CHAPTER NINETEEN: LANDLORD AND TENANT LAW

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I. THE RESIDENTIAL TENANCY ACT

A. 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.

The primary source of landlord-tenant law in British Columbia is the *Residential Tenancy Act* [*RTA*]. The *Manufactured Home Park Tenancy Act*, SBC 2002, c 77 [*MHPTA*] is a counterpart to the RTA that applies to owners of manufactured homes who rent the site on which their homes sit.

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.

B. Premises and Persons Subject to the RTA

1. Effective Date

The *RTA* applies to all residential tenancy agreements entered into before or after the date the Act comes into force. The *RTA* was modernized in 2004.

2. Infants

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

3. Excluded Premises and Agreements

S. 4 of the *RTA* sets out a list of situations which are not covered by the *RTA.*

Where a tenant is living in a cooperative housing facility and is paying rent, but is **not** a member of the cooperative, their rental unit may be subject to the *RTA* if the arrangement appears to fit the definition of a tenancy. For more information about what is covered by B.C.'s tenancy laws based on the housing types, visit the following website https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/is-my-tenancy-covered-under-bcs-tenancy-laws.

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 under the *RTA*. 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 if it is below $35,000, or to the Supreme Court if it is over $35,000. 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.
Sometimes organizations that provide housing may claim that their accommodation falls under the emergency shelter or transitional housing exceptions. However, only the RTB can make such a determination, and such claims are not necessarily correct. The Residential Tenancy Regulations were updated in December 2016 to include a three-part definition of transitional housing. According to s.1 of the Regulations, "transitional housing" means living accommodation that is provided:

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

Any accommodation must satisfy all three of these criteria to be excluded from the *Act*, even if a transitional housing agreement has been signed. "Emergency shelter" is defined in Policy Guideline 46 as 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".

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.

- 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 XIX for additional resources.

4. No Contracting Out

Neither landlords nor tenants can contract out of the *RTA* or the *Residential Tenancy Regulations*. Any terms that are inconsistent with the *Act* or the *Regulations* are void.

5. Crown

Generally, the *RTA* applies to the Crown.

6. Hotel Tenants and Landlords

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

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

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

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 three exceptions:

1. Shared Accommodations

Section 10(1) of the *HRC* does not apply where a tenant and landlord will share the use of any sleeping, bathroom or cooking facilities in the space. See *HRC* section 10(2)(a) for more information.

2. Adults Only

The section does not apply to rental spaces in residential buildings in which every unit is reserved for rental by people who have reached 55 years of age, or for by two or more people, at least one of whom has reached 55 years of age.

3. Units Designed to Accommodate Disability

Section 10(1) does not apply as it relates to physical or mental disability if the space is a rental unit in residential premises, the unit and the residential premises are designed to accommodate persons with disabilities, and the unit is offered for rent exclusively to someone with a disability, or to 2 or more persons, at least one of whom has a physical or mental disability.

II. 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 https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1_chrome.pdf.

1. Illegal Application 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, or to the RTB's Compliance and Enforcement Unit (CEU), who can launch an investigation. (https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/compliance-and-enforcement).

B. General

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

1. Two Methods of Creating a Tenancy Relationship

a) By Formal Contract

Although s1 of the *Act* defines "tenancy agreement" as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Starting January 1, 2004, a landlord must prepare in writing every tenancy agreement that complies with the *Act* (*RTA*, ss 13(1), (2)). Like any valid contract, there must be an offer, acceptance, and consideration. (see

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 who provided the agreement's wording) and principles of statutory interpretation. The law seeks to recognize and validate the relationship where possible, even where the requirement for a written tenancy agreement has not been met.

b) By Implied Contract

Notwithstanding the obligation to prepare a written agreement, where there has been offer, acceptance, and some kind of meaningful consideration, the law may imply the existence of a valid tenancy agreement. Contractual Nature of the Tenancy Agreement

1. Freedom of Contract and the Agreement

Parties are free to add and alter the terms, covenants, and conditions subject to common law and statute restrictions. Changes in the tenancy agreement must be in writing, signed and dated by both parties. Unilateral changes may only be enforceable if something is offered or given in return.

a) Collateral Contract

The parties may enter additional or subsequent oral or written contracts on top of the tenancy agreement. 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. Oral collateral contracts are hard to prove. **If something is important, it should be recorded in writing**.

