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A GUIDE TO THE LAW IN ALBERTA REGARDING

LANDLORD AND TENANT

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GENERAL

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“Landlord and tenant law” is the law that deals with the renting of houses and apartments. The legislation that currently governs landlord and tenant law in Alberta is the Residential Tenancies Act that came into force in November 2004 and was updated as recently as April 2009.

QUICK DEFINITIONS

Agent: A person who acts on behalf of another person in their absence and has permission to do so (such as for a landlord during an In-inspection report).

Assignment: This occurs when the tenant’s entire interest in the term is conveyed (and they receive the whole of the remaining term).

Landlord: An owner of a premises who is renting it out.

Residential Premises: In the Residential Tenancies Act the term “Residential Premises” includes most places that people live in and call home such as apartments, houses, or self-contained rooms that are rented. The following are not strictly included in “Residential Premises”:

- a. commercial or business properties;
- b. places where people live and also conduct business;
- c. mobile homes;
- d. rooms rented to a tenant which are in a house where the landlord lives;
- e. hotels or lodges;
- f. university, college or technical school residences which are **not** separate apartments, where you are **only** renting a room on your rental agreement;
- g. nursing homes;
- h. senior citizen’s lodges;
- i. social care facilities;
- j. prisons; and

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- k. hospitals.

Owners of condominiums who rent out their units are also governed by the Condominium Property Act. Where there is a conflict between this Act and the Residential Tenancies Act, the Condominium Property Act applies. (See the section on *Condominiums* below)

Sub-lease: This occurs when the tenant does not dispose of or convey its entire interest in the term, and the tenant retains a reversionary interest in the property. For example, if the tenant has eight months left on a tenancy agreement of one year, and they sublet out only four months.

Tenant: The person who is renting a premises.

THE LAW

A person’s rights as a landlord or a tenant come from three sources:

1. Common Law

The Common Law is what is known as judge-made law. Judges look seriously at previous judicial decisions to inform their own decisions on similar subject matter.

2. Statutes

The most important statute for landlord and tenant law is the Residential Tenancies Act. It sets out the basic rules for landlords and tenants and also lists their rights and remedies. There are also regulations that supplement the Act and set out more specific rules that describe the details of the Act.

3. Tenancy Agreements

A tenancy agreement is an agreement between the landlord and tenant for the rental of the premises. It is a legal contract.

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Tenancy agreements may be verbal or written or both. A written agreement is more desirable for both landlords and tenants as it provides more concrete evidence of the agreement between the landlord and tenant, but a verbal agreement is still binding in law.

Some terms are "implied" into the tenancy agreement even if they are not specifically agreed upon. This means that the terms are part of the agreement even if the landlord and tenant did not discuss them and they are not part of the written tenancy agreement. Implied terms include all the rights, benefits, and protections provided to a tenant by the Residential Tenancies Act. The Residential Tenancies Act says that a tenant cannot agree to waive or release any rights, benefits, or protections that the Act gives to the tenant. This means that if a tenancy agreement includes something that the Act does not allow, the tenant will not be bound by that part of the tenancy agreement. For example, a landlord cannot force a tenant to steam clean the carpets if there is no damage to the carpets beyond "reasonable wear and tear" as stated in the Residential Tenancies Act s.46(5). However, the tenancy agreement could stipulate that the landlord can exact \$150.00 extra in the last month of rent. This rent can be used as the landlord sees fit and could, for example, be used to clean the carpets.

NOTE: People are often confused about the meaning of the word "lease". They think that "lease" refers only to agreements that are for a fixed term, for example a "one year lease", or that "lease" only applies to agreements that are in writing. This is not so. A lease can be month to month or even week to week and need not be in writing. In this pamphlet, to avoid confusion, the narrow term "lease" will not be used. The broader term, "tenancy agreement", which includes all agreements made between landlords and tenants concerning the rental of premises will be used.

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THE LANDLORD

A "landlord" is defined in the Residential Tenancies Act as the owner of the rented premises, the property manager of the rented premises, or any other person who has the job of deciding whether or not people will be allowed to become tenants. This means that many different people can be the landlords of the same premises and that a landlord can be an individual or a company. A landlord must supply whatever services the landlord and tenant agreed upon in the tenancy agreement.

A landlord is not allowed to discriminate against tenants on the grounds of race, religious beliefs, colour, sex, marital status, ancestry, place of origin, physical characteristics, sexual orientation, or source of income as long as it is a lawful source. (In general, age is not a protected ground in the area of tenancy.) If a person feels that he or she has been discriminated against for any of the above reasons, they may contact the nearest Alberta Human Rights Commission Office (please see the Student Legal Services pamphlet on *Human Rights in Canada* for more information).

THE TENANT

The Residential Tenancies Act defines a "tenant" as a person who is permitted to live in or occupy the premises. This means that the "tenant" is the person who rents the premises and anyone who lives with the person who rents the premises with authorization. The definition of "tenant" also includes anyone who is renting from a previous tenant under a "sublease" or by "assignment". Further, the heirs of those persons defined as a tenant may also have tenant status.

When a tenant rents a place to live from a landlord, the tenant has exclusive possession of the premises. Exclusive possession means that the tenant has the same rights to privacy that a

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person who owns his or her own home would have. The difference between being a tenant and someone who owns their own home is that a tenant must comply with the Residential Tenancy Act and with the tenancy agreement.

THE TENANCY AGREEMENT

1. General Information

The landlord/tenant relationship begins when the landlord agrees to rent the premises to the tenant. The landlord may ask the tenant to fill out an application and supply references before agreeing to rent the premises. A standard tenancy agreement form may be obtained from a Landlord and Tenant Advisory Board.

Generally, the terms of the agreement may not be changed after it has been made unless both the tenant and the landlord agree to make changes. The landlord can increase the rent without consent but with sufficient notice depending on the type of tenancy agreement made.

Tenants should read the tenancy agreement carefully. Because the tenancy agreement is a contract, the tenant will be bound by its terms, regardless of whether or not he or she has read it, unless the terms are contrary to the Residential Tenancy Act. Even if the agreement is verbal, the Residential Tenancy Act will still bind the landlord and the tenant.

2. Requirements

A valid tenancy agreement must include the following:

- a. the names of the parties. A landlord may also require the names of others who are living as occupants, such as spouses and children;
- b. a description (address) of the premises to be rented;
- c. the date the tenancy agreement is to start, the amount of rent to be paid, and all other terms to which the parties

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have agreed, including any promises made by the landlord to the tenant.

If the agreement does not contain some or all of these things, it may be an invalid contract. If a term of the tenancy agreement contradicts the Residential Tenancies Act, the Act overrides that term. The rest of the agreement, however, is still valid and binding. If a term of the agreement is vague or confusing, a judge, mediator, or tenancy dispute office can decide how it should be interpreted, taking into account all the facts and surrounding circumstances.

3. Types of Tenancy Agreements

There are two types of tenancy agreements:

- a. Periodic Tenancy
A periodic tenancy is one that does not end on a previously agreed fixed date. This means that there is no end-date stated in the tenancy agreement. This type of tenancy is renewed or continued without notice. The tenancy continues until either the landlord or tenant gives proper notice to end it. (See the section on *Termination of Tenancies* below).
- b. Fixed Term Tenancy
In a fixed tenancy, the tenant agrees to rent the premises for a certain length of time for a certain amount of rent. At the end of the agreed length of time, the tenancy ends. Neither the tenant nor the landlord is required to give notice to the other at the end of the term. However, many tenancy agreements include a clause stating notice is required. If such a clause is included, the fixed term is likely to be followed by a periodic tenancy unless the appropriate notice is given. At the end of a fixed term tenancy, if the tenant does not move out of the premises, the fixed term tenancy may become a periodic tenancy. A periodic tenancy will begin if the tenant pays the landlord

for rental of the premises and the landlord accepts the tenant's payment. If the prior (fixed term) tenancy was for a term of a month or more, a monthly tenancy will be implied. If the prior (fixed term) tenancy was for a term of less than one month, a weekly tenancy will be implied. Once a periodic tenancy has begun, it will continue until either the landlord or the tenant gives proper notice to terminate the periodic tenancy.

