

# CHAPTER NINETEEN: LANDLORD AND TENANT LAW

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Current as of July 8, 2017

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## CHAPTER NINETEEN: LANDLORD AND TENANT LAW

### I. INTRODUCTION

Landlord-tenant law was written to protect the rights and identify the responsibilities of both landlords and tenants. The 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. For more information or advice specific to your situation, you may wish to consult the resources listed in **Section II: Governing Legislation and Resources** in this chapter.

#### A. *Common Problems*

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

##### **Notices to End Tenancy & Direct Requests by Landlords**

- Once the time for a tenant to dispute a notice to end tenancy is passed, orders of possession may be granted to landlords by Residential Tenancy Branch (RTB) Arbitrators without an oral hearing (Residential Tenancy Act (RTA), s 55(4)). Landlords will have to submit detailed documentation to an Arbitrator, who will render a decision based on paper evidence only.
- If you ignore a “Notice to End Tenancy, and a direct request is made to the Residential Tenancy Branch by your landlord for an Order of Possession, you may be unable to dispute your eviction. See **Section XII.B.2 Direct Request. Never ignore a “Notice to End Tenancy”.**
- Under s 55(4), monetary orders for rent in arrears may also be granted without an oral hearing when the tenant’s time to dispute the notice has passed.

##### **Early Resolution**

- The Residential Tenancy Branch may provide forms of dispute resolution other than hearings, for example early resolution by RTB staff. Tenants should request that the Information Officer phone the landlord when the problem is basic and obvious and the law is clear (e.g. a landlord cannot lock out a tenant). The Information Officer will not take on the role of an Arbitrator and will only address situations where the law is very clear. However, if the issue is one where an Information Officer can assist, that can be a faster and lower-conflict solution to a dispute.

##### **Administrative Penalties**

- Under s 94(1) of the RTA, 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.”

##### **Timelines**

- The Rules of Procedure for dispute resolution are revised occasionally. The latest edition took effect on October 26<sup>th</sup>, 2015. It is important to be aware of timelines. For example, the RTB must receive the applicant’s documents that are to be used at a hearing no later than 14 days before the dispute resolution proceeding, while the respondent’s documents must be received no later than 7 days before the dispute resolution proceeding. This is strictly enforced and while the RTB may forward late documents to the Arbitrator, Arbitrators can choose not to accept them.

The Rules of Procedure are anticipated to be significantly changed in 2017 to incorporate the new online intake system. Up-to-date Rules of Procedure are hosted online at <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/tools-and-resources/the-law>.

### **Illegal Fees**

- A landlord cannot ask a tenant to pay an application fee. If a landlord does this as a business practice, the tenant should report this to the director of the RTB, who can launch an investigation.

### **Security Deposits**

- Landlords can charge security deposits, and an additional deposit for pets. Neither may be more than ½ the monthly rent, and must not exceed more than one month's rent in total. They can charge fees for replacing keys, garage door openers, access cards and other related items, but the fee charged cannot be more than the actual cost of the item.
- A move-in and move-out Condition Inspection Report must be completed by all landlords and tenants. It is extremely important that tenants take part in inspections for their own protection. It is very useful to take dated photographs during both move-out and move-in inspections
- If a landlord keeps a tenant's security deposit for longer than 15 days after the end of the tenancy and the tenant has moved out and given the landlord their forwarding address **in writing**, the landlord can be ordered to pay the tenant double the amount of the security deposit.

### **Rent**

- The RTA states that a tenant must pay their rent in full and on time, regardless of whether the tenant believes the landlord has fulfilled their obligations.
- A tenant may withhold the last month's rent if the tenant has been given a notice to end tenancy for landlord's use of property (e.g., major renovations, demolition, conversion to condos or co-ops), instead of paying the last month's rent and then waiting for the landlord to repay the required one month's compensation.
- Rents may be increased only once per year and only by the amount permitted by RTR s 22, unless the landlord applies for a greater increase as regulated under RTR s 23, or the tenant agrees in writing to a greater rent increase. Limits on rent increases continue to apply at the end of fixed-term tenancies.
- Tenants cannot apply to the RTB for an extension of time to pay rent, except under very limited circumstances such as where the tenant withholds rent for the payment of emergency repairs. Tenants can talk to an Information Officer about what might constitute an emergency repair but an Information Officer cannot authorize the withholding of rent. **Always** get the Information Officer's name.

**NOTE:** Many of the forms referred to in this chapter are available at the RTB web site. Please refer to **Section XIX: Forms Available on the RTB Web Site** for a complete list of available forms or visit <http://bit.ly/1FjmXzc> to download them.

## ***B. General***



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

Subject to any applicable limitation period and to RTA s 60, a landlord or tenant may start an action or claim in debt or for damages against the other party in respect of a right or obligation under the RTA or a tenancy agreement (s 58). The limitation period is generally two years. Note that this is two years from the end of the tenancy. The events that form the basis of the claim may have occurred earlier, so long as the tenancy is either on-going or ended in the last two years. Common monetary claims brought to the Residential Tenancy Branch (RTB) for dispute resolution by tenants are:

- for the return of the security and/or pet deposit;
- to dispute a proposed rent increase;
- to cancel a notice to end tenancy;
- for compensation for losses due to breaches of the contract such as loss of quiet enjoyment or lack of repairs; and
- for compensation where the landlord has illegally evicted the tenant and/or seized the tenant's possessions

Landlords commonly bring claims:

- for unpaid rent owed by the tenant;
- to obtain an Order of Possession (to regain possession of a rental unit);
- for the retention of a security and/or pet damage deposit for property damage; and
- for compensation for damage caused by a tenant.

Claims at the RTB can be up to \$35,000, per *RTA* s 58(2)(a) which imposes the same limit as the *Small Claims Act*. If a claim is over that amount, the amount above the \$35,000 figure must be waived in order to file at the RTB. A claim for more than \$35,000 must be filed at the British Columbia Supreme Court.

## **C. Definitions**

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

### **1. Tenancy Agreement**

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

### **2. Landlord**

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

### **3. Tenant**

A tenant is a person who enters into a tenancy agreement with a landlord. Tenants include the estate of a deceased tenant, and in some contexts, a former or prospective tenant. Otherwise “tenant”, “persons in possession”, and “occupants” are not defined in the RTA. Presumably a tenant is a person entitled to exclusive possession, and the definition of a tenant includes a tenant whose primary residence is in a hotel. Common law licensees are also tenants under the RTA, but not under the *Manufactured Home Park Tenancy Act*. See RTB Policy Guideline 9: Tenancy Agreement and Licenses to Occupy.

### **4. Residential Property**

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

### **5. Standard Terms**

The standard terms of a tenancy agreement are prescribed in the Schedule attached to the Regulations.

### **6. Assisted and Supported Living Tenancies**

Assisted and supported living tenancies are rental accommodations where hospitality or personal care services are provided by or through the landlord. Registered assisted living facilities are generally exempt from the RTA. However, supported housing facilities may be covered by the RTA depending on the nature of the services provided. Only an Arbitrator, through the dispute resolution process, can determine whether a housing situation is exempt from the RTA. For more information, see **Section XIV: Assisted and Supported Living Tenancies** in this chapter.

## **II. GOVERNING LEGISLATION, REGULATIONS, POLICY GUIDELINES, AND RESOURCES**

### ***A. Legislation and Regulations***

*Residential Tenancy Act*, SBC 2002, c 78 [RTA].

Website: [www.bclaws.ca/civix/document/id/complete/statreg/02078\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/02078_01)

*Residential Tenancy Regulation*, BC Reg 477/2003, [RTR].

Website: [http://www.bclaws.ca/civix/document/id/complete/statreg/477\\_2003](http://www.bclaws.ca/civix/document/id/complete/statreg/477_2003)

- The RTA and RTR set out the law of residential tenancies in BC. They will often hold the ultimate answer to questions relating to disputes between landlords and tenants.
- For the current status of the RTA and RTR, refer to *CCH British Columbia Real Estate Law Guide*, Robert J. Maguire, Rose H. McConnell, loose-leaf (Toronto, ON: CCH, undated).

*Manufactured Home Park Tenancy Act*, SBC 2002, c 77 [MHPTA].  
Website: [www.bclaws.ca/civix/document/id/complete/statreg/02077\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/02077_01)

*Manufactured Home Park Tenancy Regulation* BC Reg 481/2003  
Website: [www.bclaws.ca/civix/document/id/complete/statreg/481\\_2003](http://www.bclaws.ca/civix/document/id/complete/statreg/481_2003)

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](http://www.gov.bc.ca/landlordtenant)) to get the most up to date information.

## **B. Resources and Policy Guidelines**

### **TRAC Tenant Resource & Advisory Centre**

Website: [www.tenants.bc.ca](http://www.tenants.bc.ca)

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

### **Residential Tenancy Branch**

#### Main Office

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

#### Information line:

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

#### Downtown Satellite Office

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

#### Downtown Eastside Satellite Office

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

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

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

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

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

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

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

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

RTB Calculators: Help in calculating rent increases, dates, deposits and more.  
Website: <http://bit.ly/29tvVCU>

### **B.C. Housing**

Suite 101 - 4555 Kingsway  
Burnaby, B.C. V5H 4V8  
Website: [www.bchousing.org](http://www.bchousing.org)  
Toll-free: 1-800-257-7756

Information for tenants living in public, subsidized housing.

### **Landlord BC**

Website: [www.landlordbc.ca](http://www.landlordbc.ca)  
E-mail: [info@landlordbc.ca](mailto:info@landlordbc.ca)  
Direct: 1-888-330-6707

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

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830B Pembroke Street  
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Telephone: 250-382-6324  
Fax Local: 250-382-6006  
Fax Toll-Free: 1-877-382-6006

## **C. Books**

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

- A useful resource for 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.

### III. RESIDENTIAL TENANCY ACT COVERAGE

#### A. *Premises and Persons Subject to the RTA*

##### 1. **Effective Date**

The RTA applies to all residential tenancy agreements entered into or renewed after the date the RTA first came into force (1984). The RTA was modernized in 2004.