2. Terms, Covenants, and Conditions

a) Covenants/Terms

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, if 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

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.

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 (see RTB forms here). This Agreement incorporates suggestions put forward by landlord and tenant stakeholders and includes the prescribed terms found in the Schedule of the Regulation.

d) Unenforceable Terms

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.

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

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

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 prevents a landlord from prohibiting pets in rental units. *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 no greater than ½ of a month's rent, regardless of the number of pets.

3. Cannabis Legalization

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

- If a tenancy agreement entered prior to legalization 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 *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 follows 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 if they do not violate the *RTA.*

III. MOVING IN AND MOVING OUT

A. Condition: Moving In

The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day (*RTA*, s 23 (1)), and once more on a mutually agreed day when the tenant moves out. Landlords can use their own forms so long as they contain all the information required in s 20 of the *RTR*.

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, 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, per *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 within seven days after the condition inspection is completed.

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)).

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;
- return all the keys and other means of access; 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. The tenant may also have to pay liquidated damages, if the tenancy agreement includes a liquidated damages term.

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 (including non-payment) 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.

NOTE: Effective July 11, 2022, there are now compensation requirements in place that could result in a landlord being ordered to compensate a tenant 12 times the monthly rent if they include a vacate clause in a fixed term tenancy agreement in accordance with Section 13.1 of the *Residential Tenancy Regulation*, and they or their close family member do not occupy the rental unit for at least 6 months at the end of the fixed term. See Policy Guideline 50 for more information.

IV. 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). A security deposit does **not** include a post-dated cheque for rent, a pet damage deposit, or a fee prescribed under *RTR* ss. 6 and 7. See Policy Guideline 29: Security Deposits.

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

B. Requirements Under the RTA

1. Amount

A security deposit demanded or received must not exceed one half of the monthly rent (*RTA*, s 19(1)). Only one security deposit can be required for each rental unit (s 20(b)). A landlord can also ask for an additional ½ month rent as a pet damage deposit (s 18(2)).

If a landlord accepts a security deposit or a pet damage deposit that is greater than 1/2 of one month's rent, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. 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 eviction notice if the tenant fails to pay the security deposit within 30 days.

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: The interest payable on security and pet damage deposits for 2023 is 1.95%.

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.

2. Change of Landlord

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

D. Non-Refundable Fees

The *RTA* allows landlords to charge some non-refundable fees to a tenant in accordance with section 7 of the *RTA*. For example, a landlord may charge for the direct cost of additional building access devices that are requested by the tenant.

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.

V. 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.

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 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 to pay for the damage.

When a tenant goes to the RTB to request a repair order, they may also request a rent reduction until the repair is complete. 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 can only make deductions from their rent if they are expressly authorized to do so under a provision of the *RTA* (such as section 19(2)) or if an RTB Arbitrator orders that they may do so.

Landlords are generally responsible for arranging and paying for bed bug treatment. According to section 32 of the *Residential Tenancy Act*, landlords must ensure that their rental property is suitable for occupation and compliant with health, safety, and housing standards required by law. In addition, Residential Tenancy Branch Policy Guideline 1 says, "the landlord is generally responsible for major projects, such as … insect control." If your landlord believes that you caused the infestation, they should still pay for treatment within a reasonable period of time, and then seek to recover compensation from you after the fact.

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),), 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.

Tenants must follow the exact procedure under s 33(3) of the *RTA* or the landlord can make a claim against the tenant, or serve a 10-day notice to end tenancy for non-payment of rent. 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*, applies to any of the following that are provided or agreed to be provided to the tenant by the landlord:

a) Appliances and furnishings;
b) Utilities and related services;

c) Cleaning and maintenance services;
d) Parking spaces and related facilities;
e) Cablevision facilities;
f) Laundry facilities;
g) Storage facilities;
h) Elevators;
i) Common recreational facilities;
j) Intercom systems;
k) Garbage facilities and related services;
l) Heating facilities or services
m) Housekeeping 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.

