

CHAPTER NINETEEN: LANDLORD AND TENANT LAW

Edited by Timothy Chang
With the Assistance of Zuzana Mordrovic and Robert Patterson
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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.

A. *Common Problems*

The following points contain most common problems experienced between tenants and landlords:

1. *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 (Residential Tenancy Act (*RTA*), s 55(2)b and s 55(4)).

NOTE: Subsections 4(1) and (2) of [Ministerial Order 89 of 2020](#) prevented the director from granting orders of possession under s 55 of the *RTA* except for notices to end tenancy by the landlord between March 30th, 2020 and June 23rd, 2020. Section 4 of [Ministerial Order 195 of 2020](#) prevents parties from filing orders of possessions at the Supreme Court of British Columbia unless the order of possession was granted under section 56 or 56.1 of the *RTA* between June 24th, 2020 and July 1st, 2020. Check <https://www.emergencyinfobc.gov.bc.ca/covid19-provincial-state-of-emergency/> to see if the BC Provincial State of Emergency is currently in effect. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving> for the most up to date information.

- In the case of an eviction due to a tenant not paying rent, a direct request may be made to the Residential Tenancy Branch and an order of possession may be granted without a participatory hearing. This means you may be unable to dispute your eviction. **Never ignore a “Notice to End Tenancy”, and always pay your rent.**
- 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.

2. *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.

3. Administrative Penalties

- Under s 87(3) and s 87(4) 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.”

4. Timelines

The Rules of Procedure for dispute resolution are revised occasionally. The latest edition took effect on May 24th, 2019. It is important to be aware of timelines. For example, the respondent and 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 by both the applicant and the RTB 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 current rules and procedures can be found online at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf>

5. Illegal Fees

- A potential landlord cannot ask a renter or potential renter for an application fee. If someone 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. 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.

6. 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.
- A Condition Inspection Report must be completed by all landlords and tenants during move-in, move-out, and before the client starts keeping a new pet. 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 does not conduct any one of the required condition inspections (either for move-in or move-out), doesn’t fill out a Condition Inspection Report as requested, doesn’t give a copy of the filled out report to the tenant, or doesn’t offer the client at least two opportunities to attend the inspection on a mutually agreed upon day, then the landlord loses their right to claim against the security deposit or pet damage deposit
- If the landlord abides by all the regulations concerning the condition inspections but the tenant did not participate in the condition inspection on both opportunities, then the tenant loses their right to claim their deposit back.
- A landlord has 15 days from the day the tenancy ends, or the day the landlord receives the tenant’s forwarding address **in writing**, whichever is later, to either return the deposit or apply for dispute resolution to claim against it. If the landlord does neither, the tenant may make a claim for double the security deposit

7. 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.

NOTE: Many of the forms referred to in this chapter are available at the RTB web site. Please 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; or
- 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 their 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*.

II. RESIDENTIAL TENANCY ACT COVERAGE

A. *Premises and Persons Subject to the RTA*

1. *Effective Date*

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

2. *No Contracting Out*

An agreement or a term in an agreement which purports to exclude the application of the *RTA* is of no effect. Where a term in an agreement conflicts with the *RTA* or the *Residential Tenancy Regulations*, the term is void. This means that neither landlords nor tenants can contract away rights legislated under the *RTA* when the *RTA* would have otherwise applied to the situation

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. **Rights and obligations specified by the *RTA* cannot be waived or contracted out by the landlord or tenant.**

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, Guideline 27: Jurisdiction, 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
- where the accommodation is a correctional institution.

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 to the Civil Resolution Tribunal if the disputed monetary amount is under \$5000. Otherwise, the dispute can be brought to Small Claims Court. For more information, see 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 an 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 a 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 their personal property seized should consider taking the position that they are a tenant and apply to the Residential Tenancy Branch for dispute resolution seeking an order for the return of personal property. If the Arbitrator finds that the *RTA* does not apply, 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, they 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)). 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.

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

Section 4(e) of the *RTA* provides that the *RTA* does not apply to living accommodation occupied primarily as vacation or travel accommodation

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, they are 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 (f) 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 on 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 including a facility that “provides a homeless individual with temporary overnight shelter”. 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. Residential Tenancy Branch Information Line & Additional Information

- 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*.
- If your issue does not fall under the *RTA*, please see section XX for additional resources.

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

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

III. TENANCY AGREEMENTS

A. Protecting the Tenant

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

After establishing the tenancy and before the tenant moves their personal possessions into the rental unit, the *RTA* requires the landlord and tenant to jointly conduct a condition inspection and fill out and sign the RTB's Condition Inspection Report. 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.

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 their 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. 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 11: 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 13(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. 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:

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

If the person in possession pays rent or a deposit and the landlord accept 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 the 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 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 s.15 of the *RTA*: 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 nothing offered or given in return 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*, new landlords or tenants that take over or enter into the same tenancy agreement would be bound by the 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. 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 or attempts to avoid the *RTA* (s 5(1) and (2));
- 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)).

- for a fixed term tenancy, any vacate clauses that require the tenant to move out at the end of the tenancy unless:
 - The tenancy agreement is a sublease agreement; OR
 - The fixed term tenancy was created in circumstances where the landlord or landlord's close family plans in good faith to occupy the unit after the tenancy ends, pursuant to RTR s 13.1.

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 some value given in return (i.e. lower rates of rent).

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 the 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. **If the agreement is silent about pets, then the tenant should be able to obtain one.** 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 Dog and Service Dog Act*, SBC 2015, c 17, s 3, which states that landlords must not deny tenancy or impose discriminatory terms on a person with a disability who intends to keep a guide dog in the rental unit.

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). The landlord can request pet damage deposit of not greater than ½ of a month's rent, regardless of the number of pets.

f) *Prescribing Terms*

Terms and conditions that must or must not be included in every written tenancy agreement or an application for an agreement may be prescribed by an order-in-council and may prescribe different terms for different classes of tenancy agreements. As discussed above, the RTR sets out in its schedule those terms that must be included in every tenancy agreement.

g) *Implied Obligations and Usual Terms*

(1) Landlord's Obligations

A landlord must ensure that:

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

(2) Tenant's Obligations

A tenant must ensure that:

- he or she pays the rent or other fees on;
- 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.

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.

