



ALBERTA LAW REFORM INSTITUTE

**RESIDENTIAL TENANCIES ACT:
GENERAL ISSUES**

ISSUES
PAPER

6

MAY

2025



ALBERTA
LAW REFORM
INSTITUTE

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**THE RESIDENTIAL TENANCIES ACT:
GENERAL ISSUES**

ISSUES PAPER || **6**

MARCH 2025

ISSN 0838-0511

ISBN 978-1-896078-91-5

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Invitation to Comment

This Issues Paper by the Alberta Law Reform Institute [ALRI] is the first of a series on the *Residential Tenancies Act*.

This Issues Paper discusses general problems with the *Residential Tenancies Act*. These problems were reported to us in early consultation with stakeholders from both landlord and tenant groups. Other problems were identified in our research.

An Issues Paper allows you the opportunity to consider these issues and to share your views with us. You may respond to one, a few or all of the issues raised. Any comments sent to us will be considered as we determine which issues warrant further review and how the law might be improved.

You can reach us with your comments or with questions about this document on our website, or by mail or e-mail to:

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Law reform is a public process. We assume that comments on this Issues Paper are not confidential. We may quote or refer to your comments. We usually discuss comments generally and without attribution. If you do not want your comments attributed to you, you may request confidentiality in your response or submit comments anonymously.

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Alberta Law Reform Institute

The Alberta Law Reform Institute (ALRI) was established on November 15, 1967 by the Government of Alberta, the University of Alberta and the Law Society of Alberta for the purposes, among others, of conducting legal research and recommending reforms in the law. Funding for ALRI's operations is provided by the Government of Alberta, the University of Alberta and the Alberta Law Foundation.

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Acknowledgments

This is the first of a series of reports outlining issues regarding the *Residential Tenancies Act*.

We would like to express our thanks to everyone who provided input in our early consultation. This includes everyone who attended one of our five consultation events (the data meetings in November 2023 and the landlord and property manager meetings in February 2024), everyone who participated in an interview, the organizations who invited us to present to various groups, and the people attending those meetings who shared comments and questions. Some participants also helped in other ways, like making introductions or providing examples of written residential tenancy agreements. We promised participants that we would not identify specific individuals or organizations who provided information. However, we are immensely grateful for the information that they shared. It has been essential to shaping this project.

We are also grateful to other researchers who gave advice and help along the way. We would particularly like to thank Kate Gower and the team at the Justice Data and Design Lab. The Justice Data and Design Lab shared a Reddit dataset with us, helping us test a new way of learning about legal problems.

Internally, we would like to thank our student researchers. Aydin McClelland and Brennan Shepherd reviewed all reported Alberta court decisions from 2000 or later about the *Residential Tenancies Act*, all published decisions of the Residential Tenancy Dispute Resolution Service, and all reported Alberta Human Rights Tribunal decisions from 2000 or later about residential tenancies. Rachel Poznikoff and Sawyer Senekal reviewed the dataset from the Justice Data and Design Lab to identify the specific legal issues in the posts. They also updated the decisions database and contributed research on distress for rent and other issues.

A large project such as this can only be carried out by an effective team. Laura Buckingham, legal counsel, has been the lead on this series of reports. She has tirelessly reviewed and documented the feedback we received from participants and compared it against the legislative and common law framework to assess the legal basis (or lack thereof) for the problems that we heard about. This has been no small task and we are amazed by and thankful for her ability to organise such a large volume of material in an accessible report.

Matthew Mazurek and Stella Varvis are also legal counsel assigned to the project team. In particular, Matthew Mazurek took the lead to obtain and manage the Reddit data while working on a separate report. He also prepared the summary for this report.

We are also grateful to our support staff who took on the work of managing and formatting this report series and related communication tools. Barry Chung, Communications Associate, and Kyla Krysko, Executive Assistant, deserve the credit for preparing this report for publication. Finally, we express our thanks again to Rachel Poznikoff and Sawyer Senekal for checking the footnotes.

