CHAPTER NINETEEN: LANDLORD AND TENANT LAW

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CHAPTER NINETEEN: LANDLORD AND TENANT LAW

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I. INTRODUCTION

British Columbia's Landlord-tenant law was written to protect the rights and identify the responsibilities of both landlords and tenants. The law serves to prevent and resolve disputes that may arise within a tenancy, in the clearest and lowest-conflict manner possible. This guide seeks to provide basic legal information, including about the rights and responsibilities of tenants and landlords, and about the processes available for resolving disputes between tenants and landlords.

The primary source of landlord-tenant law in British Columbia is the *Residential Tenancy Act* [*RTA*]. The *Manufactured Home Park Tenancy Act*, SBC 2002, c 77 [*MHPTA*] is a counterpart to the RTA that applies to owners of manufactured homes who rent the site on which their homes sit. As these statutes were enacted to provide tenants with protections beyond that which is offered by the common law, ambiguities in language must be interpreted in favour of tenants (Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator), 2007 BCSC 257 at para 11).

The *RTA* sets out the rights and obligations of landlords and tenants. Landlords and tenants enter into tenancy agreements that set out further rights and obligations. 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. It also includes a licence to occupy a rental unit.

The Residential Tenancy Branch ("RTB") is the government body that adjudicates disputes covered under the *RTA* or the *MHPTA*. It has published many Policy Guidelines that expand beyond the *RTA*, and the *Residential Tenancy Regulation* [*RTR*]. They help create greater predictability and consistency when the RTB adjudicates tenancy disputes as well as summarize tenancy law in British Columbia. Although the Policy Guidelines are highly persuasive and are frequently followed by RTB arbitrators, they are not absolutely binding (*Shuster v. British Columbia (Residential Tenancy Branch)*, 2024 BCCA 282 at para 42).

This Chapter covers the rights and obligations of landlords and tenants that are under a tenancy agreement, as well as seeking dispute resolution at the Residential Tenancy Branch. As this Chapter primarily covers the *RTA*, unless otherwise specified, any statement in this Chapter should be presumed to apply to the *RTA* and may or may not apply to the *MHPTA*.

II. GOVERNING LEGISLATION

A. Tenancy Law

1. Statutes

Residential Tenancy Act, SBC 2002, c 78 [*RTA*]
Manufactured Home Park Tenancy Act, SBC 2002, c 77 [*MHPTA*]

2. Regulations

Residential Tenancy Regulation, BC Reg 477/2003 [*RTR*]
Manufactured Home Park Tenancy Regulation, BC Reg 481/2003 [*MHPTR*]

3. Policy Documents

Residential Tenancy Branch Policy Guidelines:
https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/tenancy-policy-guidelines-number.
Throughout this Chapter, individual policy guidelines are abbreviated as "RTB PG " followed by its number, such as RTB PG 1 for Policy Guideline 1.

Residential Tenancy Branch Rules of Procedure:
https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf [RTB ROP], with updated versions published at https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/tenancy-laws-rules.

B. Related statutes

Small Claims Act, RSBC 1996, c 430 [*SCA*]
Civil Resolution Tribunal Act, SBC 2012, c 25[*CRTA*]
Human Rights Code, RSBC 1996, c 210 [*HRC*]
Strata Property Act, SBC 1998, c 43 [*SPA*]
Administrative Tribunals Act, SBC 2004, c 45 [*ATA*]
Judicial Review Procedure Act, RSBC 1996, c 241 [*JRPA*]
Personal Information Protection Act, SBC 2003, c 63 [*PIPA*]

III. THE *RESIDENTIAL TENANCY ACT* AND RELATED STATUTES

A. What Is and Is Not Subject to the *RTA*

The RTB can only hear disputes subject to either the *RTA* or the *MHPTA*. If a dispute between a tenant and a roommate arises beyond the jurisdiction of either *Act*, it cannot be brought to the RTB. Instead, it may be brought to:

- the Civil Resolution Tribunal ("CRT") if the disputed monetary amount is $5000 or less;
- the Small Claims Court if the disputed monetary amount is between $5,001 to $35,000; or
- the Supreme Court if it is over $35,000.

For more information about proceedings in those bodies, see Chapter Twenty: Small Claims and the CRT.

Call the Residential Tenancy Branch information line (604-660-1020 or 1-800-665-8779) if you are unsure whether the rental unit comes under the *RTA*. Further resources are available at the end of this Chapter if you need assistance with a tenancy that is not under the jurisdiction of the RTB.

1. No Avoiding Tenancy Statutes

Neither landlords nor tenants can contract out of or avoid the *RTA* or *RTR* (*RTA*, s 5(1)). Any tenancy agreement terms that are inconsistent with *RTA* or *RTR* or otherwise any attempt to avoid them are void and of no effect (*RTA*, s 5(2)).

2. Excluded Premises and Agreements

Section 4 of the *RTA* sets out a list of situations which are not covered by the *RTA*. For more information about what is covered by B.C.'s tenancy laws based on the type of housing situation, visit the following website: https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/tenancy-laws-rules/tenancies-types.

The following discusses some of the housing arrangements that are not covered by the *RTA*.

a) Renting as a Housing Cooperative Member

If a non-profit housing cooperative rents housing to one of its members, the tenancy is not covered by the *RTA* (*RTA*, s 4(a)). Conversely, where a tenant is living in a cooperative housing facility and is paying rent, but is not a member of the cooperative, their rental unit may be subject to the *RTA* if the arrangement otherwise fits the definition of a tenancy.

b) Sharing Bathroom or Kitchen Facilities

If a tenancy allows for sharing bathroom or kitchen facilities with the owner of the accommodations, the tenancy is not covered by the *RTA* (*RTA*, s 4(c)).

c) *Roommates Without Tenancy Agreement With the Landlord*

Any roommates who do not have a tenancy agreement with the landlord are not covered by the *RTA* and do not have any recourse against the landlord under the *RTA*. For more information, see RTB PG 19: Assignment and Sublet.

The determination of whether there is a direct tenancy with the landlord depends on the circumstances of each case and can only be made by an RTB Arbitrator at a dispute resolution hearing.

d) *Emergency Shelter or Transitional Housing*

Sometimes organizations that provide housing may claim that their accommodation falls under the emergency shelter or transitional housing exceptions. However, such claims are not necessarily correct, and only the RTB can make such a determination.

"Emergency shelter" entails an individual being provided with temporary overnight shelter or, in extreme circumstances, shelter beyond overnight until the emergency is over (RTB PG 46). Residents of these shelters "may have an immediate need for support services" such as nutrition, hygiene, and health services, and "may be required to abide by house rules as a condition of their stay".

The *RTR* defines "transitional housing" as living accommodation that is provided:

- on a temporary basis;
- by a person or organization that receives funding from a local government or the government of British Columbia or of Canada for the purpose of providing that accommodation; and
- together with programs intended to assist tenants to become better able to live independently.

Any accommodation must satisfy all three of these criteria to be excluded from the *RTA*, even if a transitional housing agreement has been signed.

e) *Commercial Tenancies*

Premises primarily occupied for business purposes are instead governed by the *Commercial Tenancy Act*, RSBC 1996, c 57. Furthermore, the *RTA* does not apply to accommodations rented under the same agreement as premises primarily occupied for business purposes (*RTA*, s 4(d)). See also RTB PG 14.

f) *Other Excluded Arrangements*

The other housing arrangements excluded from the *RTA* under section 4 are:

- accommodations owned or operated by an educational institution for its students or employees (*RTA*, s 4(b));
- accommodations occupied as vacation or travel accommodation (*RTA*, s 4(e));
- accommodations provided as part of various medical and care programs, such as certain hospitals or community care facilities (*RTA*, s 4(g));
- accommodations in a correctional institution (*RTA*, s 4(h));
- tenancy agreements with a term longer than 20 years (*RTA*, s 4(i)); and
- tenancy agreements that fall under the *MHPTA* (*RTA*, s 4(j));

3. Minors

Tenancy agreements entered into by persons under the age of 19 are enforceable (*RTA*, s 3). Despite the Infants Act, RSBC 1996, c 223, this section allows the *RTA*, *RTR*, tenancy agreements, and service agreements to be enforced against minors.

4. The Crown

Generally, the *RTA* applies to the Crown.

5. Hotel Tenants and Landlords

Hotel tenants are fully covered by the *RTA* if the hotel is the tenants' primary residence. The following rules apply only to hotel tenants and landlords:

- section 29(1)(c) of the *RTA* permits entry into a hotel tenant's room without notice to provide housekeeping or related services at reasonable times;
- section 59(6) of the *RTA* permits an individual occupying a room in a residential hotel to apply for an interim order stating that the *RTA* applies to that living accommodation without notifying other parties.

B. Strata Property

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*, SBC 1998, c 43 [*SPA*].

For more information, see Chapter Twenty-Two: Strata Law.

C. Discrimination Against Tenants

Although overall poverty is not a protected ground under the BC *Human Rights Code*, RSBC 1996, c 210 [*HRC*], a landlord must not deny tenancy to a prospective tenant or discriminate regarding a term of a tenancy agreement based on a lawful source of income, such as income assistance or similar benefits (*HRC*, s 10(1)(a)). The prospective tenant may file a human rights complaint to the BC Human Rights Tribunal. See Chapter Six: Human Rights for more information.

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 Indigenous identity, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age. Note that pets are not covered under discrimination rules.

There are three exceptions:

1. Shared Accommodations

These provisions do not apply where a tenant and landlord will share the use of any sleeping, bathroom or cooking facilities in the space (*HRC*, s 10(2)(a)).

2. Older Adults Only

These provisions, as they relate to age and family status, do not apply to rental spaces in residential buildings in which every unit is reserved for rental by people who have reached 55 years of age, or for by two or more people, at least one of whom has reached 55 years of age (*HRC*, s 10(2)(b)).

3. Units Designed to Accommodate Disability

These provisions, as they relate to physical or mental disability, do not apply if both the rental unit and the residential premises containing it are designed to accommodate persons with disabilities, and the unit is offered for rent exclusively to someone with a disability, or to two or more persons, at least one of whom has a disability (*HRC*, s 10(2)(c)).

IV. TENANCY AGREEMENTS

A. General

A “tenancy agreement” is defined as “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” (*RTA*, s 1). Like any valid contract, there must be an offer, acceptance, and consideration.

A tenancy agreement gives the tenant the right to use, enjoy, and dispose of the property for some duration. The landlord has a freehold in reversion, allowing them to sell their property to someone else. A tenancy continues under the same terms when a rental property is sold in BC. Accordingly, the landlord cannot terminate a lease simply because they want to sell the property; instead, the new owner will take over as the landlord. No new lease is required to be drafted and signed, though this may happen if both parties agree.

1. Two Methods of Creating a Tenancy Relationship

a) By Written Contract

Although section 1 of the *RTA* contemplates tenancy agreements that are written, oral, or implied, a landlord must prepare in writing any tenancy agreement entered into on or after January 1, 2004 (*RTA*, s 13(1)).

Vague terms of the tenancy agreement may be framed in the tenant's favour using the principle of contra proferentem, meaning that the agreement will be strictly construed against the party who provided the agreement's wording.

b) By Implied Contract

Notwithstanding the obligation to prepare a written agreement, where there has been offer, acceptance, and some kind of meaningful consideration, the law may imply the existence of a valid tenancy agreement. The law seeks to recognize and validate the relationship where possible, even where the requirement for a written tenancy agreement has not been met.

Oral contracts are hard to prove. If something is important, it should be recorded in writing.

In a fixed term tenancy that does not require the tenant to vacate on the last day, if the landlord and tenant have not entered into a new tenancy agreement, they are deemed to have entered into a month to month tenancy on the same terms (*RTA*, s 44(3)).

2. Freedom of Contract and the Agreement

Parties may use a standard form tenancy agreement with or without an addendum for additional terms, or they may write their own. Parties are free to add and alter the terms, covenants, and conditions, subject to common law and statute restrictions, which include standard terms that the *RTA* and *RTR* require to be in every tenancy agreement.

What Tenancy Agreements Must ContainThe standard terms are the clauses that every tenancy agreement must contain (RTR, s 13(1)), and are found in the schedule of the *RTR*. The standard terms cover key rights and responsibilities of both parties, including repairs, payment of rent, rent increases, security deposits, assignment or sublet, occupants and invited guests, entry of the residential premises by the landlord, locks, ending the tenancy, and the application of the RTA. A tenancy agreement cannot be amended to change or remove a standard term (*RTA*, s 14(1)), making them a minimum standard that all tenancy agreements must achieve.

All tenancy agreements must comply with the requirements laid out in section 13(2) of the *RTA*. In addition to mandating that the tenancy agreement include the standard terms, a tenancy agreement must also contain the landlord and tenant's agreement over certain key terms, such as the parties' contact information, the duration of the tenancy, the amount and due date of the rent, and the amount and due date of any security or pet damage deposits to be paid.

Form RTB-1 is a standard tenancy agreement form that only contains the standard terms along with fillable boxes to complete the remaining mandatory terms; additional terms can be added as an addendum, or alternatively, the parties could use any other written document that conforms with the requirements from the *RTA* and *RTR*. More information about tenancy agreement requirements and Form RTB-1 can be found here: https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/starting-a-tenancy/tenancy-agreements.

c) *No Contracting Out of Tenancy Legislation*

As it is not possible to contract out of the *RTA* or *RTR* (*RTA*, s 5), a tenancy agreement cannot have terms that contradict the *RTA* or *RTR*. A tenancy agreement cannot be subsequently amended to change or remove a standard term (*RTA*, s 14(1))

A tenancy agreement might purport to contain terms contrary to tenancy legislation, and this may not be identified in some cases until dispute resolution. A tenant is free to argue that a term violates the *RTA* or *RTR* and should, therefore, be void.

d) *Amendments and Subsequent Contracts*

The parties may enter additional or subsequent oral or written contracts on top of the tenancy agreement. If an RTB Arbitrator determines the terms are reasonable and not unconscionable, as defined within section 3 of the *RTR*, new landlords or tenants that take over or enter into the same tenancy agreement would be bound by the subsequent contract.

Changes in the tenancy agreement must be agreed upon by both the landlord and tenant (RTA, s 14(2)), in writing, and signed and dated by both parties. Generally, changes are only enforceable if both parties offer something in return for the other; however, a change without fresh consideration may be enforceable in the absence of duress, unconscionability, or other public policy concerns (*Rosas v Toca*, 2018 BCCA 191 at para 183).

e) Pets

If the tenancy agreement is silent about pets, then the tenant can obtain one. Tenancy agreements are allowed to include terms that prohibit pets or restrict the size, kind, or number of pets a tenant may keep on the residential property, or otherwise govern the tenant's obligations regarding keeping a pet on the rental property (*RTA*, s 18(1)). This is subject to the *Guide Dog and Service Dog Act*, SBC 2015, c 17 (*RTA*, s 18(3)), which in section 3 prohibits a person from denying tenancy or from discriminating with respect to a term of the tenancy against a person who intends to keep a guide dog or service dog in the rental unit.

f) Cannabis

As of October 17, 2018, personal possession of cannabis is legal in Canada. Accordingly, changes to the *RTA* were implemented around growing and smoking cannabis.

If a tenancy agreement entered into prior to legalization includes a clause prohibiting or limiting smoking and did not explicitly allow for smoking cannabis, then that clause is deemed to apply to smoking cannabis in the same way (*RTA*, s 21.1(2)). Vaporizing a substance containing cannabis is not "smoking cannabis" (*RTA*, s 21.1(3)).

