


FACULTY OF LAW

## Residential Tenants' Rights


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### Scope of lecture

- Tenants' rights
- Residential premises
- The *Residential Tenancies Act* (RTA) and its Regulations
  - 3(1) Any waiver or release by a tenant of the rights, benefits or protections under this Act is void.
  - 3 (2) If a residential tenancy agreement is in writing, the agreement must contain the following statement in print larger than the other print in the agreement: "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."




### RTA: Consumer Protection

- But has fewer tenants' rights than do other provinces
  - E.g. no limits of amount of rent increases
  - E.g. complicated and time-consuming process to get landlord to comply with Minimum Housing Standards
- Not written or organized to be easy for non-lawyers to use
  - E.g. rules scattered throughout the RTA and its 5 Regulations
  - E.g., some Regulations change the rules in the RTA
  - E.g., uses language only a lawyer would understand




### Six Preliminary Points

1. Keep paying the rent! There are no self-help remedies for tenants.
2. RTA only applies to "tenants" as defined in the act
  - those permitted by the landlord to live in the rented premises under a residential tenancy agreement
3. RTA does not apply to those renting a room and sharing a bathroom, kitchen, etc with the landlord




### Six preliminary points (con't)

4. Tenants renting a condo unit have more rules
  - Condominium Property Act also applies
  - Condominium rules also apply
5. RTA does apply to illegal secondary suites
6. Distinguish "periodic tenancies" from "fixed term tenancies"
  - Periodic: has a start date but no end date; continues on week-to-week, month-to-month or year-to-year until ended by notice
  - Fixed term: has a start and end date; ends without notice




### Your choice of topics:


- Security deposits
- Inspections
- Rent increases
- Pets
- Roommates
- Problem tenants in the building
- Repairs
- Forcing a tenant who is not in breach to move
- Eviction of a tenant who is in breach
- Landlord's covenants (aka promises, duties)
- Tenants' remedies
- Where to go to enforce Tenant's rights, to complain, etc.

 **Security deposits**


- RTA allows landlords to ask tenants for a “security deposit”
  - A guarantee of a tenant’s performance
  - Refunded if promises kept; forfeited if not
- Maximum amount: equal to one month’s rent
- All refundable fees are considered part of the security deposit
  - Total amount cannot exceed one month’s rent
- All non-refundable fees or charges that a tenant agrees to pay are not part of the security deposit
  - Are not subject to any of the RTA security deposits rules

 **Security deposits**


- Landlord must
  - Deposit into a separate interest-bearing trust account
  - Pay interest as specified by the RTA
    - 0% for 10 of past 12 years
  - Keep records to produce for inspection if investigated

 **Security deposits**


- Tenants have the right to the return of their security deposit when they move out if they kept their promises:
  - Promise not to do or permit significant damage to the premises, the common areas or the property of which they form a part
  - Promise to maintain the premises and any property rented with it in a reasonably clean condition
  - Promise to pay rent when due
  - Promises in the residential tenancy agreement to pay non-refundable charges

 **Security deposits**


- Landlord cannot deduct for normal wear and tear even the residential tenancy agreement says it can
- “normal wear and tear”: the gradual worsening of the condition of the premises over time that happens even when the premises are looked after properly
  - E.g., the need to repaint walls that have been washed an cared for over the years
  - E.g., the need to replace carpets that have been regularly cleaned

 **Security deposits**


- Examples of damages and uncleanness for which Landlord can deduct -- if the inspection reports are properly completed -- are:
  - Steam cleaning of rugs with obvious dirt, soil, stains or holes
  - Badly repaired holes in the walls or doors
  - Food or dirt or nicotine stains on walls, cupboards and appliances
  - Broken windows and holes in window screens
  - Pet excrements

 **Security deposits**


- Landlord can keep part or all of the security deposit to cover the following costs
  - cost of repairing or replacing due to physical damage
  - cost of cleaning because of abnormal use
    - if the landlord complied with inspection report requirements
  - arrears of rent
  - other costs agreed to by the tenant
    - Not related to the condition of the premises so no inspection report required