Summary

This is the first in a series of reports summarizing issues in the *Residential Tenancies Act*, SA 2004, c R-17.1. This report, and the others that follow in the series, lay the groundwork for a larger project on residential tenancies.

This first series of reports do not make any recommendations for reform. Rather, the series is an inventory of issues. The issues identified in the reports are important and should be reviewed when updating or replacing the *Residential Tenancies Act*.

1. WHY REFORM THE RESIDENTIAL TENANCIES ACT?

The *Residential Tenancies Act* is fundamentally important. For example, it

- affects over 25% of households in Alberta;
- creates rules that must be followed when most homes are rented;
- sets out the rights and responsibilities that landlords and tenants have; and
- explains how to resolve disputes.

a. Residential tenancy problems can have large impacts

The *Residential Tenancies Act* can impact the lives of many people. For these people more than just money is at stake, although money is a common concern. Issues or conflicts can also affect the quality of life for those involved. Further, ALRI has found that issues are common, everyday legal problems. ALRI has heard about problems that face landlords, property managers, tenants and those who live with them, and others. However, the impact any particular issue has depends on the type of person affected.

For example, the *Residential Tenancies Act* affects landlords. The impact an issue has may depend on the type of landlord. Consider the different impacts that might occur if a single tenant does not pay their rent.

- A corporate landlord, with hundreds or thousands of residential premises, may suffer only a small impact.
- A non-profit may face a more significant impact because they may have smaller reserves of money.
- An individual landlord may be significantly impacted, missing a mortgage payment and risking their own housing security.

ALRI is concerned about the impact of the *Residential Tenancies Act* in all of these situations. However, it is important to recognize that the law has a diversity of impacts.

The *Residential Tenancies Act* also affects tenants. Tenants rent a home to satisfy a basic human need: shelter. More than mere shelter, however, a safe and secure home is essential to health and wellbeing. ALRI has heard about problems for tenants at every point in a tenancy. Tenants' problems may occur when:

- trying to find a home;
- during a tenancy;
- when losing a home; or
- after leaving the home.

However, not all tenants are impacted in the same way. Some tenants may rent for only a short while. For example, a tenant may rent only when looking for a home to buy, or while away attending school. Other tenants may face these problems their whole lives.

The *Residential Tenancies Act* affects more than just landlords and tenants. There are also ripple effects on government and the wider community.

b. The law is falling behind and becoming less effective

Despite the *Residential Tenancies Act's* importance and serious impacts, change comes slowly. Many parts of the law date back more than 50 years. The last major review of the *Residential Tenancies Act* happened more than 20 years ago. However, that review mainly focused on dispute resolution. The last major, substantive review of the *Residential Tenancies Act* happened more than 30 years ago. As a result, the law no longer reflects social or technological changes present in Alberta today.

ALRI found signs that the *Residential Tenancies Act*, related legislation, and enforcement mechanisms are not working well. ALRI heard that the legislation is confusing and difficult to understand. People may be unknowingly breaking the law, or do not know when or how to enforce their rights. It appears that non-compliance with the law is commonplace.

In addition, there is a significant lack of data available for residential tenancies. For example, ALRI cannot find out how many landlords there are in Alberta. ALRI cannot discover the number of fixed-term versus periodic tenancies in the

province. ALRI is also unable to find out how often people are losing their homes as a result of a forced or unplanned end to a residential tenancy.

2. OVERVIEW

Chapters 1 and 2 outline ALRI's methods, and why we are looking into the *Residential Tenancies Act*.

Chapter 3 discusses in greater detail the issues that are outside of the scope of this report, and outside the scope the project more generally.

Chapter 4 discusses the lack of clarity in the law. Sometimes lack of clarity has to do with how the law is organized. For example, sometimes regulations change how the *Residential Tenancies Act* operates. Further, time periods are inconsistent and do not follow a pattern.

Chapter 5 lists issues that come from rules outside of the *Residential Tenancies Act*. The *Residential Tenancies Act* is not a complete code. Some of the rules for residential tenancies come from the common law. Other rules come from laws made in England but are effective in Alberta. Other rules are found in legislation that is not the *Residential Tenancies Act*. Yet other rules are found only in policy documents of government agencies.