Most tenancy agreements entered into prior to legalization are deemed to contain a term prohibiting growing cannabis plants in or on the residential property. There is an exemption for existing operations in or on the residential property that met the following conditions on the day before legalization:

- the tenant is growing one or more medical cannabis plants (*RTA*, s 21.1(4)(a));
- growing the plants is not otherwise a violation of the tenancy agreement (*RTA*, s 21.1(4)(b));
- the tenant is authorized under federal law to grow the cannabis plants in or on the residential tenancy (*RTA*, s 21.1(4)(c)); and
    - the tenant is in compliance with federal law with respect to the medical cannabis (*RTA*, s 21.1(4)(c)).

3. Operation of Tenancy Agreement Terms

A term in a tenancy agreement consists of a promise by a person that a certain thing must or must not be done.

a) Material Terms

From RTB PG 8, a material term is defined as a term of the tenancy agreement that, at the time of entering into the tenancy agreement, both parties agree is so important that the most trivial breach of the term entitles the other party to terminate the agreement.

Not all terms of a tenancy agreement are material terms. The circumstances surrounding the creation of the tenancy agreement and the importance of the term in the tenancy agreement as a whole are more relevant to whether the term is material; meanwhile, the consequences of a breach are less relevant. Although RTB PG 8 states that whether the tenancy agreement declares the term to be material is

less relevant, Arbitrators are likely to consider a term material if the agreement flags it as such. The same clause can be a material term in one tenancy but not material in another.

b) Express, Implied and Statutory Terms

Valid express terms 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. Furthermore, the terms that the *RTA* deems to be terms in every agreement 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) Unenforceable Terms

A term of the tenancy is unenforceable if:

- the term is inconsistent with this *RTA* or the *RTR* (*RTA*, s 6(3)(a));
- the term is unconscionable (*RTA*, s 6(3)(b)); or
- the term is not expressed in a manner that clearly communicates the rights and obligations under it (*RTA*, s 6(3)(c)).

The definition of "unconscionable" for the purposes of determining whether a term of a tenancy agreement is enforceable is "if the term is oppressive or grossly unfair to one party" (*RTR*, s 3). Some of the factors determining whether a term meets this standard can include (RTB PG 8):

- whether it grossly impacts the health and living quality of one party;
- whether there is a rational basis for the term to exist in the agreement; or
- whether the term is so one-sided that it oppresses or exploits the party with weaker bargaining power.

The following are examples of express terms that are void and unenforceable:

- a term purporting to hold that the *RTA* does not apply to the agreement or attempts to avoid the *RTA* (*RTA*, s 5);
- that the next payable rent becomes immediately due if a tenant fails to comply with a term of the tenancy agreement (*RTA*, s 22);
    - that the landlord can seize the tenant's personal property for rent owing (*RTA*, s 26(3)(a));
    - terms that impose unreasonable restrictions on guests or impose a fee for having guests stay overnight (RTB PG 8); or
    - for a fixed term tenancy, any vacate clauses that require the tenant to move out at the end of the tenancy unless:
        - The tenancy agreement is a sublease agreement; or
        - The fixed term tenancy was created in circumstances where the landlord or landlord's close family plans in good faith to occupy the unit after the tenancy ends (*RTR* s 13.1).

B. Protecting the Tenant During Agreement Formation

A third party may accompany a potential tenant during a rental unit showing, so there is a witness as to the landlord's representations made during the showing. Tenants should 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 landlord and tenant must jointly conduct a condition inspection and fill out and sign the RTB's Condition Inspection Report (*RTA*, s 23). This report notes the condition of various elements of the rental unit, such as what needs to be repaired. It is a good idea to 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 fifteen days (*RTA*, s 23(5)).

1. Illegal Application Fees

A potential landlord cannot ask a renter or potential renter for application or processing fees relating to the following:

- accepting a tenancy application (*RTA*, s 15(a));
- processing the application (*RTA*, s 15(b));
- investigating the applicant's suitability as a tenant (*RTA*, s 15(c)); or
- accepting the person as a tenant (*RTA*, s 15(a)).

If someone has paid an application fee and the landlord will not give it back, they 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. If a landlord does this as a business practice, the tenant should report this to the director of the RTB, or to the RTB's Compliance and Enforcement Unit (CEU), who can launch an investigation. For more information about the CEU, see https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/tenancy-compliance-enforcement.

V. MOVING IN AND MOVING OUT

A. Condition Inspections

With exceptions for tenancy agreements entered into before 2004, the landlord and tenant together must inspect the condition of the rental unit when the tenant gains possession of the rental unit, when the tenant starts keeping a pet if permission thereto was granted after the start of the tenancy, or when the tenant ceases to occupy the rental unit.

During dispute resolution proceedings, a condition inspection report that complies with this section is evidence of the state of repair and condition on the date of the inspection, unless a party has evidence to the contrary (*RTR*, s 21).

1. Timing of Condition Inspections

a) Moving In

A condition inspection must occur on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day (*RTA*, s 23(1)). However, tenancies that started before January 1, 2004 are not subject to the requirements for a move-in condition inspection (*RTA*, s 100(1)).

The landlord must give the tenant a copy of the signed and completed condition inspection report within seven days after the inspection is completed (*RTR*, s 18(1)(a)).

b) Keeping a Pet

Where permission to keep a pet on the residential property was granted after the start of the tenancy, a condition inspection must occur on or before the day the tenant starts to keep a pet or on another mutually agreed day (*RTA*, s 23(2)). Tenancies that started before January 1, 2004 are subject to the requirements for this condition inspection, but only in respect of any pet damage deposit that the landlord requires from the tenant (*RTA*, s 100(2)).

The landlord must give the tenant a copy of the signed and completed condition inspection report within seven days after the inspection is completed (*RTR*, s 18(1)(a)).

c) Moving Out

A condition inspection must occur on or after the tenant ceases to occupy the rental unit or on another mutually agreed day; in any case, this must occur before a new tenant begins to occupy the rental unit (*RTA*, s 35(1)).

The landlord must give the tenant a copy of the signed and completed condition inspection report within fifteen days after both of the following are true:

- the condition inspection is completed (*RTR*, s 18(1)(b)(i)); and
- the landlord has received the tenant's forwarding address in writing (*RTR*, s 18(1)(b)(ii)).

2. Two Opportunities to Participate

The landlord must give the tenant two opportunities to participate in a condition inspection. Keeping in consideration any reasonable availability limits that are known, the parties must meet these requirements for there to be two opportunities to participate for the purposes of the *RTA*:

1. first, the landlord must offer one or more dates and times for the condition inspection (*RTR*, s 17(1));
2. second, if the tenant is not available during a time offered by the landlord, the tenant may propose an alternative time which the landlord must consider (*RTR*, s 17(2)(a)); and
3. third, the landlord must propose a different opportunity from their initial offer and give the tenant notice of this opportunity using the approved form (*RTR*, s 17(2)(b)).

3. Obligations of the Parties

a) Landlord

The landlord must conduct and complete a condition inspection report that complies with section 20 of the *RTR* (*RTA*, ss 23(4) and 35(3)). Landlords can use their own condition inspection report forms so long as they contain all the information required in section 20 of the *RTR*.

The landlord must sign the report and allow the tenant to sign it (*RTA*, ss 23(5) and 35(4)), and then give the tenant a copy of the signed report as soon as possible within the time limit set out in section 17 of the *RTR*.

The landlord must make the inspection and complete and sign the report without the tenant if the tenant still does not participate after being offered two opportunities (*RTA*, ss 23(6) and 35(5)(a)), or in the case of a move-out inspection, if the tenant has abandoned the rental unit (*RTA*, s 35(5)(b)).

Except if the tenant has abandoned the rental unit in the case of a move-out inspection, the landlord loses the right to claim against a security deposit, pet damage deposit, or both, for damage to the residential property if the landlord fails to do any of the following:

- offer the tenant at least two opportunities for the inspection (*RTA*, ss 24(2)(a) and 36(2)(a));
- participate in the inspection (*RTA*, ss 24(2)(b) and 36(2)(b)); or
- complete the condition inspection report and give the tenant a copy of it within the appropriate deadline for the type of inspection (*RTA*, ss 24(2)(c) and 36(2)(c)).

In the case of a condition inspection for a tenant who has started keeping a pet after being granted permission after the tenancy started, the landlord only loses the right to claim against the pet damage deposit (*RTA*, s 100(2)).

b) Tenant

If the landlord has provided two opportunities to participate in the condition inspection and the tenant does not participate in either one, the tenant loses the right to the return

of a security deposit or a pet damage deposit, or both (*RTA*, ss 24(1) and 36(1)). In the case of a condition inspection for a tenant who has started keeping a pet after being granted permission after the tenancy started, the tenant only loses the right for the return of the pet damage deposit (*RTA*, s 100(2)).

B. Other Obligations on Moving In

1. 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 had already altered the locking system, the landlord need not do so again (*RTA*, s 25).

2. Providing a Copy of the Tenancy Agreement

Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement (*RTA*, s 13(3)).

C. Other Obligations on Moving Out

1. Tenant Obligations

The following are some of the tenant's other obligations upon or before moving out:

- giving proper notice (*RTA*, s 44(1)(a));
- leaving the unit reasonably clean (*RTA*, s 37(2)(a));
- repairing damage caused above reasonable wear and tear (*RTA*, s 37(2)(a) and (4)), including damage caused by guests or pets above normal wear and tear levels (*RTA*, s 32(3));
- returning all the keys and other means of access (*RTA*, s 37(2)(b)); and
- removing all possessions from the rental unit and the residential property (*RTR*, s 24).

2. Landlord Obligations

The following are some of the landlord's other obligations upon, before, or after the tenant moves out:

- giving proper notice (*RTA*, s 44(1)(a)); and
- one of the following within fifteen days after the later of the tenancy ending and the landlord receiving the tenant's forwarding address in writing (*RTA*, s 38(1)):
    - returning the security deposit and pet damage deposit with interest, or
    - making an application for dispute resolution to retain them.

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 lost rent until the unit is rented or the fixed term expires. For more information, see RTB PG 5.

The tenant may also have to pay liquidated damages and be subject to other obligations as laid out in their tenancy agreement.

VI. SECURITY AND PET DAMAGE DEPOSITS

A. Definitions

A landlord may require a tenant to pay one security deposit as a condition of entering into a tenancy agreement (*RTA*, s 17). "Security deposit" is defined very broadly. It can include money, property, rights, or otherwise 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 tenancy agreement and the *RTA*; however, 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 (*RTA*, s 1); for more information, see RTB PG 29: Security Deposits.

A pet damage deposit is similar to a security deposit, but is held by the landlord as security for damage to the rental property caused by a pet (*RTA*, s 1). Unlike a security deposit, the definition of a pet damage deposit does not exclude post-dated cheques for rent (*RTA*, s 1).

B. Payment of the Security Deposit and Pet Damage Deposit

1. Amount

A security deposit or a pet damage deposit must not exceed one half of the monthly rent (*RTA*, s 19(1)).

2. Number

A landlord is permitted to accept a maximum of one security deposit (RTA, s 20(b)) and one pet damage deposit (*RTA*, s 20(d)) within a tenancy agreement.

3. Timing

A landlord is not entitled to a security deposit from a tenant after the agreement has already been formed (*RTA*, s 20(a)).

A landlord is only permitted to require a pet damage deposit from a tenant when the tenant enters into the tenancy agreement, or the point at which the landlord agrees that the tenant may keep a pet they acquired during the tenancy on the residential property (*RTA*, s 20(c)).

4. Consequences of Non-Compliance

If a landlord accepts a security deposit or a pet damage deposit that is greater than 1/2 of one month's rent, the tenant may deduct the overpayment from rent or otherwise recover the overpayment (*RTA*, s 19(2)).

Failure to pay a lawful security deposit is a ground for ending the tenancy (*RTA*, s 47(1)(a)). The landlord may give a one-month eviction notice if the tenant fails to pay the security deposit within 30 days of the due date under the tenancy agreement.

C. Return of Security Deposit and Pet Damage Deposit

A tenant must provide their landlords with a forwarding address in writing within one year after the end of the tenancy (*RTA*, s 39). Once both the tenancy has ended and the landlord

has received the tenant's forwarding address in writing, the landlord has 15 days to do one of the following:

- return the security deposit or pet damage deposit to the tenant, with interest (*RTA*, s 38(1)(c)); or
- make an application for dispute resolution to retain the deposit (*RTA*, s 38(1)(d)).

If the landlord fails to complete either of those two options and the tenant still has a valid right to the deposit, the tenant may apply for dispute resolution (*RTA*, s 38.1(1)). After this, 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 (*RTA*, ss 38(6)).

If a tenant fails to provide their forwarding address in writing within one year after the end of the tenancy, they lose the right to have their security deposit or pet deposit returned, and the landlord may keep them (*RTA*, s 39). A landlord may also keep a security deposit or pet damage deposit if the tenant agrees in writing or if ordered by the RTB (*RTA*, s 38(4)).

Leases may not include a term providing that the landlord automatically keeps all or part of the deposit at the end of a tenancy (*RTA*, s 20 (e)). The right of a landlord or tenant to respectively keep or retrieve the security deposit or pet deposit depends on their compliance with the requirements governing condition inspection reports.

1. Interest on Security Deposit

Interest on a security deposit or pet damage 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 or pet damage 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 (*RTR*, s 4). The interest payable on security and pet damage deposits for 2024 is 2.7%.

There is an online deposit interest calculator at: https://www.housing.gov.bc.ca/rtb/WebTools/InterestOnDepositCalculator.html.

2. Change of Landlord

Where a security or pet deposit is paid to a landlord, and the property is then subsequently sold, the obligations regarding the security deposit and pet damage deposit pass to the new property owner, meaning they become responsible for repaying the security deposit and pet damage deposit when the tenancy ends (*RTA*, s 93).

D. Non-Refundable Fees

The *RTA* allows landlords to charge some non-refundable fees to a tenant in accordance with section 7 of the *RTR*. They do not form part of the security deposit or pet deposit (*RTA*, s 1).

Some of these allowable non-refundable fees are:

- direct cost of replacing keys or other access devices (*RTR*, s 7(1)(a));
- direct cost of additional keys or other access devices requested by the tenant (*RTR*, s 7(1)(b));
- a service fee charged by a financial institution to the landlord for the return of a tenant's cheque (*RTR*, s 7(1)(c));
- a move-in or move-out fee charged by a strata corporation to the landlord (*RTR*, s 7(1)(f));
- a fee for services or facilities that are requested by the tenant and not required to be provided under the tenancy agreement (*RTR*, s 7(1)(g)).

The following fees must only be charged if laid out in the tenancy agreement (*RTR*, s 7(2)):

- an administration fee for a tenant's cheque returned by their financial institution or for late payment of rent, which must not exceed $25 (*RTR*, s 7(1)(d)); and
- a fee for moving between rental units within the residential property if the move was requested by the tenant, which must not exceed the greater of $15 and 3% of the monthly rent (*RTR*, s 7(1)(e)).

VII. REPAIR AND SERVICE

A. Duty to Provide and Maintain Rental Unit in Repair

The division between the landlord's and the tenant's responsibilities in maintaining the rental unit are established in section 32 of the *RTA*. The specifics of these responsibilities are clarified in much greater detail in RTB's Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises.

Because tenancy agreements cannot contradict the terms of the *RTA*, they cannot purport to make one party responsible for repair allocated by the *RTA* to the other (RTB PG 1).

1. Landlord

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 (*RTA* s 32(1)(a); and
- having regard to the age, character, and location of the rental unit, makes it suitable for tenant occupation 32(1)(b).

As a result, the landlord is responsible for repairing:

- the rental structure and roof;
- heating, plumbing, and electricity;
- locks, walls, floors, and ceilings;
- fire doors and fire escapes;
- insect control, such as bed bug treatment;
- intercoms and 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 notify the landlord of the need for repair, preferably in writing. If the landlord refuses to make the repair, the tenant may seek a repair order by making a dispute resolution application at the RTB. If the tenant fails to notify the landlord and substantial damage results from the lack of repair, the tenant may have to pay for the damage; for more information, see RTB PG 5: Duty to Minimize Loss.