4. Responsibility for Rent

Whoever signs the tenancy agreement is responsible for paying the rent. If more than one person signs the agreement, the landlord can require any one of the tenants to pay the whole amount of rent that is due. Although the law in this area is unclear, it appears that the landlord may also be able to hold a person who is permitted to occupy the premises, but who has not signed the tenancy agreement, responsible for the rent of the unit (see *CriticalControl Solutions Corp. v. 954470 Alberta Ltd* [2005] 55 Alta. L.R. (4th) 54 (QB) at para 26 and 27).

5. Destruction of Premises

If the residential premises are destroyed, or are so severely damaged that they cannot be fixed or the tenant cannot live there, then all further rights and obligations of the landlord and tenant under the tenancy agreement are cancelled. The event that caused the damage must not have been anticipated, or intentionally caused, by either the landlord or the tenant.

6. Services to be Provided

The tenancy agreement should spell out the services the landlord is going to provide. This includes the provision of such things as storage rooms, laundry facilities, and parking spaces. These services may be included in the rent or there may be a separate charge for them provided in the tenancy agreement.

WHEN THE TENANT MOVES IN

1. Availability of Premises

The landlord must make the premises available to the tenant so that the tenant can move in on the agreed date. If the premises are not available, the tenant may either cancel the tenancy agreement and live somewhere else, or apply to the Court of Queen's Bench for a court order forcing the landlord to make the premises available. However, it may not be possible for the court to make such an order. For example, if the premises has been destroyed, a tenant's only option is to terminate the tenancy.

The tenant also has the right to sue the landlord for any reasonable losses that the tenant suffered because he or she could not move in on time. Reasonable losses may include the cost of a motel with cooking facilities for a few days, until the tenant can find another place to live. (See the section on *Court Actions by Tenants* below.)

2. Habitability of Premises

All premises must be habitable when the tenant moves in. "Habitable" means that the premises must not present any risk to the life or the health of the tenant. Also, the premises must be in a reasonable state of repair and cleanliness. It is not necessary that the condition of the premises meet every expectation of the tenant. Common sense should be applied. The Residential Tenancies Act stipulates that the premises must meet the minimum standards for rental housing as set out in the Housing Regulation and Minimum Housing and Health Standards under Alberta's Public Health Act. These standards include:

- a. roofs, walls and windows must be waterproof, wind proof and weather proof;
- b. both outdoor and indoor stairways, porches and landings must be safely built;
- c. walls should be clean with no major cracks or damage;

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- d. walls and ceilings should be painted every five years or when the Capital Health Authority thinks it is necessary;
- e. floors should not have splinters, major cracks or depressions, and should be easy to keep clean;
- f. there should be a sink and toilet available for residents to use;
- g. if the house is hooked up to public waterworks, there should be hot and cold water available;
- h. the plumbing should have no leaks or defects;
- i. there should be proper ventilation in the bathroom;
- j. the heating should be sufficient to allow all rooms to be at a minimum of 22 C°;
- k. gas stoves must not be in a room which is used for sleeping and the gas system must not be leaking;
- l. every room, except the bathroom, must have a window and the ceiling must be at least 7 feet or 2.3 metres high, over at least half the room.

These standards do not apply to hotels and motels or to a building occupied solely by its owner and the owner's immediate family.

If a housing unit does not meet the public health standards, the landlord may have frustrated or committed a substantial breach of the tenancy agreement, depending on degree of fault. For example, mould on the premises constitutes a substantial breach while a fire may only frustrate the agreement. (See the section on *Remedies* below)

The tenant may make a complaint to a health authority (Alberta Health Services). The health authority will investigate the situation and will then either request that the landlord make repairs or will take the landlord to court. If the court makes an order and the landlord does not comply with that order, then the landlord will be liable for a fine for each day until the landlord complies.

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If the premises are not habitable when the tenancy is to begin, and the tenant has found alternative accommodation, the tenant can apply to terminate the tenancy by reason of breach. The court must find that the breach is of such significance that the tenancy *must* be terminated. Various factors will be considered in the determination, such as the parties' efforts to mitigate, the degree of habitability, and any specifics of the tenancy agreement. The court may also consider whether the tenant had actually moved in and resided in the premises at all. Taking possession may make it more difficult to recover any amount paid toward the rental of the premises.

If the health authority, such as the Alberta Health Services in the city of Edmonton, investigates and decides that the tenant caused the poor condition of the premises himself, then they may not order the landlord to repair the premises.

3. Copy of Agreement

Where there is a written tenancy agreement the landlord must give the tenant a complete and signed copy of the agreement within 21 days of the tenant signing it. If the landlord does not give the tenant a copy of the agreement within 21 days from the time the agreement is signed, then the tenant may withhold payment of the rent until he or she receives a copy. However, it is important to remember that the tenant still owes the landlord the rent and must pay the landlord the full amount when he or she does receive a copy. This is the only situation where a tenant may lawfully withhold payment of rent. Before withholding rent the tenant should contact one of the legal resources at the end of this brochure for further information.

4. Promises in Writing

A tenant should get in writing the promises that the landlord made to the tenant before he or she decided to rent the premises. If the landlord makes a promise such as "We'll repaint the apartment before you move in" or "We'll replace the rug once you're in" or "If

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you do the repairs, we'll reduce your rent", it is best to get these promises in writing. Having the promise in writing will help to avoid misunderstandings with a landlord and the tenant will have proof of the bargain that was made. If either the landlord or the tenant fails to follow through with promises that they have made, then the other party has the right to apply to the Court or to the Residential Tenancy Dispute Resolution Service (RTDRS) for a remedy (see the section on the *Residential Tenancy Dispute Resolution Service* below).

INSPECTION REPORTS

An "in-inspection" or "inspection report" is a written description of the condition of the premises at the time that they were rented. For example, if the carpets are dirty or the walls have holes in them, this information must be put on the inspection report. Inspection reports are very important when there is a security deposit dispute so it can be shown that the damage was already there. It is a very good idea to take pictures to show the condition of the premises upon possession.

Under the Residential Tenancies Act, the landlord and tenant must do an inspection of the premises and complete an inspection report within one week of the tenant moving in. The inspection report is prepared by the landlord but ideally should be signed by both the landlord and the tenant.

There must also be an "out-inspection", which is an inspection report of the state of the premises within one week of moving out. The tenant should be present for the out inspection, but it may be completed without the tenant with certain conditions (see below). The tenant may be responsible for any damages that did not appear on the "in-inspection" and are beyond normal wear and tear. The tenant must be given a copy of the "in" and "out" inspection reports. The Residential Tenancies Act also requires

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the landlord to keep a copy of the report for 3 years after the termination of the tenancy.

1. Requirements

Every inspection report must contain the following statement: "Inspections should be conducted when the premises are vacant unless the landlord and tenant or their agents otherwise agree." Unless the reports are correctly completed, neither the landlord nor the tenant will be able to use inspection reports in court to prove that the premises were damaged. However, the landlord can prove the damage by other means, such as witness statements.

2. Inspection Reports with the Tenant

When the landlord and the tenant conduct an inspection, the report must contain the following statement and be signed by the landlord: "The inspection of the premises was conducted on (date) by (landlord's name or landlord's agent) and by (tenant's name)."

The report should also contain **one** of the following statements:

- a. If the tenant and landlord both agree with the statements which are made on the inspection report then the report should say: "I, (name of tenant) agree that this report fairly represents the condition of the premises"; or
- b. If the tenant does not agree with statements which are made on the inspection report then the report should say: "I, (name of tenant), disagree that this report fairly represents the condition of the premises for the following reasons... (reasons for disagreement should be clearly written on the report)."

If the tenant refuses to sign one of the above statements, then the report must contain the following statement and be signed by the landlord: "The tenant or tenant's agent present at the inspection refused to sign the tenant's statement." The tenant's agent is someone who the tenant has asked to take his place for the

inspection of the premises and the filling out of the inspection report.