Chapter 6 discusses issues related to the meaning of “residential tenancies” and “residential premises”. The *Residential Tenancies Act* does not define “residential tenancy”. Chapter 6 asks if this should change.

Chapter 7 considers the issues relevant to the main users of the *Residential Tenancies Act*. In this chapter issues relevant to defining a tenant are considered, so too are issues regarding co-tenants. Chapter 7 also details issues that arise when a sublease or assignment occurs. Chapter 7 considers issues relevant to defining a landlord.

Finally, Chapter 8 discusses further issues related to tenants and landlords. This discussion includes analysis of advocacy, particularly as it relates to tenant associations. The chapter also asks if licensing for landlords should occur. Chapter 8 concludes with a little more detail on ALRI's next steps.

REFORMING THE RESIDENTIAL TENANCIES ACT

The law cannot prevent all of the issues that people face. However, it should help people to resolve their conflicts and legal disputes. Well-designed laws about residential tenancies should help people resolve their problems more quickly and easily. In turn, this can help to ensure that the *Residential Tenancies Act* and its impacts are more positive for people.

Issues relevant to residential tenancies are complex, entwined, and interrelated. Analyzing one issue requires analyzing other issues that may initially appear to be unrelated. Disentangling the issues in preparation for this series of reports has been a significant task. Making recommendations for reform will likely be an even greater task. However, ALRI believes that the time for this work is now. ALRI hopes that publishing an inventory of residential tenancy issues will help guide that work. ALRI also hopes that the inventory of issues will help others looking to reform the *Residential Tenancies Act*, and who have the expertise to consider the issues that ALRI cannot.

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Table of Abbreviations

LEGISLATION

<i>Residential Tenancies Act</i>	<i>Residential Tenancies Act, SA 2004, c R-17.1</i>
--------------------------------------	---

LAW REFORM PUBLICATIONS

<i>Residential Tenancies 1977</i>	Institute of Law Research and Reform (Alberta), <i>Residential Tenancies</i> , Final Report 22 (1977)
<i>Achieving a Balance</i>	Ministerial Advisory Committee on Residential Tenancies (Alberta), <i>Achieving a Balance</i> (Edmonton: Alberta Consumer and Corporate Affairs, 1990)

Notes About Language

Some words and phrases in this report have a particular meaning. We have sometimes chosen different words and phrases than other researchers or writers. This page explains what we mean by certain words or phrases and why we chose them.

Landlord

We use landlord to mean a property owner or a manager or agent who acts on behalf of the owner. It has this meaning in the *Residential Tenancies Act*.¹ Many people also use the word this way in everyday life.

We recognize there are some possible problems with the word landlord. For one thing, it is a gendered word that implies property owners, managers, or agents are usually masculine. People of any gender can have these roles, so a gender neutral term would be more accurate. For another thing, it is an old word that might be considered archaic. It would be better to have a different word to reflect the modern relationship.

Despite these problems with the word landlord, we use it in this report to be consistent with the *Residential Tenancies Act* and because it is a common word that most people understand. Any alternatives we considered would be unclear.

Tenant or Renter

We usually use tenant to mean a person who rents a home from a landlord. As discussed in this report, it can be difficult to identify who is a tenant under the *Residential Tenancies Act*. We sometimes use renter instead of tenant if it is unclear whether the person would be a tenant or if the *Residential Tenancies Act* applies.

¹ *Residential Tenancies Act*, SA 2004, c R-17.1, s 1(1)(f) [*Residential Tenancies Act*]:

1(1)(f) “landlord” means

(i) the owner of the residential premises,

(ii) a property manager who acts as agent for the owner of the residential premises and any other person who, as agent for the owner, permits the occupation of the residential premises under a residential tenancy agreement,

(iii) the heirs, assigns, personal representatives and successors in title of the owner of the residential premises, and

(iv) a person who is entitled to possession of the residential premises, other than a tenant, and who attempts to enforce any of the rights of a landlord under a residential tenancy agreement or this Act;