##### 2. **No Contracting Out**

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

##### 3. **Crown**

Generally, the RTA applies to the Crown.

##### 4. **Infants**

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

##### 5. **Hotel Tenants and Landlords**

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

- s 29(1)(c) permits entry into a hotel tenant's room without notice for the purposes of providing maid service, as long as it is at reasonable times;
- s 59(6) permits an individual occupying a room in a residential hotel to apply to an Arbitrator, without notice to any other party, for an interim order stating that the RTA applies to that living accommodation.

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

## 6. Subsidized Housing

Persons living in publicly subsidized housing paying rent on a scale geared to their income are excluded from the rent increase provisions. They are also excluded from s 34 of the RTA, which deals with assignment and subletting. Not all subsidized housing is directly operated by the B.C. Housing Corporation. For a list of subsidized housing options and to apply for subsidized housing, visit <https://www.bchousing.org/housing-assistance/rental-housing/subsidized-housing>.

### ***B. Excluded Premises and Agreements***

#### 1. Tenancies, Co-tenancies and Licenses to Occupy

The RTA sets out the rights and obligations of landlords and tenants. When a tenancy starts, there should be a tenancy agreement in place. A tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and a tenant, respecting possession of a rental unit, use of common areas and services and facilities. It also includes a licence to occupy a rental unit. Each landlord must prepare a written tenancy agreement that complies with the RTA. However, **even if the landlord does not prepare such a written tenancy agreement, the tenant is still protected by all the standard terms** contained in the Residential Tenancy Regulations.

The question may arise as to whether or not a person living in a rental unit is a tenant, a co-tenant, a tenant in common or an occupant. Residential Tenancy Policy Guideline 19: Assignment and Sublet and Guideline 13: Rights and Responsibilities of Co-tenants may provide helpful guidance.

Section 4 of the *Residential Tenancy Act* sets out living accommodations where the Act does not apply. These include but are not limited to:

- where the tenant shares bathroom or kitchen facilities with the owner of the accommodation;
- where the accommodation is rented by a housing cooperative to a member of that cooperative;
- where the accommodation is owned or operated by an educational institution (e.g. a college or university) and provided by that institution to its students or employees; and
- where the accommodation is included with premises that are primarily occupied for business purposes and are rented under a single agreement

In situations where a tenant, named in the tenancy agreement, shares accommodations with a roommate who does not have an agreement with the landlord, only the tenant is protected by the RTA. 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. Disputes between a tenant and a roommate cannot be brought to the RTB, but may be brought in Small Claims Court. For more information, see **Section X.E Subletting and Assignment** and Policy Guideline 19: Assignment and Sublet.

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

A person who is not a tenant (i.e. someone whose housing is excluded from the RTA or who is an occupant, such as a roommate) may have a licence to occupy. Licensees' rights and obligations are governed by common law. A licensee can be asked to leave (i.e. be evicted) without specific reason, but the licensor must give reasonable notice (written or verbal). This can be as short as a few days. Over two weeks or a month is almost always reasonable. A person who has had his or her personal property seized should consider taking the position that he or she is a tenant and apply to the Residential Tenancy Branch for dispute resolution seeking an order for return of personal property. If the Arbitrator finds that the RTA does not apply then the application will be dismissed.

Seizing a licensee's personal property is not lawful unless the licensor already has a court order. If the licensee has been locked out or has had goods seized without notice, he or she could ask a police officer for assistance or sue in Small Claims Court for an order for the return of goods and/or monetary compensation. A licensee not covered by the RTA may have a remedy under the common law, the *Hotel Keeper Act*, RSBC 1996, c 206, the *Commercial Tenancy Act*, RSBC 1996, c 57 (under which "tenant" is defined as including "occupant"), or the regulations authorized by these statutes.

## **2. Non-Profit Housing Cooperatives**

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

More information can be found at the website of the Co-operative Housing Federation of BC at [www.chf.bc.ca](http://www.chf.bc.ca).

## **3. Strata Lots**

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

## **4. Twenty-Year Term**

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

## **5. Holiday Premises**

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

## **6. Manufactured Home Owners**

The RTA does not apply to tenancy agreements to which the *Manufactured Home Park Tenancy Act* applies, i.e. owners of manufactured homes who rent the site on which their homes sit

(RTA, s 4(j)). If a person rents both a manufactured home and the pad it sits on, he or she is covered by the RTA.

## **7. Assisted and Supported Living Tenancies**

Assisted and many supported living tenancies may not be covered by the RTA. In addition to a tenancy agreement as required for regular tenancies, residents must negotiate and sign a separate agreement specifying services, costs, and other terms. Section 4(g) of the RTA excludes community care facilities governed by the *Community Care and Assisted Living Act*, the *Continuing Care Act*, hospitals governed by the *Hospital Act*, some health facilities designated under the *Mental Health Act*, and others.

## **8. Emergency Shelter and Transitional Housing**

Section 4 of the RTA states that the RTA does not apply to accommodation “provided for emergency shelter or transitional housing.” The Residential Tenancy Regulations were updated in December 2016 to include a three-part definition of transitional housing. According to s.1 of the Regulations, “transitional housing” means 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 Act, even if a transitional housing agreement has been signed.

Policy Guideline 46: Emergency Shelters, Transitional Housing, Supportive Housing defines “emergency shelter” as “a facility that provides temporary overnight shelter to homeless individuals”. 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”.

## **9. Others Not Covered (RTA, s 4)**

- People living in accommodations owned or operated by educational institutions if the institution provides the accommodation to its students;
- People living in accommodations occupied as vacation or travel accommodation;
- People living in a correctional institution;
- People living in accommodation rented under a tenancy agreement that has a term longer than 20 years;
- People living in accommodations covered by the *Manufactured Home Park Tenancy Act*; and



- Prescribed tenancy agreements, rental units or residential property.

## 10. Residential Tenancy Branch Information Line

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

### *C. Discrimination Against Tenants*

Although poverty is not a protected ground, a landlord must not discriminate against a (prospective) tenant based on a lawful source of income, such as Income Assistance or similar benefits. The prospective tenant may file a human rights complaint under the the B.C. *Human Rights Code*, RSBC 1996, c. 210 [HRC]. Section 10(1) of the HRC also prohibits a person from denying tenancy or from discriminating with respect to a term of the tenancy against a person or class of persons because of their race, sexual orientation, colour, ancestry, place of origin, religion, marital status, physical or mental disability, or sex. Note also, that pets are not covered under discrimination rules. See **Chapter 6: Human Rights** for more information.

There are two exceptions:

#### 1. Shared Accommodations

The law does not always apply when kitchen and bathroom facilities are shared with the owner of that accommodation.

#### 2. Adults Only

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

### *D. Application Fees*

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

### *E. Foreign Students*

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

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

Some foreign students take furnished rooms by paying “take-over fees” to purchase the furniture and continue the rental agreement. The initial tenancy agreement may have been “taken over” by a dozen students in a row, leading to confusion about who is entitled to the security deposit or the furniture.

## IV. TENANCY AGREEMENTS

### A. *Protecting the Tenant*

A third party should accompany a potential tenant during a rental unit showing, so there is a witness as to the landlord’s representations made during the showing. **Important: Get the landlord’s promises in writing** if possible, but note that landlords are **not** obligated to provide them in writing.

After establishing the tenancy and before the tenant moves their personal possessions into the rental unit, the RTA requires the landlord and tenant to jointly conduct a condition inspection and fill out and sign the RTB’s Condition Inspection Report. This report notes the condition of various elements of the rental unit. 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 15 days.

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

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

### B. *General*

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

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

## 1. Two Methods of Creating a Tenancy Relationship

### a) *By Formal Contract*

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

**b) *By Implied Contract***

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

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

- i) there is no written tenancy agreement;
- ii) a previously existing agreement has expired or terminated; or
- iii) there was no previous agreement of any kind.

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

**2. Where Something Other than a Tenancy is Created**

A person who enters into an agreement with a landlord to rent accommodation does not always create a tenancy. Depending on specific circumstances and context, such a person may not be a tenant, but instead may be a mere occupant.

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

**3. Formal Requirements**

**a) *Essential Elements of the Agreement***

A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004 (RTA, s 13(1)). A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all the requirements in RTA s 13(2).

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

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

Landlords may occasionally attempt to have potential tenants enter into “agreements to lease”, whereby they agree, by paying some amount now, to enter into a lease at a later date. In accordance with the provisions of the RTA, particularly section 15, application, holding, consideration, administration or other fees are not permitted. If a tenant gives a landlord a sum of money after negotiating in relation to a rental unit, the most likely legal outcome is that the parties have created a tenancy, and the amount paid is considered either a security deposit and/or rent.

### ***C. Contractual Nature of the Tenancy Agreement***

#### 1. **Freedom of Contract and the Agreement**

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

##### ***a) Collateral Contract***

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

#### 2. **Terms, Covenants, and Conditions**

##### ***a) Covenants and Conditions***

A covenant in a tenancy agreement consists of a promise by a person that a certain thing must or must not be done (the RTA eliminates the word “covenant” and uses the more modern word “term”). A “Material Term”, as used in the RTA, is a term going to the root of the relationship and the tenancy agreement. Landlords and tenants may agree to any term they wish, as long as it is not unconscionable or contrary to the RTA. Terms contrary to the RTA may not be identified in some cases until dispute resolution, and a tenant is free to argue that a term violates the RTA and should therefore be void. The Arbitrator will take this into consideration when determining reasonableness. For more information, see RTB Policy Guidelines 8: Unconscionable and Material Terms.

**b) *Express, Implied and Statutory Terms***

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

**c) *Express Terms and Obligations***

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

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

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

- a term purporting to hold that the RTA does not apply to the agreement (s 5(1));
- that the rent remaining for the term of the agreement becomes due and payable if a tenant fails to comply with a term of the tenancy agreement (s 22) (i.e. “accelerated rent terms” are not permitted); or
- that the landlord can seize the tenant’s personal property for rent owing (s 26(3)(a)).