3. Cannabis Legalization

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

- If a tenancy agreement included a “no smoking” clause and did not explicitly allow for smoking cannabis, then the “no smoking” clause is deemed to apply to smoking cannabis. This also applies to any clauses that restrict or regulates smoking. (*RTA* s 21.1 (2))
 1. For the purpose of *RTA* s 21.1 (2), vaporizing a substance containing cannabis is not “smoking cannabis.”
- All existing tenancy agreements would be implied to have terms prohibiting growing cannabis unless:
 1. the tenant is growing in or on the residential property one or more cannabis plants that are medical cannabis,
 2. growing the plants is not contrary to a term of the tenancy agreement, AND
 3. the tenant is authorized under applicable federal law to grow the plants in or on the residential property and the tenant is in compliance with the requirements under that law with respect to the medical cannabis.

NOTE: The *RTA* allows for landlords and tenants to agree upon terms in new tenancy agreements as long as they do not violate the *RTA*.

IV. MOVING IN AND MOVING OUT

A. Condition Inspection: Move In and Move Out

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)), and once more on a mutually agreed day when the tenant moves out. 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 conduct 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 the 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. 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 inspection 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 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)).

C. *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).

D. *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.

E. *Obligations on Move Out*

1. *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.

2. *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*

F. *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 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.

V. SECURITY DEPOSITS

A. *General*

A requirement that a tenant pay a security deposit is an express term of the standard 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. 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(2)). 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(1)). 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 them (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 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, they must provide their 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 of the later of the following two: the date at which the tenancy ends, or the date the landlord receives the tenant's forwarding address, which **must be in writing**.

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. After this, the landlord may not make a claim against the security deposit or any pet damage deposit and **must pay the tenant double the amount of the security deposit, pet damage deposit, or both** (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 (s 20 (e)).

According to *RTA* s 38(8), the landlord can repay security deposits by cheque, personal service methods, or electronic fund transfers.

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

NOTE: A tenant has only one year from the time the tenancy ends to supply the landlord with their 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.

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 (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 request;
- Bank service fees for NSF cheques plus a maximum late fee of \$25; and
- Parking fees.

VI. REPAIR AND SERVICE

A. Duty to Provide and Maintain Rental Unit in Repair

1. Landlord

Sections 32(1)(a) and (b) of the *RTA* provide that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, housing

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

A landlord is responsible for repairing:

- the rental structure, and roof;
- heating, plumbing, electricity;
- locks, walls, floors, ceilings;
- fire doors, and fire escapes;
- intercoms, elevators; and
- anything else included in a tenant's rent if 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 their duty.

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

In the case of an infestation of bedbugs or other pests, 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. 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 is 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

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 them on the rental unit or property (*RTA*, s 32(3)). **There is no duty to repair reasonable wear and tear** (s 32(4)).

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

If a landlord refuses to have the suite or building treated, the tenant can apply to the RTB for an order compelling the landlord to do so, or 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.

B. Withholding Rent

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

VII. RENT INCREASES

NOTE: Except for rent increases for one or more occupants and is authorized under the tenancy agreement by a term referred to in section 13(2)(f)(iv) of the *RTA*, section 6 of [Ministerial Order 89 of 2020](#) and section 5 of [Ministerial Order 195 of 2020](#) render rent increases that would have taken effect during the BC Provincial State of Emergency ineffective until the State of Emergency expires. If a landlord collects a rent increase that does not comply with these sections, the tenant may deduct the increase from rent or otherwise recover the increase. The Ministry of Housing has announced that they intend to amend the Order such that rent increase notices are effective on December 1st, 2020. Check <https://www.emergencyinfobc.gov.bc.ca/covid19-provincial-state-of-emergency/> to see if the BC Provincial State of Emergency is currently in effect. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving> for the most up to date information.

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 (*RTA* s 43 (3)). The percentage for allowable rent increases is the inflation rate (Consumer Price Index, or "CPI") plus 2 percent. **The maximum allowable increase changes each year on January 1st.** Check the webpage titled Rent Increases (<http://bit.ly/1cWKrDB>) on the RTB website to find the maximum rent increase allowed for the current 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 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) by making an application for a dispute resolution if one or more of the following conditions are met:

- 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;
- the landlord, acting reasonably, has incurred a financial loss for the financing costs of purchasing the residential property if the financing costs could not have been foreseen under reasonable circumstances; 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. New Lease with Same Tenant and Location

In the case where a tenant is remaining in the same rental location, but circumstances require a new lease is signed, any change in rent is still controlled by *RTA* s 43 **as if the new lease is an extension of the original lease.**

This means that if there was a rent increase in the last 12 months, the landlord is prohibited from increasing the rent for the new lease. If there wasn't a rent increase in the last 12 months, the landlord can only increase the rent to the maximum annual allowable amount and is prohibited from increasing it again in the next 12 months unless they obtain the director's approval pursuant to *RTA* s 43 (3).

C. Hidden Rent Increases

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

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

VIII. RIGHT OF ENTRY, QUIET ENJOYMENT AND PRIVACY

A. Right of Entry

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

- an emergency exists and the entry is necessary to protect life or property;
- the tenant gives either written or verbal consent to enter for a specific purpose one month or less prior to entry, including when the tenant consents at the time of entry

- the landlord provides housekeeping or related services as part of the written tenancy agreement and the entry is for this purpose in accordance with the terms
- 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, unless earlier received;

the landlord has an Arbitrator’s order authorizing the entry.

NOTE: Between March 30th, 2020 and June 23rd, 2020, section 8 of [Ministerial Order 89 of 2020](#) prohibited landlords from entering the rental unit despite a notice of entry under s 29(1)(b) unless an emergency related to the COVID pandemic exists and the entry is necessary to protect the health of themselves, a tenant, an occupant, a guest or the public. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving> for the most up to date information.

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; and
4. use of the 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. There is no reciprocal right.

However, a landlord may end a tenancy for Cause with one month’s notice if a tenant unreasonably disturbs other occupants or the landlord of the building. **This is separate from the right of quiet enjoyment and is a cause for a landlord to evict (*RTA* s 47 (d)(i)).**

C. Duty to Provide Access

Under *RTA* s 30 (1) once a tenant has taken possession of a rental unit, a landlord is not allowed to unreasonably restrict the tenant’s access to the residential property. Under s 31 of the *RTA*, the landlord cannot change the locks or alter the means of access to the rental unit without the tenant’s permission, and a landlord is obligated to provide all tenants with new keys or other means of access to the rental unit. 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 and Moving Out**. A landlord cannot restrict access if a tenant has failed to pay rent.