When a tenant goes to the RTB to request a repair order, they may also request a rent reduction until the repair is complete; this is based on the reduction in the value of a tenancy agreement as a result (*RTA*, s 65(1)(f)). A tenant can only make deductions from their rent if they are expressly authorized to do so under a provision of the *RTA* (*RTA*, s 26(1)).

2. Tenant

Tenants must repair damage to the rental unit or common areas caused by their or their pet's wilful or negligent acts or omissions, or those of a person permitted by them on the rental property (*RTA*, s 32(3)). The tenant does not have a duty to repair reasonable wear and tear (s 32(4)), which falls on the landlord.

Tenants must maintain "reasonable health, cleanliness and sanitary standards" in their rental unit (*RTA*, s 32(2)), which includes ordinary amounts of day-to-day cleaning. This includes notifying the landlord of any suspected pest infestation. Upon discovery of a pest infestation, the tenant is obligated to cooperate with the landlord in treating the infestation. If tenants do not cooperate within a reasonable time, 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 pests 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 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.

B. No Withholding Rent

A tenant cannot withhold rent because of repairs needed unless an Arbitrator gives an order permitting it, or the repairs qualify as emergency repairs and the tenant has complied with all necessary procedures concerning emergency repairs. A tenant must pay their rent in full and on time, regardless of whether the tenant believes the landlord has fulfilled their obligations, unless they have a right under the *RTA* to deduct from their rent (*RTA*, s 26(1)).

C. Emergency Repairs

A tenant is allowed to make certain emergency repairs by themselves without the need for going to the RTB for dispute resolution; the landlord must then reimburse the tenant, or the tenant may deduct their cost from the rent.

Tenants must exercise high caution when proceeding with emergency repairs. Improperly deducting from their rent without exact compliance with the provisions of section 33 of the *RTA* can result in the tenant being evicted for non-payment of rent.

1. Definition of Emergency Repair

Emergency repairs must be urgent (*RTA*, s 33(1)(a)). They must be necessary for the health or safety of someone, or for the preservation or use of the residential property (*RTA*, s 33(1)(b)).

Furthermore, an emergency repair must only be for the purpose of repairing one or more of the following (*RTA*, s 33(1)(c)):

- major leaks in the pipes or roof;
- damaged or blocked water or sewer pipes or plumbing fixtures;
- the primary heating system;
- damaged or defective locks that give access to a rental unit; or
- the electrical systems.

2. Procedure for Conducting an Emergency Repair

A tenant may conduct emergency repairs without going to dispute resolution if all of the following conditions are true:

- emergency repairs are in fact needed (*RTA*, s 33(3)(a));
- the tenant has made at least two attempts to telephone the contact number designated by the landlord for emergency repairs, which may be

posted in a conspicuous place on the rental property or communicated to the tenant in writing (*RTA*, s 33(3)(b));
- the tenant has given the landlord reasonable time to make the repairs (*RTA*, s 33(3)(c)).

The landlord must reimburse the tenant if they claim reimbursement and provide the landlord with a written account of the amounts incurred, accompanied by a receipt for each amount (*RTA*, s 33(5)). However, the following is exempt:

- repairs made before all of the above three conditions were met (*RTA*, s 33(6)(a));
- amounts for which the tenant has not provided a written account or receipts (*RTA*, s 33(6)(b));
- amounts that are more than a reasonable cost for the repairs (*RTA*, s 33(6)(c)); and
- amounts for emergency repairs caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant (*RTA*, s 33(6)(d)).

If the landlord does not make required reimbursements to the tenant, the tenant may deduct the amount from their rent or otherwise recover the amount (*RTA*, s 33(7)). A tenant must take care that the amounts they deduct from rent truly qualify as amounts for emergency repairs, or else they risk being evicted for non-payment of rent.

3. Tenants Should Exercise Extreme Caution

Tenants should exercise high caution when proceeding with emergency repairs. If they do not exactly comply with the requirements for undertaking emergency repairs, their rent deduction could be legally construed as a failure to pay rent that justifies the landlord serving them with a 10-day notice to end tenancy for non-payment of rent, or otherwise claim against the tenant. All steps taken should be documented fully.

There is sometimes a discrepancy between what a tenant, landlord, and RTB might consider “emergency” repairs. Before a tenant conducts any repairs, they 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.

Emergency repairs usually constitute a large repair bill and should only be undertaken by the tenant in the clearest of circumstances. When in doubt, a tenant should first apply to an Arbitrator for a Repair Order, refer to a Property Use Inspector, or investigate local Standards of Maintenance bylaws.

D. Municipal Bylaws

Another way to seek repairs can be through their municipality’s Standards of Maintenance bylaws. However, this is only available in some municipalities, such as 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) or fire problem

(such as 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 a reduction in rent.

There is a risk attached to calling a City Inspector. The inspection could result in the municipality ordering the suite vacated, resulting in eviction for the tenants. For example, the City Inspector may do this if they discover that the rental unit is an illegal suite under their municipality's bylaws, which is an outcome that the RTB alone cannot undertake.

E. Terminating or Restricting Services or Facilities

A service or facility, as defined in s 1 of the *RTA*, applies to any of the following that are provided or agreed to be provided to the tenant by the landlord:

- appliances and furnishings;
- utilities and related services;
- cleaning and maintenance services;
- parking spaces and related facilities;
- cablevision facilities;
- laundry facilities;
- storage facilities;
- elevators;
- common recreational facilities;
- intercom systems;
- garbage facilities and related services;
- heating facilities or services; and
- housekeeping services.

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 (*RTA*, s 27(1)). A landlord may terminate or restrict other services or facilities if they do the following:

- give 30 days' written notice, in the approved form, of the termination or restriction (*RTA*, s 27(2)(a)); and
- reduce 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 (*RTA*, s 27(2)(b)).

The tenant may dispute the restriction or termination on the basis that the service being restricted or terminated constitutes an essential service or is a material term of the tenancy agreement.

For more information, see RTB PG 22: Termination or Restriction of a Service or Facility.

VIII. RENT INCREASES

A. Subsidized Housing is Excluded

For rental units operated by certain public housing bodies whose rent is dependent on the tenant's income, the tenancy is excluded from the *RTA*'s provisions on rent increases (*RTR*, s 2). The affected bodies under this section are:

- the British Columbia Housing Management Commission;
- the Canada Mortgage and Housing Corporation;
- the City of Vancouver;
- the City of Vancouver Public Housing Corporation;
- Metro Vancouver Housing Corporation;
- the Capital Region Housing Corporation; and
- any housing society or non-profit municipal housing corporation that has ever had an agreement (including if the agreement expired and was not renewed) regarding the operation of residential property with the following:
    - the government of British Columbia;
    - the British Columbia Housing Management Commission;
    - the Canada Mortgage and Housing Corporation;
    - a municipality; and
    - a regional district.

B. Payment and Non-payment of Rent

1. Cash Payment Rules

A landlord must provide a tenant with a receipt for rent paid in cash (*RTA*, s 26(2)). 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.

2. 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 *RTR* (*RTA*, s 26(4)).

C. Allowed Rent Increases

Landlords can raise rents in the following circumstances under section 43(1) of the *RTA*.

1. Annual Rent Increase

A landlord can unilaterally increase rent by a set amount each year as defined in the *RTR* (*RTA*, s 43(1)(a)). The percentage for allowable rent increases is usually the inflation rate (Consumer Price Index, or "CPI"), but it is limited to only 3.5% for 2024 (*RTR*, s 22.2(2)). The maximum allowable increase changes each year on January 1 and is usually posted in the preceding September on this webpage: https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/rent-rtb/rent-increases.

The rent increase formula for Manufactured Home Parks is inflation plus the proportionate amount of the increases to regulated utilities and local government levies (*MHPTR*, s 32(3)).

2. By RTB Order

Section 43(3) of the *RTA* permits landlords to apply to the RTB for an order allowing a rent increase greater than otherwise allowed under s 43(1). The circumstances under which these applications may be made are set out in sections 23-23.4 of the RTR. A landlord may impose this rent increase in combination with an annual rent increase, but may only impose an approved additional rent increase from one of the following two categories at a time:

a) Circumstances Other Than Eligible Capital Expenditures

Circumstances in this category are governed by section 23 of the *RTR* and include:

- incurring financial loss from an extraordinary increase in the rental property's operating expenses (*RTR*, s 23(1)(a));
- incurring reasonably unforeseen financial loss from the financing costs of purchasing the residential property (*RTR*, s 23(1)(b)); or
- the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit (*RTR*, s 23(1)(c)).

b) Eligible Capital Expenditures

If the landlord, in the 18 months preceding their application for dispute resolution, has made a significant capital expenditure, they may be eligible for an RTB order for a rent increase (*RTR*, s 23.1(1)). This 18-month window includes expenditures partially paid for outside the 18-month period, as long as the final payment is paid within the 18-month period.

The expenditure must be for installing, repairing, or replacing a major system or component of the rental property that is necessary to achieve one of the following purposes:

- maintaining the residential property in a state of repair that complies with the health, safety, and housing standards required by law in accordance with section 32(1)(a) of the *RTA* (*RTR*, s 23.1(4)(a)(i));
- the system or component has failed, is malfunctioning, or is close to the end of its useful life (*RTR*, s 23.1(4)(a)(ii));
- reducing energy use or greenhouse gas emissions (*RTR*, s 23.1(4)(a)(iii)(A)); or
- improving the security of the residential property (*RTR*, s 23.1(4)(a)(iii)(B)).

Applications shall not be granted where a tenant can show that the need for the capital expenditures arose because of inadequate repair or maintenance on the part of the landlord, or that the landlord has been paid or is entitled to be paid from another source (*RTR*, s 23.1(5)). Capital expenditures may not be claimed again for at least 5 years (*RTR*, s 23.1(4)(c)).

3. By Mutual Agreement in Writing

A tenant may also agree to pay a greater increase than the percentage permitted; this agreement must be writing. RTB PG 37B sets out that a mutually agreed rent increase being recorded in writing should:

- clearly set out the rent increase (for example, the percentage increase and the amount in dollars);
- clearly set out any conditions for agreeing to the rent increase;
- be signed by the tenant, and
- include the date that the agreement was signed by the tenant.

Because the *RTA* otherwise limits the circumstances under which a landlord may increase rent, a tenant is not obligated to agree to a rent increase by mutual agreement if so requested by the landlord.

D. Improper Rent 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, or they may risk being served a 10-day notice to end tenancy for non-payment of rent.

A tenant may not apply for dispute resolution to dispute a rent increase that complies with section 43(1) of the *RTA*. However, especially in the case of rent increases by mutual agreement, it may be possible that a rent increase is invalid due to being unconscionable or otherwise an attempt to avoid the *RTA*, of no effect pursuant to section 5; in this case, the tenant should apply for dispute resolution at the RTB. This includes if the mutually agreed rent increase was not imposed in compliance with the other requirements governing rent increases (RTB PG 37B).

E. Timing and Notice of Rent Increases

A landlord must not impose a rent increase for at least 12 months after the previous rent increase, or the tenant's rent has never been increased, at least 12 months after the rent was first payable (*RTA*, s 42(1)).

Using the approved form, the landlord must give written notice of any rent increase at least three full months before the increase becomes effective (*RTA*, s 42(2)), including for those mutually agreed to in writing.

If the landlord gives notice of less than three months or does not comply with the 12-month waiting period described above, the notice of rent increase is invalid and of no effect until it does comply (*RTA*, s 42(4), with its effective date self-correcting to the first day the notice complies with both timing and notice requirements. The tenant should notify the landlord about any self-correcting dates.

1. Exception: Rent Tied to Number of Occupants

In a tenancy agreement conforming to section 13(2)(f)(iv) of the *RTA* where the monthly rent varies according to the number of occupants, the addition of a new occupant is not subject to these rent increase provisions: the timing and notice provisions only apply to rent increases other than those triggered by a new

occupant (*RTA*, s 40), and the addition of a new occupant does not reset the period the landlord must wait before imposing another rent increase.

As of May 16, 2024, landlords are not allowed to make these occupancy-tied rent increases based on additional occupants who were a minor at the time of entering into the tenancy agreement (*RTA*, s 22.1). One result of this provision is that a landlord cannot automatically increase rent per due to the birth of their tenant's child. See RTB PG 37 for other examples of how this provision prevents landlords from relying on an occupant-based rent rate to automatically adjust rent without affecting other rent increases.

F. New Lease with Same Tenant and Location

A landlord and tenant may agree to renew a fixed-term tenancy agreement with or without changes for another fixed term. If a fixed term tenancy does not require the tenant to vacate at the end of the term and no new agreement is entered into, the tenancy automatically continues as a month-to-month tenancy on the same terms (*RTA*, s 44(3)). Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met, so entering into successive fixed-term tenancies does not constitute a mutually agreed rent increase under section 43(1)(c) of the *RTA* (RTB PG 30).

G. Hidden Rent Increases

If the landlord starts to charge the tenant for a service or facility included in the rent or takes away a service or facility included in the rent without decreasing the rent proportionately pursuant to section 27 of the *RTA*, that may effectively be a rent increase. The tenant may apply for dispute resolution to recover the effective overpayment.

If the Arbitrator considers that the value of the tenancy agreement has decreased as a result, the Arbitrator can provide relief such as a monetary order in favour of the tenant or an order to restore the terminated service or facility. See also RTB PG 22: Termination or Restriction of a Service or Facility.

IX. RIGHT OF ENTRY, QUIET ENJOYMENT AND PRIVACY

A. Landlord's Limited Right of Entry

A landlord is prohibited from entering their rental unit when it is subject to a tenancy agreement except in the following circumstances:

- the tenant gives either written or verbal consent to enter for a specific purpose one month or less prior to entry, including when the tenant consents at the time of entry (*RTA*, s 29(1)(a));
- the tenant receives written notice of entry between 24 hours and 30 days before the time of entry (*RTA*, s 29(1)(b)), with the time of receipt depending on the method of service as established in section 90 of the *RTA* and with the entry complying with the following requirements:
    - the written notice specifies the purpose for entering, which must be reasonable (*RTA*, s 29(1)(b)(i));
    - the written notice states the date and time of entry, which must be between 8:00 AM and 9:00 PM unless the tenant otherwise agrees (*RTA*, s 29(1)(b)(ii));
    - it has been at least one month since the landlord last inspected the unit using this method (*RTA*, s 29(2));
- the landlord provides housekeeping or related services as part of the written tenancy agreement and the entry is for this purpose in accordance with the terms (*RTA*, s 29(1)(c));
- the landlord has an RTB order authorizing the entry (*RTA*, s 29(1)(d));
- the tenant has abandoned the rental unit (*RTA*, s 29(1)(e)); or
- an emergency exists and the entry is necessary to protect life or property (*RTA*, s 29(1)(f)).

B. Tenant's Right to Quiet Enjoyment

A tenant has the right to quiet enjoyment (*RTA*, s 28), which includes but is not limited to:

- reasonable privacy (*RTA*, s 28(a));
- freedom from unreasonable disturbance (*RTA*, s 28(b));
- exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 (*RTA*, s 28(c)); and
- use of the common area for reasonable and lawful purposes, free from significant interference (*RTA*, s 28(d)).

Landlords have a duty to protect their tenants' rights to quiet enjoyment (RTB PG 6), and to not interfere with that right themselves (*RTA*, s 7). A landlord may be liable to compensate a tenant for breach of quiet enjoyment even if they were not the cause of a breach, if the tenant can establish that the landlord was aware of the problem and failed to take reasonable steps to correct it (RTB PG 6). If a landlord interferes with a tenant's right to quiet enjoyment by repeatedly entering a rental unit in a manner not in accordance with the *RTA*, the tenant may apply for an order to be permitted to change the locks in the rental unit, and to be permitted to not provide the landlord with a key (*RTA*, s 70).