 **Security deposits**


- Within 10 days of the tenant giving up possession of the rented premises, the landlord must do one of three things:
  - Refund the full amount of the security deposit (and any interest) to the tenant OR
  - Deliver a statement of account listing the damages, repair costs and details of the cleaning charges, and refund the balance of the security deposit OR
  - Deliver an estimate of the deductions that will be made and refund the balance of the security deposit
    - Followed by a final statement within 30 days after move out

 **Security deposits**


- New landlords must, within a reasonable time:
  - Give the tenant a Notice of Landlord that meets the RTA requirements (name, postal address, physical location in Canada)
  - Give the tenant a statement setting out the amount of the security deposit (and interest) standing to the tenant's credit as of the date they became the new landlord

 **Security deposits**


- What can a tenant do if they disagree with the their landlord's deductions?
  - Send a demand letter
  - Apply to the Residential Tenancy Dispute Resolution Service
  - Sue in Provincial Court
- What can a tenant do if the landlord does not refund or account within 10 days?
  - All of the above
  - Report the commission of an offence under the RTA
    - Maximum \$5,000 fine

 **Inspections**

- Landlords and tenants must complete written move-in and move-out inspection reports describing the condition of the premises
  - Must be done one week before or after move-in and move-out
  - Premises should be vacant
  - Landlord and tenant should inspect together
  - Both landlord and tenant can be represented by an agent
  - Landlord must give tenant a copy of each report as soon as each is completed

 **Inspections**

- Required statements in the inspection reports must be signed
  - When was the inspection made and by who: to be signed by both
  - Whether tenant agrees or disagrees that report fairly represents the condition of the premises: to be signed by tenant
    - Or a statement that the tenant refused to sign: signed by landlord
  - If tenant refuses or does not attend, a statement that the inspection was conducted without the tenant: signed by landlord

 **Inspections**

- If inspection reports are not done, a landlords cannot deduct for damages or cleaning costs from the security deposit when the tenant moves out
- Tenants should show up for both move-in and move-out inspections and should take photos
  - Protects good tenants from paying for damages that existed when they moved in and for normal wear and tear
  - Landlord can do the inspection reports without the tenant present if offers two different times
  - Landlord can sue for damage or failure to clean without inspection reports

**Rent increases**

- No maximum rent; no control of how much rent can be increased in RTA
  - Can agree on how much rent
  - Can agree on what services rent will include
- Tenants do have the right
  - to have their rent raised once a year at the most
  - only after the required amount of written notice.

**Rent increases**

**Timing:**

- periodic tenants: no rent increases until at least 365 days since start of tenancy or last rent increase, whichever is later
- fixed term tenants:
  - term is one year or more: no rent increases are allowed
  - term less than one year but tenant has occupied under 2 or more consecutive fixed term leases: no rent increases until at least 365 days since the start of the tenancy or last rent increase or until the end of the term if day 365 falls within the term, whichever is later

**Rent increases**

**Written notice:**

- weekly: 12 full tenancy weeks
- monthly: 3 full tenancy months
- any other periodic tenancy: 90 days

- date of increase specified and signed by landlord.
- served on each tenant

**Rent increases**

**Faulty notice?**

- void, not effective
  - increase does not have to be paid
  - good defence if sued
- Need to object to the rent increase in writing?
- if pay increase under a faulty notice, have two years to sue to recover the amount of the increase
- landlord cannot try to correct a faulty notice
  - new and proper notice must be served


**Rent increases**

- “Rent”: the consideration to be paid by a tenant to a landlord under a residential tenancy agreement, not including the security deposit
- If both agree that the landlord will add some services – e.g. extra parking stall – probably not a rent increase
- but if services were included, L cannot ask T to pay for the included services except by treating as a rent increase
- Adding sub meters (measure energy used by each rental unit) is a rent increase


