from the B.C. Housing web site at www.bchousing.org, or contact:

B.C. Housing
Suite 101 - 4555 Kingsway
Burnaby, B.C. V5H 4V8
Toll-free: 1-800-257-7756
Lower Mainland: 604-433-2218

B. BC Housing Corporation's Family Rental Assistance Program (RAP)

The Rental Assistance Program provides eligible low-income, working families with at least one dependent child with assistance to help pay their rent. The maximum gross annual household income level is $35,000. A child up to age 25 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.

A rental assistance calculator is available on the RAP website as well as other information and application forms see www.bchousing.org/Options/Rental_market/RAP, or contact **B.C. Housing** (above).

XVIII. SECONDARY AND ILLEGAL SUITES

Municipalities all over the Lower Mainland are attempting to regulate secondary suites. In most Lower Mainland municipalities, secondary suites are legal and regulated (though some landlords may be operating the secondary suite without approval). The bylaws and 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. For a website with links to various municipalities' polices on secondary suites, see www.homeswithsuites.ca/MunicipalSuitePolicies.ubr

The City of Surrey approved secondary suites in December of 2010. See www.surrey.ca/city-government/7617.aspx for information.

Vancouver's Zoning and Development By-law makes it possible to have a secondary suite in every detached single family home in the City of Vancouver. 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: http://vancouver.ca/home-property-development/creating-a-secondary-suite.aspx.

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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. **Regardless of the legality of the suite however, the RTA may still apply**. 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 proper notice is not given. See RTB Policy Guideline 20: Illegal Contracts.

XIX. FORMS AVAILABLE ON THE RTB WEBSITE

Check the RTB web site: http://bit.ly/1FjmXzc for current forms and fees. Ensure clients are using the most recent forms. Be aware that some applications require fees (a standard Application for dispute resolution costs $50). Waivers are available for low-income applicants.

The dispute resolution policy guidelines are also available online, as are decisions by Arbitrators. These are useful for preparing for a hearing, but they are **NOT** binding on Arbitrators.

A. Entering Into a Tenancy

1. **Residential Tenancy Agreement - RTB 1**
   The RTB is of the opinion that this Residential Tenancy Agreement accurately reflects the RTA 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 MHPTA 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**
   Use this Schedule of Parties to continue if the form you are completing does not have enough room for additional applicants or respondents. 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 a single tenancy agreement.

3. **Application for Additional Rent Increase - RTB 16**
   A landlord must use this form to apply for an Arbitrator's approval for a rent increase in an amount greater than the amount specified in the RTA, the MHPTA and associated regulations.

4. **Schedule of Parties - RTB 26**
   Use this Schedule of Parties to continue if the form you are completing does not have enough room for additional applicants or respondents. 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 an Arbitrator to resolve a residential tenancy dispute. To submit the Application form over the web, fill out the Online Application for Dispute Resolution form.

2. **Landlord's Application for Dispute Resolution - RTB 12**
   Landlords must complete and file this form to request a hearing before an Arbitrator 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 an Arbitrator order documents be served in a method other than those required by the RTA.

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 is sensible that the matters be joined.

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

D. Dispute Resolution Decisions and Orders

1. **Application to Review Arbitrator'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 an Arbitrator's order or decision.

2. **Request for Correction - RTB 6**
   Tenants and landlords may use this form to request that the Residential Tenancy Branch correct any obvious error or inadvertent omission.

3. **Request for Clarification – RTB 38**
   Tenants and landlords may use this form to request the Residential Tenancy Branch clarify a decision.

4. **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. Please note that original copies must be given to the Residential Tenancy Branch and the other party of the dispute. The applicant or respondent should always keep original copies of each document submitted in a dispute resolution proceeding.

5. **Application for Substituted Service - RTB 13**
   Landlords and tenants must use this form to request an Arbitrator order documents be served in a method other than those required by the RTA.

6. **Schedule of Parties - RTB 26**
   Use this Schedule of Parties to continue if the form you are completing does not have enough room for additional applicants or respondents. 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**
   Use this Schedule of Parties to continue if the form you are completing does not have enough room for additional applicants or respondents. 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. Both parties must participate in these inspections, in order to reclaim (tenants) or withhold (landlords) the damage deposit. It is therefore in the interests of both parties to complete these inspections carefully, and it is advisable to take photographs confirming the condition on both move-in and move-out.

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**
   Use this Schedule of Parties to continue if the form you are completing does not have enough room for additional applicants or respondents. It is to be filed with your completed application.

G. Other Forms

1. **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.

2. **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.

3. **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.