NOTE: Between March 30th, 2020 and June 23rd, 2020, section 7 of [Ministerial Order 89 of 2020](#) allowed landlords to restrict access to common areas of the residential property by tenants and their guests to protect the health of themselves, a tenant, an occupant, or a guest, to comply with an order by the governments of Canada, BC, or the municipalities under the *Emergency Program Act* or to follow the guidelines of BC Centre for Disease Control or the Public Health Agency of Canada. Between June 24th, 2020 and when the BC Provincial State of Emergency expires or is cancelled. Section 6 of [Ministerial Order 195 of 2020](#) prevents the director from granting an order that reduces the rent or any other order of monetary compensation resulting from the termination or restriction of access unless the director already held a hearing on an application for dispute resolution for this reason. Check <https://www.emergencyinfobc.gov.bc.ca/covid19-provincial-state-of-emergency/> to see if the BC Provincial State of Emergency is currently in effect. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving> for the most up to date information.

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 a tenant changing a lock without landlord permission or 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(2) 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* s 26 (4)(a) and (b).

IX. SUBLETTING AND ASSIGNMENT

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

According to s 34 of the *RTA*, a tenant may assign or sublet their 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 with six months or more remaining (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. People with licences to occupy, such as roommates or other occupants, may not be sub-tenants or assignees.

B. 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 sublet 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**. 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.

X. END OF TENANCY (RTA S 44)

A. Tenant Gives Notice (RTA, ss. 45, 45.1)

A tenant can end the tenancy by giving notice:

- 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 another 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, a notice to end the tenancy given on January 1st will be effective in terminating the tenancy agreement no earlier than February 28th, and rent must be paid throughout the notice period; notice given on May 31st would be effective to end the tenancy on June 30th. Note that the time is calculated **from the time the landlord receives the notice**, not when the notice was sent.
- 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.

- It 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 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 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

NOTE: For clarity, “family violence” is defined under the *Family Law Act*, SBC 2011 c. 25 to include

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence.

- 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.

B. Landlord Gives Notice

NOTE: Section 3 of [Ministerial Order 89 of 2020](#) prevented Landlords from giving notices to end tenancy under Sections 46-49.1 between March 30th, 2020 and June 23rd, 2020. Notices given before this remain in effect subject to the dispute resolution process. Section 3 of [Ministerial Order 195 of 2020](#) prevents Landlords from giving notices to end tenancy for unpaid or late rent or utility that is due after June 24th, 2020 and when the BC Provincial State of Emergency expires or is cancelled. The Ministry of Housing announced that they intend to amend the Order to allow giving notices for unpaid or late rent after September 1st, 2020. Check

<https://www.emergencyinfbc.gov.bc.ca/covid19-provincial-state-of-emergency/> to see if the BC Provincial State of Emergency is currently in effect. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving> for the most up to date information.

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

A landlord may give a ten-day 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.

If the tenant decides to pay the overdue rent after the five-day period is over, **the landlord is not obligated to accept the late payment.**

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

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

- a) the tenant does not pay security deposit or pet damages deposit within 30 days when the deposits are due
- b) the tenant is repeatedly late in paying rent

NOTE: There is a very high standard to apply this cause; in [Guevara v Louie, 2020 BCSC 380](#), e-transfer caused delays to payment that was sent on the days rent were expected to be paid and this was found to not be a valid reason to terminate a tenancy.

- c) there are an unreasonable number of occupants in the rental unit
- d) the tenant or their permitted guests has done something that:
 - a. significantly interfered with or disturbed another occupant or landlord of the property, OR
 - b. seriously jeopardized the health or safety or a lawful right of the landlord or another occupant of the property, OR
 - c. placed the landlord's property at significant risk
- e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - a. has caused or is likely to cause damage to the landlord's property,
 - b. has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - c. has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- f) the tenant or their permitted guests have caused extraordinary damage to a rental unit of residential property

- g) the tenant does not repair damage to the rental unit that is within their obligations (*RTA* s 32(3)) within a reasonable time
- h) the tenant has failed to comply with a material term of the tenancy agreement and has not corrected the situation in a reasonable time after the landlord gave them written notice
- i) the tenant purports to assign the tenancy or sublet without the landlord's permission
- j) the tenant knowingly gives false information about the residential property to a prospective buyer or tenant of the residential property who is viewing the property
- k) there is an order to vacate the property by the government
- l) the tenant has ignored an Arbitrator order for 30 days after receiving the order or when the order should take effect, whichever comes later.

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 a notice to end the tenancy if:

- the rental unit was provided to the tenant for the term of the caretaker's (tenant's) employment,
- 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.

An employer may also end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving a notice to end the tenancy if the employment is ended.

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 they intend to occupy the property (*RTA*, s 49(5)(c));
- the landlord or a member of their immediate family (consists only of spouse, child or parent of the landlord or spouse) intends to occupy the property (s 49(3));
- the landlord is a "family corporation (i.e. a corporation where the voting shares are all own by one individual or one individual and their sibling or immediate family) and a person owning voting shares in the family corporation or their immediate family member intends to occupy the property (s 49(4));
- the landlord has all the necessary permits and approvals required by law and intends **in good faith** to demolish the property, convert it into a strata lot or co-op, 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)).

NOTE: One of the rulings of [*Aarti Investments Ltd. v Baumann, 2019 BCCA 165*](#) states that in a dispute over an eviction on s 49 (6), **the onus is on the landlord to establish "good faith."** The tenant is not required to prove the landlord's bad faith.

Right of first refusal:

Additionally, if the rental unit is one in a residential property containing 5 or more rental units where the landlord ended the tenancy pursuant to **s. 49(6)(b) (renovation or repair)**, the tenant has a **right of first refusal** under s. 51.2. This means that the tenant is entitled to enter a new tenancy upon completion of renovation or repair **if they give notice that the tenant intends to enter into a new tenancy prior to the end of tenancy.**

If the tenant gave notice pursuant to s. 51.2, the landlord must give tenant notice at least 45 days before the date of completion informing the tenant the availability date of the rental unit and a tenancy agreement to sign that commences on that availability date.

If the tenant does not enter into a tenancy agreement on or before the availability date, the tenant has no further right.