VI. RENT INCREASES

A. Payment and Non-payment of Rent

1. Cash Payment Rules

Section 26(2) of the *RTA* 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.

2. Non-Payment of Rent

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

B. 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, the landlord may apply for an additional rent increase (*RTA* s 43 (3)). The percentage for allowable rent increases is usually the inflation rate (Consumer Price Index, or "CPI"), but it is limited to only 2% for 2023.**The maximum allowable increase changes each year on January 1st** and is posted on the Rent Increase webpage (http://bit.ly/1cWKrDB). A landlord can only impose a rent increase 12 months after the date on which the tenant's rent was first payable for the rental unit or the effective date of the last rent increase (s 42(1)).. A tenant may not apply for dispute resolution to dispute a rent increase that complies with s 43(1). 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 written 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.

Section 43(3) of the *RTA* permits landlords to apply for an order allowing a rent increase greater than otherwise allowed under s 43(1). The circumstances under which these applications may be made are set out in ss 23-23.4 of the Regulations, and include:

- 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;
- the landlord, as a tenant, has received an additional rent increase under this section for the same rental unit; or
- the landlord, in the 18 months preceding the application, made a significant capital expenditure incurred for the purpose of installing, repairing, or replacing a major system of component of the rental property.

NOTE: The purpose of the expenditure **must** be necessary to a) comply with health and safety standards, b) repair or replace a malfunctioning or inoperative system or component, c) reduce energy usage or greenhouse gas emissions, or d) improve the security of the residential property.

NOTE: Applications shall not be granted where the need for the capital expenditure arose because of inadequate repair or maintenance on the part of the landlord, or where the landlord has been paid from another source. Capital expenditures may not be claimed again for at least 5 years.

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

C. New Lease with Same Tenant and Location

A landlord and tenant may agree to renew a fixed-term tenancy agreement with or without changes, for another fixed term. If a tenancy does not end at the end of the fixed term and no new agreement is entered into, the tenancy automatically continues as a month-to-month tenancy on the same terms. Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent increases are met.

D. 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 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.

E. 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.

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

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.

Landlords have a duty to protect their tenants' rights to quiet enjoyment, and to not interfere with that right themselves. If a landlord interferes with a tenant's right to quiet enjoyment by repeatedly entering a rental unit in a manner not in accordance with the *RTA*, the tenant may apply for an order to be permitted to change the locks in the rental unit, and to be permitted to not provide the landlord with a key: see *RTA* s 70. While tenants have a right to quiet enjoyment, they also have a duty not to disturb other tenants. 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 even if a tenant has failed to pay rent.

1. Tenant: Changing the Locks

Tenants must not change the locks without permission of the landlord or an order from an Arbitrator. This may be grounds for eviction.

VIII. 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 this assignment and sublet provisions. Generally, this means a subsidized housing tenant cannot assign or sublet a rental unit.

B. Creating a Sublet

Sub-tenants enjoy similar rights against the tenant they rent from as do tenants against the original landlord when they live in the property without the original tenant. However, sub-tenants cannot dispute the actions of the "main" landlord.

Where an individual takes on a roommate, that roommate will not be considered a sub-tenant. **Individuals moving in as roommates may wish to ensure that they are named on a written agreement with the landlord**. If they are not so named, 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 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.

IX. 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 of the tenancy agreement, and the tenant wishes to end the tenancy for that reason, the tenant must first give written warning that the term has been breached and request that the breach be corrected within a reasonable period. If the landlord has not corrected the breach before the deadline, the tenant can end the tenancy after the landlord receives a 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: "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

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. No evidence from any other party would be considered except the landlord's written submissions.

If the tenant decides to pay the overdue rent after the five-day period is over, **the landlord is not obligated to accept the late payment, and even if the landlord does accept it, this does not cancel the notice**

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**).

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

Various circumstances can qualify as causes to end a tenancy. For instance, repeatedly not paying rent on time, having an unreasonable number of occupants, and causing extraordinary damage to the rental property. See *RTA* section 47 for the complete list.

NOTE: Eviction due to repeatedly late rent payments has a high threshold. 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.