Some included requirements of the RTA state that the tenant:

- must maintain reasonable health, cleanliness, and sanitary standards throughout the rental unit and other areas of the property to which the tenant has access;
- shall not assign or sublet without the landlord’s written consent, where the agreement is for a period of six months or more; and
- shall not pay more than one-half of one month’s rent for each of the security deposit and/or pet damage deposit.

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

**d) Reasonable Terms**

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

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

- a) the term is inconsistent with this RTA or the regulations;
- b) the term is unconscionable; or
- c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

See Policy Guideline 8: Unconscionable and Material Terms.

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

**e) Pets**

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

(1) New Pet: Where Permitted

When a landlord permits a tenant to keep a pet after the tenancy has already started, the landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day (RTA, s 23(2)). Failure of the tenant or landlord to participate in the inspection may extinguish the right of the failing party to the rights relating to the pet deposit (s 24(1)). The landlord can request a pet damage deposit not greater than 1/2 of a month’s rent, regardless of the number of pets.

**f) Prescribing Terms**

Terms and conditions that must or must not be included in every written tenancy agreement, or an application for an agreement, may be prescribed by an order-in-council and may prescribe different terms for different classes of tenancy

agreements. As discussed above, the RTR sets out in its schedule those terms that must be included in every tenancy agreement.

***g) Implied Obligations and Usual Terms***

(1) Landlord's Obligations

A landlord must ensure that:

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

(2) Tenant's Obligations

A tenant must ensure that:

- he or she pays the rent or other fees on time and conducts him or herself in a manner consistent with protecting the landlord's rights and interests;
- he or she delivers up the rental unit in a reasonably clean condition and in a reasonable state of repair, with exceptions for reasonable wear and tear ; and
- he or she gives one full month's notice in writing when terminating the agreement. (see **Section IX.B.1: Form and Basic Requirements**).

(3) Court-Implied Terms

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

- to pay rent;
- to pay taxes and utilities not payable by the landlord assigned to them in the tenancy agreement; and
- to keep and deliver up the rental unit in good repair.

***h) Statutory Terms in the RTA: Duties and Prohibitions***

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

*i) Rent Increases for Additional Occupants*

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

**V. MOVING IN**

**A. Condition Inspection: Move In**

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

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

**1. Landlord**

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

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

**2. Tenant**

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

**B. Re-keying Locks for New Tenants**

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



### *C. Duty to Provide a Copy of the Agreement*

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

## **VI. SECURITY DEPOSITS**

### *A. General*

A requirement that a tenant pay a security deposit is an express term of the model agreement. Security deposit is defined in s 1 of the RTA very broadly. It can include money or property or almost any other item of value to be held by a landlord for the purpose of securing the performance of a tenant's obligations under the agreement and the RTA (e.g. the payment of rent and the obligation to leave the rental unit in the same condition they were received). A security deposit is a deposit which may cover a variety of costs to the landlord: see *Balfour v. Thomson*, Vancouver Registry F771652 (BC Co Ct). A security deposit does **not** include: a post-dated cheque for rent, a pet damage deposit, or a fee prescribed under RTR ss 6 and 7. See Policy Guideline 29: Security Deposits.

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

### *B. Requirements Under the RTA*

#### **1. Amount**

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

#### **2. Inspection Reports**

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

### *C. Return of Security Deposit and Pet Damage Deposit*

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

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

Leases may not include a term providing that the landlord automatically keeps all or part of the deposit at the end of a tenancy.

Changes have been passed, but not yet brought into force as of the time of writing, allowing landlords to repay security deposits by electronic funds transfer, in addition to the former cheque or personal service methods. For more information on whether the changes have been brought into force, consult the RTB.

## 1. Interest on Security Deposit

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

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

- Jan 1/2009 - Dec 31/2017 - 0.00% compounded annually
- Jan 1/2008 - Dec 31/2008 - 1.50% compounded annually
- Jan 1/2006 - Dec 31/2007 - 0.50% compounded annually
- Jan 1/2002 - Dec 31/2005 - 0.00% compounded annually
- Jan 1/2001 - Dec 31/2001 - 3.00% compounded annually
- Jan 1/2000 - Dec 31/2000 - 2.00% compounded annually
- Jan 1/99 - Dec 31/99 - 2.25% compounded annually
- Jan 1/98 - Dec 31/98 - 1.50% compounded annually
- Jan 1/97 - Dec 31/97 - 0.25% compounded annually
- Jan 1/96 - Dec 31/96 - 3.00% compounded annually
- Jan 1/95 - Dec 31/95 - 3.50% compounded annually
- Jan 1/94 - Dec 31/94 - 1.00% compounded annually
- Jan 1/93 - Dec 31/93 - 2.75% compounded annually
- Jan 1/92 - Dec 31/92 - 3.50% compounded annually
- Jan 1/91 - Dec 31/91 - 8.25% compounded annually
- Jan 1/90 - Dec 31/90 - 9.00% compounded annually
- Jan 1/89 - Dec 31/89 - 7.75% compounded annually
- Jan 1/88 - Dec 31/88 - 5.25 % compounded annually
- Feb 1/87 - Dec 31/87 - 5.25% compounded the last day of that period
- July 1/84 - Jan 31/87 - 8.00% per annum
- April 1/83 - June 30/84 - 8.00% compounded annually
- June 1/80 - March 31/83 - 12.00% compounded annually
- Dec 1/74 - May 31/80 - 8.00% compounded annually

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

The RTB website provides a Deposit Interest Calculator which calculates the interest payable on a security deposit during any specific time period:  
[www.rto.gov.bc.ca/content/calculator/calculator.aspx](http://www.rto.gov.bc.ca/content/calculator/calculator.aspx).

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

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

#### ***D. Extra Deposits and Non-Refundable Fees***

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

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

##### **1. Allowable Non-Refundable Fees**

- Direct costs of replacement keys;
- Direct costs of any additional keys that a tenant requests;
- Bank service fees for NSF cheques plus a maximum late fee of \$25; and
- Parking fees.

## **VII. REPAIR AND SERVICE**

### ***A. Duty to Provide and Maintain Rental Unit in Repair***

#### **1. Landlord**

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

A landlord is responsible for repairing:

- the rental structure, and roof;
- heating, plumbing, electricity;
- locks, walls, floors, ceilings;
- fire doors, and fire escapes;

- intercoms, elevators; and
- anything else included in a tenant’s rent, if so identified in the tenancy agreement.

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

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

## 2. Tenant

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

### *B. Withholding Rent*

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

**NOTE:** There is a **risk** attached to calling a City Inspector. The inspection could result in the municipality ordering the suite vacated, resulting in an eviction for the tenants.

### *C. Emergency Repairs*

Before advising any tenant on this course of action, an advocate should be aware that this is a rather complicated area. To qualify, the repairs must fall into the categories below, and must be urgent and necessary for the health and safety of persons or the preservation and use of the property and rental units. Pursuant to s 33, a tenant may conduct emergency repairs without going to dispute resolution if the landlord fails to make repairs within a reasonable time after a tenant has made a reasonable effort on two or more occasions to contact the landlord. Sometimes there is a discrepancy between what a tenant, landlord, and RTB might consider ‘emergency’ repairs. **Before a tenant conducts any repairs, he or she should call the Residential Tenancy Branch, speak to an Information Officer, and make note of the Officer’s name and what the Officer tells them.** The specific types of repairs that may qualify as emergency repairs are urgent, necessary for the health, safety or preservation of property AND concern:

- major leaks in the pipes or roof;

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

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

#### ***D. Terminating or Restricting Services or Facilities***

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

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

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

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

#### ***E. Bedbugs***

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

##### **1. Landlord Obligations**

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

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

## 2. Tenant Obligations

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

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

## VIII. RENT INCREASES

### A. *Rent Increases and Notice*

Landlords can raise rents by a set amount each year and can apply for rent increases above that amount (RTA, s 43(1)). A tenant may also agree to pay a greater increase than the percentage permitted; this agreement must be in writing. If the tenant does not agree then the landlord is required to go through the dispute resolution process. The percentage for allowable rent increases is the inflation rate (Consumer Price Index, or “CPI”) plus 2 percent. **The maximum allowable increase changes each January 1st; for 2017 the rate is 3.7%.** Check the webpage titled Rent Increases (<http://bit.ly/1cWKrDB>) on the RTB website to find the maximum rent increase allowed for the succeeding year. The increase can occur every 12 months of the tenancy with the time period running from the date of the last rent increase for that tenant or the date the rental agreement was entered into (s 42(1)). A tenant may not apply for dispute resolution to dispute a rent increase that complies with s 43(1) (permitted increase or an Arbitrator ordered increase). If a landlord collects a rent increase that does not comply with the RTA, the tenant may deduct the entire increase from the rent. The tenant should communicate the reason for the deduction to the landlord before taking this form of action.

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

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

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

- the landlord has incurred a financial loss from an extraordinary increase in the operating expenses of the residential property; or
- the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit.

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

### ***B. Hidden Rent Increases***

The tenant can apply to an Arbitrator under s 27 of the RTA, if the landlord starts to charge the tenant for a service or facility previously included in the rent (e.g. for cable television or laundry that was previously free), **or** takes away a service or facility previously enjoyed by a tenant (e.g. stops providing cable television or laundry that was previously included in the rent, without decreasing the rent proportionately).

If the Arbitrator considers that the failure or reduction has resulted in a substantial reduction of the use and enjoyment of residential premises or of the service or facility, the Arbitrator can provide relief (e.g. allowing the tenant to pay less rent, or ordering the service or facility restored). See also RTB Policy Guideline 22: Termination or Restriction of a Service or Facility.