By s. 51.3, if the tenant gave notice under s. 51.2 and the landlord does not comply with s. 51.2, the landlord must pay the tenant 12 times the monthly rent as compensation. Note that the landlord may be exempted due to hardship as determined by an Arbitrator (s. 51.3(2)).

A landlord who gives a 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 12 times the monthly rent payable under the tenancy agreement (s 51(2)). The landlord's use must be for at least six months beginning within a reasonable period of the effective date of the notice, to prevent landlords from simply moving a relative in for a month. The landlord may be exempted due to hardship.

NOTE: Some municipalities have additional protection in place for tenants that are being subject to "renovictions" in addition to the protection offered by the *RTA*. One such example is the City of Vancouver's *Tenant Relocation and Protection Policy*. Check if your municipality has similar policies in place.

C. 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.

D. Required Notice

1. Form and Basic Requirements

For a notice to end a residential tenancy to be effective, it must be in writing, signed and dated by the landlord or tenant giving notice, include the address of the rental unit, and 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 a 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 their 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 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** use one of the Notice to End a Residential Tenancy forms put out by the RTB. Failing to do so may constitute a 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 the tenant does not pay the overdue rent in 5 days, the landlord is not legally obligated to accept the payment.**

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(2)). Practically speaking, the full month requirement means the 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 Personal Use of Property

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

d) Renovations

If the landlord is giving notice for *RTA* s 49(6), which would include most forms of building renovations, the landlord must give at least 4 months' notice. If the tenancy is a fixed term tenancy, the landlord cannot terminate the tenancy before the fixed term is over.

A tenant would have **30 days** after receiving the notice to file a dispute.

e) End of Employment

Where the ground for eviction is the end of employment (*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.

f) 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, they 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**;
- under s 49 (landlord use of property): **15 days**;
- under s 49 (6) (renovations): **30 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 when disputing a notice to end tenancy for non-payment.**

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. – i.e. if the tenant has paid rent and intends to continue to pay rent, the tenant should indicate that

NOTE: A tenant should **never** ignore a 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.

E. 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)). if a prospective tenant is suing the landlord for failure to give vacant possession, the landlord can add the overholding tenant as a party to the case (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 their 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 they were 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). 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 an authorized court bailiff to change the locks and remove the tenant.

NOTE: Subsections 4(3) to (5) of [Ministerial Order 89 of 2020](#) prevented parties from obtaining writs of possession for section 54 or 55 orders of possessions between March 30th, 2020 and June 23rd, 2020. Section 5 of the Ministerial Order also prevents the enforcement of writs of possession obtained before March 30th, 2020 until the aforementioned expiration. Section 4 of [Ministerial Order 195 of 2020](#) allows parties to file orders of possession after July 1st, 2020. Check <https://www.emergencyinfobc.gov.bc.ca/covid19-provincial-state-of-emergency/> to see if the BC Provincial State of Emergency is currently in effect. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving> for the most up to date information.

If the landlord gives the notice to end, they 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 5, 10, 15, or 30 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)).

F. Abandonment and End of Tenancy

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)). Where a tenant abandons the rental unit before the end of a fixed term tenancy, or without giving proper notice during a periodic tenancy, a landlord may have a claim against the tenant for outstanding rent. Disputes may arise when the landlord claims the rental unit has been abandoned and the tenant disputes the end of the tenancy and the landlord's finding of abandonment. The landlord's duty to mitigate and re-rent and the landlord's right to remove the tenant's goods both depend on a finding that the rental unit was abandoned. In other words, if a tenant does not clearly communicate to the landlord that they will be abandoning the rental unit, the landlord may not be subject to a duty to mitigate their losses by re-renting the suite until they are sure the rental unit has been abandoned.

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, they have breached s 29. The landlord could enter under the emergency provision, or if they are 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 they believe 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 of abandoned personal property, and/or assist the tenant to recover such property.

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 they have 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 they have not paid rent, or from which the tenant has removed substantially all of their 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). 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 their 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.**

XI. 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 them that landlords are required by law to provide rent receipts if the tenant pays rent in cash. The Information Officer will not take on the role of an Arbitrator and will only explain the Legislation.

Dispute resolution is the formal method of resolving disputes between landlords and tenants. Any party going to dispute resolution may be represented by an agent, advocate, or lawyer. The Arbitrator may require a representative to provide proof of their appointment to represent a party and may adjourn a dispute resolution hearing for this purpose. To understand the procedure, advocates should read the dispute resolution Rules of Procedure that are available on the Residential Tenancy Branch website (<https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf>).

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 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 5.1 of the *RTA*, from considering the following:

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

NOTE: One may make an application to the RTB for disputes in relation to the rights, obligations, and prohibitions set out in Parts 2 and 3 of [Ministerial Order 89 of 2020](#) as well as Parts 2 and 3 of [Ministerial Order 195 of 2020](#).

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. Most applications for dispute resolution are filed online through the RTB website. Applicants can also apply in person by submitting a paper application for dispute resolution form in person at the RTB office or any Service BC office. 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.

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), or online with the online application or at <https://tenancydispute.gov.bc.ca/DisputeAccess/#access>

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 apply for a fee waiver you must also upload proof of income through the Online Portal or submit it in person. The Downtown Eastside office only accepts 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 a few days. The RTB created a Monetary Order Worksheet which should 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, see <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/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. 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.

To learn more about amending an application, see:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/apply-online/amend-or-update-an-application>

2. Direct Request

A landlord may make a Direct Request for an order of possession and/or monetary order for unpaid rent or utilities when they have issued a 10-day notice to end tenancy for non-payment of rent or utilities, 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, with only the landlord's written submissions being considered by the Arbitrator. No evidence from any other party would be considered. The landlord can also recover the \$100 application filing fee through Direct Request. Because of the Direct Request process, it is very important that tenants never ignore a notice to end tenancy. See <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/apply-online/direct-request> for more details.

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.

Once an Order of Possession has been given to the landlord and served to the tenant after a wrongful Direct Request, the tenant should tell the landlord that they are reviewing it, so the landlord can't get a writ from BC Supreme Court; The tenant should file a Review Application to the RTB on the basis of landlord fraud and/or inability to attend the original hearing (See **Section XI. E: Review of Arbitrator's Decision**).