Eviction

Many researchers and writers use eviction to mean a process where a landlord ends a tenancy against the will of a tenant.² Some further divide evictions into formal and informal evictions.³ A formal eviction uses legal procedures, like an application to a court or tribunal to end a tenancy. An informal eviction is one where a landlord convinces or compels a tenant to leave without the involvement of a court or tribunal.⁴

Eviction has a technical meaning in Alberta law. The *Civil Enforcement Act* defines it as “anything done to enforce the right to take physical possession of premises or land”⁵ Eviction in this sense means physically removing tenants or occupants and their belongings from premises. It is only lawful if a court or tribunal has made an order for recovery of possession. Only a civil enforcement agency can carry out an eviction.

To avoid confusion, in this report we use eviction only in the second, technical sense.

Terminating a Tenancy

We use terminating a tenancy to refer to any situation where a landlord or tenant follows procedures in the *Residential Tenancies Act* to end a tenancy against the will of the other. It does not always require the involvement of a court or tribunal. In some circumstances, the *Residential Tenancies Act* allows a landlord or tenant to give the other a notice to terminate the tenancy.

² See eg Sarah Zell & Scott McCullough, *Evictions and Eviction Prevention in Canada* (Winnipeg: Institute of Urban Studies, University of Winnipeg, 2020), online: <eppdscrmssa01.blob.core.windows.net/cmhcprodcontainer/sf/project/archive/research_6/evictions-and-eviction-prevention-in-canada.pdf> [perma.cc/5LFN-JR3FX] (“In this research, ‘eviction’ is understood as the process through which tenants are required to leave their home, under the demands of the owner of the unit of housing ...” at iii).

³ See eg Zell & McCullough, note 2 at iii-iv; Sarah Buhler, “Pandemic Evictions: An Analysis of the 2020 Eviction Decisions of Saskatchewan’s Office of Residential Tenancies” (2021) 35 J L & Soc Pol’y 68 at 73-74.

⁴ Some examples of informal eviction are:

- a landlord raises the rent to an amount the tenant cannot afford;
- a landlord does not address maintenance or pest issues in a timely way so the home no longer comfortable or safe;
- a landlord harasses or assaults the tenant;
- a landlord offers the tenant money to leave (“cash for keys”).

⁵ *Civil Enforcement Act*, RSA 2000, c C-15, s 1(1)(s).

Losing a Home

We use losing a home to refer to a situation where a tenant must leave a rented home against their will. It includes situations where the landlord terminates a tenancy in accordance with the *Residential Tenancies Act*, such as for non-payment of rent. It also includes situations where there are no legal procedures but nonetheless the tenant's only option is to leave.

Homeless or Homelessness

We use homeless to describe a person who does not have a stable place to live. We chose to use homeless instead of terms like unsheltered or unhoused because homeless best describes the particular problem we discuss in this report. If a person loses their home, they may find shelter elsewhere. For example, they might stay in an emergency shelter or with a friend or family member. Even so, they would not have a place they could call home.

CHAPTER 1

Introduction

A. Introduction

[1] Is Alberta's *Residential Tenancies Act* working well? The Alberta Law Reform Institute [ALRI] is working on a project to review the *Residential Tenancies Act* and other rules for landlords and tenants.

[2] The *Residential Tenancies Act* is about the relationship between landlords and tenants. As the name says, the act applies to residential tenancies – those where a person rents a place to live.⁶ It does not apply to commercial tenancies, where the tenant rents a place of business.⁷ It does not apply to tenancies of mobile home sites, which are regulated by the *Mobile Home Sites Tenancies Act*.⁸

[3] The *Residential Tenancies Act* sets general rules for residential tenancies, including the rights and responsibilities that landlords and tenants have to each other. It says what landlords and tenants must do and must not do. It also sets out the ways landlords and tenants can resolve disputes.

[4] While the *Residential Tenancies Act* is the most important legislation about residential tenancies, it does not have all the rules for landlords and tenants. Other rules are in the *Public Health Act*, the *Alberta Human Rights Act*, the *Civil Enforcement Act*, and privacy legislation like the *Personal Information Protection Act*, among others. There are also common law rules developed by courts.