## **IX. RIGHT OF ENTRY, QUIET ENJOYMENT AND PRIVACY**

### ***A. Right of Entry***

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

- an emergency exists and the entry is necessary to protect life or property;
- the tenant consents at the time of entry;
- the tenant gives either written or verbal consent to enter for a specific purpose one month or less prior to entry;
- where the occupation is by a hotel tenant, the entry is for the purpose of providing maid service at reasonable times;
- the tenant abandons the rental unit;
- the landlord gives written notice of entry for a specified “reasonable purpose” between 30 days and at least 24 hours before the time of entry (s 29(1)(b)). The landlord must arrange a specific time between 8 a.m. and 9 p.m. to enter, unless otherwise agreed by the tenant. Note that the clock starts ticking when the tenant receives the notice to enter, not the time when the landlord gives it. The 24 hours starts right away when a landlord hand delivers the notice; 3 days later when it is delivered by fax or by posting on the tenant’s door, or five days later when sent by regular or registered mail;

- the landlord has an Arbitrator's order authorizing the entry; or

### ***B. Quiet Enjoyment***

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

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

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

### ***C. Duty to Provide Access***

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

#### **1. Tenant: Changing the Locks**

If the landlord changes the locks in contravention of s 31 of the RTA, the Arbitrator may grant an order authorizing the tenant to change the locks. Also, if a tenant applies for dispute resolution, an Arbitrator can grant permission to allow the tenant to change the locks, and give the tenant the right to withhold a copy of a key from the landlord if the Arbitrator is satisfied that the landlord may contravene s 31. It should be noted that changing a lock without an order can be grounds for eviction. To change the lock legally, the tenant must follow the procedure set out in RTA, s 31(2).

### ***D. Cash Payment Rules***

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

### ***E. Personal Property: Non-Payment of Rent***

Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must **not** seize any personal property of the tenant, or prevent or interfere with the tenant's access to the



tenant's personal property (RTA, s 26(3)). The only exceptions are if the landlord has a court order authorizing the action, or if the tenant has abandoned the rental unit and the landlord complies with the regulations: see RTA ss (4)(a) and (b).

## **X. MOVING OUT**

### **A. *Tenant Obligations***

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

### **B. *Landlord Obligations***

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

### **C. *Condition: Moving Out***

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

#### **1. Landlord**

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

#### **2. Tenant**

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

#### ***D. Breaking a Fixed-Term Tenancy***

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

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

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

#### ***E. Subletting and Assignment***

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

According to s 34 of the RTA, a tenant may assign or sublet his or her interest in a tenancy agreement with the written consent of the landlord (s.34(1)); in other words, **the landlord's written consent is always required for an assignment or subletting** of the agreement. However, the landlord must not be arbitrary or unreasonable in withholding consent if the tenant has a fixed term tenancy of six months or more (s 34(2)). A tenant may apply for an Arbitrator's order where a landlord has unreasonably withheld consent: see RTA s 65(1)(g). Section 34(3) stipulates that a landlord must not charge a tenant anything for considering, investigating or consenting to an assignment or sublease.

Public housing tenants or tenants receiving a rent subsidy (those renting premises owned by the Crown, or by a non-profit organization receiving rental subsidy by agreement with the Crown, or whose landlord is the B.C. Housing Management Commission) are exempt from these assignment and sublet provisions. Generally this means a subsidized housing tenant cannot assign or sublet a rental unit.

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

##### **2. Creating a Sublet**

Generally, sub-tenants have many of the same rights against the tenant they rent from as do tenants against the original landlord, with the exception that they cannot themselves dispute the actions of the "main" landlord, as this can only be done by the original tenant. This only applies, however, if a sub-let is actually created. Where an individual takes on a roommate, and that roommate does not either hold a sublet approved by the landlord, or is subletting a clearly defined, separate portion of the property, that roommate will not be considered a sub-tenant. As a result, **individuals moving in as roommates may wish to ensure either that they are named on a written lease as a co-tenant or tenant in common, or that they are sub-letting with the written consent of the landlord.** If they are not named on such a written lease, they will have no recourse against the landlord at the RTB unless they can prove that a tenancy agreement has been created between the two in some other way.

Tenants wanting to create sublets must retain an interest in the tenancy. This is done by making sure that the sublease ends before the first tenant's lease with the original landlord does. For example, if a tenant has a fixed term tenancy agreement that lasts for six more months and wants to sublet to a sub-tenant, that sublease must, at maximum, be for six months **less a day** so that the tenant still retains an interest in the tenancy. In a periodic tenancy, there must be an understanding that the sublet continues on a month-to-month basis, less one day, in order to preserve the original tenant's interest in the tenancy. Where a sublet continues for the full period of the tenancy, it likely amounts in law to an assignment instead. See Policy Guideline 19: Assignment and Sublet.

## **XI. FORCED END OF TENANCY (TERMINATION/EVICTION)**

### ***A. Types: End of Tenancy Agreements***

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

### ***B. Tenant Gives Notice (RTA, ss 45, 45.1)***

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

- Where there is a periodic tenancy, notice will be effective in terminating the tenancy no earlier than **one clear month** after it is received by the landlord. Additionally, it must take effect no earlier than the day before the day of the month (or other period on which the tenancy is based) that rent is payable under the tenancy agreement. E.g. If rent is payable on the first of the month, notice to end the tenancy given on January 1<sup>st</sup> will be effective in terminating the tenancy agreement no earlier than February 28<sup>th</sup>, and rent must be paid throughout the notice period; notice given on May 31<sup>st</sup> would be effective to end the tenancy on June 30<sup>th</sup>. Note that the landlord must receive the tenant's notice to end tenancy before the final month's rent is due. When it is given is less relevant than when it is received.
- Where there is a fixed term tenancy, notice will be effective no earlier than **one clear month** after it is received by the landlord. Additionally, it must be no earlier than the date specified in the tenancy agreement as the end date of the tenancy, and must be the day before the day in the month (or in the other period on which the tenancy is based) that rent is payable under the agreement.
- If a landlord breaches a material term, the tenant must first give written warning that a term has been breached and requests that the breach be corrected. If after a **reasonable time**, the landlord has not corrected the breach, the tenant can end the tenancy one day after the landlord receives notice in writing.
- Under s 45.1 of the RTA, a tenant is eligible to end a fixed term tenancy early if they are at a risk of or fleeing family violence, or if they have a need for or have been accepted into long term care. Tenants must fill out form [#RTB-49](#) and submit it to the landlord with one month written notice. Note that the early termination form requires a qualified third-party to verify the risk of family violence or the need for long term care. Section 39 of the Residential Tenancy Regulations lists persons qualified to confirm a risk of family violence, and Section 40 of the RTR lists persons qualified to confirm the need for long term care. Ending a tenancy this way means that all individuals subject to the same tenancy agreement must vacate the rental unit when the tenancy ends. 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 the basis of the claim is that the confirmation statement was made by a

person who was not authorized under the regulations to do so, or if the tenant's notice is not provided in accordance with the RTA, or if there are other claims unrelated to the tenant's notice to end tenancy.

### ***C. Landlord Gives Notice***

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

A landlord may give notice to end a tenancy if rent is unpaid on any day after the day it is due. If the tenant pays the overdue rent **within five days** after receiving a notice under s 46 the notice has no effect. If the tenant does not pay within those five days or dispute the notice to end tenancy, the landlord can go to the RTB and make a direct request for an order of possession without a hearing.

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

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

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

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

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

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

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

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

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

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

#### 5. Illegal Activity

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

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

**NOTE:** In these situations a landlord may also apply for an Arbitrator's order to have the tenant evicted immediately, without a one month notice, if the tenant's conduct is serious enough to justify the end of tenancy earlier (RTA s 56).

See RTB Policy Guideline 32: Illegal Activities.

## ***D. Landlord and Tenant Agree in Writing***

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

## ***E. Required Notice***

### **1. Form and Basic Requirements**

For a notice to end a residential tenancy to be effective, it must be in writing and must be signed and dated by the landlord or tenant giving notice, include the address of the rental unit, state the effective date of the notice. When the landlord gives notice, it must state how to challenge the eviction (RTA, s 52). A landlord must state the grounds for ending the tenancy; tenants giving notice are not required to provide any such grounds (RTA, s 45(1) or (2)). An official form is available from the Residential Tenancy Branch. **A landlord must use RTB approved forms** (s 52(e)) when giving notice to end a tenancy in order for it to be effective. A mailed notice is presumed to be received in five days, while a posted notice is deemed received three days after being posted. Generally before a landlord issues a notice to end tenancy for cause, the landlord should give the tenant some written warnings in relation to the conduct at issue and a reasonable opportunity to adjust his or her conduct.

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

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

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

In order to properly give notice, landlords **must** Notice to End a Residential Tenancy forms put out by the RTB. Failing to do so may constitute failure to provide notice. Tenants and landlords can agree to use the Mutual Agreement to End Tenancy form, but tenants should add a clause barring the landlord from claiming damages.

### **2. Length of Notice and Limitation Periods**

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

#### ***a) Non-Payment of Rent***

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

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

**NOTE:** A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under the RTA to deduct from rent. However, tenants need to file for dispute resolution in this situation, and not simply ignore the notice.

**b) *Cause***

The minimum notice given by a landlord where there is cause is **one month**, effective on the last day of the ensuing rental period (RTA, s 47). Practically speaking, the full month requirement means notice must be received the day before rent is due, so notice given on May 31 is effective to end the tenancy on June 30, but notice given June 1 would be effective to end the tenancy only on July 31. A tenant may **dispute** a notice under this section by applying for dispute resolution **within 10 days** after the date the tenant receives the notice. The minimum notice of one month does not apply if the tenant is engaging in illegal activity.

**c) *Landlord's Use of Property***

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

**d) *End of Employment as a Caretaker***

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

**e) *Early End to Tenancy***

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

A tenant may end a tenancy early if they believe the landlord has not complied with a material term of the tenancy agreement, regardless of whether they have a fixed-term tenancy agreement or a month-to-month tenancy agreement. The tenant must first write the landlord describing the problem, stating they believe it is a breach of

a material term of the tenancy agreement, asking the landlord to fix the problem and stating that if the problem is not fixed by a reasonable deadline [stated in the letter] they will end the tenancy early. The tenant must give the landlord a chance to fix the problem. If the landlord does not fix the problem by the deadline, the tenant may end the tenancy by writing the landlord a second letter stating they are ending the tenancy. The tenant may not end the tenancy until the landlord has received the second letter.