While tenants have a right to quiet enjoyment, they also have a duty not to disturb other tenants so as to not breach their right to quiet enjoyment. A landlord may end a tenancy for cause with one month's notice if a tenant significantly interfered with unreasonably disturbs other occupants or the landlord of the building (*RTA*, s 47 (d)(i)).

C. Duty to Provide Access

Once a tenant has taken possession of a rental unit, a landlord is not allowed to unreasonably restrict access to the residential property by the tenant or someone they permit onto the residential tenancy (*RTA*, s 30(1)); therefore, a landlord cannot unreasonably restrict a tenant's guests.

The landlord cannot change the locks or alter the means of access to the rental unit without the tenant's permission, and a landlord is obligated to provide the tenant with new keys or other means of access to the rental unit (*RTA*, s 31(1.1)). On the request of a tenant at the beginning of a new tenancy agreement, the landlord must rekey or change the locks to the rental unit (*RTA*, s 25). A landlord cannot restrict access even if a tenant has failed to pay rent.

1. Tenants: Changing the Locks

Tenants must not change the locks giving access to common areas without the permission of the landlord (*RTA*, s 31(2)). Tenants also must not change the locks or other means of giving access to their unit without the landlord's written permission or an order from the RTB (*RTA*, s 31(3)). Breach of these rules may be grounds for eviction.

X. ASSIGNMENT AND SUBLET

A. Concepts

For further explanation of the concepts of assignment and sublet, see RTB PG 19: Assignment and Sublet.

1. Assignment

An assignment is where a tenant permanently transfers the remainder of their rights and obligations in their tenancy to a third party, who directly becomes the new tenant of the original landlord (RTB PG 19).

Generally, the new tenant is not liable for the actions or omissions of the original tenant; however, the original tenant may remain liable to the landlord under the original agreement under these circumstances (RTB PG 19):

- the assignment was made without the landlord's consent;
- the assignment agreement does not fully assign all obligations to the new tenant.

2. Sublet

In a sublease agreement, the tenant temporarily moves out of the rental unit, temporarily becoming the "landlord" of a third party who moves in as a subtenant. Throughout a sublease, the original tenancy remains intact, and the tenant remains responsible to the landlord under the terms of the original tenancy agreement (RTB PG 19). The sublease agreement governs the contractual relationship between the tenant and the subtenant.

As the definition of "landlord" under the *RTA* includes tenants who sublet to a subtenant, the *RTA* affords many of the protections to the subtenant against the tenant as if it were an ordinary tenancy agreement; however, the subtenant has no contractual relationship with the original landlord and has no recourse against them (RTB PG 19).

Furthermore, the tenant's obligations as the subtenant's landlord is dependent on their own tenancy relationship with the original landlord, meaning that the subtenant does not enjoy the complete protection of the *RTA*. For instance, an original landlord who ends the tenancy agreement also ends the sublease agreement; also, while a subtenant can seek an RTB order for a rent reduction if requested repairs are not completed within a reasonable time, the tenant can only have the repairs done by requesting the same from the original landlord (RTB PG 19).

The tenant must retain an interest in the tenancy for a sublease agreement to be valid, so the sublease term must end sometime before the end of the tenant's tenancy, even if the remaining time is as short as one day. For example, for a fixed-term tenancy agreement with six months remaining, the term of the sublease agreement may be six months less one day. If the sublease lasts the entire remainder of the original tenant's tenancy, it may be determined to be legally an assignment instead (RTB PG 19).

3. Roommates Not Covered by the *RTA*

One living situation that is commonly mistaken to be an assignment or a sublet is when a person moves in with a tenant only under an agreement with the tenant, and not the original landlord.

Unlike an assignment or a sublet, this type roommate is not covered by the *RTA* and has no recourse under tenancy legislation; to gain protection under the *RTA*, the roommate should ideally have themselves named on the written tenancy agreement. If a legal dispute arises and the roommate still does not have written evidence of a tenancy agreement with the original landlord, they should either seek recourse against the original tenant at the CRT or Small Claims Court, or make an application at the RTB and try to argue that an implied tenancy agreement in fact exists between them and the original landlord in order to be covered by the jurisdiction of the RTB.

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

A tenant may assign or sublet their interest in a tenancy agreement, but only with the written consent of the landlord (*RTA*, s 34(1)). However, the landlord must not be arbitrary or unreasonable in withholding consent if the tenant has a fixed term tenancy with six months or more remaining (*RTA*, s 34(2)); where a landlord has unreasonably withheld consent, the tenant may apply for an RTB order allowing the sublet (*RTA*, s 65(1)(g)). A landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease (*RTA*, s 34(3)).

1. Limitations in Subsidized Housing

For rental units operated by certain public housing bodies whose rent is dependent on the tenant's income, the landlord is exempt from the prohibition under section 34(2) of the *RTA* from unreasonably withholding consent to assign or sublet for fixed term tenancy agreements with more than six months remaining (*RTR*, s 2). Usually, this means that their tenants cannot assign or sublet their tenancy. The affected bodies under this section are:

- the British Columbia Housing Management Commission;
- the Canada Mortgage and Housing Corporation;
- the City of Vancouver;
- the City of Vancouver Public Housing Corporation;
- Metro Vancouver Housing Corporation;
- the Capital Region Housing Corporation; and
- any housing society or non-profit municipal housing corporation that has ever had an agreement (including if the agreement expired and was not renewed) regarding the operation of residential property with the following:
    - the government of British Columbia;
    - the British Columbia Housing Management Commission;
    - the Canada Mortgage and Housing Corporation;
    - a municipality; and
    - a regional district.

XI. END OF TENANCY (*RTA* S 44)

A. Overview

Landlords and tenants may end a tenancy in compliance with the *RTA*. This includes requirements about the form and length of notice required for a notice to end tenancy to be effective, and the reasons that a landlord is allowed to serve a tenant with a notice to end tenancy (commonly referred to as an eviction notice).

A periodic tenancy continues on a weekly, monthly, or other periodic basis until it is ended in accordance with the *RTA* (*RTA*, s 1). A periodic tenancy may be set out in the lease agreement; in addition, for a fixed-term tenancy that does not require the tenant to vacate on the last day, the landlord and tenant are deemed to have entered into a month to month periodic tenancy on the same terms if they have not entered into a new agreement by the last day (*RTA*, s 44(3)).

Eviction notices lay out the procedure for disputing the notice to end tenancy, including the very short deadline to apply for dispute resolution at the RTB that varies depending on the type of eviction notice. Tenants should never ignore a notice, even if they believe it is drafted incorrectly; the best course of action is to apply for dispute resolution so that an RTB arbitrator may adjudicate the validity of the eviction.

Readers are cautioned that because residential tenancy law changes very quickly, it is highly advisable to first research and verify the latest tenancy law before acting or advising on something in this Chapter, especially as it relates to notice periods or limitation periods for notices to end tenancy.

B. Requirements of Notices to End Tenancy

1. Form

For a notice to end a residential tenancy to be effective, it must:

- be in writing (*RTA*, s 52);
- be signed and dated by the landlord or tenant giving notice (*RTA*, s 52(a));
- include the address of the rental unit (*RTA*, s 52(b)); and
- state the effective date of the notice (*RTA*, s 52(c)).

For a landlord's notice to be effective, it must also use the approved RTB form found on the RTB website (*RTA*, s 52(e)), which lays out how the tenant may dispute the notice. A landlord's notice must also state the grounds for ending the tenancy; tenants' notices are not subject to this requirement (*RTA*, s 52(d)).

If a notice to end tenancy does not comply with these form requirements, an Arbitrator may nevertheless amend the notice if they are satisfied that the person receiving the notice knew or should have known the information that was omitted from the notice, and it is reasonable to amend the notice (*RTA*, s (68)(2)). They may set aside the notice, amend it, or order that the tenancy end on a date other than the effective date shown (*RTA*, s 68(2)). Thus, tenants are cautioned against presuming that a minor defect on a notice to end tenancy makes it invalid, without the need to file for dispute resolution at the RTB.

Dates are self-corrective (*RTA*, s 53), so notice is not void simply because a landlord proposes to have the tenancy end on a date sooner than the *RTA* allows.

2. Date of Receipt

The required length of notice depends on the type of notice to end tenancy, described in further sections of this Chapter below. They are tied to when the other party receives the notice.

Giving and serving documents is governed by sections 88 to 90 of the *RTA* and sections 43 and 44 of the *RTR*; notably, email is not a method of service unless the person provided their email address as an address for service (*RTR*, s 43(1)). Absent evidence to the contrary, documents are presumed to be received on the following timelines:

- if given or served in person, on the same day;
- if given or served by mail, five days after it is sent (*RTA*, s 90(a));
- for most other methods, three days after it is sent or posted.

3. Paying Rent During the Notice Period

When a notice to end tenancy is given by either party, the effective date is later, creating a notice period. Rent must be paid throughout the notice period (*RTA*, s 26(1)), as the tenancy does not end until the effective date. A tenant who does not pay rent for the remainder of the tenancy may be served with a 10-day notice to end tenancy for non-payment of rent.

4. Calculating the Notice Period

Many notice periods for notices to end tenancy require both that its duration is at least certain number of months and that its effective date falls on the day before rent is due. The result is that the required notice period can vary depending on when notice is given.

For example, if rent is payable on the first of the month, a one-month notice given on January 1 will be effective in terminating the tenancy agreement no earlier than February 28, whereas notice given on May 31 would be effective to end the tenancy on June 30. In the former, the notice period lasts nearly two months, whereas in the latter, the notice period lasts less than a day longer than one month.

C. Tenant Gives Notice

A tenant can end a tenancy by giving notice. A landlord cannot apply for dispute resolution with respect to a tenant's eligibility to end their tenancy, but they can apply for dispute resolution if:

- Notice was given by a person who was not authorized under the regulations to do so;
- The tenant's notice is not provided in accordance with the RTA; or
- There are other claims unrelated to the tenant's notice to end tenancy.

When a tenant ends a tenancy this way, all individuals under the same tenancy agreement must vacate the rental unit when the tenancy ends, subject to whether the landlord enters into a new tenancy agreement with the remaining tenants immediately afterwards (RTB PG 13), which may involve renegotiation the terms of the agreement, including the rent amount.

Thus, not having to choose between moving out or accepting a rent increase when a different tenant leaves is one advantage of signing a tenancy agreement that is separate from any other tenants living in the same unit.

1. One Month's Notice

Where there is a periodic tenancy, the tenant can terminate the tenancy by giving notice with an effective date that satisfies both of the following:

- it is at least one clear month after the landlord receives the notice (*RTA*, s 45(1)(a)); and
- it takes place on the day before rent is periodically payable (*RTA*, s 45(1)(b)).

Where there is a fixed term tenancy, the effective date also must not be earlier than the end date of the tenancy as specified in the tenancy agreement (*RTA*, s 45(2)(b)). As a result, a fixed term tenant usually cannot end their tenancy early, but they can prevent it from converting into a month to month tenancy.

Although a landlord is not entitled to dispute a tenant's one-month notice to end tenancy, if the tenant's notice does not comply with the above requirements, the landlord may be entitled to monetary compensation at RTB dispute resolution.

2. Family Violence

A tenant is eligible to end a fixed term tenancy early in the following circumstances:

- they or their dependant are likely at risk from family violence carried out by the tenant's family member, as defined under the *Family Law Act*, SBC 2011, c 5 [*FLA*] (*RTA*, s 45.1(2)(a)(i));
- they or any occupant are likely at risk from household violence (*RTA*, s 45.1(2)(a)(ii));
- they have been assessed as requiring long-term care (*RTA*, s 45.1(2)(b)); or
- they have been admitted to a long-term care facility (*RTA*, s 45.1(2)(c)).

The definition of "family violence" does not require intent to harm the tenant or family member, and includes the following (*FLA*, s 1):

- real or attempted physical or sexual abuse of a family member;
- psychological or emotional abuse of a family member; and
- direct or indirect exposure of a child to family violence.

The definition of "household violence" covers similar violence as "family violence," including the lack of an intention to harm the tenant or occupant; "household violence" additionally covers circumstances when such violence has adversely affected or is likely to adversely affect the tenant or occupant's quiet enjoyment, security, safety, or physical well-being (*RTA*, s 45.1(1)).

To terminate a fixed term tenancy early, the tenant must fill out Form RTB-49 and submit it to the landlord with along with one month's written notice. A qualified third party is required to verify the risk of family violence or the need for long-term care (*RTA*, s 45.2). Section 39 of the *RTR* lists persons qualified to confirm a risk of family violence, whereas section 40 of the *RTR* lists persons qualified to confirm the need for long term care.

D. Landlord Gives Notice

Certain time limits may be extended, but only in exceptional circumstances (*RTA*, s 66(1)). In any event, time limits to dispute a notice to end tenancy cannot be extended past the effective date of the notice (*RTA*, s 66(3)). See RTB PG 36: Extending a Time Period, which sets out more information regarding the high bar of exceptional circumstances.

3. Non-Payment of Rent

A landlord may give a notice to end a tenancy if rent is unpaid on any day after the day it is due (*RTA*, s 46(1)). If a tenant fails to pay the utilities, the landlord can give written notice demanding payment; if the payment remains unpaid for over 30 days after the tenant receives the written demand, the landlord can treat the unpaid amount as unpaid rent for the purposes of ending the tenancy (*RTA*, s 46(6)).

a) Effective Date of the Notice

A notice to end tenancy for non-payment of rent is effective 10 days after the tenant receives the notice (*RTA*, s 46(1)).

b) Timeline to Invalidate or Dispute the Notice

After receiving the notice, the tenant has five days to do one of the following:

- pay the overdue rent, which invalidates the notice (*RTA*, s 46(4)(a)); or
- dispute the notice by applying for dispute resolution (*RTA*, s 46(4)(b)).

If the tenant does not pay the outstanding rent or dispute the notice to end tenancy on time, the tenant is conclusively considered to have accepted that the tenancy has ended on the effective date of the notice, and must vacate the unit by that date (*RTA*, s 46(5)). The landlord can go to the RTB to make a direct request for an order of possession without a hearing. No evidence from any other party would be considered except the landlord's written submissions.

A notice to end tenancy for non-payment of rent has no effect if the amount of unpaid rent is an amount the tenant is permitted under the *RTA* to deduct from rent. However, tenants still need to file for dispute resolution in this situation rather than simply ignore the notice, otherwise they will be deemed to have accepted the end of the tenancy (*RTA*, s 46(5)(a)).

c) Paying the Overdue Rent

If a tenant pays the overdue rent in cash, they should request that the landlord provide a receipt as required under section 26(2) of the *RTA*. This can help prove that the tenant paid the overdue rent.

If the tenant decides to pay the overdue rent after the five-day period is over, the landlord is not obligated to accept the late payment, and even if the landlord does accept it, this does not cancel the notice as the tenant is conclusively presumed to accept the notice as ending the tenancy (*RTA*, s 46(5)(a)).

4. Cause to End Tenancy

A landlord may give notice to end tenancy for cause under certain circumstances. The following lists some of the valid causes:

- the tenant has not paid the security deposit or pet damage deposit within 30 days it must be paid under the tenancy agreement (*RTA*, s 47(1)(a));
- the tenant is repeatedly late paying rent (*RTA*, s 47(1)(b));
- there are an unreasonable number of occupants in the rental unit (*RTA*, s 47(1)(c));
- the tenant or a person they permitted on the residential property has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant (*RTA*, s 47(1)(d)(ii));
- the tenant or a person they permitted on the residential property has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord (*RTA*, s 47(1)(e)(iii));
- the tenant or a person they permitted on the residential property caused extraordinary damage to a rental unit or residential property (*RTA*, s 47(1)(f));
- the tenant fails to repair damage required under section 32(3) of the *RTA* within a reasonable time (*RTA*, s 47(1)(g));
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so (*RTA*, s 47(1)(h));
- the tenant purports to assign the tenancy agreement or sublet the rental unit without the prior written consent of the landlord (*RTA*, s 47(1)(i));
- the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property (*RTA*, s 47(1)(j));
- the rental unit must be vacated to comply with a government order (*RTA*, s 47(1)(k)); and
- the tenant has not complied with an RTB order within 30 days of the later between the date the tenant receives the order and the date the order specifies the tenant must comply (*RTA*, s 47(1)(l)).