Similarly, a tenant may make a Direct Request for an order of possession and/or monetary order for outstanding deposit(s) when they gave the landlord their forwarding address in writing at the end of the tenancy, and, within 15 days after the receipt of the forwarding address, the landlord has not returned the outstanding deposit(s) or made an application to retain part or all of the deposit. See [https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/apply-online/tenants-direct-request#:~:text=A%20tenant%20can%20use%20a,of%20their%20deposit\(s\).](https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/apply-online/tenants-direct-request#:~:text=A%20tenant%20can%20use%20a,of%20their%20deposit(s).) for more details.

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:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/policy-guidelines>.

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

a) Telephone Hearings

Parties should join the conference call in a quiet place where they will not be interrupted. 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) Expedited Hearings

Expedited hearings are for applications that are very urgent and if it would be unfair for the applicant to wait for a standard hearing. They are usually limited to early ending of tenancy, an order of possession for a tenant, and emergency repairs. Usually, the branch tries to schedule them for a hearing within 12 days from the date the application is made. In cases where there is evidence that violence has occurred, health and safety are severely jeopardized or there is a demonstrable immediate danger or threat, the branch may schedule it for a hearing within six days. Your evidence must be ready for submission on application. More details including how to apply are available online at: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution/expedited-hearings>)

d) 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, delivered in person to any ServiceBC office, or RTB office in Burnaby, or uploaded online at <https://tenancydispute.gov.bc.ca/DisputeAccess/#access>

Digital evidence must be provided to the RTB on a USB memory stick, CD or DVD for their permanent files and must also be accompanied by a printed description, or they can be uploaded online with the online application or at the Dispute Access Site. Evidence does not need to be presented in print form but should be organized in a way so that the Arbitrator and other parties can easily refer to it during the hearing. Each party must also deliver a copy of all evidence to the RTB and the other party 14 days before the hearing for the applicant and 7 days before the hearing for the respondent. The Arbitrator will usually refuse to look at anything not exchanged in advance of the hearing, but might accept the evidence subject to the following rules:

- 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 the 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. However, Rule 3.17 requires that both parties must have the opportunity to be heard on the question of prejudice arising from accepting late evidence. In [*Khan v Savino, 2020 BCSC 555*](#), the applicant was late to the 14-day deadline by one day but the arbitrator failed to seek submissions regarding prejudice arising from accepting the late evidence from both parties at the hearing. This was a ground for voiding the result at the dispute resolution and returning the decision to the RTB for re-determination.

The RTB's definition of "days" is as follows, taken from page 6 of the *Dispute Resolution Rules of Procedure*, located on the RTB's website at <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/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 their case but the witness refuses to cooperate, the party can then request in advance or at the hearing that the Arbitrator summon that witness (RTB Rules of Procedure s. 5.3 - 5.5).

The Arbitrator may then decide to adjourn the hearing and summon the witness for the hearing when it reconvenes. The party requesting the summon is required to serve it on the person being summoned. 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, they 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) of the *RTA*, the written decision and reasons must be provided **within 30 days**. If a party, pursuant to s 78 of the *RTA* completes a form requesting correction of a technical error, omission, or clarification **within 15 days** of the decision being given, such amended decision or clarification must be provided **within 30 days**.

The Arbitrator's order is final and binding but may be reviewed in limited circumstances (s 79).

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 40 detailed RTB Policy Guidelines available that ensure more consistency in dispute resolution decisions, and which should be reviewed in preparation for any hearing. They can be found online at <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/policy-guidelines>

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, they should request an order under *RTA*, s 71(1) and (2) permitting alternate means of service. An example of such an order would be one that permits serving a document at a tenant's workplace rather than at their new home.

1. Enforcing a Monetary Order

The Arbitrator may order the tenant or landlord to pay a monetary amount or to bear all or part of the costs of dispute resolution (*RTA*, s 67). **Enforcement of the order is the sole responsibility of the applicant.** If the monetary order is in favour of a **tenant** still living in the rental unit owned by the landlord that the order is against, the Arbitrator may direct the tenant to deduct the award from the rent (*RTA*, s 65(1)(b)). Rent should not be withheld unless the decision explicitly states this is allowed. If the monetary order is in favour of a **landlord** still holding 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 their own means (*RTA*, s 57(2)), as this is unlawful. Bailiff services, described below, can be used to lawfully remove the tenant.

a) Use of Bailiff Services

If the tenant does not comply with the order and does not vacate the rental unit on the date specified on the order, the Order of Possession can be filed in the Supreme Court of B.C. Registry. The landlord must 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 the 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 they are 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 the relevant section below.

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

a) *Personal Service*

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

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

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

NOTE: Between March 30th, 2020 and June 23rd, 2020, under sections 9 and 17 of [Ministerial Order 89 of 2020](https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving), in-person service of documents was not allowed; service by mail, fax, and e-mail were allowed during this period. Check <https://www.emergencyinfobc.gov.bc.ca/covid19-provincial-state-of-emergency/> to see when the BC Provincial State of Emergency is currently in effect. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving> for the most up to date information.

b) *Registered Mail*

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

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

c) *Ordinary Mail*

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

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

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

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

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

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

g) *Fax*

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

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

h) *Substituted Service*

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

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 their business as a landlord at that same address.

If the landlord disputes that they have been served in one of the permitted ways at the address where they carry on business as a landlord, or if the landlord does not attend the hearing, the tenant will have to provide sufficient evidence to the Arbitrator to prove that the address used is, in fact, the address at which the landlord carries on business as a landlord.”¹

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

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

4. Proof of Service

Where service has been affected and a party fails to appear at a hearing, the other party should be prepared to prove that service was affected. For personal service, this can be done by having the person who actually served the other party appear as a witness at the hearing or provide a signed statement with details about service. For personal service on another adult apparently residing with the other party, details should be included about the date and time of service, identity of the person served, and description of how it was confirmed that the person apparently resides with the party being served. For registered mail, a Canada Post tracking printout providing information about the delivery of the registered mail item and the signature of the recipient will suffice. Proof of service by other methods should include details about the date, time, identity of persons served, address where notice was posted, fax number or mailbox information, and any other relevant information. Photographs of service can be valuable in proving that service occurred.

E. Review of Arbitrator’s Decision

1. Application for Review of Arbitrator’s Decision

Under the *RTA*, s 79(2), an application may be made for Review of the Decision or Order, only if:

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

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

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.