[5] The *Residential Tenancies Act* and related laws affect many people. More than one quarter of Alberta households rent their homes. Many, if not most, individuals will be a tenant at some point in their lives. There are also many people who are landlords or who earn money from rental property. Some own and manage property themselves, some work for companies that are landlords, some are property managers, and some invest in corporations or trusts that own or manage rental properties.

⁶ *Residential Tenancies Act*, s 2(1).

⁷ There are other limits and exceptions: see *Residential Tenancies Act*, s 2(2); *Residential Tenancies Exemption Regulation*, Alta Reg 189/2004, s 1.

⁸ *Mobile Home Sites Tenancies Act*, RSA 2000, c M-20. The *Mobile Home Sites Tenancies Act* is outside the scope of this report although ALRI may consider it later. See Chapter 3.

[6] There are signs that the *Residential Tenancies Act* has not kept up with the times. Many features of the *Residential Tenancies Act* date back more than 50 years. The legislation does not reflect social changes or modern technology.

[7] There are also signs that the *Residential Tenancies Act*, related legislation, and the systems to enforce them are not working well. Landlords, tenants, and other people who rely on the legislation say it is confusing and difficult to understand. When people do not know their rights and responsibilities, they may unknowingly violate the law. When problems arise, they do not know how to enforce their rights. Non-compliance with the law seems to be widespread.

[8] To begin the project, ALRI did research and consultation to learn about problems or issues with the *Residential Tenancies Act* and related laws. This report is the first of a series summarizing our findings.

B. About this Project and this Report

[9] This report is the first one in ALRI's project about residential tenancies. ALRI will publish a series of reports summarizing issues with the *Residential Tenancies Act*. This series of reports will lay the groundwork for the rest of the project. The summary of issues will guide the next stages of our work.

[10] This report does not have any recommendations for reform. This report and the others in the series are intended to be an inventory of all the issues that should be considered in updating or replacing the *Residential Tenancies Act*. ALRI may not make recommendations about all the issues in this report. Some of the issues are outside the scope of ALRI's project or outside our expertise as a law reform agency.⁹

[11] As a law reform agency, ALRI's expertise is in legal issues. We usually focus on issues that could be resolved by legislation. ALRI does not usually make recommendations about operational issues, resource allocation or budgets, or economic policy. In addition, while we have legal expertise we are not experts in legislative drafting. ALRI generally avoids making recommendations about the specific wording of legislation.

⁹ See Chapter 3.

[12] Some of the issues in this report should be left to elected officials, legislative drafters, or others. We hope this report will assist them by identifying questions to consider.

C. Methods: Research and Early Consultation

[13] The findings in this report are based on four things:

- A review of legislation and case law,
- A literature review,
- An extensive early consultation process, and
- Reports of individual experiences gathered from news stories and online sources.

[14] For this part of the project, ALRI's goal was simply to identify problems. We have not yet attempted to weigh the importance of problems or determine their impact.

[15] ALRI is not yet considering solutions. We did not try to measure support for particular solutions or reconcile different points of view. As the project continues, ALRI will have additional consultation on options for reform. We will consider all input when making recommendations.

1. LEGISLATION AND CASE LAW

[16] ALRI counsel carefully reviewed the *Residential Tenancies Act*, its regulations, and other legislation. This review turned up some issues or inconsistencies not mentioned elsewhere.

[17] ALRI students gathered and summarized Alberta case law, including the following:

- Any reported Alberta court decisions from 2000 or later considering or applying the *Residential Tenancies Act* or the *Mobile Home Site Tenancies Act*. Court decisions include decisions from the Court of Appeal of Alberta, the Court of King's Bench of Alberta (formerly the Court of Queen's Bench of Alberta), and the Alberta Court of Justice (formerly the Provincial Court of Alberta);

- All published decisions of the Residential Tenancy Dispute Resolution Service [RTDRS] decisions. RTDRS began publishing some written decisions on CanLII in 2019. Only a small fraction of RTDRS decisions are published;¹⁰ and
- Any reported Alberta Human Rights Tribunal decisions from 2000 or later considering discrimination in tenancy.