See section 47 of the *RTA* for a complete list of grounds for a landlord ending a tenancy for cause. To comply with the form and content requirements for notices to end tenancy, a landlord's obligations include using Form RTB-33 and selecting the applicable cause to end tenancy from the provided boxes.

a) Effective Date of the Notice

A notice to end tenancy for cause must have an effective date that satisfies the following:

- it is at least one clear month after the landlord receives the notice (*RTA*, s 47(2)(a)); and
- it takes place on the day before rent is usually payable (*RTA*, s 47(2)(b)).

b) Timeline to Dispute the Notice

Upon receiving a notice to end tenancy for cause, the tenant has 10 days to apply for dispute resolution (*RTA*, s 47(4)). If the tenant does not apply for dispute

resolution on time, the tenant is conclusively considered to have accepted that the tenancy has ended on the effective date of the notice, and must vacate the unit by that date (*RTA*, s 47(5)). The landlord can go to the RTB to make a direct request for an order of possession without a hearing. No evidence from any other party would be considered except the landlord's written submissions.

c) *Landlord's Application to End Tenancy Early*

For certain causes to end tenancy that constitute more serious violations identified in section 56(2) of the *RTA*, such as engaging in disruptive illegal activity or causing extraordinary damage to the residential property, the landlord may instead apply for an RTB order ending the tenancy on a date earlier than notices to end tenancy for cause would otherwise allow. The RTB may make an order ending the tenancy if they are satisfied of the grounds for ending the tenancy, and that it would be unreasonable or unfair to the landlord or other occupants to wait for the full notice period to elapse (*RTA*, s 56(2)); this eliminates the need for the landlord to provide notice (*RTA*, s 56(3)).

d) *Repeated Late Payment of Rent*

A landlord can evict a tenant if they repeatedly pay rent late (*RTA*, s 47(1)(b)). Eviction due to repeatedly late rent payments has a high threshold: although RTB PG 18 states that a minimum of three late payments is required, the existence of three late payments is in no way determinative.

In *Guevara v Louie*, 2020 BCSC 380 [*Guevara*], e-transfer delays caused rent payments to be received after the due date, and this was found to be an invalid reason to terminate a tenancy. Furthermore, if a landlord has exhibited a pattern of accepting late rent payments, the doctrine of estoppel may prevent the landlord from later relying on those past instances; in that scenario, the landlord is required to give the tenant reasonable notice that strict compliance with rent deadlines would be enforced (*Guevara* at para 67) before counting further instances towards a finding of repeatedly late payment of rent.

e) *By Government Order*

Although the *RTA* operates independently of the legality of a suite under municipal bylaws and policies, municipal and other government orders can require a landlord to evict their tenants.

Municipalities all over the Lower Mainland are attempting to regulate secondary suites. In most Lower Mainland municipalities, secondary suites are regulated and may be legal, though some landlords may be operating the secondary suite without approval. The relevant bylaws and policy guidelines governing secondary suites and enforcement are specific to each municipality.

If a city inspector determines that a suite should be closed down, the city may order the landlord to shut down the suite, which will allow them to give a one-month notice to end tenancy for cause to the tenant.

For more information on the issue of tenancy agreements relating to illegal or unapproved suites, see RTB PG 20: Illegal Contracts.

5. End of Employment with the Landlord

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 a notice to end the tenancy if:

- the rental unit was provided to the tenant for the term of the caretaker's (tenant's) employment (*RTA*, s 48(1)(a));
- the tenant's employment as a caretaker, manager, or superintendent has ended (*RTA*, s 48(1)(b)); and
- the landlord intends in good faith to rent or provide the rental unit to a new caretaker, or manager (*RTA*, s 48(1)(c)).

More generally, if an employer rents or provides a rental unit to their employee for the term of their employment, the employer can end the tenancy if the employment has ended (*RTA*, s 48(2)).

a) Effective Date of the Notice

A notice to end tenancy for end of employment with the landlord must have an effective date that satisfies all of the following:

- it is at least one clear month after the landlord receives the notice (*RTA*, s 48(3)(a));
- it is not earlier than the last day the tenant is employed by the landlord (*RTA*, s 48(3)(b)); and
- it takes place on the day before rent is usually payable (*RTA*, s 48(3)(c)).

b) Timeline to Dispute the Notice

Upon receiving a notice to end tenancy for end of employment with the landlord, the tenant has 10 days to apply for dispute resolution (*RTA*, s 48(5)). If the tenant does not apply for dispute resolution on time, the tenant is conclusively considered to have accepted that the tenancy has ended on the effective date of the notice, and must vacate the unit by that date (*RTA*, s 48(6)). The landlord can go to the RTB to make a direct request for an order of possession without a hearing. No evidence from any other party would be considered except the landlord's written submissions.

6. Landlord's Use of Property

A landlord can give a notice to end tenancy in certain circumstances of them wanting to use their rental unit. The notice period and dispute resolution limitation dates differ according to the circumstance.

a) Good Faith

"Good faith" requires an honest motive, unaccompanied by any ulterior motive; whether the honest motive was the primary reason for ending the tenancy is irrelevant to the presence of ulterior motives. The burden lies on the landlord to establish good faith. For further discussion on good faith in evictions for landlord's use, see RTB PG 2B and Gichuru v Palmar Properties Inc., 2011 BCSC 827.

b) Grounds: Personal Occupancy

Several provisions allow for the owner of a rental unit to end a tenancy so that they or their close family members can use the rental unit for personal occupancy.

For the purposes of notices to end tenancy for landlord's use, an individual's "close family member" is defined as any of the following:

- their parent, spouse, or child (*RTA*, s 49(1)(a)); or
- the parent or child of that individual's spouse (*RTA*, s 49(1)(b)).

Meanwhile, a "family corporation" is defined as a corporation whose voting shares are all owned either one person, or one person and their siblings or close family members (*RTA*, s 49(1)).

A landlord may end a tenancy for landlord's use if one of the following or their close family member, in good faith, intends to use the rental unit for personal occupancy:

- the landlord (*RTA*, s 49(3));
- where the landlord is a family corporation, a person owning its voting shares (*RTA*, s 49(4)); or
- where the landlord has entered into a good faith agreement to sell the rental unit and all the sale's conditions have been satisfied (*RTA*, s 49(5)):
    - the purchaser; or
    - where the purchaser is a family corporation, a person owning its voting shares.

Occupation can include using the space as a home office (*Koyanagi v Lewis*, 2021 BCSC 2062 at para 30).

However, a landlord must not give notice to end tenancy for personal occupancy grounds if the rental unit is found in a building that has 5 or more rental units and is either not strata-titled or has all rental units being owned by the same owner (*RTA*, s 49(6.1)).

c) Other Grounds

A landlord may also end a tenancy for landlord's use if they have all the permits and approvals required by law, and intend in good faith to do any of the following:

- demolish the rental unit (*RTA*, s 49(6)(a));
- convert the residential property to strata lots (*RTA*, s 49(6)(c));
- convert the residential property into a not for profit housing cooperative (*RTA*, s 49(6)(d));
- convert the rental unit for use by a caretaker, manager, or superintendent of the residential property (*RTA*, s 49(6)(e)); or
- convert the rental unit to a non-residential use (*RTA*, s 49(6)(f)), where converting to vacation or travel accommodation does not qualify (RTB PG 2B).

d) Effective Date of the Notice

Where there is a periodic tenancy, the effective date of the RTB order must satisfy the following:

- it is at least four clear months after date the order is made (*RTA*, s 49(2)(a)(i)), except where an exception applies; and

- it takes place on the day before rent is usually payable (*RTA*, s 49(2)(b)).

Where there is a fixed term tenancy, the effective date also must not be earlier than the end date of the tenancy as specified in the tenancy agreement (*RTA*, s 49(2)(c)). As a result, the landlord's use of the rental unit cannot cause a fixed term tenancy to end early, but it can prevent it from converting into a month to month tenancy.

The following exceptions apply to the number of clear months that the notice period must last:

- where the purchaser of the rental unit intends in good faith to use the rental unit for personal occupancy, three clear months is required on or after August 21, 2024 (*RTR*, s 42.2), whereas two clear months were required before July 18, 2024;
- where the landlord or their close family member or a holder of a family corporation landlord's voting shares or their close family member intend in good faith to use the rental unit for personal occupancy, two clear months were required before July 18, 2024.

e) Timeline to Dispute the Notice

Upon receiving a notice to end tenancy for landlord's use, the tenant has 30 days to apply for dispute resolution (*RTA*, s 49(8)(a)), with the exception being that if the purchaser of the rental unit intends in good faith to use the rental unit for personal occupancy, the tenant has 21 days to dispute an eviction notice given on or after August 21, 2024 (*RTA*, s 49(8)(b); *RTR*, s 42.3).

If the tenant does not apply for dispute resolution on time, the tenant is conclusively considered to have accepted that the tenancy has ended on the effective date of the notice, and must vacate the unit by that date (*RTA*, s 49(9)). The landlord can go to the RTB to make a direct request for an order of possession without a hearing. No evidence from any other party would be considered except the landlord's written submissions.

f) Requirement for Generated Notices to End Tenancy

Effective July 18, 2024, certain grounds to end tenancy for landlord's use require the notice to end tenancy use Form RTB-32L as generated from the RTB's Landlord Use Web Portal. If the tenant is given the old notice as a notice to end tenancy after that date, the notice is not valid and the landlord cannot end the tenancy using that form (*RTA*, s 53.1). This change was intended to help reduce bad faith evictions by requiring landlords to provide greater detail about their intentions for using the rental unit.

The following grounds for landlord's use require the use of a generated notice to end tenancy (*RTR*, s 42.1):

- one of the following or their close family member intends in good faith to occupy the rental unit:
    - the landlord;
    - where the landlord is a family corporation, a person holding voting shares;
    - the purchaser of the rental; or

    - where the purchaser is a family corporation, a person holding its voting shares; or
- the landlord, having all the permits and approvals required by law, intends in good faith to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

A sample RTB-32L can be found here: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/sample_generated_notice_rtb-32l.pdf.

g) Tenant's Compensation

A landlord who gives a notice to end a tenancy for landlord's use 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 (*RTA*, s 51(1)); alternatively, the tenant is authorized to withhold the amount authorized from the last month's rent (*RTA*, s 51(1.1)), negating the need to wait for the landlord to finish repairs and pay the compensation.

As applicable, the landlord or purchaser must also pay the tenant an additional 12 months' rent in compensation, unless they establish both of the following:

- the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice (*RTA*, s 51(2)(a)); and
- except if the rental unit was to be demolished, the rental unit was used for that stated purpose for at least 12 months following that reasonable period (*RTA*, s 51(2)(b)).

The RTB can excuse the landlord from the 12 months' compensation if they find that extenuating circumstances prevented compliance with those two requirements (*RTA*, s 51(3)).

7. Tenant Ceases to Qualify for Rental Unit

A tenant may live in a subsidized rental unit it is operated by or on behalf of a public housing body, and the tenant was required to provide proof of their or another proposed occupant's eligibility in criteria such as income, number of occupants, or health before entering into the tenancy agreement (*RTA*, s 49.1(1)).

If provided for in the tenancy agreement, the landlord can give a tenant of a subsidized rental unit notice to end tenancy if they no longer qualify for the rental unit.

a) Effective Date of the Notice

A notice to end tenancy for the tenant ceasing to qualify for the rental unit must have an effective date that satisfies all of the following:

- it is at least two clear months after the landlord receives the notice (*RTA*, s 49.1(3)(a)); and
- it is not earlier than the last day the tenant is employed by the landlord (*RTA*, s 49.1(3)(b));

Where there is a fixed term tenancy, the effective date also must not be earlier than the end date of the tenancy as specified in the tenancy agreement (*RTA*, s 49.1(3)(c)). As a result, the landlord's use of the rental unit cannot cause a fixed

term tenancy to end early, but it can prevent it from converting into a month to month tenancy.

b) Timeline to Dispute the Notice

Upon receiving a notice to end tenancy for end of employment with the landlord, the tenant has 15 days to apply for dispute resolution (*RTA*, s 49.1(5)). If the tenant does not apply for dispute resolution on time, the tenant is conclusively considered to have accepted that the tenancy has ended on the effective date of the notice, and must vacate the unit by that date (*RTA*, s 49.1(6)). The landlord can go to the RTB to make a direct request for an order of possession without a hearing. No evidence from any other party would be considered except the landlord's written submissions.

E. By RTB Order: Renovations or Repairs

Frequently called "renovictions," a landlord may only end a tenancy to make renovations or repairs to the rental unit by applying for an RTB order through the dispute resolution process.

Some municipalities have additional protection in place for tenants that are being subject to renovictions in addition to the protection offered by the *RTA*. One such example is the City of Vancouver's *Tenant Relocation and Protection Policy*.

a) The Landlord's Case to Prove

The RTB must make an order ending the tenancy (*RTA*, s 49.2(3)) if the landlord proves the following:

- the landlord intends in good faith to renovate or repair the rental unit (*RTA*, s 49.2(1)(a));
- the landlord has all the permits and approvals required by law to carry out the renovations or repairs (*RTA*, s 49.2(1)(a));
- the renovations or repairs require the rental unit to be vacant (*RTA*, s 49.2(1)(b));
- the renovations or repairs are necessary to prolong or sustain the use of the rental unit or its building (*RTA*, s 49.2(1)(c)); and
- the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement (*RTA*, s 49.2(1)(d)).

b) Effective Date of the Order

Where there is a periodic tenancy, the effective date of the RTB order must satisfy the following:

- it is at least four clear months after date the order is made (*RTA*, s 49.2(4)(a)); and
- it takes place on the day before rent is usually payable (*RTA*, s 49.2(4)(b)).

Where there is a fixed term tenancy, the effective date also must not be earlier than the end date of the tenancy as specified in the tenancy agreement (*RTA*, s 49.2(4)(c)). As a result, renovations or repairs cannot cause a fixed term tenancy to end early, but it can prevent it from converting into a month to month tenancy.

c) Tenant's Right of First Refusal

If a tenant receives an order that the tenancy agreement is to end due to renovations or repairs, the tenant may want to enter into a new tenancy agreement in respect of the rental unit. If the tenant gives the landlord a notice using Form RTB-28 of their intention to do so, they become entitled to enter into the new tenancy agreement (*RTA*, s 51.2(1)).

Upon being given the notice of intention to enter into a new tenancy agreement, the landlord has an obligation to give the tenant at least 45 days' notice using Form RTB-35 of the availability date of the rental unit, as well as a tenancy agreement to commence on the availability date (*RTA*, s 51.2(2)). If the tenant does not enter into a tenancy agreement by the rental unit's availability date, their right to a new tenancy agreement expires (*RTA*, s 51.2(3)).

d) Tenant's Compensation

A landlord who is granted an RTB order ending the tenancy for renovations or repairs 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 (*RTA*, s 51.4(1)); alternatively, the tenant is authorized to withhold the amount authorized from the last month's rent (*RTA*, s 51.4(2)), negating the need to wait for the landlord to finish repairs and pay the compensation.

