

## **Hitchhiker's guide to Residential Landlord & Tenant Law, part 2**

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The Alberta Residential Tenancy Act imposes the following obligations and restrictions on the landlord after a tenancy has been created.

### **A. Inspections and Inspection Reports**

The policy of requiring inspection reports at both the beginning and end of the tenancy protects tenants. The landlord must complete an inspection and issue a report to the tenant, of actual condition (at move-in and move-out). The landlord controls the inspection process, but the tenant is expected to participate in it.

If the landlord makes two requests for inspections to occur between 8:00 am and 8:00 pm on different working days, and both requests are refused, then he/she may unilaterally complete the inspection. The landlord must give the tenant an Inspection Report "that describes the condition of the premises" after each inspection.

### **B. Trust Accounting for Security Deposits**

Landlords must put all security deposits of money into an interest-bearing trust account at a financial institution permitted by the Act.

### **C. Increase of Rent by the Landlord**

Two main rules pertain to rent increase: First, the landlord must give the tenant three clear tenancy months notice before the increase can become effective. Second, there can be no more than one rent increase every six months. Together, these two rules constitute the rent controls in Alberta.

### **D. Assignments and Sub-leases**

An assignment (transfer of the full remaining part of the lease to another person) or sub-lease (transferring part of the lease) must receive the written consent of the landlord which, in turn, must not be refused "unless there are reasonable grounds for the refusal."

### **E. Locks and Security Devices**

The landlord can add to or change locks on doors giving access to the residential premises so long as she or he gives a key to the tenant as soon as the change is made. Otherwise, neither party can add to or change the locks without the consent of the other party.

### **F. Entry of Premises**

Generally, the landlord cannot enter the premises without the consent of the tenant or an adult lawfully on the premises. There are two exceptions: the landlord can enter without notice or consent on reasonable grounds that an emergency exists or that the tenant abandoned the premises. The landlord can also enter with 24 hours written notice between 8:00 am and 8:00 pm except for Sundays or another day of religious worship of the tenant in order to (1) inspect the state of property repair, (2) to make repairs, (3) to show the premises to prospective buyers or mortgagees, or (4) to show the premises to prospective tenants if either the landlord or tenant has given notice of termination.

#### G. Dealing with Trespassers in Possession

The Act deals with two different kinds of trespassers to the property. If the tenant has abandoned the premises and someone else is occupying them, the landlord must give the trespasser at least 48 hours written notice to vacate. If this fails, the landlord may apply to the court to recover possession. If the tenant is still in possession, with a trespasser, the notice period is 30 days.

#### Termination of the Tenancy

In the case of a fixed-term residential tenancy, neither party need give the other notice of the end of the tenancy. This is, however, a courtesy and a good practical suggestion that will avoid any misunderstandings about the term of the lease.

In all cases other than a fixed-term tenancy, the party wishing to terminate must furnish formal notice to the other party. The length of the notice can vary depending upon three factors: (1) the party giving the notice; (2) the kind of periodic tenancy in force; and (3) the reasons for the proposed termination.

#### A. The Tenant's Notice of Termination

**Not For Cause:** Cause in the context of landlord and tenant law means behaviour relating to the tenancy or the leased premises by or through either the landlord or tenant. If the termination is not for cause, in a monthly tenancy, notice must be given by the first day of the month to take effect on the last day of that month.

**For Cause:** If the landlord significantly breaches the tenancy agreement or the Act, the tenant may apply to the court for a remedy, which may include termination of the tenancy on at least three clear days notice.

#### B. The Landlord's Notice of Termination

**Not for Cause:** The landlord must have a reason that is recognized in law for termination of the tenancy where the tenant has not breached the agreement. These reasons include situations where the landlord or his/her family wants to move in; the property is sold and the buyer (or family) wants to move in; major renovations are to be done (more than painting, changing floor coverings or routine maintenance); and conversion to commercial use. This is what is referred to

as security of tenure in favour of the tenant. There is no reciprocal security in favour of the landlord.

If one of these grounds exists, the landlord must give at least three tenancy months of notice.

For Cause: For the tenant's "substantial breaches," the landlord can apply to the court for termination. Alternatively, the landlord may give the tenant 14 clear days notice of termination. Substantial breach is defined as breaking any of the tenant's implied covenants listed above. If the tenant pays rental arrears, or if she or he objects to the 14 days of written notice, the notice is not effective to terminate the tenancy. Then the landlord must go to court.

For extremely bad tenants, where there is "significant damage" to the property or where the tenant has physically assaulted the landlord or other tenants, the landlord may apply to the court to terminate the tenancy upon 48 hours' notice to the tenant.

### C. Constructive Termination by the Landlord

Rent increases to evict are not colourable; that is, they cannot be used as a subtle method of termination. Only those reasons listed above can justify a non-cause termination by the landlord.

### D. Abandoned Goods

If goods left behind by a tenant would not fetch more than \$1,000 after the costs of storage and sale, the landlord can dispose of them in any way. If they are worth more, the landlord must store them for 30 days for the tenant; after that, they can be sold. The landlord can first deduct the costs of storing and selling them and any other money the tenant owes. Any balance is sent to the government.

### E. Security Deposits and Trust Accounts

The landlord must return the security deposit with annual compound interest without any deduction for normal wear and tear in a full accounting within 10 days of the tenant leaving. The rate is 6% for the time prior to February 1, 1993 and 3% since that date.

### Conclusion

The new Alberta Residential Tenancy Act is a consumer protection statute. It sets certain minimum standards for the approximately 43% of Alberta households which live in rental accommodation. It is, however, like most legislation, technical, and it requires unsatisfied landlords and tenants to pursue legal recourse in provincial court. In virtually all cases, both landlords and tenants would be in the best legal position by prudent selection and by agreeing to and writing down all the essential terms in a lease at the beginning of the tenancy. The parties should try to resolve between themselves any difficulties during or at the end of the tenancy.

The Landlord and Tenant Advisory Boards in the community may be able to give information and assist to settle disputes. In most cases, suing in court for legal results may be less satisfying than carefully managing the relationship and any disputes as they arise.

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