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

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

2. Time Limits for Launching a Review

There are strict time limits in the *RTA* for launching a review. For orders of possession (s 54, 55, 56, 56.1), unreasonable withholding of consent (s 34 (2)) and notices to end tenancy for non-payment of rent (s 46) the time limit is **two days**. For a notice to end a tenancy agreement other than under s 46, repairs or maintenance under s 32, and services or facilities under s 27, the time limit is **five days**. For other orders, the time limit is **15 days** (*RTA* s 80).

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

3. Successful Application for Review

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

The Arbitrator's decision permitting review must be served on the other side within three days of receiving the decision. The same method of service must be used as outlined above for a Notice of Hearing package.

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

An Arbitrator's decision can also be reviewed by the Supreme Court of B.C. under the *Judicial Review Procedure Act*, RSBC 1996, c 241. The *RTA* contains a privative clause (s 84.1) which narrows the scope of the review. It is not a new trial. The Supreme Court of B.C. generally would conduct a review if there were:

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

When a decision is overturned by the court, the case is usually returned to an Arbitrator to be reheard. Due to the complexity of operating in the B.C. Supreme Court, a lawyer should be involved for a judicial review in B.C. Supreme Court. It is important to get legal advice and act quickly. The Community Legal Assistance Society (CLAS) (604-685-3425) is available to assist with judicial reviews of Arbitrators' decisions and is especially interested in helping with potential test cases. For more information on grounds on grounds for judicial review, see judicialreviewbc.ca.

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

5. Filing Complaints to the RTB

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

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

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

XII. THE COMMON LAW, TENANCIES, AND THE *RTA*

Since a tenancy agreement has elements of both contract and interest in land, privity of contract and privity of estate exists between the parties to the agreement. Covenants relating to either the estate or the agreement are enforceable between such parties. Where either the reversionary (landlord) or the tenant assigns their 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 the return of their security deposit from a new landlord, even though the tenant had originally paid the security deposit to a different person. See s 93 of the *RTA* regarding covenants that run with the land.

A sub-lessee has privity of estate and contract with the head landlord and is bound by all the covenants in the original lease.

Covenants in leases are independent at common law, which means 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 or other residential leases 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. 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 11: 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 the law of contract, 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 tenant under the *RTA* to enforce against each other all conditions and terms, whether material or not, contained in the tenancy agreement for the possessed rental unit (s 49(1)).

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

2. Status of Other Statutes and Legal Doctrines

a) 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 contractual rights. The tenant may not exercise rights incidental to the possession of the 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 the agreement is entered into. The tenant may obtain an order respecting their 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 the rental unit and the landlord repossesses and re-rents. Generally, no further rent or compensation for the unexpired portion of the tenancy may be claimed on surrender. However, claims for lost rentals are allowed.

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

c) Frustration

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

d) *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. a tenant does not pay their rent in full.

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 their loss by re-renting the rental unit as soon as possible, rather than just suing the tenant for the whole year's rent. A landlord who makes such a claim must prove that they took reasonable steps to re-rent the unit and was not able to do so. See RTB Policy Guideline 5: Duty to Mitigate Loss.

5. Compensation

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

Only persons who are party to the tenancy agreement have the right to enforce said agreement.

Section 95 is a penalty section, which states that breaches of the listed sections (mostly landlord breaches) are punishable by fine. Recently, the RTB has established a Compliance and Enforcement Unit to conduct investigations of repeated or serious non-compliance with tenancy laws or orders of the Residential Tenancy Branch, issue warnings to ensure compliance and if necessary, administer monetary penalties.

The Compliance and Enforcement Unit only handles cases in which all attempts to resolve the issue through the RTB has been made, yet there is still no compliance. Usually, the first step that the unit takes would be simply informing the parties of their responsibilities. For continued non-compliance, fines of up to \$5000 per day may be levied.

Example of matters that the unit investigates:

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

C. Joint Hearing

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

XIII. TENANCIES IN STRATA LOTS (CONDOMINIUMS)

The *Strata Property Act* (SPA) and the *Strata Property Regulation* (SPR) govern strata properties. Persons renting a residential condominium are tenants under the *RTA*. Such tenants are also subject to Parts 7 and 8 of the SPA. 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 to settle disputes between owners, tenants, and the strata corporation. It also states that statements or documents made only for the purpose of such voluntary dispute resolution cannot be reused at other legal proceedings;
- 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 their guest contravenes a bylaw or rule; Section 7.1 of the SPR gives the maximum amount and frequency by which a fine can be levied.
- s 131 provides that the strata corporation may collect fines levied against a tenant both from the tenant and from a landlord/owner. 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, subject to a duty to mitigate by both sides;
- 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 in the strata 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.
- **NOTE:** This is a highly technical section. Often strata corporations do not comply with it very well and technical defences 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).
 - Other than the above points, a strata corporation is not permitted to regulate, restrict, or otherwise interfere with the rental of strata property in any way.
- 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 (1) states that any bylaw that restricts or prohibits strata rentals would not take effect on existing tenants. The bylaw would not apply on that particular lot until either a year after the tenancy has ended or a year after the bylaw takes effect, whichever is later.
- 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 has not contravened the bylaw and 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. However, **there is no corresponding section in the RTA, and the right to tenancy MUST come from the RTA.** Tenants cannot solely rely on SPA s 145 to end a tenancy.
- s 146 puts the responsibility on the landlord to provide a copy of a Form K to a tenant to sign, and to provide a copy of the Form, once signed, to the strata corporation. Tenants are bound by the bylaws and rules of the strata **whether or not they are provided with one.** A landlord must provide a Form K to the tenant, and they can also force the tenant to sign it. **It is important the tenant reads the bylaws before signing, as the tenants are bound by the rules and bylaws, and can be held liable for any contraventions**
- s 146(3)(b) and (4) purport to allow a tenant to end a tenancy and claim reasonable moving expenses if the landlord does not provide a Form K, but **there is no corresponding section in the RTA,** so tenants likely cannot rely upon this as a means for ending a tenancy.
- s 147 allows an owner to assign to a tenant some or all the powers and duties of a landlord under the *Strata Property Act*, with the exception of the landlord’s responsibility for fines and costs of remedying a contravention of the bylaw (as per SPA s 131).
 - This must be done in writing and copied to the strata corporation;
- 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, with the exception of the landlord’s responsibility to pay fines as per SPA s 131. The landlord must not deal with their interest in the strata lot during a long-term lease in a way that would unreasonably interfere with the rights of the tenant.