The landlord must also pay the tenant an additional 12 months' rent in compensation, unless they establish that the renovations and repairs have been accomplished within a reasonable period after the order's effective date (*RTA*, s 51.4(4)). The RTB can excuse the landlord from the 12 months' compensation if they find that extenuating circumstances prevented the landlord from accomplishing the renovations or repairs within that reasonable period (*RTA*, s 51.4(5)).

If the landlord receives from the tenant their notice of intention to exercise their right of first refusal and fails to provide the necessary 45-day notice of availability and tenancy agreement, the landlord must pay the tenant an additional 12 months' rent in compensation unless the RTB finds that extenuating circumstances prevented them from granting the tenant their right of first refusal (*RTA*, s 51.3).

F. Either Party Gives Notice: Breach of Material Term

From Policy Guideline 8, a material term is defined as a term of the tenancy agreement that, at the time of entering into the tenancy agreement, both parties agree is so important that the most trivial breach of the term entitles the other party to terminate the agreement. Not all terms of a tenancy agreement are material terms. The circumstances surrounding the creation of the tenancy agreement and the importance of the term in the tenancy agreement as a whole are more relevant to whether the term is material, whereas the consequences of a breach or whether the tenancy agreement declares the term to be material are less relevant. The same clause can be a material term in one tenancy but non-material in another.

If a tenant breaches a material term of the tenancy agreement, and the landlord wishes to end the tenancy for that reason, the landlord must first give written warning. From Policy Guideline 8, the landlord must advise the tenant in that written warning that:

- there is a problem;
- they believe the problem is a breach of a material term of the tenancy agreement;

- the problem must be fixed by a specific deadline (which must be reasonable); and
- if the problem is not fixed by the deadline, they will serve a notice to end the tenancy.

If the tenant has not corrected the breach before the deadline, the landlord can end the tenancy after the landlord receives the written notice (*RTA*, s 47(1)(h)) .

To uphold an end to tenancy for a breach of material term, the RTB arbitrator must make the following objective findings:

- the tenant breached a term of the tenancy agreement;
- the term being breached is a material term;
- following the breach, the landlord provided written notice of the problem to the tenant;
- the written notice indicates that the tenant must correct the breach within a specified deadline;
- the tenant was given a reasonable amount of time to correct the breach; and
- the tenant continued to breach the material term of the tenancy agreement after the deadline.

See *Ali v. British Columbia (Residential Tenancy Branch)*, 2023 BCSC 1336 for an example of a judicial review court case in which an arbitrator's decision was overturned for being patently unreasonable due to missing a necessary element of a the test for eviction for material breach, namely that the tenant continued to breach the material term after the deadline to remedy it.

G. Landlord and Tenant Agree in Writing

The landlord and tenant can consent in writing to end a tenancy (*RTA*, s 44(1)(c)). Standard form RTB-8 is provided for this purpose, but it is not a mandatory form.

There have been some cases in which landlords have coerced or misled tenants into signing mutual agreements to avoid the *RTA*'s provisions on when a tenancy can be ended. Mutual agreements to end tenancy signed concurrently with a fixed-term lease have been struck down by the RTB as an attempt to contract out of the *RTA*, a violation of section 5. Generally, in a fixed-term lease, a mutual agreement to terminate the tenancy is legitimate if based on circumstances arising after the tenancy has begun.

Tenants and landlords can agree to use the Mutual Agreement to End Tenancy form, but it may be prudent for tenants to seek to add a clause barring the landlord from claiming damages for loss of rent due to breaking a fixed term tenancy..

When a tenant ends a tenancy this way, all individuals under the same tenancy agreement must vacate the rental unit when the tenancy ends, subject to whether the landlord enters into a new tenancy agreement with the remaining tenants immediately afterwards (RTB PG 13), which may involve the rent being adjusted back to market rates. Thus, not having to choose between moving out or accepting a rent increase when a different tenant leaves is one advantage of signing a tenancy agreement that is separate from any other tenants living in the same unit.

H. End of Fixed Term Tenancy With Requirement to Vacate

A fixed term tenancy can only require the tenant to vacate at the end of the term, as opposed to enter a month to month tenancy, if one of the following people will occupy the rental unit for at least six months at the end of the fixed term (*RTA*, ss 44(1)(b) and 49(1); *RTR*, s 13.1):

- the landlord;
- the landlord's spouse, parent, or child; or
- the parent or child of the landlord's spouse.

When a fixed term tenancy includes such a requirement to vacate, the landlord must pay the tenant the equivalent of 12 months' rent as compensation, unless they can establish that steps have been taken to have the required individual occupy the rental unit within a reasonable period after the tenancy's end date and that the individual did indeed occupy the rental unit for the required 6 months (*RTA*, s 51.1(1)). The RTB can excuse the landlord from having to pay the 12 months' compensation if they find that extenuating circumstances prevented them from having the rental unit be occupied as required (*RTA*, s 51.1(2)).

I. Wrongful Direct Request for Order of Possession

Sometimes, a tenant will receive a Notice of Direct Request in circumstances where they should receive a hearing: for example, if an application for dispute resolution over the eviction notice has already been filed, there is a legitimate dispute on its merits, or in the case of a notice to end tenancy for non-payment of rent, all arrears have been paid within five days of receipt. In such a case, it is imperative that the tenant immediately write to the RTB and request a dispute resolution hearing to stop the landlord from obtaining an order of possession. The tenant should explain why their case is not appropriately addressed through the direct request process.

Once an order of possession has been given to the landlord and served to the tenant after a wrongful Direct Request, the tenant should tell the landlord that they are reviewing it, so the landlord cannot get a writ from BC Supreme Court. The tenant should then file a review application to the RTB on that order of possession, on the basis of landlord fraud and/or inability to attend the original hearing.

J. Disputing a Notice to End Tenancy

If a tenant misses their deadline to file to dispute their eviction notice at the RTB, they may be conclusively presumed to accept that the tenancy has ended, allowing the landlord to apply for an order of possession without a participatory hearing. Therefore, tenants are almost always advised to dispute their eviction notice unless they truly accept the eviction. As an order of possession cannot be enforced if there is a dispute resolution application pending adjudication, applying for dispute resolution can provide the tenant with greater time to find a new home in case their eviction is upheld.

An RTB Arbitrator may extend a time limit established by the *RTA* only in exceptional circumstances (*RTA*, s 66(1)). However, they 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 (*RTA*, s 66(3)). Furthermore, the time limit to dispute a notice to end tenancy for non-payment of rent can only be extended in one the following circumstances:

- the landlord has provided written permission for an extension (*RTA*, s 66(2)(a)); or
- the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an RTB order (*RTA*, s 66(2)(b)).

A tenant can ask for a delayed order of possession in the alternative that the eviction is upheld. Effective dates for orders of possession have generally been set for seven days after the order is received, although an RTB arbitrator has the discretion to set the effective date based on factors such as the point up to which the rent has been paid, the length of the tenancy, and evidence showing that it would be unreasonable to vacate the property in seven days (RTB PG 54).

K. Failure of a Tenant to Deliver Up the Rental Unit: Regaining Possession

A tenant must surrender possession at the end of the tenancy (*RTA*, s 37(1)). After a tenancy ends, there is no agreement, and the overholding tenant is usually found to be a licensee or mere occupant. A new tenancy agreement could be created afterwards, such as by the landlord accepting 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)). If a prospective tenant is suing the landlord for failure to give vacant possession, the landlord can add the overholding tenant as a party to the dispute (*RTA*, s 57(4)).

The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the B.C. *Supreme Court Rules*.

If a landlord gives a notice to end tenancy, they can apply for the order of possession after the tenant's limitation period to file for dispute has expired (*RTA*, s 55(2)(b)), which may range from 5 to 30 days depending on the grounds for ending the tenancy. The landlord may be able to obtain the order of possession without a participatory hearing taking place, as well as an order to pay rent in the case of an eviction for non-payment of rent (*RTA*, s 55(4)). Monetary orders for rent in arrears may also be granted without a participatory hearing if the tenant's time to dispute the notice has passed.

L. Abandonment and End of Tenancy

Abandonment of the rental unit by the tenant is one of the automatic grounds for ending a tenancy agreement (*RTA*, s 44(1)(d)). Where a tenant abandons the rental unit before the end of a fixed term tenancy, or without giving proper notice during a periodic tenancy, a landlord may have a claim against the tenant for outstanding rent. Disputes may arise when the landlord claims the rental unit has been abandoned while the tenant disputes the end of the tenancy and the landlord's finding of abandonment.

The landlord's duty to mitigate and re-rent and the landlord's right to remove the tenant's goods both depend on a finding that the rental unit was abandoned. In other words, if a tenant does not clearly communicate to the landlord that they will be abandoning the rental unit, the landlord may not be subject to a duty to mitigate their losses by re-renting the suite until they are sure the rental unit has been abandoned.

Part 5 of the *RTR* sets out the landlord and tenant's rights and obligations regarding abandoned property.

1. Abandonment of Personal Property

Section 24 of the *RTR* deals with the situation where the tenant has vacated the residential premises but leaves personal property behind. The main issue is whether the tenant has "given up possession" of the property.

a) Definition of Abandoned Personal Property

A landlord may only consider that a tenant has abandoned personal property if the tenant leaves the personal property in residential premises in one of the following situations:

- the tenant has vacated the residential property after the tenancy agreement has ended (*RTR*, s 24(1)); or
- both of the following are true:
    - either the tenant has neither paid rent nor ordinarily occupied the residential property for one continuous month, or the tenant has removed substantially all of their personal property (*RTR*, s 24(1)(b)); and
    - either the landlord receives express oral or written notice that the tenant does not intend to return to the residential property, or the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property (*RTR*, s 24(2)).

b) Landlord's Rights and Obligations Towards Abandoned Personal Property

Once personal property is abandoned within the meaning of the *RTR*, a landlord may remove it from the residential property, except if they and the tenant have an express agreement to the contrary regarding storage of personal property (*RTR*, s 24(3) and (4)). This includes removing personal property from storage lockers.

After removal, the landlord is required to do the following:

- store the property in a safe place and manner for at least 60 days (*RTR*, s 25(1)(a));
- keep a written inventory of such property (*RTR*, s 25(1)(b));
- keep the particulars of the disposition and inventory for two years after disposal of the property (*RTR*, s 25(1)(c)); and
- upon request, advise the tenant or their representative of information about the storage or disposal of the property (*RTR*, s 25(1)(d)).

The landlord is exempt from the above obligations towards a former tenant's personal property if the landlord reasonably believes one of the following:

- the property has a total market value of less than $500 (*RTR*, s 25(2)(a));
- the cost of removing, storing, and selling the property would be more than the proceeds of its sale (*RTR*, s 25(2)(b)); or
- the storage of the property would be unsanitary or unsafe (*RTR*, s 25(2)(c)).

The landlord may sell or dispose of abandoned personal property if they remain compliant with the above obligations. The purchaser of the 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.

The landlord must exercise reasonable care and caution to ensure the personal property does not deteriorate and is not damaged, lost, or stolen; until the personal property can be properly disposed of under sections 25 or 29 of the *RTR*, a tenant

may apply for dispute resolution to claim their personal property at any time. Practically speaking, any claim for return of abandoned property, or for compensation for lost, damaged, or abandoned property should be brought as soon as possible.

XII. DISPUTE RESOLUTION REGARDING TENANCY

A. General

The formal dispute resolution process may be avoided in cases where the application of the law is clear. For example, an Information Officer might call a landlord and tell them 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, and will not assist with completing forms.

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, advocate, or lawyer. The Arbitrator may require a representative to provide proof of their appointment to represent a party and may adjourn a dispute resolution hearing for this purpose. To understand the procedure, advocates should read the dispute resolution Rules of Procedure that are available on the Residential Tenancy Branch website (https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf). These Rules of Procedure are revised occasionally, usually without any notice or announcement.

1. Disputes Covered by Dispute Resolution

Virtually all claims that may arise between tenants and landlords are eligible for dispute resolution (*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 before the RTB. The exceptions are as follows, where the RTB has no jurisdiction:

- the monetary claim for compensation under the following sections of the *RTA* exceeds $65,000 (*RTA*, s 58(2)(a.1)), which each provide for compensation equalling 12 months' rent:
    - 51 (1) or (2) (tenant's compensation: section 49 notice);
    - 51.1 (tenant's compensation: requirement to vacate);
    - 51.3 (tenant's compensation: no right of first refusal);
    - 51.4 (tenant's compensation: section 49.2 order).
- any other monetary claim exceeds the monetary limit prescribed under the *Small Claims Act*, RSBC 1996, c. 430, s 3, which is $35,000 (*RTA*, s 58(2)(a));
- the dispute is linked substantially to a matter that is before the Supreme Court (*RTA*, s 58(2)(d)); or
- the dispute involves the *Human Rights Code*, RSBC 1996, c 210 or a constitutional question (*RTA*, s 5.1(c) and (d)).

If a participant's monetary claim is over the applicable limit, they can bring the dispute into the RTB's jurisdiction by abandoning the amount that exceeds the limit (*RTA*, s 58(2.2)).

Some issues that may apparently be under the exclusive jurisdiction of the *RTA* may still be grounded in a different source of law. In such cases, a tenant may be able to elect to proceed with their claim either as an RTB dispute or as a different kind of civil claim that falls under the inherent jurisdiction of another court. For example, if a tenant's claim can be successfully characterized as a claim in negligence, they may be permitted to proceed with an action in Supreme Court. See *Janus v The Central Park Citizen Society*, 2019 BCCA 173 at paras 23-29.

2. Arbitrators

Arbitrators are like judges and base their decisions on evidence and arguments presented by the parties at the dispute resolution hearing. Arbitrators are only bound by legal precedent established by the court; past RTB decisions are not binding but may be persuasive The RTB's Policy Guidelines are more strongly persuasive albeit not fulling binding (*Powell v British Columbia (Residential Tenancy Branch)*, 2016 BCSC 1835 at para 33).

Arbitrators are not required to have any formal legal training, though some may. Students intending to make legal arguments should be prepared to do so using as much plain language as possible, but should take care to specifically refer to all relevant law, regulation and policy, and apply those to the facts.

An Arbitrator has authority to make any findings of fact or law necessary to resolve disputes that arise under the *RTA* or a tenancy agreement (*RTA*, s 62(2)). Arbitrators may assist the parties or offer the parties an opportunity to settle their dispute during a hearing (*RTA*, s 63). They can record agreements reached by the parties, sign off on the agreement, and record the settlement as an order. Except as otherwise provided by the *RTA*, a decision of the director is final and binding (RTA, s 77(3)).

3. Joint Hearings

The RTB cannot make orders for landlords and tenants not participating in a hearing, so class action lawsuits do not exist for RTB hearings. However, tenants can seek a joint hearing where they can join their claims into a single hearing. If several tenants seek a joint hearing, under the *RTA*, they must file separately for Dispute Resolution then apply to join their claims together. The scheduled hearing date may include a preliminary hearing to allow the parties to argue why the matters should or should not be joined. Arbitrators can also decide to hear the cases jointly without the consent of the landlord.

For more information on joint RTB hearings, see https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/tenancy-dispute-resolution/participatory-process/complete-and-file-application/join-dispute-applications.

4. Limitation Dates

The general limitation period for filing a claim at the RTB is two years from the end of the tenancy to which the dispute relates (*RTA*, s 60) unless otherwise provided for in the *RTA*. Most of the other limitation dates apply to eviction disputes and are much shorter, ranging from a few days to one month.

If an application for dispute resolution is made past the expiry of the limitation period, it will be dismissed regardless of its chances of success.

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. Most applications for dispute resolution are filed online through the RTB website. Applicants can also apply in person by submitting a paper application for dispute resolution form in person at the RTB office or any Service BC office. Note that there are separate forms for the landlord and the tenant.

Online applications can be paid with a credit card or an online debit card. Applicants wishing to apply for a fee waiver must also upload proof of income through the online portal or submitting it in person. The application will not be considered made until the applicant has paid the filing fee or submitted the documents required for a fee waiver.