**Rent increases**

Non- refundable fees / charges

- RTA allows landlord and tenant to agree to charges in addition to security deposit and rent
  - e.g. application fee
  - e.g. a key fee
  - e.g., a pet fee
  - e.g. late payment of rent or NSF fees
  - e.g. a re-rental fee for early termination
- Cannot agree to fee for landlord consenting to an assignment or sublease

 **Pets**

- up to the landlord to decide
  - whether or not pets will be allowed
  - what type or size or number
- landlord can refuse to rent to tenants who have pets, unless tenant has a qualified service dog
- landlord does not need to give a reason, but same rules must apply to entire building
- if a condo, tenant bound by rules of the condo board
- landlord can evict a tenant for having a pet if there is a no pet policy


 **Pets**

**Pet fee at beginning of tenancy**


- Landlord cannot charge a security deposit plus an additional refundable amount for a pet if total more than one month's rent
- landlord charge a non-refundable amount in addition to a security deposit

**Pet fee after the tenancy has begun**

- Not allowed unless lease says is allowed or both agree

 **Roommates**


- RTA: a “tenant” is a person permitted by the landlord to occupy the residential premises under a residential tenancy agreement, which can be written, oral or implied
  - tenant can be someone not named in lease
- at the beginning of tenancy, landlord and tenant should agree on who is allowed to live in the premises
  - names of all tenants should be listed in the lease
  - does make each one liable for full rent

 **Roommates**


- Unauthorized occupants:
  - Not listed in lease
  - Cannot prove have landlord’s permission to occupy
- If listed tenant living in premises too, landlord can evict unauthorized occupants on 14 days’ notice
- If listed tenant moves out, landlord can evict unauthorized occupants on 48 hour notice

 **Roommates**

- Protect yourself:
  - If moving out, give landlord written notice to terminate the lease
  - Have a roommates agreement
    - CPLEA has a sample roommate’s agreement available online

 **Problem tenants in building**


- All tenants promise landlord:
  - tenant will not in any significant manner interfere with the rights of either the landlord or other tenants in the premises, the common areas or the property of which they form a part;
  - tenant will not perform illegal acts or carry on an illegal trade, business or occupation in the premises, the common areas or the property of which they form a part;
  - tenant will not endanger persons or property in the premises, the common areas or the property of which they form a part;

 **Problem tenants in building**


- landlord's responsibility to take action
  - 14 day eviction notice if serious
- can one tenant force the landlord act against problem tenants?
  - Probably yes, because landlord promises tenant that neither the landlord nor a person having a claim to the premises under the landlord will in any significant manner disturb the tenant's possession or peaceful enjoyment of the premises
- can one T sue the other T and ask for a court order to evict problem neighbor?
  - Unclear, need a test case

 **Repairs**


- RTA silent about who is responsible for repairs
- Basically:
  - Landlord responsible for “big” repairs, e.g. new light fixture
  - Tenant responsible for “tiny” repairs, e.g. new light bulbs
- RTA says all landlords must ensure premises meet Minimum Housing and Health Standards
- So landlord responsible for repairs needed to meet standards:
  - E.g. weatherproof and waterproof windows
  - E.g. hot water tank

 **Forcing a tenant to move**

- Can a landlord make a tenant move if the tenant has done nothing wrong?
  - periodic tenancies only
- Landlord must serve written notice to terminate
  - Notice must contain the L's reason
- If reason does not say tenant has done something wrong, whether the notice is legal depends on :
  - 1) Is the reason the landlord gives a reason the RTA allows the landlord to use to end a tenancy?
  - 2) If the reason is a legal one, then has the landlord provided enough notice and in the right form?