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

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

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

### 3. Disputing a Notice to End Tenancy

#### *a) By a Landlord*

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

#### *b) By a Tenant*

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

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

An Arbitrator may extend a time limit established by the RTA only in exceptional circumstances. In respect to a notice given by a landlord for non-payment of rent (s



46(4)(a)), time limits can only be extended if: the landlord has provided written permission for an extension, or the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an Arbitrator's order (s 66(2)). **Personal hardship is not a reason for more time.**

**NOTE:** An Arbitrator must not extend the time to apply for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

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

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

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

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

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

If the landlord gives the notice to end, he or she can apply for the Order of Possession only after the tenant's limitation period to file for dispute has expired (s 55(2)(b)). This may be five, 10, or 15 days depending on the reasons for ending the tenancy. A list of reasons can be found on the Notice to End Residential Tenancy form.

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

#### ***G. Abandonment and End of Tenancy; Surrender***

At common law, abandonment does not necessarily bring about a surrender (end) of the tenancy. A landlord can re-enter and re-let the rental units as the tenant's agent. If the landlord conducts him or

herself in a manner consistent with ending the interest, the tenancy is “surrendered”; the landlord’s intentions are not critical. If the tenancy is not surrendered, the landlord may sue the tenant for the debt of rent as it is due, and is not limited to damages for loss suffered up until the end of the tenancy (although in certain circumstances, a landlord may bring about a surrender and still sue for damages to the end of the unexpired term). For month-to-month tenancies, any such losses will be minimal.

Abandonment of the rental unit by the tenant is one of the automatic grounds for ending a residential tenancy agreement (RTA, s 44(1)(d)). Disputes commonly arise when the landlord claims the rental unit has been abandoned and the tenant disputes the end of the tenancy and the landlord’s finding of abandonment. Please note that the landlord’s duty to mitigate and re-rent and the landlord’s right to remove the tenant’s goods both depend on a finding that the rental unit was abandoned.

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

Part 5 of the *Residential Tenancy Regulations*, sets out guidelines to assist the landlord to dispose of abandoned personal property, and/or assist the tenant to recover such property.

## **1. Abandonment of Personal Property**

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

- a) he or she has given up possession of, or that he or she has vacated after the tenancy agreement has ended or after the term of the tenancy agreement has expired; or
- b) for a continuous period of one month, the tenant has not ordinarily occupied and remained in possession of, and in respect of which he or she has not paid rent, or from which the tenant has removed substantially all of his or her personal property, and either gives the landlord an express oral or written notice of the tenant’s intention not to return to the residential premises, or by reason of the facts and circumstances surrounding the giving up of the residential premises, could not reasonably be expected to return to the residential premises.

Section 24(3) of the RTR permits the landlord to remove personal property from residential premises that have been abandoned. This includes removing personal property from storage lockers, etc. If the landlord decides property has been abandoned, the landlord is required by s 25(1)(b) of the RTR to make and keep an inventory of such property as soon as the property has been removed from the rental unit, and to keep the particulars of the disposition and inventory for two years. In addition, the personal property, once removed from the rental unit, must be kept in a safe place for a period of not less than 60 days if the property is considered to be worth five hundred dollars or more (see the RTR for exceptions, e.g. where the personal property is of no value). Under s 25(2) of the RTR, the landlord may sell or dispose of the property stored in compliance with s 25(1) of the RTR. The purchaser of such property obtains marketable title, free of all encumbrances, but

landlords should be very cautious before selling a tenant's property, and should follow the regulations carefully. For example, problems will arise if a landlord sells a tenant's "abandoned" furniture if it turns out that the furniture was only leased.

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

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

## 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 if an Information Officer is willing to phone one of the parties in order to explain the law. For example, an Information Officer might call a landlord and tell him or her that landlords are required by law to provide rent receipts if the tenant pays rent in cash. The Information Officer will not take on the role of an Arbitrator and will only explain the Legislation.

Dispute resolution is the formal method of resolving disputes between landlords and tenants. Any party going to dispute resolution may be represented by an agent (e.g. a law student), barrister, or solicitor, and should advise the RTB of this before the hearing. The Arbitrator may 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 web site.

#### 1. **Disputes Covered by Dispute Resolution**

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

- the application was not filed within the application period specified under the RTA;
- the dispute is linked substantially to a matter that is before the Supreme Court; or
- the monetary claim exceeds the monetary limit prescribed in the *Small Claims Act*, RSBC 1996, c. 430, s 3. (Currently the monetary limit is \$35,000.)

As well, the RTB is specifically excluded, pursuant to section 78.1 of the RTA, from considering the following:

- Questions of constitutional law, and
- Issues arising out of the BC *Human Rights Code*.

## 2. Arbitrators

Arbitrators are like judges and base their decisions on evidence and arguments presented by the parties at the dispute resolution hearing. The Arbitrator is not bound by decisions of other Arbitrators but is bound by legal precedent established by the court. The Arbitrator makes the decision based on the merits of the case. An Arbitrator has authority to arbitrate disputes referred by the director to the Arbitrator, and any matters related to disputes that arise under the RTA or a tenancy agreement. Arbitrators may assist the parties, or offer the parties an opportunity to settle their dispute. They can record agreements reached by the parties, sign off on the agreement, and record the settlement order. Except as otherwise provided by the RTA, a decision of the director is final and binding (s 77(3)).

### ***B. Dispute Resolution Procedure***

#### 1. Applying for Dispute Resolution

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

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

**NOTE:** Rule 3 of the RTB *Rules of Procedure* (available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf>) sets out how to serve the Application for Dispute Resolution, how to submit and exchange documents, and the time limits within which the parties and the Arbitrator must receive the documents to be used as evidence at the hearing. For applicants, the easiest way to comply with this rule is to attach all relevant documents to the initial application form. Evidence can be faxed to the RTB at 1-866-341-1269. (Applications cannot be submitted via fax).

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

You should also take special notice of the rules regarding how days of service are calculated. Documents sent by mail are deemed “received” **five days later**, while documents dropped through a mail slot or taped to a door are deemed “received” **three days later**. Please note that the RTB does not copy evidence for parties. See the Rules for further information.

An Information Officer at the RTB must check the form. This is best done in person. Clients who cannot go to an RTB office can file applications at a local Service BC office. Online applications may be paid for over the Internet with a credit card or an online debit card, but if you wish to submit a fee waiver form for your online application, you must pay in person after submitting. The Richards Street and Downtown Eastside offices only accept applications where a fee waiver applies. Those offices do not handle money payments. The application will not be accepted until the applicant has paid \$100 (by cash, or money order or certified cheque payable to the Minister of Finance) or submitted the documents required for a fee waiver. Any corrections or clarifications will need to be completed as well. People on income assistance or whose incomes fall below the low-income guidelines can apply to have the fee waived if they provide proof of their income status. The applicant is usually informed of the date of the hearing within 24 hours. The RTB created a Monetary Order Worksheet which must be completed when applying for a monetary order. The worksheet number is available online at: <http://bit.ly/1ToyRm9>.

For more information about how to apply for dispute resolution and request a fee waiver, both online and with a paper application, see <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution/applying-for-dispute-resolution>.

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

**a) *Naming Parties on an Application***

The RTB has specific rules for naming parties. These rules are of particular importance in relation to landlords who conduct their operations under a business or other name. If a tenant has a written lease, it may specify the name of the landlord, in addition to their address for service.

Individuals should be named by their full legal names, if known. 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, you may indicate that the party is “doing business as” the other name.

**b) *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 RTB-42 “Amendment to an Application for Dispute Resolution” form, 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 days before the hearing. Note that, as the application must be served on each party 14 days before the hearing, and it takes time to have the application approved, it is advisable to submit an application to amend as soon as possible so as to meet these deadlines.

## 2. Direct Request

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

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

## 3. The Dispute Resolution Hearing

Hearings are a formal process, though less formal than court. The RTB uses the dispute resolution Rules of Procedure (online at: <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf>). The Information Officer may assist landlords and tenants by providing information about the procedure for resolving disputes, but will not help complete forms. An Arbitrator may make any finding of fact or law that is necessary or incidental to making a decision or an order under the RTA. The Arbitrator makes decisions based on the merits of the case and is not bound by previous Arbitrator decisions but is bound by court decisions. The Arbitrator considers all of the evidence and makes a decision based on the RTA, the common law, and the facts.

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

As well, although not yet in force, section 97 of the *Residential Tenancy Act* has been modified so that the branch may conduct hearings by other methods, including online, although there are at present no announcements related to the branch taking up other methods. As well, there are changes not yet in force that would allow the Director of the RTB to implement a “facilitated settlement” process similar to that used in BC Human Rights Tribunal mediations (Bill 18, *Administrative Tribunals Statutes Amendment Act*, 4<sup>th</sup> Sess, 40<sup>th</sup> Parl, 2015).

### a) *Telephone Hearings*

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

Telephone hearings are scheduled for one hour exactly. If the hearing is not finished at this time, the Arbitrator may extend the hearing or schedule another conference call to continue the hearing. This may be several weeks or months after

the first hearing. It is important that parties be focused on the outcome they wish to achieve and that their documents are carefully numbered so that time is not wasted searching for documents and other evidence.

**b) *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 particular 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>)

**c) *Evidence***

If possible, it is best to include all evidence with the initial application. However, if this is not possible, the RTB must receive a copy of all of the applicant’s evidence **no less than 14 days prior** to the hearing; the respondent’s evidence must be received **no less than 7 days prior** to the hearing. Evidence can be faxed to the RTB at 1-866-341-1269.

To rely on digital evidence (photos, videos or audio), per rule 3.10, a party must first check whether the other party and the RTB are able to access the digital evidence. Digital evidence must be provided to the RTB on USB memory stick, CD or DVD for their permanent files and must also be accompanied by a printed description. Evidence such as web pages, email or text conversations, and other digital evidence that can be provided in a printed form, should be provided in a printed form. **Note:** substantial changes to the rules governing digital evidence are expected with the implementation of the new online intake system, which will take place by the end of 2017. Please consult the RTB website and the LSLAP Manual Wikibook for the latest revisions.