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));
- 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: As of July 1st, 2021, s. 49 (6)(b) is repealed, and landlords can no longer end tenancy to renovate or repair the rental unit in a manner that requires the unit to be vacant, except in accordance with s. 49.2 (Director's Orders: Renovations or Repairs).

a) Director's Orders: Renovations or Repairs ("Renovictions")

As of July 1st, 2021, under s. 49.2, landlords may make an application for dispute resolution requesting an order to end tenancy if:

- The landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;
- The renovations or repairs require the unit to be vacant;
- The renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located; and
- The only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

If a landlord is successful in a section 49.2 application, the landlord will get an order of possession effective no earlier than 4 months after the order is made.

A landlord who gives a notice to end a tenancy under s 49 or 49.2 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 or the director's order, 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. However, an Arbitrator can exempt the landlord if extenuating circumstances prevented compliance.

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.

NOTE: 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 or a director's order for renovations or repairs instead of paying the last month's rent and then waiting for the landlord to repay the required one month's compensation.

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 49.2,** 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 if an Arbitrator determines that extenuating circumstances prevented the landlord from complying with s 51.3(2).

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. Standard form RTB-8 is provided for this purpose, but it is not a mandatory form.

NOTE: There have been some cases in which landlords have coerced or misled tenants into signing Mutual Agreements to get around the *RTA*'s provisions on when a tenancy can be ended. Mutual Agreements signed concurrently with a fixed-term lease have been struck down by the RTB as an attempt to contract out of the *Act*, a violation of section 5. Generally, the legitimate purpose of the Mutual Agreement to End Tenancy is to terminate a fixed-term lease based on circumstances arising after the tenancy has begun.

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 for it to be effective. A mailed notice is presumed to be received 5 days after it is sent, while a notice posted on a door, for example, is deemed received 3 days after being posted. If posted documents are received before they are deemed received, they are considered received on the day they are actually received.. A landlord is only required to give the

tenant a written notice and a reasonable opportunity to adjust their conduct for a breach of a material term of the tenancy agreement before eviction. However, the landlord can also do this in other circumstances.

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 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.

Tenants and landlords can agree to use the Mutual Agreement to End Tenancy form, but tenants should seek to add a clause barring the landlord from claiming damages.

2. Length of Notice and Time Limits

The *RTA* sets out when a landlord may issue a notice to end tenancy,the length of the notice period and time limits to apply to the Residential Tenancy Branch for dispute resolution. Certain time limits may be extended in exceptional circumstances. **Time limits to dispute a notice to end tenancy cannot be extended past the effective date of the notice**. 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 any rent they paid in cash 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 and reinstate the tenancy.**

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 unpaid rent is an amount the tenant is permitted under the *RTA* to deduct from rent. However, tenants still need to file for dispute resolution in this situation, and not simply ignore the notice, or they will be deemed to have accepted the end of the tenancy.

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.

NOTE: The reasons for which a landlord may end a tenancy for cause are enumerated in s 47(1) of the *RTA* and landlords must select one of these enumerated grounds when filling out the required standard form (RTB-33)

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 for the permissible forms of landlord use. A tenant has **15 days** to apply for dispute resolution to challenge the notice, unless the landlord intends to demolish the unit or convert it to certain enumerated forms of non-rental property, in which case a tenant has **30 days**.

d) Tenant Ceases to Qualify

Tenants in subsidized housing can be evicted if they no longer qualify for the housing subsidy as defined in the tenancy agreement. In this case, landlords must provide 2 months' notice. Tenants wishing to dispute the eviction have **15 days** to file their dispute. See ss 49.1 and 50 for more information.

e) Director's Orders: Renovations or Repairs

If the landlord is giving notice for *RTA* s 49.2, which would include most forms of building renovations, the landlord must give at least four months' notice. If the tenancy is a fixed term tenancy, the landlord cannot terminate the tenancy before the fixed term is over.

The four-month notice can only be served to the tenant once an order has been made under the requirements of s 49.2(1). A tenant would have **30 days** after receiving the notice to file a dispute. See the above section on Renovictions for more details.

f) 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.

g) 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 days'** notice for a date earlier than that specified by the landlord at any time during the period of notice and pay rent up to the end of that 10 days. This does not apply to tenants in a fixed-term tenancy.