 **Forcing a tenant to move**

- Legal reason?
  - major renovation to premises
  - condo conversion
  - landlord or relative is going to live in the premises
  - landlord has sold the premises and the purchaser or their relative is going to live in it
  - landlord has sold the premises -- which are a detached or semi-detached dwelling or a condo unit -- and the purchaser has asked in writing that the tenancy be ended
  - ... (more)

 **Forcing a tenant to move**


- Legal reason? (continued)
  - Demolishing premises
  - premises to be used or rented out for non-residential purposes
  - landlord is an educational institution and the tenant no longer a student
  - If subsidized public housing and:
    - tenant is no longer financially eligible for such housing
    - Tenant has not reported income
    - funding for the program is cancelled
  - tenancy an employment benefit and employment ended

 **Forcing a tenant to leave**


- Enough notice?
- major renovations and condo conversions need 365 days' notice
- for every other reason:
  - month-to-month tenants get 3 tenancy months' notice
  - week to week tenants get 1 tenancy weeks' notice

 **Forcing a tenant to leave**


- Right form?
  - in writing
  - signed by landlord or agent
  - sets out reason for termination
  - identifies the premises
  - states the end date
- Properly served?
- if reason allowed, notice long enough, notice properly served and notice contains required information, tenant will have to move

 **Forcing a tenant to leave**


- If notice is not legal, what can the tenant do?
- Object in writing, telling the landlord not moving out and the why
  - then the landlord can either serve new notice or sue to terminate
- Rent increase instead of legal reason?
  - landlords can only "raise the rent in reasonable increments"
  - Depends on market
- Offences:
- E.g. not using premises for reason given in notice within a reasonable period of time
  - if convicted, \$5,000 maximum fine – ticket specified penalty of \$250
- e.g. not giving enough notice
  - If convicted, \$10,000 maximum fine - no ticket penalty available

 **Eviction**


- If the landlord's reason in written notice to terminate is because tenant has done something wrong, is an eviction notice
- Whether tenant must leave depends on:
  - 1) Is the reason one that RTA allows landlord to use to end the tenancy?
  - 2) If the reason is a legal one, then has landlord provided enough notice and in the right form?

 **Eviction**

- Is the **reason** for termination allowed by the RTA?
  - not paid the rent
  - interfered with the rights of other tenants or the landlord
  - done something illegal in the premises or the common areas
  - done something in the premises or the common areas that puts another person in danger
  - caused significant damage to the property or common areas
  - not kept the property reasonably clean
  - failed to leave the premises when your tenancy was over

 **Eviction**

- Enough notice?
  - amount required varies by type of breach
- If tenant seriously damages property or physically assaults landlord or another tenant, then 24-hour notice
- If tenant breaches a covenant listed in s 21 RTA or there is a series of breaches of lease with cumulative substantial effect, then 14 days' notice
- If just a breach, then L may sue
  - Timing depends on court

 **Eviction**

- For both 48 hour and 14 day notices:
  - Properly served?
  - in writing
  - address for the rental property
  - signed by the landlord or their agent
  - termination date included
  - amount of rent that is due included
  - reason for termination provided?
  - if reason is not paying rent, a statement that all tenant needs to do is pay the rent and the tenancy will not be terminated

**Eviction**

- **Faulty notice?**
  - tenant can file a Notice of Objection, including the landlord's failure to follow the RTA as a reason for objecting
- **Legal notice for non-payment of rent?**
  - tenant can pay the rent to stop the eviction
- **Legal notice for other reason?**
  - Tenant can file a Notice of Objection setting out reasons, and serve it on the landlord before the termination day
  - Notice then ineffective

**Landlord's covenants**

- RTA sets out 3 promises every landlord makes to every tenant:
  - Will make the premises available on the date the tenancy starts
  - “peaceful enjoyment”: not interfere with the tenant's possession of the premises
  - Ensure the premises are habitable at the beginning and throughout the tenancy
- Also must give tenant a written “notice of landlord”

**Landlord's covenants**

- **A landlord's cannot enter T's premises unless:**
  - has tenant's consent, oral or written
  - landlord has reason to believe there is an emergency
  - landlord has reason to believe that the tenant has abandoned the premises.
  - landlord gives tenant written notice at least 24 hours before the time of entry for a reason allowed by the RTA:
    - to repair
    - to inspect
    - to control pests
    - to show to prospective purchasers, or mortgagees
    - to show to prospective tenants