NOTE: All legislation related to strata property can be found on a single web page on <https://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing/legislation-and-changes/strata-legislation#sources>

XIV. ASSISTED AND SUPPORTED LIVING TENANCIES

The *RTA* does not cover Assisted Living nor most Supported Living Tenancies. These would fall under the *Community Care and Assisted Living Act*.

NOTE: In September 2013, the B.C. Law Institute published a report after a three-year review regarding drafting legislation on Assisted Living and Residential Care tenancies. *The Report on Assisted Living in British Columbia* is available online at www.bcli.org/publication/report-on-assisted-living-in-british-columbia.

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

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

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

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

XV. COMMERCIAL TENANCIES

Generally speaking, the *RTA* does not cover tenancies that are made for a commercial purpose (i.e. Renting a space to open a store). These tenancies would be 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 end of this chapter.

XVI. MANUFACTURED HOMES (FORMERLY “MOBILE HOMES”)

A. *General*

In 2004, the *Manufactured Home Park Tenancy Act*, (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 rent 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*.

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.

NOTE: Between March 30th, 2020 and June 23rd, 2020, section 16 of [Ministerial Order 89 of 2020](#) allowed landlords to restrict access to common areas of the manufactured home park by tenants and their guests to protect the health of themselves, a tenant, an occupant, or a guest, to comply with an order by the governments of Canada, BC, or the municipalities under the *Emergency Program Act* or to follow the guidelines of BC Centre for Disease Control or the Public Health Agency of Canada. Between June 24th, 2020 and when the BC Provincial State of Emergency expires or is cancelled, section 11 of [Ministerial Order 195 of 2020](#) prevents the director from granting an order that reduces the rent or any other order of monetary compensation resulting from the termination or restriction of access unless the director already held a hearing on an application for dispute resolution for this reason. Check <https://www.emergencyinfobc.gov.bc.ca/covid19-provincial-state-of-emergency/> to see if the BC Provincial State of Emergency is currently in effect. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving> for the most up to date information.

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.

5. Cannabis

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

- If a tenancy agreement included a “no smoking” clause and did not explicitly allow for smoking cannabis, then the “no smoking” clause is deemed to apply to smoking cannabis. This also applies to any clauses that restrict or regulate smoking. (*MHPTA* s 18.1 (2))

For the purpose of *MHPTA* s 18.1 (2), vaporizing a substance containing cannabis is not “smoking cannabis.”

- All existing tenancy agreements would be implied to have terms prohibiting growing cannabis on the **outdoor areas or common areas of the home park or home site** unless:
 1. the tenant is growing, in an outdoor area of the manufactured home park, one or more cannabis plants that are medical cannabis,
 2. growing the plants is not contrary to a term of the tenancy agreement, and
 3. the tenant is authorized under applicable federal law to grow the plants at the manufactured home park and the tenant is in compliance with the requirements under that law with respect to the medical cannabis.

C. Moving In and Moving Out

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

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

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

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

D. Deposits

1. Security Deposits

A landlord cannot require or accept a security deposit in respect of a manufactured home site tenancy. If a landlord accepts a security deposit from a tenant, the tenant may deduct the amount of the security deposit from rent or otherwise recover the amount (*MHPTA*, s 17). Security deposits held by landlords before the effective date of the *MHPTA* may be retained until the end of the tenancy. As the *MHPTA* was assented to in Nov. 2002, this would only apply in long-standing tenancies as of the time of writing (2019).

A landlord who does not return or file a claim against the deposit at the end of tenancy could be required to pay the tenant double the amount of the deposit.

2. Pets

Landlords may not charge pet damage deposits but may include terms in the tenancy agreement that prohibits pets or restricting the size, kind, and number of pets. Landlords may also add terms that govern the tenant's obligation regarding keeping their pets on the manufactured home site.

3. Fees

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

A landlord must not charge:

- a guest fee, 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. A list of permissible non-refundable fees are listed in the Manufactured Home Park Tenancy Regulations (MHPTR) s 5.

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 the proportionate increase in local government levies and regulated utilities (*MHPTA*, s 36(1)(a) and see MHPTR Part 5). A landlord may apply to an Arbitrator for approval of a rent increase in an amount that is greater than the amount calculated under the regulations.

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

b) Notice

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

NOTE: Section 15 of [Ministerial Order 89 of 2020](#) and section 10 of [Ministerial Order 195 of 2020](#) renders rent increases that would have taken effect during the BC Provincial State of Emergency ineffective until the State of Emergency expires. If a landlord collects a rent increase that does not comply with these sections, the tenant may deduct the increase from rent or otherwise recover the increase. If a landlord collects a rent increase that does not comply with this section the tenant may deduct the increase from rent or otherwise recover the increase. Check <https://www.emergencyinfobc.gov.bc.ca/covid19-provincial-state-of-emergency/> to see when the BC Provincial State of Emergency is currently in effect. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#servicing> for the most up to date information.

c) Timing

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

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

F. Manufactured Home Park Rules and Committee

In accordance with s 31 - 33 of the *MHPTA* and the associated regulations, the landlord and tenants of a manufactured home park may establish and select the members of a park committee. A park committee must make all of its decisions by unanimous agreement of all members of the committee (MHPTR s 22), except resolutions regarding secret ballots made under MHPTR, s 23(8), which must be decided by majority vote.

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

- it promotes the convenience or safety of the tenants;
- it protects and preserves the condition of the manufactured home park or the landlord's property;

- it regulates access to or fairly distributes a service or facility; or
- it regulates pets in common areas.

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

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

G. Tenancy Agreements

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

1. Liability for Non-compliance

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

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

2. Tenant's Right to Quiet Enjoyment

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

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the manufactured home site subject only to the landlord's right to enter the manufactured home site in accordance with *MHPTA* section 23; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

H. Ending a Tenancy

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

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

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

NOTE: Section 11 of [Ministerial Order 89 of 2020](#) prohibits landlords from giving notices to end tenancy despite sections 37(1)(a)(ii) to (v) and sections 39 to 42 of the *MHPTA* between March 30th, 2020 and June 23rd, 2020. If a notice to end tenancy was given before March 30th, 2020, then the notice remains in effect, subject to the dispute resolution process and an order of possession may be granted under section 48 of the *MHPTA*. However, sections 13 and 14 of the Order prevents the application for orders of possession or the enforcement of existing writs of possession between March 30th, 2020 and when the BC Provincial State of Emergency expires unless the order was applied for and granted under section 49 or 49.1 of the *MHPTA* or the order of possession was permitted under section 12(2) of the Order. Section 8 of [Ministerial Order 195 of 2020](#) prevents Landlords from giving notices to end tenancy for unpaid or late rent or utility that is due after June 24th, 2020 and when the BC. Check <https://www.emergencyinfobc.gov.bc.ca/covid19-provincial-state-of-emergency/> to see if the BC Provincial State of Emergency is currently in effect. Refer to <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19#serving> for the most up to date information.