3. Inspection Reports without the Tenant

The landlord may complete the inspection without the tenant if the tenant has refused to do an inspection and the landlord has suggested 2 different days, that are not holidays, between the hours of 8:00 a.m. and 8:00 p.m., on which an inspection could be done. When an inspection is conducted without the tenant, the report must be signed by the landlord and must contain the following statement: "The inspection of the premises was conducted on (date) by (landlord or landlord's agent) without the tenant or the tenant's agent being present."

4. If the Landlord does not do an Inspection

If the landlord keeps the security deposit in full or in part and the tenant does not agree with this, the tenant can claim for the money in court or through the RTDRS. The landlord may claim a portion of the deposit, regardless of whether an inspection report was completed. However, it is more difficult for a landlord to keep or deduct from a security deposit without an inspection report, as he or she is in violation of the Residential Tenancies Act. But if the tenant has damaged the premises, and the landlord can prove this through something other than an inspection report, then the court may find in favour of the landlord.

SECURITY DEPOSITS

1. Security Deposits and Damage Deposits

Most tenancy agreements require the tenant to pay the landlord a "security deposit" or a "damage deposit". The landlord can use the security or damage deposit to pay for damage, for rent owing, for cleaning costs, for changing the locks when keys are not returned, or to cover any other costs that the tenant is obligated to pay. One-time non-refundable fees like pet fees are not

considered security deposits and are not subject to the same requirements.

2. Maximum Amount

A landlord cannot ask a tenant to pay more than one month's rent as a security deposit, however the amount can also be less. Once the security deposit has been paid and the tenant has moved in, the landlord cannot ask the tenant to give more money for the security deposit. This is the case even where the landlord increases the rent.

3. Trust Account

The landlord must deposit the security deposit into a trust account within 2 banking days of receiving it. This account is only for the security deposit money. The landlord can take money from the account to pay for damage for which the tenant is responsible.

Unless otherwise agreed upon between the landlord and the tenant, the landlord must pay the tenant interest on the security deposit each year. The percentage of interest that the landlord must pay the tenant is set out in the Security Deposit Interest Rate Regulations that accompany the Residential Tenancies Act. The interest rate that must be paid changes from time to time and the landlord is required to find out the current rate. The landlord and tenant can agree that the landlord will pay the tenant a higher rate of interest than the Act requires but they cannot agree that the tenant will be paid a lower amount. If you would like to know what the interest rate for security deposits currently is, visit: <http://www.servicealberta.gov.ab.ca/1033.cfm>.

4. Damage Beyond Normal Wear and Tear

The landlord can keep some or all of the security deposit money if the tenant does damage to the premises beyond normal wear and tear. Normal wear and tear is defined in the Residential Tenancies Act as the deterioration that occurs over time with the use of the premises even though the premises receive reasonable

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care and maintenance. For example, scratches on the kitchen work surfaces would probably be considered normal wear and tear, whereas a large hole in the wall would not.

Tenants should make sure that the premises are clean when they leave. If the premises are not "reasonably clean" then the tenant might be responsible for the costs of cleaning.

5. Time Limits

If there is no damage, no rent owing, the premises are left reasonably clean, and all of the keys are returned, then the landlord must return the full security deposit, including interest, to the tenant within 10 days from the day the tenant moves out of the premises. If the tenant has damaged the premises and the landlord has made a deduction from the security deposit, then the remaining money of the deposit and a statement of account showing the amount of the deposit money used by the landlord for repairs is to be given to the tenant within the ten day period. The landlord cannot make a deduction for normal wear and tear.

Sometimes it may be impossible for the landlord to determine the exact amount of the damages within the ten day period. In such cases, the landlord is required to give the tenant an estimated statement of account and return the remaining money, if any, to the tenant within the ten day period. A final statement and the remaining money, if any, must be given to the tenant within thirty days of the date the tenant moved out of the premises.

6. Rent Owing

A security deposit can be used by the landlord to pay for damage, for rent owing, for cleaning costs, for changing the locks when keys are not returned, or for anything else that the tenant is obliged or liable to pay. The exception to this rule would be where a tenancy agreement specifically defines the deposit as only a "damage" deposit or only a "key" deposit, etc.

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A tenant cannot refuse to pay the landlord the last month's rent simply because the landlord has the security deposit. However, the security deposit can be used to pay the last month's rent if the tenant has the landlord's consent. It is not a good idea for a landlord to permit the tenant to use the security deposit to pay the last month's rent because the landlord will not have a fund from which to take out the cost of repairs. The landlord would then have to sue the tenant for the cost of repairs.

LANDLORD'S OBLIGATIONS

1. Peaceful Enjoyment

The landlord cannot significantly disturb the tenant's possession of the premises, nor affect the peaceful enjoyment of the rented premises. This does not mean that the landlord guarantees that the premises will be quiet or peaceful. Instead, this means that the landlord will not interfere with the tenant's ability to physically live in and use the premises. Sometimes renovations, repairs, uninhabitable premises, or other factors that affect the tenant's ability to use his or her premises may mean that the tenant's peaceful enjoyment is affected. The interference must be significant for the tenant's rights to be affected. If the landlord does significantly interfere with the tenant's use and enjoyment, then the tenant may pursue the general remedies included in the Residential Tenancies Act.

2. Entry of Premises

The landlord may enter the premises at any time if he or she has the tenant's permission or if an adult who is on the premises has given the landlord permission to enter. The landlord may enter without permission if he or she reasonably believes that there is an emergency, that the tenant has abandoned the premises, or the landlord needs to control pests as required by the Minimum Housing and Health Standards.

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If the landlord gives proper notice, he or she is entitled to enter the premises without the tenant's consent to inspect the state of repairs, to make repairs, or to show the premises to potential purchasers or tenants. Proper notice means that the landlord must give written notice to the tenant at least 24 hours before the time of entry. The notice must be signed by the landlord, state the reason for entry, and state the date and time that the landlord will be there. The time must be between 8:00 a.m. and 8:00 p.m. Monday through Saturday. The landlord cannot enter the premises on any holidays, Sundays, or the tenant's day of religious worship if that day is not a Sunday and the tenant has provided the landlord with a written notice of that day (in which case, the landlord can enter on a Sunday). The date and time of the entry must be of "reasonable duration" for a definite period of time.

3. Changing the Locks

A landlord may add to or change the locks giving access to the premises as long as a key is given to the tenant as soon as the change is made. The landlord should have the tenant's consent to change or add the locks to the premises themselves. If the landlord fails to leave a key for the new lock, he or she may be liable to a fine of up to \$5,000.00. However, the maximum fine is unlikely.

4. Duty to Repair

Under certain circumstances both the landlord and the tenant must make repairs to the premises. If the landlord promises in the tenancy agreement to make repairs and doesn't make them, then the tenant will be able to sue for any reasonable losses that the tenant suffers. Also, the tenant could pay for the repairs and apply to the court to get back the money that he or she spent. The tenant should never keep all or part of the rent money to pay for repairs. If the tenant keeps part of the rent money the landlord has the right to terminate the tenancy.

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The Landlord and Tenant Advisory Board takes the position that the landlord is responsible for major repairs such as structural repairs, plumbing, heating, and so on.

If the landlord promises to lower the tenant's rent because the tenant has agreed to repair the premises, or if the landlord has promised the tenant that he will make repairs, these promises should be in writing. A tenant who makes repairs to the premises should keep records of the amount of time spent making the repairs and keep receipts for all the materials purchased.

5. Common Areas

The "common areas" of a building are those areas controlled by the landlord and used by all tenants to access the residential premises. An example of a common area is a hallway that runs between apartment units. Another type of common area is an area that all tenants use and enjoy such as a laundry area or a work-out room. The landlord should keep the common areas of the building reasonably clean and in reasonable repair. The landlord must ensure that the common areas of the building comply with minimum health standards.

6. Increasing the Rent

For fixed term leases, such as a one-year lease, the rent cannot be increased until the lease expires unless otherwise indicated in the lease. Tenants with fixed term leases should speak with the landlord a month before it terminates to discuss what will happen after the lease ends.

For periodic leases, for example month-to-month, rent cannot be increased more than once a year. This is a new amendment which is retroactive to April 24, 2007.

