

Residential Tenancy Law

LSLAP Training

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BROUGHT TO YOU BY

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Overview

- Introduction
- When does tenancy legislation apply?
- Common tenancy issues
- The dispute resolution process
- How to handle a landlord/tenant file
- Key resources
- Questions?

Introduction

- The landlord/tenant relationship is essentially based on a **contract** (a tenancy agreement) between landlord and tenant
- But there are 2 **statutes** that overarch the parties' contractual arrangements:
 - *Residential Tenancy Act* ("RTA")
 - *Manufactured Home Park Tenancy Act* ("MHPTA")
- The regulations provide standard terms that must be included in any tenancy agreement
- Parties cannot contract out of the Acts (see s. 5 in both Acts)

What do the *RTA*/*MHPTA* do?

- The *RTA* and *MHPTA*:
 - Give tenants greater security of tenure than they would otherwise have
 - Put a limit on rent increases
 - Set out basic standards of maintenance that landlords have to meet
 - Set out what conduct justifies a landlord's eviction of a tenant
 - Create a forum - the Residential Tenancy Branch ("RTB") - for resolving disputes under both the *RTA* and the *MHPTA*

When do the *RTA/MHPTA* apply?

- The *RTA* applies to most tenancy agreements for rental units (s. 2 of *RTA*)
- Note the definitions in s. 1 of the *RTA*, especially:
 - "**rental unit**" means living accommodation rented or intended to be rented to a tenant;
 - "**tenancy**" means a tenant's right to possession of a rental unit under a tenancy agreement;
 - "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

When do the *RTA/MHPTA* apply?

- The *MHPTA* applies to most tenancy agreements regarding manufactured home sites (s. 2 of *MHPTA*). Note the definitions in s. 1 of *MHPTA*, especially:
 - "**manufactured home site**" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;
 - "**tenancy**" means a tenant's right to possession of a manufactured home site under a tenancy agreement;
 - "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities;

When do the *RTA/MHPTA* apply?

- **WARNING!!** *There are some tenancy type situations that are excluded from both Acts*
- Consider whether your clients are covered by the legislation, or whether they are excluded under s. 4 of either the *RTA* or *MHPTA*



When do the *RTA/MHPTA* apply?

- **Look carefully at s. 4** – exceptions include:
 - non profit cooperative housing
 - housing provided by an educational institution to its students/employees
 - housing where the tenant shares bathroom or kitchen facilities with the owner
 - living accommodation included with, and rented under an agreement with, business premises
 - holiday accommodation
 - emergency/transitional housing
 - housing under the *Community Care and Assisted Living Act, Continuing Care Act, Hospital Act, or Mental Health Act*
 - jails
 - tenancy agreements with a term longer than 20 years
 - **AND MANY MORE**

When do the *RTA/MHPTA* apply?

- Cases that fall under the *RTA* or *MHPTA* should proceed at the RTB; those that do not should proceed in court (as appropriate – Small Claims, BCSC, Federal Court).
- When you are unsure whether or not the case falls under the RTB's jurisdiction, go to the RTB (not court) to get a determination. It's faster.



Common tenancy issue #1

- A landlord wants to evict a difficult tenant. She needs advice: how she can legally do that?



Major grounds for eviction

- The possible grounds for eviction are found at Part 4 of the *RTA* and Part 5 of the *MHPTA*:
 - Non-payment of rent or utilities
 - Cause
 - End of employment with the landlord
 - Landlord's use of property
 - Tenant ceases to qualify for rental unit

Common tenancy issue # 2

- A tenant has been served with a notice to end tenancy that says he must move at the end of the month. Is there anything he can do?



How a tenancy ends

- Part 4 of the *RTA* and Part 5 of the *MHPTA* set out how a tenancy may end:
 - Notice to End Tenancy
 - Time for tenant to pay overdue rent, if applicable, or file an application for dispute resolution
 - Conclusive presumption if overdue rent not paid or application for dispute resolution not filed
 - Order of Possession
 - Writ of Possession

Common tenancy issue #3

- A tenant is concerned about the bad state of repair of her rental unit. What are her rights?



Maintenance and Repairs

- Sections 32-33 of the *RTA* and s. 26-27 of the *MHPTA* address landlord and tenant obligations to repair and maintain the rental unit
- The Policy Guideline: Landlord & Tenant – Responsibility for Residential Premises provides more detailed information

Common tenancy issue #4

- A tenant is frustrated by the person in the next apartment, who constantly harasses her and uses derogatory language towards her. The landlord isn't doing anything about it. What are the tenant's rights?

Quiet Enjoyment

- Section 28 of the *RTA* and s. 22 of the *MHPTA* address the tenant's right to quiet enjoyment
- See also the Right to Quiet Enjoyment policy guideline



Common tenancy issue #5

- A tenant has not received his damage deposit back, 3 weeks after moving out. What are his rights?



Security Deposits

- Part 2 Division 5 of the *RTA* deals with the return of security deposit at the end of a tenancy
- Landlord has 15 days from the later of the date the tenancy ends or the date the tenant provides her forwarding address in writing to return the security deposit or make a claim against the deposit at the RTB
- Note the importance of a condition inspection report

Common tenancy issue #6

- A landlord is concerned his suite is rented to a long-term tenant, way below market rent. How can he go about increasing the rent?