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 landlord may apply to the RTB seeking a monetary order.

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. 49.1 (tenant ceases to qualify for rental unit: 15 days
- under s 49(6) (demolition and conversion): **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)).

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 ask for a delayed order of possession in the alternative that the eviction is upheld. Effective dates for orders of possession have generally been set for two days after the order is received. However, an arbitrator has the discretion to set the effective date based on the point up to which the rent has been

paid, the length of the tenancy, and evidence showing that it would be unreasonable to vacate the property in two days.

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

A tenant must surrender 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 payment of rent), but otherwise the occupant of residential premises is liable to a landlord's claim for compensation for "use and occupation" (*RTA*, s 57(3)). If a prospective tenant is suing the landlord for failure to give vacant possession, the landlord can add the overholding tenant as a party to the dispute (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.*

If a landlord gives a notice to end tenancy, they can apply for the Order of Possession after the tenant's limitation period to file for dispute has expired (s 55(2)(b)). This may be 5, 10, 15, or 30 days depending on the reasons for ending the tenancy.

Landlords can, in some circumstances, obtain an Order of Possession without a participatory hearing taking place. 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)). Monetary orders for rent in arrears may also be granted without a participatory hearing if the tenant's time to dispute the notice has passed.

F. Abandonment and End of Tenancy

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

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

1. Abandonment of Personal Property

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

a) the tenant 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 unless the landlord reasonably believes either that the property has a total market value of less than $500, the cost of removing, storing, and selling the property would be more than the proceeds of its sale, or the storage of the property would be unsanitary or unsafe.

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 cumulative 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 should be brought as soon as possible**

X. DISPUTE RESOLUTION REGARDING TENANCY

A. General

The formal dispute resolution process may be avoided in cases where the application of the law is clear. For example, an Information Officer might call a landlord and tell them that landlords are required by law to provide rent receipts if the tenant pays rent in cash. The Information Officer will not take on the role of an Arbitrator and will only explain the Legislation.

Dispute resolution is the formal method of resolving disputes between landlords and tenants. Any party going to dispute resolution may be represented by an agent, advocate, or lawyer. The Arbitrator may require a representative to provide proof of their appointment to represent a party and may adjourn a dispute resolution hearing for this purpose. To understand the procedure, advocates should read the dispute resolution Rules of Procedure that are available on the Residential Tenancy Branch website (https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/rop.pdf). These Rules of Procedure are revised occasionally, usually without any notice or announcement, so be sure that you are relying on the most up to date version.

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

2. Arbitrators

Arbitrators are like judges and base their decisions on evidence and arguments presented by the parties at the dispute resolution hearing. Arbitrators are only bound by legal precedent established by the court, not past decisions. An Arbitrator has authority to make any findings of fact or law necessary to resolve disputes that arise under the *RTA* or a tenancy agreement. Arbitrators may assist the parties or offer the parties an opportunity to settle their dispute during a hearing. They can record agreements reached by the parties, sign off on the agreement, and record the settlement as an order. Except as otherwise provided by the *RTA*, a decision of the director is final and binding (s 77(3)).

NOTE: Arbitrators are not required to have any formal legal training (though some may). Students intending to make legal arguments should be prepared to do so using as much plain language as possible.

3. Joint Hearings

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 file separately for Dispute Resolution then apply to join their claims together. The scheduled hearing date may include a preliminary hearing to allow the parties to argue why the matters should or should not be joined. Arbitrators can also decide to hear the cases jointly without the consent of the landlord.

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.

Online applications can pay 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 application will not be considered made until the applicant has paid the filing fee or submitted the documents required for a fee waiver. . The applicant is usually informed of the date of the hearing within a few days. The RTB created a Monetary Order Worksheet which is mandatory 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 general limitation period for filing a claim at the RTB is **two years** from the end of the tenancy to which the dispute relates (*RTA*, s 60) unless otherwise provided for in the *RTA*.

a) Naming Parties on an Application

Individuals should be named by their full legal names. Businesses should be named using the full legal name of the business, which may include an indication of the type of legal structure the business operates under and may be a numbered corporation. Where a business carries on business under a name other than the legal name of the business, 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 clear days before the hearing. Note that, as the application must be served on each party 14 clear days before the hearing, and it takes time to have the application approved, it is advisable to apply to amend as soon as possible so as to meet these deadlines.