For month-to-month tenancies, the landlord must give the tenant at least 3 months notice of the rent increase in writing. For weekly tenancies the landlord must give at least 12 weeks notice in

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writing, with at least 26 weeks between increases. Mobile home sites require at least 6 months notice. For other periodic tenancies, the landlord must give the tenant correct notice as per the Residential Tenancies Act.

A tenant may respond within 60 days of receiving notice of the rent increase, to indicate whether he or she wants to continue the tenancy at the new rent price, or whether he or she wants to move out.

There is no rent control in Alberta. There is no limit to the amount that the landlord can increase the rent. However, if the tenant's rent is the only rent being increased in the building, and is being increased dramatically, the tenant could have an argument that the landlord is constructively evicting him or her (they are trying to evict the tenant in a roundabout way).

7. Landlord's Address: Notice to Tenant

The tenant must be given written notice of the landlord's name and address. The landlord must give each tenant written notice of the name and address of the landlord within seven (7) days of the day the tenant moves into the premises. The landlord can post a written notice of the landlord's name and address in the building's common area. The landlord must keep the information of the landlord's name and address current, and if the information changes, then the landlord must either change the posted notice, or give each tenant the new information. If the landlord posts the notice in a common area, he or she must take reasonable steps to ensure it remains posted (i.e. that it is not torn down).

8. New Landlords

A new landlord who buys property already rented to a tenant has all the rights and obligations of the old landlord. The new landlord must accept the original tenancy agreements and can only change the tenancy agreements when the original agreements expire or by agreement with the tenants. Furthermore, the

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Residential Tenancies Act requires a new landlord to serve the tenant with a notice of landlord and a record of the security deposit amount including applicable interest accrued. The new landlord is responsible for refunding security deposits.

TENANT'S OBLIGATIONS

1. Abiding by the Agreement

If a tenant does not live up to the obligations that he or she has agreed to under the tenancy agreement, then the landlord will be able to take legal action. The type of legal action available to the landlord will depend upon the way in which the tenant failed to meet his or her obligations and whether or not the landlord suffered damage as a result of the tenant's failure to comply with the tenancy agreement.

2. Changing the Locks

A tenant cannot change the locks without the consent of the landlord. Once consent is obtained, a tenant is required to leave a key with the landlord as soon as any locks are changed. If the tenant does not give the landlord a duplicate key the landlord has the right to end the tenancy because this is considered to be a serious breach of the tenancy agreement.

A tenant is allowed to install a lock that can only be locked from the inside of the premises so long as that lock can be installed and removed without damaging the premises, or so long as the tenant leaves that lock on the premises when she or he leaves.

3. Paying the Rent on Time

The only time that a tenant can legally live in a place without paying rent to the landlord is if he or she has not received a copy of the lease within the time required. However, as soon as the landlord gives the tenant a copy of the lease, the tenant must pay all of the rent that the tenant did not pay to the landlord during the time that the tenant lived in the premises. In any other situation, if

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a tenant fails to pay rent on time, the landlord can give notice to end the tenancy. However, this notice must state that if the rent due is paid by the termination date specified the tenancy will not be terminated.

4. Penalties for Late Payment

Many Tenancy Agreements include a Penalty Clause for late payment. These penalties are not covered in the RTA, but are found at common law. The rule, generally, is that a Penalty Clause is legitimate if it is a genuine pre-estimate of loss that a landlord will suffer as a result of late or non-payment of rent. This is determined by looking at the agreement as a whole. A penalty clause is not legitimate if it does not bear any relation to the actual losses, but is merely a threat designed to frighten the tenant into timely payment of rent. Therefore, a penalty clause will not be legitimate where the sum is extravagant or excessively large compared to the possible losses, or if the tenant agrees to pay a certain sum of money and a larger sum if the first sum is not paid. For example, for a person paying \$325/month, a late payment penalty of \$5 per day late is not enforceable, since it is exorbitant compared to the rent (it would amount to almost 50% interest if you were one month late), and applies even if the tenant was short just \$1.

Ultimately, whether or not a Penalty Clause is legitimate is up to the decision of a Judge. Your safest bet is to always pay rent on time. In situations where you cannot pay rent on time, or it is very difficult, it might be worth talking to your landlord to see if late payments will be accepted.

5. Damage to the Premises

The tenant must not damage the premises. Generally, the landlord does not have a duty to repair the premises after the tenant has moved in. The exception to this rule is major repairs such as structural repairs, plumbing, heating, and so on (see the section on *Landlord's Obligations* above).

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Unless the tenancy agreement says that the landlord will repair the premises, or the repairs that are required are major repairs, the tenant is responsible for the general state of the premises as well as any damage done to the premises.

SUBLETTING

1. Definition

“Subletting” occurs when the tenant rents out the place to a second tenant who takes the first tenant’s place. The second tenant is called a “sub-tenant”. It is important to note that the first tenant remains liable to the landlord under the original tenancy agreement.

The first type of subletting occurs when Mick, for example, is renting an apartment and he makes an agreement with Keith that Keith will move in and pay the rent, and Mick will move out.

The second type of “subletting” occurs when a tenant rents an apartment and takes in a roommate. For example, if Mick is renting a two bedroom apartment and his name is on the tenancy agreement and Mick makes an agreement with Keith that Keith will move in and share the apartment with him, then Mick is subletting to Keith. Some tenancy agreements do not allow this, and may state that all of the people who live as tenant must be listed on the agreement.

The sub-tenant in the second example is not protected by the Residential Tenancies Act. The Act does not necessarily cover tenants who share living quarters with their landlord and Mick is considered Keith’s landlord. However, Courts may hold the Act to be persuasive when the landlord is living in the rental premises. Courts may take into consideration whether the situation is analogous to a standard landlord/tenant relationship. For example, if Keith is merely a friend of Mick’s and there are no strict lease terms such as time of payment, the court may be less

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likely to enforce his right to a sufficient eviction notice as provided by the Residential Tenancy Act. In comparison, if there is a standard landlord/tenant relationship, the only difference being the presence of the landlord in the premises, the Court is more likely to protect the tenant's legal rights, as provided by the Residential Tenancy Act. Alternatively, the tenant may seek protection under the Innkeeper's Act, which governs this situation when an individual pays for lodging in more temporary situations.

2. Landlord's Consent

According to the Residential Tenancies Act, the landlord must give the tenant written permission, before the tenant can sublease the premises. If the tenant does not get the landlord's written permission to sublet, then the sublease will not be valid. The landlord cannot refuse to allow the tenant to sublet unless the landlord has reasonable grounds for refusing. If the landlord refuses, the landlord must give the tenant written reasons. The landlord cannot ask the tenant to pay money before he or she will consent to the sublease.

3. Time Limit for Landlord's Consent

When a tenant requests the landlord's permission to sublet the premises, the landlord must tell the tenant, within 14 days of the tenant's request to sublet, whether or not the tenant is allowed to sublet the premises. If the landlord does not answer the tenant's request for permission to sublet within 14 days, the Court will assume that the landlord has agreed to let the tenant sublet the premises. If the landlord does not answer the request within 14 days, the tenant can sublet without the written consent of the landlord.

4. Responsibility for Rent

The initial tenant who is subletting to a sub-tenant is responsible for making sure that the rent is paid to the landlord even though he or she may not be living in the premises any more. The tenant is also responsible for any damage which the sub-tenant does to

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the premises. The landlord can take money out of the tenant's security deposit even if the tenant did not cause the damage. A tenant who sublets a premises should protect him or herself by getting a security deposit from sub-tenant.

When a tenant sublets his or her premises, he or she becomes the landlord of the sub-tenant. For example, when Mick sublets his premises to Keith and moves out, he becomes Keith's landlord and has all the obligations of a landlord under the Residential Tenancies Act. Mick, however, is still a tenant of the original landlord and has all the responsibilities of a tenant under the Residential Tenancies Act.

TERMINATION OF TENANCIES

1. Honouring a Tenancy for Fixed Terms

Once the landlord has accepted rent for a fixed tenancy, the landlord must allow the tenant to remain in the premises for the period set out in the tenancy agreement, or seek a remedy through the Court or the RTDRS. However, the landlord can also terminate a tenancy on shorter notice for a substantial breach (including non-payment of rent) or damage, assault, or threats of assault.