**Landlord's covenants**

- **Notice to enter must:**
  - be in writing
  - be signed by the landlord or agent
  - state the reasons for the entry
  - state the date and time of the entry
    - can be a period of time, reasonable in duration, that begins and ends at a specified time.
    - only be between 8 a.m. and 8 p.m. on a day that is not a holiday or tenant's day of worship
- tenant does not have to be present
- landlord cannot insist tenant be out
- tenant cannot refuse entry if notice proper

**Landlord's covenants**

- **Habitable premises**
  - Premises meet the Minimum Housing and Health Standards under Alberta's Public Health Act and Housing Regulation.
- E.g. adequate heat (capable of maintaining premises at 22 degrees)
- E.g. hot and cold water
- E.g. adequate space for sleeping
- E.g. locks on doors
- E.g. windows of certain size
- E.g. smoke alarms
- ... and more


**Landlord's covenants**

- **Uninhabitable premises a “substantial breach” by landlord**
  - does not mean tenant can leave, or pay less rent
  - means T can apply to RTDRS or court to terminate on 14 days' notice if
    - not habitable and
    - order issued under s. 62 Public Health Act and T has reason to believe L has not complied with the order
  - ineffective if L objects
  - then T has to apply to RTDRS or court for normal remedies for a breach by a landlord




 **Tenant's remedies**

- Withhold rent for as long as landlord does not give the tenant a copy of a written lease the tenant has signed
- If the landlord is in breach of one of the promises the RTA requires every landlord to make, tenant may:
  - Serve a 14 day notice to terminate “substantial breach” if premises are not habitable and order issued under s. 62 Public Health Act L has not complied with
  - ineffective if landlord objects because says has complied or order stayed

 **Tenant's remedies**

- If a breach of a covenant or L objects to notice for substantial breach, tenant may apply to the RTDRS or court for one or more of the following remedies:
  - recovery of damages, or
  - reduction in rent to the extent that the breach or contravention deprives the tenant of the benefit of the tenancy, or

 **Tenant's remedies**


- compensation for the cost of the tenant performing the landlord's covenants
- termination of the tenancy if, in the opinion of the court or RTDRS, the breach or contravention should cause the tenancy to be terminated

 **Where to go to enforce tenant's rights**

- First, contact the landlord or property manager
- Second, send a demand letter
  - How to: Centre for Public Legal Education Alberta website: [www.cplea.ca](http://www.cplea.ca)
  - Sample demand letters: Canadian Housing and Mortgage Corp (CMHC) “Your Guide to Renting a Home” website: [www.cmhc-schl.gc.ca/en/co/reho/index.cfm](http://www.cmhc-schl.gc.ca/en/co/reho/index.cfm)


 **Where to go to enforce tenant's rights**

- Apply to Residential Tenancies Dispute Resolution Service (RTDRS): <http://www.servicealberta.ca/rtdrs/>
- resolve disputes outside of court
- Dispute Resolution Officer (DRO) can make binding decisions involving disputes of up to \$50,000
- same remedies available as from a court
- online application form
  - Must be filed in person: Main Floor, Rocky Mountain Plaza, 230 - 7th Avenue S.E. Calgary

 **Where to go to enforce tenant's rights**


RTDRS (continued):

- more informal
  - often no hearing or very quick hearings
  - no rules of evidence
  - but are recorded in case of appeal
  - but agents often appear for landlords (repeat players)
- At conclusion of most hearings, the DRO gives oral reasons for their decision and a written order
- DRO's decision is binding on all parties
- \$75 cost
  - application fee reduction or waiver available
- 5 weeks to hearing

 **Where to go to enforce tenant's rights**


RTDRS (continued):

- limits to the powers of DRO:
  - cannot hear constitutional law or human rights law issues
  - Cannot hear complex matters
- can appeal a DRO's decision if a question of law or jurisdiction but only to the Court of Queen's Bench

 **Where to go to enforce tenant's rights**


RTDRS (continued):

- not much public information available on how RTDRS is doing
- Service Alberta's Annual Report contain no details - 2012-2013: RTDRS accepted 8,355 applications and conducted 7,111 hearings.
- 2013-14: RTDRS filed 8,647 applications and conducted 7,282 hearings
- Too few social media reviews