To learn more about amending an application, see: https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/apply-online/amend-or-update-an-application

2. Direct Request

A tenant may make a Direct Request for a 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). 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 RTB publishes Policy Guidelines intended to assist Arbitrators in interpreting and applying the law. These Policy Guidelines are available online at: (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.

NOTE: Prior to an arbitration hearing, an Information Officer may assist landlords and tenants by providing information about the procedure for resolving disputes but will not help complete forms.

a) Telephone Hearings

Parties should join the conference call in a quiet place where they will not be interrupted. Parties should try to call about 5 minutes before the start of the hearing. It is important that parties check they have the correct telephone code. If a hearing has been adjourned or continued from an earlier hearing, the code may be different than the previous one.

Telephone hearings are usually scheduled for one hour exactly. If the hearing is not finished at this time, the Arbitrator may extend the hearing or schedule another conference call to continue the hearing. This may be several weeks or months after the first hearing. It is important that parties be focused on the outcome they

wish to achieve and that their documents are carefully organized and page numbered so that time is not wasted searching for documents and other evidence.

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 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. Evidence must be submitted with the 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

The RTB Rules of Procedure state that, to the extent that it is possible, an applicant must submit their evidence with their application and serve a copy of that evidence when they serve the Notice of Hearing. However, if this is not possible, the RTB and the respondent must receive a copy of all the applicant's evidence **no less than 14 days prior** to the hearing; the respondent's evidence must be received by the RTB and the applicant **no less than 7 days prior** to the hearing., However, arbitrators have the authority to extend the time limit to serve the Notice Package if they find that the Package was sufficiently served for the *Act* on a later date. Evidence can be submitted online, in person or by mail or fax.

(1) Online

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

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

Parties should always confirm that the other party and the RTB have gain access to the digital evidence before the hearing. No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator.

(2) In person

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

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

(3) Mail or Fax

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

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

Evidence should be clearly marked and numbered so that all parties involved can easily locate the relevant documents when necessary. If evidence submitted is not in an acceptable format or quality to support a fair and appropriate dispute resolution process, the arbitrator may require the person who submitted the evidence to resubmit it in a different format or resubmit exact copies.
All evidence must be relevant to the claim(s) being made in the Application(s) for Dispute Resolution. The arbitrator has the discretion to decide whether evidence is or is not relevant to the issues identified on the application and may decline to consider evidence that they determine is not relevant. An Arbitrator is not bound by the traditional rules of evidence (*RTA* s 75).

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 government office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

c) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.
d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

If a witness cannot attend, the Arbitrator may accept affidavits (however, written statements may suffice) and 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 request in advance or at the hearing that the Arbitrator summon that witness (RTB Rules of Procedure s. 5.3 - 5.5).

The applicant should always submit proof of service (i.e. proof that the other side received the Notice of Hearing package) 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. If it was served in person, the person who served the documents should be at the hearing or should have provided an affidavit of service to the applicant. Proof of service of any evidence not served with the Notice of Hearing should also be submitted to the RTB.

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 RTB continues to amend its Policy Guidelines on key issues under the *RTA*. There are now over 40 detailed RTB Policy Guidelines available that ensure more consistency in dispute resolution decisions, and which should be reviewed in preparation for any hearing. They can found online at https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/policy-guidelines
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 all or part of the security deposit paid by the tenant, it may be deducted from the tenant's security deposit. If neither of these situations applies, one should give the other party a written request for payment stating the amount owing and requesting payment by the date on the order or within a reasonable time.

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

2. Enforcing a Repair Order

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

3. Enforcing an Order of Possession

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

a) Use of Bailiff Services

If the tenant does not comply with the order and does not vacate the rental unit on the date specified on the order, the Order of Possession can be filed in the Supreme Court of B.C. Registry. The landlord must obtain a Writ of Possession in Supreme Court and contact a court bailiff service. The Writ of Possession can then be executed by the court bailiff.