When the tenancy agreement is for a fixed term, then the agreement will say whether the tenancy ends when the period of the tenancy is over or whether the tenancy can be renewed.

The tenancy agreement may also state whether or not the agreement can be terminated before the end of the fixed term. If the tenancy agreement sets out methods for early termination of the fixed tenancy, then those requirements must be carefully followed. Notice of early termination should be given in writing, and be in compliance with the Act.

2. Substantial Breach

A landlord may end a tenancy with 14 days' notice if there has been a "substantial breach" of the tenancy agreement. A "substantial breach" is a violation of the tenancy agreement that the Court considers to be serious.

A substantial breach occurs if the tenant:

- a. consistently fails to pay the rent when it is due;
- b. interferes with the landlord's rights or the rights of other tenants in a significant manner (i.e., loud music on an ongoing basis);
- c. does something illegal on the premises;
- d. behaves in a way that endangers persons or property;
- e. significantly damages the premises or the common areas of the building;
- f. fails to keep the premises, or property rented with the premises, reasonably clean;
- g. fails to vacate the premises at the end of the tenancy;
- h. breaches the tenancy agreement more than once and the effect of the those breaches is substantial. For example, if the tenant is late paying his rent once, this would not be a substantial breach of the agreement. However, if the tenant pays his rent late every month, the Court may consider this to be a substantial breach of the tenancy agreement.

If the landlord wishes to end the tenancy because the tenant has committed a substantial breach, he or she must give the tenant written notice. The landlord or the landlord's agent must sign the notice, and it must let the tenant know when he or she must move out of the residence. The notice must also tell the tenant what he or she did that breached the tenancy agreement.

3. Notice of Objection

If the landlord gives the tenant notice that he or she is ending the tenancy for any of the reasons listed above, that notice will not be

effective if the tenant gives the landlord a notice, in writing, stating that he or she objects to the landlord's notice of termination or pays the rent if non-payment was the reason for the notice. The tenant's written objection to the landlord's termination of the tenancy is called a "notice of objection". Blank notices of objection are available from organizations like the Landlord & Tenant Advisory Board. A notice of objection should include the reasons why the tenant believes he or she should not be evicted. If a landlord receives a notice of objection, and still wants to evict the tenant, then the landlord has to go to court or the RTDRS to end the tenancy.

Once a landlord receives a notice of objection, he or she cannot force the tenant to move without the assistance of the Court or the RTDRS. The landlord must apply to the court by filing a written notice to the clerk or application to the RTDRS describing the premises, the remedy requested, and an affidavit (which is a statement, made under oath, that the person who makes the statement swears is true. The affidavit may either be sworn or affirmed.) if the Residential Tenancies Act prescribes. An application to Court or the RTDRS would be required even if the tenant did not file a notice of objection, but still refused to move. The affidavit must include details of the substantial breach(es), the remedy requested, and a copy of the notice that was given to terminate the tenancy. A tenant may also apply to end the tenancy in the case of a substantial breach by a landlord (see the section on *Tenant Leaving* below).

4. Rent Owning

If the landlord gives the tenant a 14 day notice to move out of the premises because the tenant has not paid the rent, and the tenant pays all of the rent owing before the 14 days of the termination notice are over, the landlord will not be able to end the tenancy. However, if it is a case of *continual* non-payment of rent, payment will not void the eviction notice for substantial breach.

5. Assault, Threats of Assault, or Damage

If the tenant (or a friend or guest of the tenant) has significantly damaged the premises or the common areas of the building or if the tenant has physically assaulted, or threatened to assault, the landlord or other tenants, then the landlord may give the tenant 24 hours notice to move. This notice must be in writing, be signed by either the landlord or the landlord's agent, and must set out the reasons for the termination of the tenancy as well as the time and date the tenancy will end.

If the tenant has been given a 24 hours notice and does not leave after 24 hours are over, then the landlord can apply to Court or the RTDRS to have the tenant removed. The landlord must apply within 5 days of the end of the 24 hour notice. If the landlord does not go to Court or the RTDRS to remove the tenant within 5 days, then the notice of termination of the tenancy will be unenforceable.

6. Reasons Permitting the Landlord to End the Tenancy

In a periodic tenancy where the tenant has not substantially breached the tenancy agreement and the landlord wants to end the tenancy, the landlord must give the tenant appropriate notice per the Residential Tenancy Act, outlining the reasons in writing.

The landlord must give one of the following reasons:

- a. the landlord or a relative of the landlord wants to live in the premises;
- b. the landlord has decided to sell the premises and either the buyer of the premises, or a relative of the buyer, wants to live in the premises;
- c. the building is a condominium and the landlord has decided to sell one unit of the building or, the landlord owns a house or a duplex which he has decided to sell and the buyer wants the premises to be vacant when the buyer takes possession;

- d. the landlord wants to tear down the building or to do major renovations. The landlord cannot make people move out so that he or she can paint, replace the rug or the linoleum, or to do routine maintenance;
- e. the landlord intends to use or rent the premises to someone who is going to use it as something other than a residence;
- f. where a student is a tenant of a school, the tenancy can be ended when the tenant is no longer a student of the school; or
- g. where the premises are subsidized public housing and the tenant's income levels have become too high, or the public funding has been cancelled, or the tenant has not reported income and is therefore not eligible for the subsidy program.

If the landlord does not perform the acts supporting the reason for termination, he or she is guilty of an offence. This only applies to periodic tenancies. A landlord cannot end a fixed term tenancy before its end date unless there has been fault on the part of the tenant as explained above.

7. Time Limits

Where the tenant has not substantially breached the tenancy and there has not been an assault or damage caused to persons or property, then the landlord must give the tenant enough time to move out of the premises. This means that a landlord must give a tenant who rents by the week notice of at least one full tenancy week. A landlord must give a tenant who rents by the year at least 90 days notice prior to the last day of the tenancy year.

A landlord must give a tenant who rents by the month at least three full tenancy months notice. Normally, notice must be given on or before the first day of a tenancy month to be effective on the last day of the third tenancy month thereafter. The notice is then effective on the last day of the third month. For example, notice

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must be given by a landlord on or before February 1st in order to end a monthly tenancy on April 30th. If notice is late, then the notice period begins on the next complete month. For example, if notice is given on February 2nd, then the notice period begins to run on March 1st and is done on May 31st.

8. Employees

In the case of a periodic tenancy forming out of employment, the landlord has several alternative time limits for terminating the tenancy. The length of notice must be 1) the notice required under any law relating to termination of employees, 2) the period required for a standard landlord/tenant termination, or 3) a week, whichever is longest. The period may also be that prescribed in accordance with applicable regulations.

9. Other Requirements

Before a landlord can end a tenancy, the tenant must be given notice in writing, signed by the landlord. This notice must tell the tenant why the tenancy is being terminated and must correctly state the address of the relevant premises. The notice must give the date when the tenancy will end.

Whenever possible, notice to end the tenancy should be given to the tenant personally. If the landlord cannot give the tenant notice because the tenant is not at home, or because the tenant is avoiding the landlord, then the landlord has other options. The landlord can send the notice to the tenant by registered or certified mail, give the notice to any adult person who is living with the tenant, or the landlord can post the notice someplace where the tenant will find it. For example, the landlord could post the tenant's notice on his or her door.

10. Reasons a Landlord cannot End a Tenancy

A landlord cannot end a tenancy agreement because the tenant has made an application or filed a Statement of Claim under the Residential Tenancy Act, made a complaint, or assisted in an

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investigation under the Public Health Act. To end a tenancy for one of these reasons is a fineable offence.

11. Overholding Tenant

If the tenant does not move out when he or she is supposed to, he or she is defined as an "overholding tenant". When a tenant overholds there are various options open to a landlord. The landlord can let the overholding tenant keep on living in the premises and then apply to the court for damages. If this happens the court would order the overholding tenant to keep paying rent. The court might also tell the overholding tenant to pay the landlord money that the landlord lost because the tenant did not move out. This might mean that the overholding tenant would have to pay the landlord any money that the landlord owes to a new tenant who could not move into the premises because the old tenant did not move out.