The RTB created a Monetary Order Worksheet, form RTB-37, which is mandatory when applying for a monetary order. The worksheet number is available online at https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb37.pdf.

For more information about how to apply for dispute resolution and request a fee waiver, see https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution.

Evidence must be submitted with the application.

a) Naming Parties on an Application

Individuals should be named by their full legal names. Businesses should be named using the full legal name of the business, which may include an indication of the type of legal structure the business operates under and may be a numbered corporation. Where a business carries on business under a name other than the legal name of the business, the party can be named as "doing business as" ("dba") the other name.

b) Documents Required at the Time of the Application

To the extent possible, the applicant must submit the following documents at the time the application is submitted, or within three days if making the application online (RTB ROP, Rule 2.5):

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, when the applicant seeks and order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to the rules about new and relevant evidence.

In practice, the requirement to submit all available evidence at the time of making the application is less strictly enforced for tenants disputing notices to end tenancy.

c) *Amending an Application for Dispute Resolution*

In certain circumstances, applications for dispute resolution that have already been submitted can be amended. Amended applications must be related to existing issues raised in the original application.

To amend an application for dispute resolution, the applicant completes the form RTB-42, Amendment to an Application for Dispute Resolution, and submits that form along with any accompanying evidence to the RTB. Once the RTB approves the application, the applicant serves the other party with a copy of the application and supporting evidence, not less than 14 clear days before the hearing. Note that as the application must be served on each party 14 clear days before the hearing, and it takes time to have the application approved, it is advisable to apply to amend as soon as possible so as to meet these deadlines.

To learn more about amending an application, see https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/tenancy-dispute-resolution/participatory-process/complete-and-file-application/amend-update-application.

d) *Direct Requests*

In a direct request, the RTB makes an order through a written application alone, without a participatory hearing.

A tenant can make a direct request for the return of their deposit(s) when they gave the landlord their forwarding address in writing at the end of the tenancy, and, within 15 days after the receipt of the forwarding address, the landlord has not returned the outstanding deposit(s) or made an application to retain part or all of the deposit: see RTB PG 49.

A landlord may make a direct request for an order of possession if the tenant has not disputed the notice to end the tenancy by the deadline. In the case of a notice to end tenancy for non-payment of rent, the landlord can also make a direct request for an order to pay rent: see RTB PG 39.

2. Notice of Dispute Resolution Proceedings Package

After applying for dispute resolution, the RTB will provide the applicant with a Notice of Dispute Resolution Proceedings Package that must be served to the respondent within three days of receipt (RTB ROP, Rule 3.1). The package served to the respondent must contain the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;
- any fact sheets provided by the Residential Tenancy Branch; and
- any other evidence submitted with the application.

The applicant should always submit proof that the respondent received the Notice of Dispute Resolution Proceeding Package to the RTB. The proof of service will have to be presented if the respondent does not attend to prove that the respondent was served. If the package was served in person by someone else, the person who

served the documents should be at the hearing or should provide an affidavit of service to the applicant. Proof of service of any evidence not served with the package should also be submitted to the RTB.

3. Evidence

a) Definition

The rules of evidence do not apply to dispute resolution hearings (*RTA*, s 75), and the definition of evidence for the purposes of dispute resolution hearings includes written legal submissions that would not otherwise count as evidence under the rules of evidence. The Arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to consider evidence that they determine is not relevant.

All evidence must be relevant to the claims being made in an application for dispute resolution.

b) Evidence Deadlines and Submission Methods

In general, all the applicant's evidence must be received by the RTB and the respondent no less than 14 days prior to the hearing (RTB ROP, Rule 3.3). The respondent's evidence must generally be received by the RTB and the applicant no less than 7 days before the hearing (RTB ROP, Rule 3.15).

Note that deadlines may differ for some types of dispute resolution proceedings. See, for example, Rule 11 regarding additional rent increases for capital expenditures.

Arbitrators have the authority to extend the time limit to serve the Notice Package and/or evidence if they find that the Package was sufficiently served for the *Act* on a later date. Evidence can be submitted online, in person or by mail or fax.

(1) Online

Where possible, parties should submit evidence digitally. Parties can submit evidence online using the dispute access site (https://tenancydispute.gov.bc.ca/DisputeAccess/ #login-page) any time before the deadline. Note that RTB imposes restrictions on the format, size, or amount of evidence submitted or exchanged during the dispute resolution process. For more information visit https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/apply-online/prepare-for-a-hearing/choosing-and-preparing-evidence#digital.

A party must submit digital evidence together with an accompanying description and comply with 3.10.1 of the RTB Rules of Procedure. Parties who serve digital evidence on other parties must provide the information required under Rule 3.10.1 using Digital Evidence Details (form RTB-43) and in a manner that is accessible to the other party. Parties should always confirm that the other party and the RTB have gain access to the digital

evidence before the hearing. No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator.

(2) In person

Evidence can be submitted at any Service B.C. office, or at the Residential Tenancy Branch office in Burnaby. The applicants will need their file number and dispute access code.

Parties who submit digital evidence in person must do so by providing a copy of the evidence on a memory stick, compact disk, or DVD, or using a method requested by the RTB or Service BC with a printed accompanying description.

(3) Mail or Fax

Evidence can be mailed to "Residential Tenancy Branch #400-5021 Kingsway, Burnaby, B.C. V5H 4A5" or fax to 604-660-2323 (lower mainland) or 1-866-341-1269 (outside the lower mainland).

A party who submits evidence must keep an exact copy of the evidence they submitted for not less than two years after the date on which the dispute resolution proceeding, including any reviews, concludes. The RTB will not return copies of evidence submitted during the dispute resolution process.

Evidence should be clearly marked and numbered so that all parties involved can easily locate the relevant documents when necessary. If evidence submitted is not in an acceptable format or quality to support a fair and appropriate dispute resolution process, the arbitrator may require the person who submitted the evidence to resubmit it in a different format or resubmit exact copies.

c) Calculation of "Days"

The definition of "days" from the Rules of Procedure includes the following:

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 government 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.

d) Late Evidence

Rule 3.17 requires that both parties must have the opportunity to be heard on the question of prejudice arising from accepting late evidence. In *Khan v Savino*, 2020 BCSC 555, the applicant was late to the 14-day deadline by one day but the arbitrator failed to seek submissions regarding prejudice arising from accepting the late evidence from both parties at the hearing. This was a ground for voiding the

result at the dispute resolution and returning the decision to the RTB for re-determination.

e) Witness Statements

If a witness cannot attend or take testimony over the phone, the Arbitrator may accept affidavits, although written statements may suffice. If a party thinks a witness has something to contribute to their case but the witness refuses to cooperate, the party can request in advance or at the hearing that the Arbitrator summon that witness (RTB ROP, Rules 5.3 – 5.5).

4. The Dispute Resolution Hearing

Hearings are a formal process, though less formal than court. The RTB uses the dispute resolution Rules of Procedure. The RTB publishes Policy Guidelines intended to assist Arbitrators in interpreting and applying the law.

These are useful for preparing for a hearing, but Arbitrators have the discretion to decide when and how to apply Policy Guidelines. Most RTB hearings are now conducted via telephone. However, there are still some in-person or written hearings.

f) Telephone Hearings

Parties should join the conference call in a quiet place where they will not be interrupted. Parties should try to call about 5 minutes before the start of the hearing. 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 may be different than the previous one.

Telephone hearings are usually 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 organized and page numbered so that time is not wasted searching for documents and other evidence.

g) In-Person and Written Hearings

In-person or written hearings are rare and will generally only occur at the request of one or both parties, to account for unusual circumstances or needs of one or both parties. For more information on alternative hearing formats, see RTB Policy Guideline no. 44: “Format of Hearings” (online at: http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl44.pdf)

h) Expedited Hearings

Expedited hearings are for applications that are very urgent and if it would be unfair for the applicant to wait for a standard hearing.

They are limited to the following matters:

- An early end to a tenancy for very serious breaches by the tenant;

- An order of possession for a tenant when there has been an illegal lockout; and
- Emergency repairs for safety and security (which excludes mould).

Usually, the branch tries to schedule them for a hearing within 12 days from the date the application is made. In cases where there is evidence that violence has occurred, health and safety are severely jeopardized or there is a demonstrable immediate danger or threat, the branch may schedule it for a hearing within six days.

Applicants should not apply for expedited hearings if their dispute does not fulfill the requirement of an expedited hearing. To ensure that expedited hearings are reserved for urgent matters, the RTB will contact applicants who have not disclosed reasonable grounds for making the expedited hearing application with suggestions on amending their application; if the applicant does nothing, the RTB may dismiss their application under Rule 10.1.3 (RTB PG 51). Delays from reapplying because of such a dismissal can cause an applicant to miss the limitation date.

More details including how to apply are available online at https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/tenancy-dispute-resolution/expedited-hearings.

i) Facilitated Settlement

The RTB may schedule a dispute resolution application to be first processed by facilitated settlement. At a facilitated settlement conference, a case facilitator helps the parties resolve the dispute through negotiation and agreement rather than argumentation. Evidence and document service deadlines still apply, and attendance is mandatory if the dispute is scheduled for facilitation.

If the parties fail to reach an agreement, the dispute proceeds to a participatory hearing. For more information about facilitated settlement conferences, see https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/tenancy-dispute-resolution/facilitated-settlement.

5. 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) of the *RTA*, the written decision and reasons must be provided **within 30 days**. If a party, pursuant to s 78 of the *RTA* 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).

6. 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 RTB continues to amend its Policy Guidelines on key issues under the *RTA*. There are now over 40 detailed RTB Policy Guidelines available that ensure more consistency in dispute resolution decisions, and which should be reviewed in preparation for any hearing. They can found online at https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/policy-guidelines

C. Serving Documents: Giving and Receiving Notice under the RTA

The rules for serving the other party with documents depend on what is being served, and who is being served. This section sets out the basics of service, but for more detail or to check the requirements for your specific situation, you may need to check the Residential Tenancy Branch's Residential Tenancy Policy Guideline 12.

1. Service Methods

Generally, items can be served in any of the ways listed below. Some items must be served in particular ways. For details on items that must be served only in certain ways, see the relevant section below.

Different service methods are "deemed" or considered served at certain times after the date on which they are served. Note that, if there is proof that the document was actually received earlier than the date it is deemed to be received, the document may be considered received on the day it was actually received.

a) Personal Service

For tenants serving a landlord, the tenant must serve by leaving a document by leaving a copy with the landlord or landlord's agent. For a landlord serving a tenant, the landlord must leave a copy with the tenant, and in a case with multiple tenants, with each co-tenant separately.

Personal service requires physically handing a copy of the document to the person being served, and, if the person declines the document, leaving a copy of the document near the person, and informing the person being served of the nature of the document.

Persons can be served anywhere the person serving has legal access to, including in public streets and other publicly- or privately-owned areas open to the public.

b) Registered Mail

You may serve these items by sending them by registered mail (any Canada Post service with delivery confirmation to a named person) to the address for service of the other party. For landlords, this is where the landlord lives or carries on business as a landlord. This address may be listed on the lease or other document related to the tenancy. For tenants, this is the address where the tenant resides at the time of mailing, or the forwarding address provided by the tenant.

Records indicating that a person refused to accept a piece of registered mail are considered proof of service. Registered mail is deemed received on the **fifth day after mailing**.

c) Ordinary Mail

This method is the same as service by registered mail, except that it is sent by ordinary postal service. Ordinary mail is deemed received on the **fifth day after mailing**.

d) Leaving a Copy of the Document at the Person's Residence with an Adult Person who Apparently Resides with the Person to be Served

This method involves leaving the document with a person 19 years or older who, from what can be seen, observed, and is evident from all the circumstances, resides with the person to be served. Such documents are considered personally served, and so considered served on **the day they are delivered**.

e) Leaving a Copy of the Document in a Mailbox or Mail Slot

This method involves leaving the document in a mailbox or mail slot. For serving tenants, this would be the place where the person to be served resides at the time of service. For landlords, this would be at the address for service identified in the tenancy agreement or on the Notice to End Tenancy the tenant is contesting, or the place where the person to be served carries on business as a landlord. You must make sure that the mailbox or mail slot truely belongs to the person being served, particularly where there are multiple boxes or slots for one building.

Documents left in a mailbox or mail slot are considered served on the **third day after they are left.**

f) Posting

This method involves attaching a copy of the document to a door or other conspicuous place (a place that is clearly visible and likely to attract notice or attention). Placing a copy of the item under a door is not sufficient for service by "posting". For serving tenants, this would be where the person resides at the time of service, and for serving landlords, this would be at the address for service identified in the tenancy agreement or on the Notice to End Tenancy that the tenant is contesting, or the place where they carry on business as a landlord.

Documents served by posting are considered served on the **third day after they are attached**.

g) Fax

You can serve a party by fax if they have provided a fax number as their address for service.

Documents served by fax are considered served on the **third day after faxing them**.

h) Substituted Service

If none of the above options are feasible, the Residential Tenancy Branch may order another type of service. In applying for substituted service, you must show that the party being served cannot be served by any of the methods listed and that there is a reasonable expectation that they will receive the documents if served in the manner being proposed.

i) Email

You can serve a party by email to an email address provided for service. The documents are considered served 3 days later when the tenant does not say or show that they received it on an earlier date.

2. Requirements for Specific Documents

a) Application for dispute resolution or Residential Tenancy Branch decision to proceed with a review of a decision

These items, except for applications by landlords for an order of possession or an order ending a tenancy early, may only be served by personal service, registered mail, or by another service method authorized by an order for substituted service.

b) Application by a landlord for an order of possession or an order ending tenancy early

These items can only be served by personal service, registered mail, posting, or by another service method authorized by an order for substituted service.

3. Address at Which the Landlord Carries on Business as a Landlord

To quote from RTB policy guideline #12: “A landlord may operate a business as a landlord from one location and operate another business from a different location. The Legislation does not permit a tenant to serve a landlord in one of the ways set out above at the address where the landlord carries on that other business unless the landlord also carries on their business as a landlord at that same address.

If the landlord disputes that they have been served in one of the permitted ways at the address where they carry on business as a landlord, or if the landlord does not attend the hearing, the tenant will have to provide sufficient evidence to the Arbitrator to prove that the address used is, in fact, the address at which the landlord carries on business as a landlord” (RTB PG 12).

The address at which the landlord carries on business as a landlord may be:

- Set out in the tenancy agreement;
- The landlord’s office or resident manager’s suite in an apartment building;
- The address where the landlord resides;
- A separate business address in an office or storefront location.

4. Proof of Service

Where service has been affected and a party fails to appear at a hearing, the other party should be prepared to prove that service was affected.

For personal service, this can be done by having the person who actually served the other party appear as a witness at the hearing or provide a signed statement with details about service. For personal service on another adult apparently residing with the other party, details should be included about the date and time of service, identity of the person served, and description of how it was confirmed that the person apparently resides with the party being served.

For registered mail, a Canada Post tracking printout providing information about the delivery of the registered mail item and the signature of the recipient will suffice. Policy Guideline 12 states that intentional refusal to pick up registered mail does not rebut the deemed receipt provisions, so if the tracking report shows that the mail was refused by the recipient, a party should still be able to argue that the documents were properly served. Proof of service by other methods should include details about the date, time, identity of persons served, address where notice was posted, fax number or mailbox information, and any other relevant information. Photographs of service can be valuable in proving that service occurred.

D. Review of Arbitrator's Decision

1. Application for Review of Arbitrator's Decision

Under the *RTA*, s 79(2), 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 their 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.

Other grounds of review made available through RTB PG 24 are as follows:

- material evidence submitted late and not before arbitrator;
- administrative procedural error;
- technical irregularity or error;
- the Arbitrator did not determine a required issue;
- the Arbitrator did not have jurisdiction to determine an issue.