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

b) Role of the Police

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

4. Non-Compliance

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

Administrative penalties are rarely, if ever, imposed and according to the RTB guidelines, such penalties are to be used only in response to "serious, repeated non-compliance."

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

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

Example of matters that the unit investigates:

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

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.

b) Registered Mail

You may serve these items by sending them by registered mail (any Canada Post service with delivery confirmation to a named person) to the address for service of the other party. For landlords, this is where the landlord lives or carries on

business as a landlord. This address may be listed on the lease or other document related to the tenancy. For tenants, this is the address where the tenant resides at the time of mailing, or the forwarding address provided by the tenant.

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

c) Ordinary Mail

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

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

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

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

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

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

f) Posting

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

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

g) Fax

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

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

h) Substituted Service

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

i) Email

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

2. Requirements for Specific Documents

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

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

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

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

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

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

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

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

4. Proof of Service

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

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

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

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.

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

2. Time Limits for 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 where the decision relates to an eviction notice. TRAC's Housing Law Clinic may also assist with judicial review of RTB Decisions: https://tenants.bc.ca/get-help/legal-representation/ For more information on grounds on grounds for judicial review, see judicialreviewbc.ca.

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

5. Filing Complaints to the RTB

Complaints about information officers, dispute resolution hearings, or general services of the RTB must be put into writing and email to HSRTO@gov.bc.ca or mailed to the Executive Director of the RTB:

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

Complaints can also be made to the BC Ombudsperson. More information can be found at www.ombudsman.bc.ca.

Note that the BC Ombudsperson does not review decisions; they can only investigate complaints where a person feels that RTB staff has treated them unfairly.

XI. COMMON LAW DOCTRINES

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

A. Implied Surrender: Abandonment

At common law, a lease may be ended by "surrender" due to conduct of the parties, consistent only with a "merging" of the tenancy interest back into the landlord's (owner's) estate. Surrender occurs, for example, where the tenant abandons the rental unit, and the landlord repossesses and re-rents. Generally, no further rent or compensation for the unexpired portion of the tenancy may be claimed on surrender. However, claims for lost rentals are allowed.

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

B. Frustration

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

C. The Right to Distrain the Tenant's Personal Goods

Under the *RTA*, a landlord has no right to distrain (i.e., seize) a residential tenant's personal goods for default in rental payment, nor may the landlord seize a tenant's personal goods to satisfy another claim or demand, unless the seizure is made by a person authorized by a court order or an enactment (s 26(3) and (4)). If a landlord seizes goods contrary to s 26(3), the tenant may apply to the court for an order to return the property, and/or for a monetary claim for damages. A landlord may, where personal property has been abandoned by the tenant, remove it from the residential property, and must deal with it in accordance with the *Residential Tenancy Regulations*, which impose specific obligations on landlords in these circumstances. See Sections 24 and 25 of the RTR for specific obligations of landlords.

D. Duty to Mitigate

Under s 7(2) of the *RTA*, any time a monetary claim arises between landlord and tenant, both have a duty to mitigate damages (i.e., minimize losses). For example, if a tenant breaks a lease that was for a fixed term of one year, the landlord could sue the tenant for the balance of the rent payments. Nonetheless, the landlord has a duty under s 7(2) to try to minimize their loss by re-renting the rental unit as soon as possible, rather than just suing the tenant for the whole year's rent. A landlord who makes such a claim must prove that they took reasonable steps to re-rent the unit and was not able to do so. See RTB Policy Guideline 5: Duty to Mitigate Loss.

XII. TENANCIES IN STRATA LOTS (CONDOMINIUMS)

The *Strata Property Act* (*SPA*)and the *Strata Property Regulation* (*SPR*) govern strata properties. Persons renting a residential condominium are tenants under the *RTA.* Such tenants are also subject to Parts 7 and 8 of the *SPA*. For more information visit **Chapter 22: Strata Law**.

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

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

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

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

XIII. ASSISTED AND SUPPORTED LIVING TENANCIES

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

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

XIV. COMMERCIAL TENANCIES

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.

A. Commercial or Residential Tenancy

If you are unsure as to whether your tenancy is commercial or residential, and so whether 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 14: Type of Tenancy: Commercial or Residential.