If the landlord does not want to let the overholding tenant stay in the premises then the landlord may apply to RTDRS, Provincial Court or the Court of Queen's Bench for an "order of possession". The landlord will probably require a lawyer to do this. If the landlord applies to Queen's Bench for an "order of possession", the landlord can also ask for other things at the same time. For example, the landlord could also ask the Court to order the tenant to pay any back rent that the tenant owes.

TENANT LEAVING

1. Proper Notice

To end a periodic tenancy the tenant must give proper notice. This means that if the tenant wants to end the tenancy he or she must give the landlord a signed notice in writing. The notice must state the address of the premises and must state the date on which the tenancy will end.

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The Residential Tenancies Act also permits a tenant to apply to the Court or the RTDRS for an immediate termination of a periodic tenancy in the case of a substantial breach by the landlord. The tenant must apply within 14 days of when they desire the tenancy to end. The landlord must have committed a substantial breach, failed to fulfill one of the above outlined landlord obligations, or neglected to follow an order made by an executive under the Public Health Act. This notice must be in writing, be signed by the tenant, and must outline the date and reason for termination. This termination is void if the landlord subsequently follows the Public Health order or makes a written objection to the tenant's application.

2. Time Limits

For periodic tenancies, how much notice the tenant has to give the landlord when he or she moves out depends upon the type of tenancy. A tenant cannot terminate a fixed term tenancy before the end date of the tenancy agreement unless the landlord has not fulfilled requirements set out in the Residential Tenancies Act.

A notice to end a weekly tenancy must be given to the landlord on or before the first day of the tenancy week if that notice is going to come into effect on the last day of that tenancy week. A tenant who rents a premises on a monthly basis must give his or her landlord notice on or before the first day of the last tenancy month that the tenant will live in the premises (also known as giving "one clear month" notice). A tenant who rents by the year must give notice on or before the 60th day before the last day of the tenancy year.

A tenancy month begins on the day of the month that the tenant must pay the landlord the rent owed (such as the 1st, 15th, 30th day of the month). This means that although a tenancy month usually begins on the first day of each month, a tenancy month can begin on any day that rent is payable. For example, notice given on or before August 1st is sufficient to end a monthly tenancy on August

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31st, if rent is payable at the start of the month. If a tenant gives notice on August 2nd or later, then this notice will come into effect for September 30th.

3. Remaining Tenants

If the tenant who is named in the tenancy agreement has moved out of the premises, the landlord may ask any other person living in the premises, who is not a tenant, to leave the premises. They must give that person at least 48 hours to leave. The landlord may also seek rental arrears or damage costs from the person occupying the leased premises. The landlord must give the person who is living in the premises, but who is not a tenant, written notice signed by the landlord stating the time and the date by which a non-tenant who is living in the premises must move out. If the non-tenant does not leave the premises within 48 hours of receiving notice, the landlord can get the Court to order him or her to leave.

To get a Court order, the landlord must swear an affidavit stating the date that the premises were vacated by the original tenant and, if the landlord knows the reasons, why the non-tenant occupant refuses to leave the premises. The landlord must attach a copy of the notice that he or she gave the non-tenant to the affidavit.

ABANDONED GOODS

When things are left on the premises by a tenant who has moved out or whose tenancy has ended or been terminated, the landlord may not know whether or not the tenant will return for the goods. Where the landlord reasonably believes that the tenant's things have a total value that is less than \$2000, the landlord may get rid of the tenant's goods.

Where the landlord reasonably believes that the tenant's goods have a total value that is greater than \$2000 the landlord may get

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rid of the tenant's goods by whatever means and for whatever price that the landlord believes is reasonable if:

- a. the landlord reasonably believes that storing the tenant's goods would be unsafe, unsanitary or would cause the goods to rapidly lose value; or
- b. the landlord reasonably believes that the cost of removing or storing the tenant's goods would be greater than the value of the tenant's goods.

Where the landlord reasonably believes that the tenant's goods have a total value that is greater than \$2000 and the situations indicated in (a) and (b) above do not apply, then the landlord must either store, or arrange to have the tenant's things stored, for 30 days. If the tenant comes to the landlord to get his or her goods before the end of the 30 days then the landlord must give his or her things back. However, the landlord does not have to give the tenant his or her goods back until the tenant pays the landlord the cost of removing and storing the tenant's goods.

This also applies in the case where someone other than the tenant, for example a creditor of the tenant, has a legal claim on the goods. For example, if the tenant moves out and leaves a television on which the tenant still owes money, then the person who sold the tenant the television can go to the landlord and get the television back. The landlord may insist that the person who sold the tenant the television pay the landlord the money that it cost him or her to remove and store the television.

If 30 days have passed and the tenant has not come to the landlord to get his or her property and no creditors have come forward to claim the property that the tenant has purchased but not paid for, then the landlord may sell the tenant's things at a public auction. The landlord may only sell the tenant's goods privately if he or she has the permission of the Court of Queen's Bench or if he or she held a public auction and no one bid on the tenant's goods.

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If the landlord sells the goods that the tenant left on the premises, then the landlord can use the money received from the sale to pay any debts that the tenant owes the landlord as a result of the tenant's rental of the premises. Debts include rent that the tenant owes but has not paid, damage to the premises, or any related court judgments that the landlord has against the tenant. Before a landlord can use the money that he or she receives from selling the tenant's property, the landlord must make an affidavit and have proof that the tenant owed the landlord that specific amount of money. One way that a landlord can prove that the tenant owes him or her money is by showing the Court the bills for repairs. Landlords should check the regulations under the Residential Tenancies Act to determine exactly what documentation is required.

Any money that is left over once the landlord has taken the money that the tenant owed him must be paid to the Provincial Treasurer through the local government office of Housing and Consumer Affairs, Department of Municipal Affairs. The Treasurer will hold the money for the tenant for one year. If the tenant does not ask the Treasurer for his or her money within one year, then the money is put into the General Revenue Fund of the province, and the tenant will not be able to get his or her money back.

So long as the landlord, and the other people who are involved in removing, storing, and selling the goods that the tenant left on the premises follow the requirements of the Residential Tenancies Act, the tenant cannot sue him or her. Also, the tenant cannot sue the person who buys the tenant's property.

NOTE: These rules apply only to abandoned goods, not goods legally seized by the landlord.

1. Repudiation of the Tenancy Agreement

The tenancy is broken when the tenant has abandoned the premises or when the tenant does something that makes the

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landlord reasonably believe that the tenant has ended the tenancy agreement. This is called "repudiation" of the tenancy agreement. Repudiation happens when the tenant does something that shows that he or she no longer wants to be bound by the terms of the tenancy agreement. For example, when the tenant gives the landlord notice that he or she will be moving out of the premises before the end of the lease term. This tenant could be repudiating the tenancy agreement, depending on the circumstances.

Where a tenant repudiates his or her tenancy, the landlord has a duty to "mitigate" the losses. This means that the landlord must take reasonable steps to make sure that the landlord loses as little money as possible as a result of the tenant's repudiation of the tenancy. For example, if a tenant does not give proper notice before he or she moves out, the landlord must try to minimize the loss by re-renting the premises to a new tenant as soon as possible. If the landlord does not find someone to re-rent the premises, then the tenant who gave improper notice will be responsible for paying the landlord rent until the landlord re-rents the premises or until the tenant's move-out notice becomes effective. The tenant may also be responsible for reasonable costs incurred in the process of trying to find a new tenant, such as newspaper ads, or for the time spent putting up posters.

CONDOMINIUMS

Condominium owners who rent out their units are subject to the Condominium Property Act. Under this act the condo owner has various responsibilities to the condominium corporation:

- a. the owner must provide written notice to the corporation of their intent to rent the unit, the address where they can be served, the amount of rent they are charging, the name of the tenant (within 20 days of the start of the tenancy), and if the unit is no longer being rented (within 20 of the end of the tenancy);

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- b. the owner must pay a deposit if the corporation requests it (the landlord cannot ask the tenant to pay this deposit)
- c. the owner must agree that the tenant will not damage the corporation's property beyond normal wear and tear
- d. the owner must inform the tenants of the corporation's bylaws and make them a condition of the tenancy agreement (bylaws override the tenancy agreement and the Residential Tenancies Act)

If the corporation requests a deposit from the owner, it cannot be greater than one month's rent that will be charged for the unit. The deposit is similar to a security deposit. It can be used to repair or replace damaged, destroyed, or lost condominium property. The corporation does not have to pay interest on this deposit. The deposit must be returned within 20 days of being informed that the owner is no longer renting out the unit. If part of the deposit was used the corporation must give the owner a statement of account showing the amount. If the corporation will use the deposit, the owner must receive an estimate within 20 days and then any money left over and a final statement must be given to the owner within 60 days after receiving the estimate.