Each party must also deliver a copy of all evidence to the RTB and the other party in accordance with Rule 3.14 as above. The Arbitrator will usually refuse to look at anything not exchanged in advance of the hearing pursuant to Rule 3.17, which says that if the documents or other evidence are not served on the other party as required:

- a) the party must show that the evidence is relevant and that it was not available at the time they filed or when they served their other evidence;
- b) the Arbitrator has discretion to determine whether to accept the evidence if it does not unreasonably prejudice the other party, and both parties must have the opportunity to be heard as to whether the evidence ought to be accepted;
- c) if the evidence is accepted, the other party will have an opportunity to review it, therefore the Arbitrator must rule whether to adjourn, in accordance with Rule 6.3 and 6.4 which establish the criteria for adjourning a hearing.

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

The RTB’s definition of “days” is as follows, taken from the *Dispute Resolution Rules of Procedure*, located on the RTB’s website at [www.rto.gov.bc.ca/documents/RoP.pdf](http://www.rto.gov.bc.ca/documents/RoP.pdf)

- a) If the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday
- b) If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open
- c) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded
- d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included

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

For a face-to-face hearing, it is still a good idea to bring extra copies of important documents to the hearing itself, in case the Arbitrator, or the other party, does not have copies handy. Original photos and documents that are presented to the Arbitrator cannot be returned later to the party. If a party has filed and served a petition for judicial review in B.C. Supreme Court, the RTB will usually file an affidavit attaching the record of proceeding for the hearing, which will include copies of original photos and documents. Copies of documents can be given to the Arbitrator, but they may demand the originals. If a witness cannot attend, the Arbitrator may accept affidavits (however, written statements may suffice) and may take testimony over the phone. If a party thinks a witness has something to contribute to his or her case but the witness refuses to cooperate, the party can then request in advance or at the hearing that the Arbitrator subpoena that witness.

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

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

#### 4. The Arbitrator's Decisions

The Arbitrator may render a decision at the end of the hearing and will make a written decision following the hearing. Pursuant to s 77(1), the written decision and reasons must be provided **within 30 days**. If a party completes a form requesting correction of a technical error, omission, or clarification **within 15 days** of the decision being given, such amended decision or clarification must be provided **within 30 days**.

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



## 5. Amendments to Decisions/Orders

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

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

### *C. Enforcing the Arbitrator's Order*

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

#### 1. Enforcing a Monetary Order

The Arbitrator may order the tenant or landlord to pay a monetary amount or to bear all or part of the costs of dispute resolution (RTA, s 67). **Enforcement of the order is the sole responsibility of the applicant.** If the monetary order is in favour of a **tenant** still living in the rental unit owned by the landlord that the order is against, the Arbitrator may direct the tenant to deduct the award from the rent (RTA, s 65(1)(b)). Rent should not be withheld unless the decision explicitly states this is allowed. If the monetary order is in favour of a **landlord** still holding part or all of the security deposit paid by the tenant, it may be deducted from the tenant's security deposit. If neither of these situations applies, one should give the other party a written request for payment stating the amount owing and requesting payment by the date on the order or within a reasonable time.

If the other party still does not pay, the order can be filed in the Small Claims Court.

#### 2. Enforcing a Repair Order

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

#### 3. Enforcing an Order of Possession

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

**a) *Use of Bailiff Services***

In the event that the tenant does not comply with the order and does not vacate the rental unit on the date specified on the order, the Order of Possession can be filed in the Supreme Court of B.C. Registry. The landlord must fill out a Writ of Possession and an Affidavit (re: service) and take these completed forms with the Order of Possession to the Supreme Court. Once the documents are filed and stamped in the Supreme Court, the landlord may contact a court bailiff service. The Writ of Possession is then ready to be executed by the court bailiff.

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

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

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

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

**NOTE:** Sometimes third parties who are not named in the order (i.e. roommates) have their goods seized together with the tenant’s. It is important to inform the Bailiff as soon as possible what goods do not belong to the tenant. These goods can usually be returned to the third party if he or she is not named in the order.

**c) *Role of the Police***

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

**D. *Serving Documents: Giving and Receiving Notice under the RTA***

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 section D.2 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 mailing 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 place where the person to be served carries on business as a landlord. You must make sure that the mailbox or mail slot actually 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 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.

**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, with the exception of 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 his or her business as a landlord at that same address.

If the landlord disputes that he or she has been served in one of the permitted ways at the address where he or she carries 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.”<sup>1</sup>

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<sup>1</sup> BC Residential Tenancy Branch Policy Guideline no. 12: Service Provisions, BC Residential Tenancy Branch, March 2016.

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 effected and a party fails to appear at a hearing, the other party should be prepared to prove that service was effected. 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 will suffice. Proof of service by other methods should include details about 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.

### ***E. Review of Arbitrator's Decision***

#### 1. **Application for Review of Arbitrator's Decision**

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

- a) the party was not able to attend the original hearing due to circumstances that could not be anticipated and were beyond his or her control;
- b) there is new and relevant evidence that was not available at the time of the original hearing; or
- c) a party has evidence that the Arbitrator's decision or order was obtained by fraud.

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

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

**NOTE:** Applicants who seek a review of an RTB decision should be aware of the BC Court of Appeal's decision in *Sereda v Ni* 2014 BCCA 248. That decision provides that, where an internal review decision is judicially reviewed, only that decision, and not the initial dispute resolution decision, can be reviewed by the court. This position has been softened somewhat by the same court's decision in *Yee v Montie*, 2016 BCCA 256, and by the BC Supreme Court's decision in *Martin v Barnett*, 2015 BCSC 426, which provides a clear overview of the issue. Individuals dissatisfied with the result of a first RTB proceeding should still, however, consider, if the timelines in their situation allow, seeking legal advice on what their best course of action is in seeking to have the decision reviewed.

## 2. Time Limits for Launching a Review

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

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

## 3. Successful Application for Review

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

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

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

An Arbitrator's decision can also be reviewed by the Supreme Court of B.C. under the *Judicial Review Procedure Act*, RSBC 1996, c 241. The RTA contains a privative clause (s 84.1) which narrows the scope of the review. It is not a trial *de novo*. The court may overturn a decision where an error has been made that "goes to jurisdiction"; in other words, if the RTB has exceeded its statutory authority, either because a violation of procedural fairness has occurred, or because it has made a very serious error of fact or law, then the court can intervene to overturn the decision. 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 (604-685-3425) is available to assist with judicial reviews of Arbitrators' decisions, and is especially interested in helping with potential test cases.

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

## 5. Filing Complaints to the RTB

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

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

Complaints can also be made to the BC Ombudsperson. More information can be found at [www.ombudsman.bc.ca](http://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.

### **XIII. THE COMMON LAW, TENANCIES, AND THE RTA**

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

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

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

#### **A. *Common Law and Residential Tenancies***

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

##### **1. General Effects of Breach of the Agreement**

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

Under contract rules, a party may not be able to repudiate a contract due to another's breach of a non-material term, but a right of "forfeit" can arise under tenancy common law. Under s 45(3) of the RTA, where the landlord breaches a material term, the tenant may elect to treat the agreement as ended (an Arbitrator may have to decide whether a term is "material"). The landlord may end the tenancy only in accordance with the RTA, because of abandonment, or due to an agreement. The RTA does not abolish the doctrines of privity of estate and contract, but it enables a person having a reversionary interest (i.e. a landlord) and a "person in possession" to enforce against each other all conditions and terms, whether material or not, contained in the tenancy agreement for the possessed rental unit (s 83(4)).

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

## 2. Status of Other Statutes and Legal Doctrines

### a) *Interesse Termini: Tenant Rights before Possession*

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

### b) *Implied Surrender: Abandonment*

At common law, a lease may be ended by “surrender” due to conduct of the parties, consistent only with a “merging” of the tenancy interest back into the landlord’s (owner’s) estate. Surrender occurs, for example, where the tenant abandons and the landlord repossesses and re-rents. Generally, no further rent or compensation for the unexpired portion of the tenancy may be claimed on surrender. However, following *Highway Properties Ltd. v. Kelly, Douglas & Co. Ltd.* (above), claims for lost rentals are allowed, provided the landlord notifies the tenant that the surrender is accepted subject to rights to claim for lost future rent.

Abandonment is cause for ending a tenancy, but regardless of the wording of the tenant’s notice, or the wording of the acceptance of surrender, or the absence of a notice, abandonment gives rise to the landlord’s duty to mitigate.

### c) *Frustration*

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

The doctrine of frustration now applies to residential tenancy agreements (RTA, s 92) and commercial leases (*Commercial Tenancy Act*, s 30). If some unforeseen event occurs that prevents the agreement from being performed, it will be considered to have been frustrated and is thereby terminated at the time of the event. Frustration will rarely be found where the event appears to be largely self-induced (and the result of acts or omissions which might themselves constitute a breach of covenant, e.g. a municipal closure order made pursuant to a fire bylaw where the landlord failed to install sprinklers). If the event is totally self-induced, the perpetrator will not be able to establish frustration. Two factors to consider beyond the normal contract law concerns are: 1) the length of the unexpired term at the time of frustration, and 2) the possibility of an alternative use of the rental unit.

### d) *Mitigation of Damages: Duty to Re-rent*

Residential landlords and tenants have a duty to mitigate their damages where either has a claim against the other for losses due to the other’s breach of the agreement (RTA, s 7(2)). Where a tenant ends the tenancy illegally, or vacates or abandons the rental unit other than in accordance with the RTA, the landlord has a



duty to re-rent the rental unit at a reasonable price. Failure to do so may result in reduced compensation. See RTB Policy Guideline 5: Duty to Mitigate Loss.

**e) *The Right to Distrain the Tenant's Personal Goods***

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

**B. *Damages, Debts, Compensation, and Specific Performance***

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

**1. Termination (Ending the Tenancy)**

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

**2. Damages**

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

**3. Debt**

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

**4. Duty to Mitigate**

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

## 5. Compensation

An Arbitrator may award “compensation” to an innocent party (a tenant or landlord) who has suffered direct loss due to a “contravention” of the RTA by the other party.

