

Hitchhiker's guide to landlord and tenant law, part 1

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The residential tenancy contract is more than an ordinary contract because the landlord gives the tenant an exclusive estate in the land; that is, the tenant is given exclusive rights, advantages, duties, and responsibilities relating to the residence. The residential tenancy, then, is governed by the Residential Tenancies Act.

The Act applies only to residential premises. It specifically does not apply to mobile home sites, premises with mixed commercial and residential use, rooms in a landlord's living quarters, hotels, bed and breakfast inns, resorts (except for stays of more than six months), student residence units (unless self-contained), nursing and senior citizen homes, correctional institutions, and hospitals.

Rental Agreements

Part of the Act deals with the actual creation of a residential tenancy. It covers the kind of agreements that landlords and tenants can make with each other when the tenant first rents a residence, as well as implied agreements. A. Non-Discrimination The Individual Rights Protection Act, although a separate Act, applies to residential tenancies. Section 4 states "No person ... shall

(a) deny to any person or class of persons the right to occupy as a tenant any ... self-contained dwelling unit that is ... represented as being available for occupancy by a tenant, or

(b) discriminate against any person or class of persons with respect to any term or condition of the tenancy of any... self-contained dwelling units, because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry or place of origin " B. Writing and Standard Terms The Residential Tenancy Act permits a residency agreement to be written, oral, or implied by the conduct of the two parties. The agreement, therefore, does not have to be in writing. However, leases for a term longer than three years should be in writing. Common written terms of a lease include

- * identity as landlord and tenant

- * description of the premises leased;

- * the term if it is fixed, for example, one year. Otherwise it is a periodic tenancy, for example, monthly.

- * the commencement date of the tenancy

- * amount of rent payable

* other special terms: it is important to note that the tenant cannot contract out of the "rights, benefits or protections" of the Act;

* words that indicate the present transfer of the leasehold estate such as "the landlord hereby leases... "

* and this statement: "The tenancy created by this agreement is governed by the Residential Tenancies Act and if there is a conflict between this agreement and the Act, the Act prevails."

C. Withholding Rent for Non-Delivery of Copy of the Lease If there is a written agreement, the landlord must give a copy of it to the tenant within 21 days of receiving it, signed, back from the tenant. Until the tenant gets the copy, s/he can withhold or defer the rent payment. It is not a rent-free period.

D. Agreements Implied by the Act The Act implies certain agreements between the landlord and tenant in every residential tenancy, whether mentioned or not. Landlord's Implied Covenants:

* the premises will be available for occupation at the beginning of the tenancy;

* neither the landlord nor any person under him will disturb the tenant's possession or peaceful enjoyment of the premises;

* the premises will be habitable at the beginning of the tenancy.

Tenant's Implied Covenants:

* the rent will be paid when due;

* the tenant will not interfere with the rights of the landlord or other tenants;

* the tenant will not perform illegal activities on the property;

* the tenant will not endanger people or property in the premises;

* the tenant will not do or permit significant damage to the premises;

* the tenant will maintain the premises in a reasonably clean condition;

* that the tenant will vacate the premises at the expiry or termination of the tenancy.

E. Maximum Security Deposit The amount of a security deposit that a landlord can take is limited by the Act. The landlord cannot take a total security deposit "that is greater than one month's rent," and it cannot increase under the tenancy agreement. L N Peter *Bowal* is Associate Professor (Business Law) at the Faculty of Management, University of Calgary.