The tenant of the unit must agree to follow the corporation's bylaws, not damage the corporation's property, and pay rent to the corporation instead of the landlord at the corporation request (this rent is then deemed to have been paid to the landlord).

The corporation can evict a tenant for damaging the property or not following the bylaws. Notice will take effect on the last day of the month following the month notice was given (for example, notice will take effect March 31st if notice is given in February). The tenant has no right to give the corporation a notice of objection. The corporation can go to the Court of Queen's Bench for an order requiring the tenant to move, if the tenant refuses to leave. The corporation can also go to the Court of Queen's Bench for an order requiring the tenant to move if the tenant does

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excessive damage to the corporation's property or if the tenant is threatening other condo owners or renters or is a danger to them. The corporation must serve any notices or orders on the landlord.

REMEDIES

1. General Information

When the landlord or the tenant does not follow the tenancy agreement or when either the landlord or the tenant does something which goes against the Residential Tenancies Act, the landlord and tenant should talk to each other and see if they can solve the problem together. If the landlord and tenant cannot work things out, then they should call the Landlord and Tenant Advisory Board for help (though this is not a requirement). The Board will not take sides but will listen to both the landlord and the tenant and suggest things that the landlord and the tenant could do to solve the problem. Many disputes are settled out of court with the Landlord and Tenant Advisory Board's help. If the parties cannot settle this way there are 4 options for dispute resolution: the RTDRS, mediation, Provincial Court, or the Court of Queen's Bench.

2. The Residential Tenancy Dispute Resolution Service

The Residential Tenancies Act includes the establishment of an alternative dispute resolution mechanism for landlords and tenants as an alternative to court. The Residential Tenancy Dispute Resolution Service (RTDRS) is currently available for disputes that take place within Edmonton's corporate limits. One can access the RTDRS through Alberta Government Services. The *Voluntary Code of Practice*, available at Government Services or on its website, sets out how the Residential Tenancies Act is to be interpreted by Alberta Government Services and is another useful guide in this area of the law.

A landlord or a tenant can submit an application and filing fee of \$75 to use this service for claims up to \$25,000.00. A hearing

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date will be set when the application is filed. The party who filed the application must give a copy of it to the other party and complete an Affidavit of Service (this is a statement made under oath that confirms how and when the documents were delivered to the other party). Both the landlord and the tenant are expected to attend the hearing and bring their evidence along (appropriate evidence might include the tenancy agreement, bills, receipts, letter, notices, inspection reports, witnesses, etc.). Lawyers or agents are allowed but not required. A copy of any evidence presented must be given to the other party at least 3 days in advance. The Tenancy Dispute Officer will make a decision on the issue identified in the application form after reviewing the evidence. If a party does not attend the hearing, an order of judgement could be made against him or her. Once the RTDRS has been chosen as the method of resolution, the decision of the Tenancy Dispute Officer is binding on all parties. A Tenancy Dispute Officer can grant the same remedies as a Provincial Court Judge. Application forms (and other relevant forms) can be obtained online or from the RTDRS office. Applications that are too complex (for example, ones involving assault), involve constitutional issues, or are outside the Service's jurisdiction will be turned away. If one party has already filed in Provincial Court, that is where it will be heard. Appeals are heard in the Court of Queen's Bench.

3. Mediation

A party can request a mediation appointment at the time he or she files the claim or dispute note or the Provincial Court may schedule the case for mediation. Parties will receive a letter from the Court advising them of the date and time of their appointment.

Mediation keeps the dispute out of the Court. Parties negotiate with the assistance of a negotiator and try to resolve the dispute in a mutually agreeable way. The mediator(s) remains neutral throughout the process and agreements are entered into voluntarily. Lawyers and agents are allowed but not required to

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attend. Witnesses are not permitted to attend. Participants should bring along all documents and be prepared to discuss every element of the dispute. If the parties cannot agree after a mediation appointment they may be able to request another mediation session or may take the matter to court.

4. Remedies through the Court

If the Landlord and Tenant Advisory Board or a mediation appointment cannot help the landlord and tenant solve their problems and they do not or cannot use the RTDRS, then either the landlord or the tenant can apply to Court. The Court may make an order:

- a. giving money to a landlord who lost money because the tenant breached the tenancy agreement or giving money to a tenant who lost money because the landlord breached the tenancy agreement;
- b. ending the tenancy;
- c. making the landlord pay the tenant for work which the landlord promised to do but never did;
- d. requiring that the landlord must give all or part of the security deposit back to the tenant; or
- e. according at their discretion.

The Residential Tenancies Act states that two different courts, the Provincial Court and the Court of Queen's Bench, can give people most of the legal remedies that are set out in the Act. Generally, a person should get a lawyer if he or she is going to the Court of Queen's Bench, but people do not *need* lawyers when they appear in either court. Provincial Court deals with claims under \$25,000 and is less expensive and less complicated than Court of Queen's Bench. If a person decides to go through Provincial Court then he or she can refer to the information provided by Alberta Justice Court Services in two booklets called "*Commencing a Claim in Provincial Court Civil Division and Getting and Collecting Your Judgment in Alberta*" and "*Application*

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under the Residential Tenancies Act and Mobile Home Sites Tenancies Act, for more information.

5. Remedies Through Government Services

Certain sections of the Residential Tenancies Act are enforced by Alberta Government Services. For example, if a landlord goes into a tenant's premises without giving the tenant proper notice then the tenant may complain to Government Services, who will send both the landlord and the tenant information telling each of them what their rights are in the situation. If someone is not following the Residential Tenancies Act, that person will be warned that unless he/she follow the Residential Tenancies Act they will face legal action and could be given a fine. If the person who is not following the Residential Tenancies Act, does not change his or her behaviour, then Government Services will investigate and will decide whether or not they should take that person to court. This type of enforcement of the Act can only be done through Government Services.

6. Limitation Period

There is a "limitation period" for certain claims by landlords and tenants. A limitation period is the amount of time a person has to bring a legal problem to court. When too much time has elapsed between the time the problem arose and the present time, then the person can no longer go to court to solve his or her problem. The Limitation of Actions Act sets a limitation period of 2 years.

COURT ACTIONS TAKEN BY TENANTS

A tenant can receive the following remedies from the Provincial Court:

- a. recovery of damages resulting from a breach or contravention of the tenancy agreement by the landlord
- b. abatement of rent where a breach by the landlord deprives a tenant of the benefit of the tenancy agreement

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- c. compensation for the cost of performing the landlord's obligations
- d. termination of the tenancy by reason of a breach if in the opinion of the court the breach is of such significance that the tenancy should be terminated

1. Recovery of Security Deposit

A tenant may take action in court to get back his or her security deposit from the landlord. The tenant may choose to sue for the return of the security deposit and interest in Provincial Court, if the amount is less than \$25,000.00. The tenant must pick up a "Civil Claim" form and "Dispute Note" from the Civil Clerk at the courthouse. There is a cost for filing a Civil Claim. As of the date of printing this pamphlet, the cost is \$100.00 for amounts up to \$7500.00 and \$200.00 for amounts up to \$25,000.00. Low Income Albertans can apply to have the filing fee reduced- call the Edmonton Community Legal Centre at (780) 702-1725 for more information. Also consider referring to the Alberta Justice Court Services pamphlet, "*Commencing a Claim in Provincial Court Civil Division and Getting and Collecting Your Judgment in Alberta*" and "*Application in Provincial Court of Alberta under the Residential Tenancies Act and Mobile Home Sites Tenancies Act.*" Both publications are excellent resources for commencing a landlord-tenant related claim.