Persons merely in possession can enforce a covenant or condition of a residential tenancy agreement, take the above action, or be acted against. Specific performance may also be an applicable remedy. This does not apply to an illegal squatter.

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

### C. *Class Action*

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

## XIV. TENANCIES IN STRATA LOTS (CONDOMINIUMS)

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

### A. *The Law Under the Strata Property Act*

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

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

- s 120 provides for standard form bylaws, which can be amended;
- s 123 states that a bylaw prohibiting pets does not apply to a pet already living with a tenant when the bylaw is passed. This section also deals with age bylaws. Tenants can be well-served by reviewing the *Human Rights Code* to see if the bylaw is enforceable (see s 121(1)(a) of the SPA as it relates to age). Specifically, see section 10 of the *Human Rights Code*;
- s 124 states that bylaws can provide for a voluntary dispute resolution process and statements or documents made only for the purpose of such voluntary dispute resolution cannot be used later at Court or dispute resolution;
- s 125 gives the strata corporation the power to make rules governing use, safety and condition of the common property and assets;

- s 130 permits fines to be levied if a tenant or his or her guest contravenes a bylaw or rule; see section 133, which speaks to maximum amount of fines. See section 7.1 of the Regulations for maximum amounts. If a strata lot is tenanted, the tenant should be fined;
- s 131 provides that the strata corporation may collect fines levied against a tenant from a landlord/owner, but cannot fine the landlord/owner directly. If the landlord/owner pays a fine levied against the tenant, the tenant owes the landlord/owner the amount paid; section 7 of the RTA, sets out “fees” that landlords can charge provided they do not contradict s 131 of the SPA;
- s 133 allows for the strata corporation to also recover reasonable costs of remedying a contravention of the bylaws from the person whom they fined pursuant to s 130;
- s 134 states that the strata corporation may, for a reasonable length of time, deny a tenant the use of a recreational facility that is common property if the tenant (or guest of the tenant) has contravened a bylaw or rule relating to the recreational facility;
- s 135 states that the strata corporation must not impose fines or deny the use of recreational facilities unless the particulars of a complaint have been given in writing and reasonable opportunity is given to answer the complaint, including a hearing if requested by the tenant. The strata corporation must also give prompt notice in writing of any decision it reaches concerning a fine or denial of recreational facility. This is a highly technical section. Often strata corporations do not comply with it very well and technical defenses are available on a close reading of the section and the correspondence on the file;
- s 137 permits a landlord to issue a one-month Notice To End Tenancy under RTA s 47 for “a repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant”; and
- s 138 permits the strata corporation to issue a one month Notice To End Tenancy under RTA s 47 for “a repeated or continuing contravention of a reasonable and significant bylaw or rule... that seriously interferes with another person’s use and enjoyment of a strata lot, the common property or the common assets”.

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

Part 8 of the SPA governs “rentals” (ss 139-148):

- s 141 permits a strata corporation to pass a bylaw restricting rentals by: prohibiting rentals entirely; limiting the number or percentage of units that may be rented; or limiting the period of time for which units may be rented (i.e. requiring fixed term tenancies);
- s 142 provides that “restrictions” do not apply to prevent rental of a unit to a member of the owner’s family; “family” is defined in the Regulations, s 8.1;
- s 143 contemplates a “grandfather” clause allowing present tenants to remain until the end of their tenancy;
- s 144 permits an owner to apply for exemption from a rent restriction bylaw in cases causing hardship to the owner; “hardship” is not defined, and will depend on the facts of the case. Mere financial difficulty is often not enough;
- s 145 provides that if a tenant is renting without knowledge of a rental restriction bylaw, the tenant may end the tenancy agreement without penalty by giving notice to the landlord within 90

days of finding out about the bylaw. Also, the tenant can claim reasonable moving expenses in such a situation to a maximum value of one month's rent;

- s 146 requires a landlord to give a prospective tenant (before renting) a copy of the current bylaws and rules, and a Notice of Tenant's Responsibilities in the prescribed form (often referred to as a "Form K". Within two weeks of renting, the landlord must give the strata corporation a copy of the Notice of Tenant Responsibilities signed by the tenant. If the landlord fails to comply with s 146, the tenant is still bound by the bylaws and rules, but may choose to end the tenancy within 90 days of finding out. The tenant can claim reasonable moving expenses to a maximum value of one month's rent;
- s 147 allows an owner to assign to a tenant some or all of the powers and duties of a landlord under the *Strata Property Act*, but this must be done in writing and copied to the strata corporation; and
- s 148 defines a "long term lease" as a lease for a set term of three years or more. Such a lease confers the powers and duties of the landlord onto the tenant for the term of the lease. The landlord must not deal with his or her interest in the strata lot during a long-term lease in a way that would unreasonably interfere with the rights of the tenant.

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

- A landlord can force a tenant to sign Form K, which means a tenant must follow the strata bylaws. The landlord must provide a Form K to the tenant. It is important the tenant reads the bylaws before signing, as the tenant may be liable for a contravention.

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

## **XV. ASSISTED AND SUPPORTED LIVING TENANCIES**

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

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

- the hospitality services and personal care services provided to each occupant of the rental unit;
- the amount payable for these services and when it is due;
- the landlord's entry into the rental unit to provide services; and
- whether there is a requirement for other occupants and guests to pay for services that are not needed.

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

Fees for these services should not be part of a lump-sum monthly bill, but should be set out separately from the rental fee. A landlord can increase the rent if the tenant agrees, or once a year by a percentage permitted by law. The landlord must give the tenant **three whole rental months' written notice** before the effective date of the rent increase. A landlord will not be permitted to withdraw or restrict rental services if they are essential, or if they constitute material terms of the rental agreement.

## **XVI. COMMERCIAL TENANCIES**

In general, landlord and tenant matters not subject to the RTA, or exempted from particular provisions, are considered “commercial tenancies”, and are covered by the *Commercial Tenancy Act*, RSBC 1996, c 57. Commercial tenancy law is much more complex than residential tenancy law, and individuals who believe they may have a legal issue related to a commercial tenancy are strongly encouraged to seek legal advice relevant to their individual situation.

### **1. Commercial or Residential Tenancy?**

If you are unsure as to whether your tenancy is commercial or residential, and so whether or not it falls within the *Residential Tenancy Act*, you should seek legal advice. For assistance in determining whether your tenancy is commercial or residential, it may be helpful to refer to Residential Tenancy Branch *Policy Guideline no. 14: Type of Tenancy: Commercial or Residential*.

### **2. Commercial Tenancy Resources**

If you encounter an issue related to a commercial tenancy, resources that may be of assistance are listed in the “Resources” section at the beginning of this chapter.

## **XVII. MANUFACTURED HOMES (FORMERLY “MOBILE HOMES”)**

### **A. General**

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

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

### **B. Definitions**

#### **1. Common Area**

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

## 2. Landlord

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

## 3. Manufactured Home

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

## 4. Manufactured Home Site

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

### ***C. Moving In***

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

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

### ***D. Deposits***

#### 1. Security Deposits

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

#### 2. Pets

Landlords may not charge pet damage deposits.

#### 3. Fees

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

A landlord must not charge:

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

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

**b) *Refundable Fees***

So long as an access device is not a tenant's sole means of access to the manufactured home park, a landlord may charge a refundable fee for that device. The fee cannot be greater than the direct cost of replacing the access device. Some non-refundable fees are permissible (e.g. a \$25 charge for late payment of rent or NSF cheques) as long as the fees are identified in the tenancy agreement.

**E. *During the Tenancy***

**1. *Rent Increases***

**a) *Amount***

Landlords are able to increase rent annually by a percentage equal to the Consumer Price Index (CPI) plus 2 percent plus the proportionate increase in local government levies and regulated utilities (MHPTA, s 36(1)(a) and see MHPTR). A landlord may apply to an Arbitrator for approval of a rent increase in an amount that is greater than the amount calculated under the regulations.

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

**b) *Notice***

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

**c) *Timing***

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

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

**F. *Manufactured Home Park Rules and Committee***

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

A park committee, or if none exist, the landlord, may establish, change or repeal a rule if it is reasonable in the circumstances and if the rule has one of the following effects (MHPTR, s 30):

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

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

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

## ***G. Tenancy Agreements***

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

### **1. Liability for Non-compliance**

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

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

### **2. Specific Terms**

#### ***a) Pets***

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

#### ***b) Tenant's Right to Quiet Enjoyment***

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

- reasonable privacy;



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

## ***H. Ending a Tenancy***

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

- the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
  - s 38 (tenant's notice); s 39 (landlord's notice: non-payment of rent); s 40 (landlord's notice: cause); s 41 (landlord's notice: end of employment); s 42 (landlord's notice: landlord's use of property); or, s 43 (tenant may end tenancy early).

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

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

### **1. Tenant's Notice**

#### ***a) Periodic***

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

#### ***b) Fixed Term***

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

#### **(1) Exception for Family Violence or Long-Term Care**

Section 45.1 of the *RTA* allows tenants who have been assessed as requiring long-term care, have moved into a long-term care facility, or have been confirmed as being at risk of family violence if they remain in the rental unit, may end a fixed-term tenancy by giving one month's

notice to the landlord. See **Section XI.B Forced End of Tenancy (Termination/Eviction)**, above.

**c) *Material Term Breach***

If the landlord breaches a material term, the tenant may end the tenancy by giving the landlord notice to end the tenancy effective on a date that is after the date the landlord receives the notice. See **Section IX.C Required Notice at 1, Form and Basic Requirements**

**2. Failure to Pay Rent**

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

**3. Landlord's Use**

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

**4. Landlord's Notice: Cause**

Refer to s 40(1) of the MHPTA; it is similar to the RTA section regarding Landlord's Cause.

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

**5. Disputing Notice**

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

- non-payment of rent: **five days**;
- landlord's cause: **10 days**; and

- landlord's use of property: **15 days**.

## 6. **Moving Out Early After Receiving a Notice**

If a landlord gives a tenant notice to end a periodic tenancy under s 42 (landlord use of property), the tenant may subsequently end the tenancy with ten days written notice to the landlord: see MHPTA, s 43.