Rent Increases

- Part 3 of the *RTA* and Part 4 of the *MHPTA* address rent increases
- Part 4 of the *Residential Tenancy Regulations* and Part 5 of the *Manufactured Home Park Tenancy Regulations* also address rent increases
- There is also a Rent Increase policy guideline

The Residential Tenancy Branch Dispute Resolution Process

- Parties can apply for Dispute Resolution to enforce their rights under the *RTA* or *MHPTA*, to seek compensation or an order of possession or to dispute an eviction
- Part 5 of the *RTA* and Part 6 of the *MHPTA* address dispute resolution
- Dispute resolution hearings are generally conducted by telephone conference

The Review

- A party can request a review of an unfavorable RTB decision
- If a party is successful on review, the RTB will usually hold a new hearing
- There are three narrow grounds for review:
 - A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control
 - A party has new and relevant evidence that was not available at the time of the original hearing
 - A party has evidence that the director's decision or order was obtained by fraud

Judicial Review

- If an arbitrator's decision is very seriously problematic you can advise the client to consider seeking **judicial review** in BC Supreme Court
- A JR may be possible where the RTB's decision has very serious problems with it, such as:
 - lack of procedural fairness;
 - failure to apply the right legal test;
 - glaring errors of fact that a judge could identify simply by looking at the decision and the evidence
- Note there is a **60 day time limit** for bringing judicial reviews. You can refer people with possible tenancy JRs to Community Legal Assistance Society at (604) 685-3425.

How to handle a landlord/tenant file

○ Initial assessment of the file

- Does client fall under the legislation?
- If so which Act (the *RTA* or the *MHPTA*)?
- If so:
 - Have any notices been served (e.g. notice to end tenancy)?
 - Does your client need to dispute a notice?
 - Is there a hearing date?
- Determine the next steps and identify any deadlines

How to handle a landlord/tenant file

- **Negotiation (if possible)**
 - It is very often best to resolve landlord/tenant problems without going to a hearing, particularly if your client wants the tenancy to continue
 - Use your client's entitlement under the tenancy agreement and any relevant legislation as a baseline for any settlement proposals
 - Bargaining chips: cost of hiring bailiff, cost of responding to judicial review, payment of arrears etc.

How to handle a landlord/tenant file

- **Applying for a dispute resolution hearing**
 - If your client is the applicant, ensure that she files an application for dispute resolution in time. Note time limits in s. 46, 47, and 49 of the *RTA*
 - The fee for filing an application can be waived if your client shows the RTB evidence of low income



How to handle a landlord/tenant file

- **Preparing for a dispute resolution hearing**
 - Gather the appropriate evidence, and ensure you meet the deadlines for serving the evidence and filing it with the RTB (see Rules 3 and 4 of the Residential Tenancy Branch Rules of Procedure).
 - Documentary evidence may include photos, tenancy agreements, letters, rent receipts, etc. Make evidence as simple and relevant as possible.
 - Decide what witnesses you'll need and arrange for them to attend the hearing or be available by phone. Get signed and dated statements from any important witnesses that are unavailable. Prepare questions for your witnesses who will be attending, and prepare to cross examine the other side.
 - Prepare your client for the hearing – impress on her/him the importance of sticking to the relevant issues and being non-inflammatory.

The Hearing

- Hearings are usually done by phone rather than in person. This creates challenges.
- Hearings are run (and decided) by an Arbitrator. You can address him/her by the title, "Mr./Ms. Arbitrator."
- Hearings are not as formal as court, but are still formal.
- Be prepared for an unrepresented party on the other side and be prepared for people to get aggravated.
- While it's best not to act overly "lawyerish", some hearings may veer toward disorder (due to unruly witnesses and disorganized Arbitrators) and it is helpful if you can try and steer toward structure in the hearing.

The Hearing

- Aim to cover each of these stages in the hearing, to make sure you get your case across properly:
 - Opening statement – tell the story you think the evidence will show and then say what you are asking the dispute resolution officer to do
 - Applicant presents its case and then respondent cross-examines applicant's witnesses (if any)
 - Respondent presents its case and then applicant cross-examines respondent's witnesses (if any)
 - Closing statements – sum up the case and reiterate what you want the dispute resolution officer to do

The Hearing

- Disputes often turn on factual differences, and both sides can often be “a bit right and a bit wrong”. To make the most of your facts, make sure your client comes across as reasonable, honest and credible.

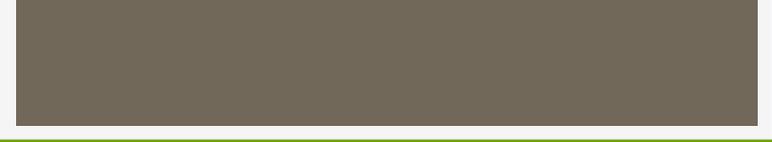


The Hearing

- Consider asking for a delayed order of possession in the alternative
 - See s. 55(3) of the *RTA* and s. 48(3) of the *MHPTA*
 - Highlight prejudice to your client if 48 hour order issued and lack of prejudice to the landlord if a longer order is issued
 - Note importance of minimizing landlord's financial loss

Key Resources

- The Residential Tenancy Branch website <http://www.rto.gov.bc.ca/> is a very helpful resource containing:
 - The Acts and Regulations
 - Forms
 - RTB Rules of Procedure
 - Policy Guidelines
 - Fact sheets
- See also chapter 13 of the LSLAP manual
- TRAC Tenant Resource & Advisory Centre – www.tenants.bc.ca – is a helpful website with resources for tenants



Questions?