 **Where to go to enforce tent's rights**


**Provincial Court**

- 8 months to get heard, mediation compulsory
- See "Application in Provincial Court of Alberta under the Residential Tenancies Act or Mobile Home Sites Tenancies Act—Instructions for Landlords and Tenants"  
[www.albertacourts.ab.ca/pc/civil/publication/rta.pdf](http://www.albertacourts.ab.ca/pc/civil/publication/rta.pdf)
- applications up to \$7,500: \$100 filing fee
- applications over \$7,500: \$200 filing fee
  - Fee waiver available

 **Where to go to enforce tenant's rights**

Court of Queen's Bench of Alberta

- Very formal in comparison to RTDRS or Provincial Court
- Very expensive in comparison
- Hears appeals from RTDRS

 **Where to go to enforce tenant's rights**


Service Alberta Landlord/Tenants  
[http://www.servicealberta.gov.ab.ca/Landlords\\_Tenants.cfm](http://www.servicealberta.gov.ab.ca/Landlords_Tenants.cfm)

- Consumer Investigations Unit investigates offences under the RTA
- See Tip Sheet: Filing a Complaint with Consumer Services

 **Where to go to enforce tenant's rights**

Environmental Public Health Program


- enforces Alberta's Public Health Act, including Minimum Housing and Health Standards
- [www.albertahealthservices.ca/3150.asp](http://www.albertahealthservices.ca/3150.asp)
- Inspection Orders for residential premises are available online:  
[http://www.calgaryhealthregion.ca/publichealth/envhealth/inspection\\_orders/housing.htm#2015](http://www.calgaryhealthregion.ca/publichealth/envhealth/inspection_orders/housing.htm#2015)

 **Where to go for more help or information**

- **Laws for Tenants in Alberta:**  
tenant.landlordandtenant.org/home/default.aspx
- **Reference Guide to Landlord and Tenant Law in Alberta:**  
[www.slsedmonton.com/civil/landlord-and-tenant-law/](http://www.slsedmonton.com/civil/landlord-and-tenant-law/)
- **Canada Mortgage and Housing Corporation: Your Guide to Renting a Home:** [www.cmhc-schl.gc.ca/en/co/reho/index.cfm](http://www.cmhc-schl.gc.ca/en/co/reho/index.cfm)

 **Where to go for more help and information**

- **Calgary Legal Guidance:** 403-234 9266 or [www.clg.ab.ca/index.htm](http://www.clg.ab.ca/index.htm)
- **Centre for Public Legal Information (CPLA):** 780-451-8764 or [www.cplea.ca](http://www.cplea.ca)
- **Office of the Utilities Consumer Advocate (UCA)** for sub meter disputes: Toll-free in Alberta: 310-4UCA (310-4822) or [www.ucahelps.alberta.ca](http://www.ucahelps.alberta.ca)
- **Pro Bono Law Alberta:** [www.pbla.ca](http://www.pbla.ca)
  - Videos: <https://www.youtube.com/watch?v=BfgA6WIG7Uw>
  - Courtroom Etiquette
  - Landlord and Tenant Disputes
  - Civil Claims

 **Where to go for more help and information**

- **Lawyer Referral :** Sponsored by the Law Society of Alberta, allows you to consult a lawyer for 30 minutes at no charge. Toll free number 1-800-661-1095.
- **Student Legal Assistance (University of Calgary):** Phone 403-220-6637 or <http://www.slacalgary.com/>
- **Consumer Contact Centre:** Toll-free in Alberta: 1-877-427-4088
- **Law Information Centres (LinC):** Calgary Courts Centre, Main Floor, 601 - 5 Street SW or 403-476-4744 or <http://www.albertacourts.ab.ca/CourtServices/LInCLawInformationCentres/ContactLinC/tabid/277/Default.aspx>
  - Helps people learn about general court procedures, locate and explain court forms, learn about legal advice options, find out about alternatives to court, etc