## 7. **Required Form**

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

### ***I. Moving Out***

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

### ***J. Dispute Resolution***

Disputes between landlords and tenants may be resolved by applying to dispute resolution 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 is for more than the monetary limit under the *Small Claims Act*, the application was not filed within the application period before the Supreme Court, or the dispute is linked substantially to a matter that is before the Supreme Court.

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

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

## **XVIII. INCOME ASSISTANCE, TAXATION, AND RENTAL HOUSING**

### ***A. Shelter Aid for Elderly Renters (SAFER)***

The SAFER program is a rental assistance program administered by BC Housing. It is intended to help senior citizens (i.e. people over 60). Applicants must be Canadian citizens, authorized to take up permanent residence in Canada, or Convention refugees. Applicants must have lived in B.C. for at least one year prior to applying. An applicant must also be paying over 30 percent of his or her income towards rent. Gross monthly income requirements for Metro Vancouver residents are: single, \$2,550; couple, \$2,750; shared, \$1,776. For those living outside the Metro Vancouver, the rates are: single, \$2,223; couple, \$2,423; shared, \$1,776.

The maximum monthly rent allowed in the SAFER program for a single person in Metro Vancouver is \$765 per month (i.e. if you pay any amount higher than \$765, SAFER will still assume that \$765 is the amount paid), or \$825 per month for a couple (rates are lower for those outside Metro Vancouver). The B.C. Housing web site has a calculator program to determine if an applicant will qualify.

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

More information and application forms are available from B.C. Housing. Application forms are available in English and Chinese. Application forms may be obtained from the B.C. Housing web site at [www.bchousing.org](http://www.bchousing.org), or contact:

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

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

The Rental Assistance Program provides eligible low-income, working families with at least one dependent child with assistance to help pay their rent. The maximum gross annual household income level is \$35,000. A child up to age 25 qualifies as dependant as long as the child is attending school. A child of any age with mental or physical infirmity is accepted as a dependant.

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

## **XIX. SECONDARY AND ILLEGAL SUITES**

Municipalities all over the Lower Mainland are attempting to regulate secondary suites. In most Lower Mainland municipalities, secondary suites are legal and regulated (though some landlords may be operating the secondary suite without approval). The bylaws and policy guidelines are municipality-specific, so clients should be directed to their municipal offices to find out what the specific enforcement policies are for their municipality. For a website with links to various municipalities' policies on secondary suites, see [www.homeswithsuites.ca/MunicipalSuitePolicies.ubr](http://www.homeswithsuites.ca/MunicipalSuitePolicies.ubr)

The City of Surrey approved secondary suites in December of 2010. See [www.surrey.ca/city-government/7617.aspx](http://www.surrey.ca/city-government/7617.aspx) for information.

Vancouver's Zoning and Development By-law makes it possible to have a secondary suite in every detached single family home in the City of Vancouver. Council also approved the relaxation of various building code standards to facilitate the secondary suite process.

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

<http://vancouver.ca/home-property-development/creating-a-secondary-suite.aspx>.

If a city inspector determines that a suite should be closed down, the landlord will be given 30 days' notice to evict the tenant. That notice will begin to run from the day on which rent is next due. **Regardless of the legality of the suite however, the RTA may still apply.** A tenant may be entitled to more than the 30 days' notice given by the municipality, and may therefore have a claim against the landlord if proper notice is not given.

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

## **XX. FORMS AVAILABLE ON THE RTB WEBSITE**

Check the RTB web site: <http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/forms> for current forms and fees. Ensure clients are using the most recent forms. Be aware that some applications require fees (a standard Application for dispute resolution costs \$100). Waivers are available for low-income applicants.

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

### **A. *Entering Into a Tenancy***

#### **1. Residential Tenancy Agreement - RTB 1**

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

#### **2. Manufactured Home Site Tenancy Agreement - RTB 5**

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

#### **3. Condition Inspection Report - RTB 27**

Landlords and tenants or their representatives can use this form to record the condition of a rental unit at the time of move-in and at the time of move-out by the tenant.

#### **4. Schedule of Parties - RTB 26**

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

## ***B. Rent Increases***

1. **Notice of Rent Increase - Residential Rental Units - RTB 7**  
Landlords must use this notice to notify tenants of rent increases.
2. **Notice of Rent Increase - Manufactured Home Site - RTB 11**  
Park owners must use this notice to notify tenants of site rent increases. This notice is not used where a tenant rents a manufactured home, as well as the site, under a single tenancy agreement.
3. **Application for Additional Rent Increase - RTB 16**  
A landlord must use this form to apply for an Arbitrator's approval for a rent increase in an amount greater than the amount specified in the RTA, the MHPTA and associated regulations.
4. **Schedule of Parties - RTB 26**  
Use this Schedule of Parties to continue if the form you are completing does not have enough room for additional applicants or respondents. It is to be filed with your completed application.

## ***C. Dispute Resolution***

1. **Tenant's Application for Dispute Resolution - RTB 12**  
Tenants must complete and file this form to request a hearing before an Arbitrator to resolve a residential tenancy dispute. To submit the Application form over the web, fill out the Online Application for Dispute Resolution form.
2. **Landlord's Application for Dispute Resolution - RTB 12**  
Landlords must complete and file this form to request a hearing before an Arbitrator to resolve a residential tenancy dispute. To submit the Application form over the web, fill out the Online Application for Dispute Resolution form.
3. **Application to Waive Filing Fee - RTB 17**  
A person bringing a dispute to dispute resolution may use this form to request that the Residential Tenancy Branch waive the fee for filing an Application for dispute resolution.
4. **Application for Substituted Service - RTB 13**  
Landlords and tenants must use this form to request an Arbitrator order documents be served in a method other than those required by the RTA.
5. **Tenant's Request to Join Applications for Dispute Resolution - RTB 19**  
Tenants may use this application to request that the Director of the Residential Tenancy Branch order that two or more dispute resolutions be heard together. Dispute resolutions may be joined when the matters to be determined are related and it makes sense that the matters be joined.
6. **Landlord's Request to Join Applications for Dispute Resolution - RTB 18**  
Landlords may use this application to request that the Director of the Residential Tenancy Branch order that two or more dispute resolutions be heard together. Dispute resolutions may be joined when the matters to be determined are related and it is sensible that the matters be joined.
7. **Schedule of Parties - RTB 26**  
Use this Schedule of Parties to continue if the form you are completing does not have enough room for additional applicants or respondents. It is to be filed with your completed application.

## ***D. Dispute Resolution Decisions and Orders***

1. **Application to Review Arbitrator's Decision or Order - RTB 2**  
Landlords and tenants may use this form to apply to the Director or the Residential Tenancy Branch for review of an Arbitrator's order or decision.
2. **Request for Correction - RTB 6**  
Tenants and landlords may use this form to request that the Residential Tenancy Branch correct any obvious error or inadvertent omission.
3. **Request for Clarification – RTB 38**  
Tenants and landlords may use this form to request the Residential Tenancy Branch clarify a decision.
4. **Request/Approval for Release of Originals - RTB 9**  
Use this form to request the return of original evidence used in a residential tenancy dispute resolution hearing. Please note that original copies must be given to the Residential Tenancy Branch and the other party of the dispute. The applicant or respondent should always keep original copies of each document submitted in a dispute resolution proceeding.
5. **Application for Substituted Service - RTB 13**  
Landlords and tenants must use this form to request an Arbitrator order documents be served in a method other than those required by the RTA.
6. **Schedule of Parties - RTB 26**  
Use this Schedule of Parties to continue if the form you are completing does not have enough room for additional applicants or respondents. It is to be filed with your completed application.

***E. End of Tenancy***

1. **Notice to End Tenancy - Residential Unit - RTB 3**  
A landlord **must** use this notice to end a tenancy agreement, unless the tenancy is a fixed-term agreement that contains a predetermined expiry date and the tenant has agreed to vacate, or the landlord and tenant have agreed in writing to end the tenancy.
2. **12 Month Notice to End Tenancy for Conversion of Manufactured Home Park - RTB 31**  
Landlords **must** use this form to end a Manufactured Home Site Tenancy.
3. **Mutual Agreement to End a Tenancy - RTB 8**  
Tenants and landlords may use this form to voluntarily end residential tenancies.
4. **Notice of Final Opportunity to Schedule a Condition Inspection - RTB 22**  
A landlord **must** use this form where a tenant was not available at the date(s) and time(s) first offered by the landlord for a condition inspection, and where the landlord was not available at an alternate time proposed by the tenant.
5. **Schedule of Parties - RTB 26**  
Use this Schedule of Parties to continue if the form you are completing does not have enough room for additional applicants or respondents. It is to be filed with your completed application.

***F. Condition Inspection***

1. **Condition Inspection Report - RTB 27**  
Landlords and tenants or their representatives can use this form to record the condition of a rental unit at the time of move-in and move-out by the tenant. Both parties must participate in these inspections, in order to reclaim (tenants) or withhold (landlords) the damage deposit. It is

therefore in the interests of both parties to complete these inspections carefully, and it is advisable to take photographs confirming the condition on both move-in and move-out.

2. **Notice of Final Opportunity to Schedule a Condition Inspection - RTB 22**

A landlord **must** use this form where a tenant was not available at the date(s) and time(s) first offered by the landlord for a condition inspection, and where the landlord was not available at an alternate time proposed by the tenant.

3. **Schedule of Parties - RTB 26**

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

***G. Other Forms***

1. **Notice Terminating or Restricting a Service or Facility - RTB 24**

A landlord must use this form to terminate or restrict a service or facility to a rental unit or manufactured home site.

2. **Request for Consent to Assign a Manufactured Home Site Tenancy Agreement - RTB 10**

Use this form if you are a manufactured home owner and you are requesting the park owner's consent to assign your site tenancy agreement to the purchaser of your manufactured home.

3. **Request for Consent to Sublet a Manufactured Home Site Tenancy Agreement - RTB 25**

A manufactured home owner may use this form to request a park owner's consent to sublet a site tenancy agreement to the renter of the manufactured home.