B. 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.

XV. MANUFACTURED HOMES (FORMERLY "MOBILE HOMES")

A. General

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

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

B. Definitions

1. Common Area

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

2. Landlord

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

3. Manufactured Home

Means a structure, that is designed, constructed or manufactured to be moved from one place to another by being towed or carried, and used or intended to be used as living accommodation regardless if it is equipped with wheels.

4. Manufactured Home Site

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

5. Cannabis

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

- If a tenancy agreement included a "no smoking" clause prior to October 17, 2018, and did not explicitly allow for smoking cannabis, then the "no smoking" clause is deemed to apply to smoking cannabis. This also applies to any clauses that restrict or regulate smoking. (*MHPTA* s 18.1 (2))
    - For *MHPTA* s 18.1 (2), vaporizing a substance containing cannabis is not "smoking cannabis."

- All existing tenancy agreements entered prior to October 17, 2018, are implied to have terms prohibiting growing cannabis on the **outdoor areas or common areas of the home park or home site** unless:

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

C. Moving In and Moving Out

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

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

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

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

D. Deposits

1. Security Deposits

A landlord cannot require or accept a security deposit in respect of a manufactured home site tenancy. If a landlord accepts a security deposit from a tenant, the tenant may deduct the amount of the security deposit from rent or otherwise recover the amount (*MHPTA*, s 17). If a security deposit was collected before the *MHPTA* became effective in November 2002, it may be retained until the end of tenancy.

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

2. Pets

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

3. Fees

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

A landlord must not charge:

- a guest fee, regardless if the guest stays overnight; or
- a fee for replacement keys or other access devices if the replacement is required because the landlord changed the locks or other means of access.

b) Refundable Fees

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

Some non-refundable fees are permissible (e.g., a $25 charge for late payment of rent or NSF cheques) if the fees are identified in the tenancy agreement. A list of permissible non-refundable fees is listed in the *Manufactured Home Park Tenancy Regulations* (*MHPTR*) s 5.

E. During the Tenancy

1. Rent Increases

a) Amount

Usually, landlords can increase rent annually by a percentage equal to the Consumer Price Index (CPI) plus the proportionate increase in local government levies and regulated utilities (*MHPTA*, s 36(1)(a) and see *MHPTR* Part 5). However, the maximum allowable annual rent increase for rent increases with an effective date in 2023 is only 2% plus the proportional amount, not the "inflation rate." A landlord may apply to an Arbitrator for approval of a rent increase in an amount that is greater than the amount calculated under the regulations.

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

b) Notice

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

c) Timing

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

- if the tenant's rent increase has not previously been increased, the date on which the tenant's rent was first established; or

- if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this *MHPTA*.

F. Manufactured Home Park Rules and Committee

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

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

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

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

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

G. Tenancy Agreements

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

1. Liability for Non-compliance

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

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

2. Tenant's Right to Quiet Enjoyment

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

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

H. Ending a Tenancy

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

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

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

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

1. Tenant's Notice

a) Periodic

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

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

b) Fixed Term

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

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

c) Material Term Breach

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

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

2. Failure to Pay Rent

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

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

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

3. Landlord's Use

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

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

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

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

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

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

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

- If the landlord closes a manufactured home park to be converted for residential or non-residential use (s. 42(1)) but have not taken any steps to accomplish the stated purpose in a reasonable time after the effective date of the notice, the landlord will have to

compensate the tenant $5000 or 12-months' rent, whichever is higher. However, if an Arbitrator determines there are extenuating circumstances that prevented the Landlord from accomplishing the stated purpose for ending the tenancy, they can excuse the landlord from paying this compensation.

4. Landlord's Notice: Cause

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

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

5. Disputing Notice

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

- non-payment of rent: **five days**;
- landlord's cause: **10 days**; and
- landlord's use of property: **15 days**.
- Landlord's use of property, demolition or conversion: **30 days**.

6. Required Form

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

I. Dispute Resolution

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

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

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

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

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

XVI. 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 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).

XVII. 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.

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.

XVIII. FORMS AVAILABLE ON THE RTB WEBSITE

Check the RTB web site: https://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.

XIX. GOVERNING LEGISLATION, GUIDELINES & 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

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.