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

1. *Tenant’s Notice*

a) *Periodic*

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

- not earlier than one month after the date the landlord receives the notice; and
- is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

b) *Fixed Term*

A tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is:

- not earlier than one month after the date the landlord receives the notice,
- is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and
- is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(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 been 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 Forced End of Tenancy (Termination/Eviction)**, above.

NOTE: For clarity, “family violence” is defined under the *Family Law Act*, SBC 2011 c. 25 to include

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence.

c) *Material Term Breach*

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

2. *Failure to Pay Rent*

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives notice (*MHPTA*, s 39(1)). Notice given under this section must comply with the form and content requirements found in s 45. A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under the *MHPTA* to deduct from rent, or if rent is paid within five days of receiving the notice to end tenancy, or if the tenant disputes the notice by applying for dispute resolution.

However, if the tenant does not dispute the notice and does not pay the amount owed the landlord can go to the Residential Tenancy Branch and apply for an Order of Possession without a hearing.

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

3. Landlord's Use

A landlord may end a tenancy agreement by giving a notice to end the tenancy agreement if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park (*MHPTA*, s 42(1)). A notice to end a tenancy under this section must end the tenancy effective on a date that is:

- not earlier than 12 months after the date the notice is received; and
- is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

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

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

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

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

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

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

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 to end tenancy must take effect on a date that is:

- not earlier than one month after the date the notice is received, and
- the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

5. Disputing Notice

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

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

6. Required Form

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

I. Dispute Resolution

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

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

A dispute between landlord and tenant generally has to be dealt with in dispute resolution unless the claim is for more than the monetary limit under the *Small Claims Act* (\$35000 as of June 2019), the application was not filed within the application period before the Supreme Court, or the dispute is linked substantially to a matter that is before the Supreme Court.

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

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

XVII. INCOME ASSISTANCE, TAXATION, AND RENTAL HOUSING

A. Shelter Aid for Elderly Renters (SAFER)

The SAFER program is a rental assistance program administered by BC Housing. It is intended to help senior citizens (i.e. people over 60). Applicants must be Canadian citizens, authorized to take up permanent residence in Canada, or Convention refugees. Applicants must have lived in B.C. for at least one year prior to applying. An applicant must also be paying over 30 percent of their income towards rent. There is a gross monthly income requirement that varies depending on the location of residence and is subject to being updated.

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

More information and application forms are available from B.C. Housing. Application forms are available in English and Chinese. Application forms may be obtained from the SAFER's webpage at <https://www.bchousing.org/housing-assistance/rental-assistance/SAFER>, or contact B.C. housing.

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

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

XVIII. SECONDARY AND ILLEGAL SUITES

Municipalities all over the Lower Mainland are attempting to regulate secondary suites. In most Lower Mainland municipalities, secondary suites are regulated and may be legal (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.

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

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

The City 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 may be given notice to shut down the suite by the City, which will allow them to give a One Month Notice to End Tenancy for Cause to the tenant. **The RTA applies independently of the legality of the suite.**

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

XIX. 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. Always ensure you 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. **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.

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 12T**
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 12L**
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. **Landlord's Application for Dispute Resolution by Direct Request - RTB 12LDR**
Landlords must complete and file this form to request a residential tenancy dispute be resolved through direct request without a hearing. To submit the Application form over the web, fill out the Online Application for Dispute Resolution form.
4. **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.
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. **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.
7. **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.
8. **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. **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. **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 29, 30, 32, 33**

The previous single RTB 3 form to end tenancy has been replaced with four different forms for four-month notice (RTB 29) 10-day notice (RTB 30), two-month notice (RTB 32), and one month notice (RTB 33). RTB 29 (renovations) and RTB 30 (unpaid rent) are tied to specific causes, and landlords **must** use the appropriate forms for the situation.

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

XX. GOVERNING LEGISLATION, REGULATIONS, POLICY GUIDELINES, AND RESOURCES

A. Legislation and Regulations

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

Website: www.bclaws.ca/civix/document/id/complete/statreg/02078_01

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

Website: http://www.bclaws.ca/civix/document/id/complete/statreg/477_2003

- 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

Manufactured Home Park Tenancy Regulation BC Reg 481/2003

Website: 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) to get the most up to date information.

B. Resources and Policy Guidelines

TRAC Tenant Resource & Advisory Centre

Website: www.tenants.bc.ca

Provides a variety of publications relating to tenant law, including the *Tenant Survival Guide* (also available online as a wikibook, via the Clicklaw website:

https://wiki.clicklaw.bc.ca/index.php/Tenant_Survival_Guide)

Residential Tenancy Branch

Main Office

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

Information line:

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

Downtown 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 Downtown Eastside office is a satellite office and does not handle money. Dispute applications can only be filed there by low-income applicants who are eligible for a fee waiver. Those offices are staffed with information officers.

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

Residential Tenancy Branch Dispute Resolution Rules of Procedure

Website: <https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf>

Residential Tenancy Information Sheets

Website: <http://bit.ly/1KTmo6l>

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

B.C. Housing

Suite 101 - 4555 Kingsway

Burnaby, B.C. V5H 4V8

Website: www.bchousing.org

Toll-free: 1-800-257-7756

Information for tenants living in public, subsidized housing.

Landlord BC

Website: www.landlordbc.ca

E-mail: info@landlordbc.ca

Direct: 1-888-330-6707

Vancouver Office:

1210-1095 West Pender Street

Vancouver, British Columbia V6E 2M6

Telephone: 604-733-9420

Fax: 604-733-9420

Victoria Office:

830B Pembroke Street

Victoria, British Columbia V8T 1J9

Telephone: 250-382-6324

Fax Local: 250-382-6006

Fax Toll-Free: 1-877-382-6006

C. Books

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

- A useful resource for 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.