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: *Martin v. Barnett*, 2015 BCSC 426 stands for the principle that a party must exhaust statutory review procedures before bringing an application for judicial review, but where the RTB does not have the power on reconsideration to encompass the alleged error (i.e. where the alleged error does not fall within one of the three grounds for Review Consideration described above), then reconsideration cannot be considered an adequate alternative to judicial review, and a party is permitted to proceed directly to judicial review. Where the error does fall within the reconsideration power of the RTB, the party must bring a reconsideration application. If they are dissatisfied with that result, a party can judicially review the review consideration decision. *Wang v. Hou*, 2019 CBC 353 adds that procedural fairness issues that cannot be raised on reconsideration can be the basis for independent judicial review of both original decisions and review consideration decisions if either raise procedural fairness issues.

2. Time Limits for Starting a Review Consideration

There are strict time limits in the *RTA* for launching a review. For orders of possession (s 54, 55, 56, 56.1), unreasonable withholding of consent (s 34 (2)) and notices to end tenancy for non-payment of rent (s 46) the time limit is **two 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** (*RTA* s 80). If multiple time limits apply, the review application must be made within the shortest period that applies (RTB PG 24).

A review application is not a stay of proceedings but can act as one since court enforcement of an Arbitrator decision requires the landlord/tenant applying for the enforcement to swear to court that they have confirmed with RTB that there is no review application consideration pending. A stay of proceedings can also be requested separately through the Supreme Court.

3. Successful Application for Review

If a party is successful in their Application for Review, that person will receive a written decision from the Arbitrator permitting the review to proceed. The original decision would be set aside, and a new hearing date would be scheduled.

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.

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 new trial. The Supreme Court of B.C. generally would conduct a review if there were:

- Patently unreasonable error of fact or law
- Breach of procedural fairness

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 B.C. Supreme Court, a lawyer should be involved for a judicial review in B.C. Supreme Court. It is

important to get legal advice and act quickly. The Community Legal Assistance Society (CLAS) (604-685-3425) is available to assist with judicial reviews of Arbitrators' decisions where the decision relates to an eviction notice. TRAC's Housing Law Clinic may also assist with judicial review of RTB Decisions: https://tenants.bc.ca/get-help/legal-representation/ For more information on grounds on grounds for judicial review, see judicialreviewbc.ca.

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 email to HSRTO@gov.bc.ca or 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.

E. Enforcing the Arbitrator's Order

NOTE: If a successful party has any concerns about the ability to serve an order, they should request an order under *RTA*, s 71(1) and (2) 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 all or part 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 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 their own means (*RTA*, s 57(2)), as this is unlawful. Bailiff services, described below, can be used to lawfully remove the tenant.

a) Use of Bailiff Services

If 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 obtain a Writ of Possession in Supreme Court and contact a court bailiff service. The Writ of Possession can then be executed by the court bailiff.

Court bailiffs carrying out an eviction can seize and sell tenants' personal property to pay their fees. Tenants have the right to claim exemptions to protect certain items, and bailiffs will often give tenants an opportunity to claim these exemptions when they first show up at the rental unit. Tenants shoudlcontact the bailiff company right away if their belongings are taken before they have a chance to claim the exemptions. Tenants must claim thier exemptions within two days of the date they found out that their property was seized.

b) Role of the Police

Neither the police nor the RCMP has the authority to evict tenants. The police may attend the occasion to prevent a 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.

4. Non-Compliance

Under s 87(3) and s 87(4) of the *RTA*, administrative penalties of up to $5,000 per day may be imposed against landlords 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."

The RTB has established a Compliance and Enforcement Unit to conduct investigations of repeated or serious non-compliance with tenancy laws or orders of the Residential Tenancy Branch, issue warnings to ensure compliance and if necessary, administer monetary penalties.

The Compliance and Enforcement Unit only handles cases in which all attempts to resolve the issue through the RTB has been made, yet there is still no compliance. Usually, the first step that the unit takes would be simply informing the parties of their responsibilities.

Example of matters that the unit investigates:

- Renters repeatedly not paying rent;
- Landlords repeatedly attempting to evict renters illegally;
- Refusal to complete health and safety repairs; and
- Illegal rent increases.

XIII. COMMON LAW DOCTRINES

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

A. 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 the rental unit, 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, claims for lost rentals are allowed.

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.

B. Frustration

The doctrine of frustration 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 alternative use of the rental unit. If the lease is one to which the *RTA* doesn't apply, by common law the doctrine of frustration would not apply.

C. 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, and/or for a monetary claim for damages. A landlord may, where personal property has been abandoned by the tenant, remove it from the residential property, and must deal with it in accordance with the *Residential Tenancy Regulations*, which impose specific obligations on landlords in these circumstances. See Sections 24 and 25 of the RTR for specific obligations of landlords.

D. 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 their loss by re-renting the rental unit as soon as possible, rather than just suing the tenant for the whole year's rent. A landlord who makes such a claim must prove that they took

reasonable steps to re-rent the unit and was not able to do so. See RTB Policy Guideline 5: Duty to Mitigate Loss.

XIV. TENANCIES IN STRATA LOTS (CONDOMINIUMS)

The *Strata Property Act* (*SPA*)and the *Strata Property Regulation* (*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*. For more information visit **Chapter 22: Strata Law**.

Section 138 of the *SPA* allows a strata corporation to evict a tenant of a residential strata lot by issuing a Notice to End Tenancy under *RTA* s 47 for a repeated or continuing contravention of a reasonable and significant bylaw or rule if the contravention seriously interferes with another person's use and enjoyment of a strata lot, the common property, or the shared assets. Although a Strata is not included in the definition of "landlord" in the *RTA*, it is considered a landlord when issuing a notice to end a tenancy under section 47 of the *RTA*, defending any application disputing that notice, and seeking an order and writ of possession about that notice.

If a tenant disputes the Notice to End Tenancy, the director will determine whether:

- The tenant repeatedly or continuously contravened a bylaw or rule; and
- The contravention of that bylaw or rule seriously interfered with another person’s use and enjoyment of a strata lot, the common property or the common assets.

The director does not have jurisdiction to determine whether a strata bylaw or rule is legally valid.

XV. ASSISTED AND SUPPORTED LIVING TENANCIES

The *RTA* does not cover tenancies in a community care facility under the Community Care and Assisted Living Act, in a continuing care facility under the Continuing Care Act, or in a housing-based health facility that provides hospitality support services and personal health care. This may exclude some Assisted Living facilities. Supportive Housing is covered by the *RTA*. As with any issue of jurisdiction, whether the *RTA* applies turns specifically on the facts of a tenancy and on whether any of the exemptions in *RTA* s 4. If an accommodation is exempt from the *RTA*, the resident receives none of the protections under the *RTA*.

Supportive housing is long-term or permanent living accommodation for individuals who need some support services to live independently. Supports offered on-site by supportive housing providers are non-clinical, and residents are not required to receive supports to maintain their housing. Any policies put in place by supportive housing providers must be consistent with the *RTA* and regulations. See **Residential Tenancy Policy Guideline 46** for transitional housing, health facilities, and rehabilitative and therapeutic housing.

XVI. MANUFACTURED HOMES (FORMERLY "MOBILE HOMES")

A. General

The *Manufactured Home Park Tenancy Act,* (*MHPTA*) applies to owners of manufactured home parks and owners of manufactured homes who rent the sites on which their homes sit. The *MHPTA* only applies if a tenant only rents the site or "pad" that their manufactured home sits on. If the tenant rents both the pad and the home itself from an owner, then they are covered by the *RTA*, not the *MHPTA*.

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*.

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, 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 regardless if it is equipped with wheels.

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.

5. Cannabis

With the legalization of cannabis in BC, changes to the *MHPTA* were implemented around growing and smoking cannabis.

- If a tenancy agreement included a "no smoking" clause prior to October 17, 2018, and did not explicitly allow for smoking cannabis, then the "no

smoking" clause is deemed to apply to smoking cannabis. This also applies to any clauses that restrict or regulate smoking. (*MHPTA* s 18.1 (2))
    - For *MHPTA* s 18.1 (2), vaporizing a substance containing cannabis is not "smoking cannabis."
- All existing tenancy agreements entered prior to October 17, 2018, are implied to have terms prohibiting growing cannabis on the **outdoor areas or common areas of the home park or home site** unless:

    1. the tenant is growing, in an outdoor area of the manufactured home park, one or more cannabis plants that are medical cannabis,
    2. growing the plants is not contrary to a term of the tenancy agreement, and
    3. the tenant is authorized under applicable federal law to grow the plants at the manufactured home park and the tenant follows the requirements under that law with respect to the medical cannabis.

C. Moving In and 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 into a park or out of 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 their entering into the tenancy agreement.

According to *MHPTA* s 30, when moving out the tenant must leave the manufactured home site reasonably clean and give the landlord all the keys or other means of access to or within the manufactured home park that are in the tenant's possession.

NOTE: "To and within the manufactured home park" means that keys or other such items that unlock, for example, a bathroom within the home park are also included in the category controlled by *MHPTA* s 30.

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). If a security deposit was collected before the *MHPTA* became effective in November 2002, it may be retained until the end of 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 but may include terms in the tenancy agreement that prohibits pets or restricting the size, kind, and number of

pets. Landlords may also add terms that govern the tenant's obligation regarding keeping their pets on the manufactured home site.

3. Fees

a) Prohibited Fees (MHPTA, s 89(2)(k); MHPTR, s 3)

A landlord must not charge:

- a guest fee, regardless if 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) if the fees are identified in the tenancy agreement. A list of permissible non-refundable fees is listed in the *Manufactured Home Park Tenancy Regulations* (*MHPTR*) s 5.

E. During the Tenancy

1. Rent Increases

a) Amount

Usually, landlords can increase rent annually by a percentage equal to the Consumer Price Index (CPI) plus the proportionate increase in local government levies and regulated utilities (*MHPTA*, s 36(1)(a) and see *MHPTR* Part 5). However, the maximum allowable annual rent increase for rent increases with an effective date in 2024 is only 3.5% plus the proportional amount, not the "inflation rate." 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) for a list of requirements for when the landlord is allowed to do so.

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 s 31 - 33 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 its decisions by unanimous agreement of all members of the committee (*MHPTR* s 22), 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 (*MHPTR* 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 contrary to or 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. 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;
- exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with *MHPTA* s 23; 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 a 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.
- the tenancy agreement is a sublease agreement.

1. Tenant's Notice

a) Periodic

A tenant may end a periodic tenancy by giving the landlord a 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 a 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 a notice to end the tenancy effective on a date that is after the date the landlord receives the notice.

NOTE: Unlike the *RTA*, the *MHTPA* does not contain provisions allowing tenants to break a lease when feeling family violence or moving into long-term care.

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 a 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, or 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.

However, if 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.

NOTE: After the allocated 5 days to pay overdue rent, the landlord is no longer legally obligated to accept any late rent to continue to tenancy.

3. Landlord's Use

A landlord may end a tenancy agreement by giving a 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.

Once a tenant receives a 12-month notice, the tenancy will end 12 months after the notice is received, regardless if it is a periodic tenancy or a fixed term tenancy with a remaining term longer than 12 months, and the tenant must vacate the manufactured home park before that date.

A tenant who is given a 12-month notice may end their tenancy early if they give the landlord 10 days' written notice in accordance with *MHPTA* s 43.

A landlord that makes a 12-month notice must compensate the tenant $20000 on or before the effective date of the notice. The tenant can apply for dispute resolution for additional compensation between the assessed value of the home and $20000 if:

- They are not able to obtain the necessary permits, licenses, approvals, or certificates required by law to move the manufactured home or they are not able to move the manufactured home to another manufactured home site within a reasonable distance of the current manufactured home site; and
- The tenant does not owe any tax in relation to the manufactured home.

If the above situation happens and the home cannot be moved out of the park, the landlord cannot claim reimbursement from the tenant for any cost incurred for removing, storing, advertising, or disposing of the manufactured home.

- If the landlord closes a manufactured home park to be converted for residential or non-residential use (s. 42(1)) but have not taken any steps to accomplish the stated purpose in a reasonable time after the effective date of the notice, the landlord will have to compensate the tenant $5000 or 12-months' rent, whichever is higher. However, if an Arbitrator determines there are extenuating circumstances that prevented the Landlord from accomplishing the stated purpose for ending the tenancy, they can excuse the landlord from paying this compensation.

4. Landlord's Notice: Cause

Refer to s 40(1) of the *MHPTA*; it is similar to the *RTA* s 46 (Landlord's Notice: Cause) and lists the same grounds under which a landlord can issue a notice to end tenancy under this section.

NOTE: Notice to end tenancy must take effect 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**.
- Landlord's use of property, demolition or conversion: **30 days**.

6. 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** (*MHPTA*, s 45).

I. Dispute Resolution

Disputes between landlords and tenants may be resolved by applying to dispute resolution at the Residential Tenancy Branch in the same manner as for an ordinary residential tenancy. The following are typical examples of issues that may lead to a need for dispute resolution:

- 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 for compensation under sections 44(1) or (2) or 44.1 exceeds $65,000, the amount of other monetary claims is for more than the monetary limit under the *Small Claims Act* ($35000 as of June 2019), 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 *MHPTA* 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 relate ends or is assigned (*MHPTA*, s 53(1)).

XIX. GUIDELINES & RESOURCES

A. The Residential Tenancy Branch

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, including current forms, fees, and Policy Guidelines.

1. Main Office

Address: 400 - 5021 Kingsway, Burnaby, BC, V5H 4A5
Office Hours: M – F 9:00 AM – 4:00 PM
Website: https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/help

2. Information Line

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

3. Residential Tenancy Information Sheets

Website: https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/information-sheets-resources

4. RTB Calculators

Help in calculating rent increases, dates, deposits and more.

Website: https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/tenancy-calculators

B. Resources

1. Tenant Resource & Advisory Centre (TRAC)

Provides a variety of publications relating to tenant law, including the *Tenant Survival Guide* (also available online as a wikibook via the Clicklaw website: https://wiki.clicklaw.bc.ca/index.php/Tenant_Survival_Guide)

Website: www.tenants.bc.ca

2. BC Housing

Information for tenants living in public, subsidized housing.

Address: Suite 101 - 4555 Kingsway, Burnaby, BC, V5H 4V8
Toll-free: 1-800-257-7756
Website: www.bchousing.org

3. LandlordBC

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

a) Vancouver Office

Address: 1210-1095 West Pender Street, Vancouver, BC, V6E 2M6
Telephone: 604-733-9420
Fax: 604-733-9420

b) Victoria Office

Address: 830B Pembroke Street, Victoria, BC, V8T 1J9
Telephone: 250-382-6324
Fax (Local): 250-382-6006
Fax (Toll-Free): 1-877-382-6006

4. 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 over 60. Applicants must be Canadian citizens, authorized to take up permanent residence in Canada, or Convention refugees. Applicants must have lived in BC for at least one year prior to applying. An applicant must also be paying over 30 percent of their income towards rent. There is a gross monthly income requirement that varies depending on the location of residence and is subject to being updated.

Residents of subsidized 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 SAFER's webpage at https://www.bchousing.org/housing-assistance/rental-assistance/SAFER, or by contacting B.C. housing:

5. 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 $ 40,000. A child up to age 25 qualifies as dependant as long as the child is attending school. A child of any age with mental or physical infirmity is accepted as a dependant.

For a rental assistance calculator as well as other information and application forms, see www.bchousing.org/Options/Rental_market/RAP or contact BC Housing.

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 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.

CCH British Columbia Real Estate Law Guide, Robert J. Maguire, Rose H. McConnell, loose-leaf (Toronto, ON: CCH, undated).

- A summary of the state of the *RTA* and RTR.