The Court will not collect a party's money for him or her. To do this, he or she must file the judgement and a Writ of Enforcement with the Clerk of Queen's Bench. If the other party does not pay, the party who is owed money must hire a Civil Enforcement Agency to enforce the court order, at a minimum cost of approximately \$300 - \$350. Or they may start a garnishee of wages or bank accounts. A party is advised to speak to a lawyer if he or she chooses to take any judgement enforcement measures.

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Only certain goods can be taken by a Civil Enforcement Agency, including goods:

- a. on the premises;
- b. at least partly owned by the tenant (or the person who owes the rent);
- c. not a necessity for the tenant (in some cases). For example, an Enforcement Agency could take your television set, but they probably could not take your baby's crib. For more details see the Civil Enforcement Act.

A tenant should seek legal advice as soon as he or she finds out that the landlord has begun the seizure process.

2. Breach of Tenancy Agreement

The tenant can sue the landlord in court for a breach of the tenancy agreement by the landlord. For example, the tenant can sue if the landlord failed to make the premises available for the tenant to move in at the beginning of the tenancy agreement. In this example, the tenant can get back from the landlord the money that the tenant spent because he or she had to live somewhere else and could not move into the premises on the agreed date. The tenant's expenses must be reasonable or the Court will not make the landlord pay for the expenses in their entirety.

The Provincial Court will generally only give people judgement for damages if there was a loss caused by a breach of a tenancy agreement. This means that a person who goes to court with a problem must know and be able to prove how much money a breach of the tenancy agreement has cost him or her.

COURT ACTIONS TAKEN BY LANDLORDS

A landlord can receive the following remedies from the Provincial Court:

- a. recovery of arrears of rent;

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- b. recovery of damages resulting from a breach of the tenancy agreement by the tenant;
- c. recovery of compensation for the use and occupation of the premises by an overholding tenant (a tenant that stays longer than their lease allowed);
- d. recovery of possession of the premises from an overholding tenant;
- e. termination of the tenancy by reason of a substantial breach;
- f. confirming the termination of a tenancy where the landlord has given notice of termination and the tenant has not vacated the premises by the time and date of termination as set out in the notice;
- g. terminating the tenancy of a tenant who abandoned the premises and for recovery of possession, where a person (other than the tenant) served with a notice to vacate has not complied with the notice; or
- h. directing a person who is not a tenant of the premises to vacate the premises, if the person has not complied with a notice to vacate

1. Recovery of Rent

A landlord may sue a tenant to get rent money that the tenant owes the landlord. If the tenant owes the landlord \$25,000.00 or less in rent, the landlord may sue the tenant in Provincial Court to get his or her money. The landlord must swear an affidavit setting out the amount of rent the tenant owes and the time during which it has been in arrears. This document must be commissioned by a Commissioner for Oaths and is only for applications, not trial.

2. Seizure by Civil Enforcement Agency

The landlord may get a Civil Enforcement Agency to seize the tenant's property if the rent is late. "Distress for rent" is a process that allows a landlord, without going to court, to tell a Civil Enforcement Agency to take the tenant's property if the rent is late. The landlord must use a Civil Enforcement Agency and

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cannot just take the tenant's property. The laws relating to this procedure are set out in the Civil Enforcement Act, and a landlord should look at this Act for more details.

The Civil Enforcement Agency will give the tenant or any adult on the premises a copy of the "Notice of Seizure" and "Notice of Objection". A tenant has the right to object when the landlord gets an Enforcement Agency to take his or her things. To object, a tenant must give the Civil Enforcement Agency, in writing, the reasons why he or she believes that the landlord does not have the right to take the tenant's property. There can be exemptions. For example, a tenant could object if there was a misunderstanding between the landlord and tenant and the tenant had, in fact, already paid the rent. If the tenant objects, the tenant has two weeks to return the "Notice of Objection" to the Civil Enforcement Agency and a court application must be made for a judge to decide if the property should be sold. If the tenant does not object, the goods may be taken and sold by the Civil Enforcement Agency so that the landlord can be paid the money that the tenant owes him or her. Once the property has been taken, the tenant no longer has any control over it.

3. Security Deposit

If the landlord has taken money from the tenant's security deposit to pay for the things that the tenant is obligated or liable to pay for and the tenant still owes the landlord money, then the landlord can sue the tenant in Provincial Court for the rest of the money. A security deposit can be used by the landlord to pay for damage, for rent owing, for cleaning costs, for changing the locks when keys are not returned, or for any other items for which a tenant has obligations or liabilities. A tenant cannot force a landlord to use the security deposit for rent, but a landlord may choose to do so and then sue for any damages above the deposit amount.

To sue a tenant in Provincial Court a landlord must include any receipts or repair bills. Where the landlord did the repairs him or

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herself, he or she may charge the tenant a reasonable amount for labour.

4. Other Remedies

Other legal remedies for landlords and tenants may be provided by the Court of Queen's Bench. Those remedies generally require a lawyer. If the landlord or the tenant is making a claim for more than \$25,000.00 then he or she must go to the Court of Queen's Bench.

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REFERRAL NUMBERS AND WEBSITES

Landlord and Tenant Advisory Boards:

Edmonton	[780] 496-5959
www.edmonton.ca ® "For Residents" ® "housing services" ® "landlord & tenant advisory board"	
Banff	[310-0000] 427-4088
Fort McMurray	[780] 743-5000
www.woodbuffalo.ab.ca/landlord	
Red Deer	[403] 346-4636
www.lltrd.ca	

Alberta Government Services

Consumer Services	[780] 427-4088
Toll Free in Alberta	1-877-427-4088
www.governmentservices.gov.ab.ca ® "landlord and tenant"	

Residential Tenancy Dispute Resolution Service	[780] 644-3000
www.governmentservices.gov.ab.ca ® "landlord and tenant"® "residential tenancy dispute resolution service"	

Boards of Health:

Edmonton	[780] 413-7927
www.capitalhealth.ca ® "about capital health" ® "our organization" ® "public health division" ® "environmental law" ® "environmental health enforcement" ® "housing and health"	
http://www.capitalhealth.ca/AboutUs/OurOrganization/PublicHealthDivision/EnvironmentalHealth/EnvironmentalHealthEnforcement/Housing.htm	
Calgary	[403] 943-8060
www.calgaryhealthregion.ca	

Human Rights Commissions:

Edmonton	[780] 427-7661
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Calgary [403] 297-6571
www.albertahumanrights.ab.ca

Provincial Court - Civil Division:

Edmonton [780] 422-2508
Calgary [403] 297-3436
www.albertacourts.ab.ca

Civil Claims Mediation Program

Edmonton [780] 427-2721
Calgary [403] 297-5536

For Legal Assistance:

Dial-A-Law (Legal Information on Tape)
Calgary [403] 234-9022
Other Cities toll-free 1-800-332-1091

Direct to Tenant Rent Subsidy Program

(Edmonton) 780-422-0122
Calgary 403-297-7453

This is a subsidy paid directly to an eligible tenant to assist with their rental costs. It is delivered by local housing operators (management bodies) located in various areas throughout the province, and the subsidy is based on the difference between 30 percent of a household's income and an agreed upon market rent, to a maximum subsidy established by the housing operator.

Edmonton Centre for Equal Justice [780] 702-1725
www.ecej.ca

Lawyer Referral Service 1-800-661-1095(Toll free)

Edmonton Community Legal Centre [780] 702-1725

Calgary Legal Guidance [403] 234-9266
www.clg.ab.ca

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Student Legal Services of Edmonton
(Switchboard) [780] 492-2226
Civil Law [780] 492-8244
www.slsedmonton.com

Calgary Student Legal Assistance [403] 220-6637
www.sla.ucalgary.ca/

Canadian Mortgage and Housing Corporation Guide to Renting a Home
www.cmhc-schl.gc.ca/en/co/reho/index.cfm

Personal Information Protection Act *Privacy and Landlord – Tenant Matters*
www.oipc.ab.ca/ims/client/upload/Landlord%20&%20Tenant%20FAQs_Mar2007.pdf

Service Alberta Website
www.servicealberta.ca

Online Reference Guide to Landlord and Tenant Law in Alberta:
www.landlordandtenant.org