2. LITERATURE REVIEW

[18] ALRI counsel reviewed secondary sources, like books, articles, research reports, government reports, news articles, and blog posts, focusing on sources from Canada.¹¹ Our research included sources from lawyers and legal scholars, sociologists, geographers, advocacy organizations, politicians, and many others.

[19] Our review included recent news stories. We paid particular attention to news from Alberta but also found useful information in news stories from other places in Canada.

3. EARLY CONSULTATION

[20] To find out how well the legislation is working in practice, we spoke with people who could tell us about real life experiences. Written sources provide an incomplete picture of issues, as most residential tenancy issues occur and are resolved privately. Even when landlords and tenants participate in formal dispute resolution processes, like RTDRS hearings, most hearings are not open to

¹⁰ To illustrate, between April 2022 and March 2023 RTDRS dealt with 14,113 applications: Residential Tenancy Dispute Resolution Service (Alberta), *RTDRS annual report: The third edition annual report for Alberta's Residential Tenancy Dispute Resolution Service* (2023) at 8, online: <open.alberta.ca/dataset/01e0066a-c12f-4278-bfc4-2c807d50304d/resource/e8c4c0b5-1ab3-4bdb-b758-7a62863a7ff6/download/sartr-rtdrs-annual-report-2022-2023.pdf> [perma.cc/9ZHK-6SRF]. There are only 37 written decisions available from that period on CanLII: CanLII, Alberta Residential Tenancy Dispute Resolution Service, online: <canlii.org/en/ab/abrtdrs/>.

¹¹ While we occasionally refer to research of sources from outside Canada, we did not attempt a thorough review of sources from other countries. There were two reasons for this choice. First, ALRI had to limit its research given the time and resources available. There are dozens, possibly hundreds, of recent articles about housing, rentals, and evictions in the United States alone. Second, research from outside Canada may not be helpful. Other countries have different laws and legal systems, but also different types of housing, housing supply, vacancy rates, rents, economies, and demographics. Many studies are very localized and explore a particular context: see eg John Balzarini & Melody Boyd, "Working With Them: Small Scale Landlord Strategies for Avoiding Evictions" (2021) 31:3-5 *Housing Policy Debate* 425 (research based on interviews with 71 small scale landlords and property managers in Philadelphia). It can be difficult to know if the conclusions would apply in other places.

the public and few decisions are reported. Speaking to people provided a fuller picture of the issues.

[21] For early consultation, we sought input from people who deal with residential tenancy issues regularly and have opportunities to observe problems. We reached out to organizations, service providers, and researchers. We sought out a variety of perspectives, including those who work with tenants, those who work with or are landlords, and those who apply or enforce the legislation.¹² We gathered input through:

- interviews,
- meetings or presentations to organizations or groups, and
- five consultation events.

[22] Some participants followed up by sending us comments in writing or documents.

[23] Altogether, we had input from over 140 individuals. Many were from employees or members of organizations, with over 40 organizations represented. We also had input from several researchers and individuals who provided input in their personal capacity.

a. Information sharing and confidentiality

[24] We asked participants for permission to use any information shared without identifying who provided the information. Accordingly, this report will not identify specific individuals or organizations who participated in early consultation.

b. Interviews

[25] We interviewed 36 individuals. Most of interviews were by phone or videoconference, with a few in-person. We did not use standardized questions for interviews, as we wanted to hear which issues were most important to

¹² We did not actively seek input from individual tenants for early consultation, although some contacted us and participated in the meetings we organized. At this point in the project, we were looking for input from “repeat players” who could tell us about general observations or frequent problems. For information about RTDRS, for example, it was more helpful to hear from service providers who attend hearings every month than from a tenant who attended one hearing. ALRI plans to seek input from individual tenants in later stages of the project.

interviewees. We generally let interviewees lead the conversation, asking follow-up questions or prompting as necessary.

c. Meetings and presentations

[26] We were invited to meet with or present to six organizations or groups about our project. We took these opportunities to gather additional input from attendees. Each meeting had a different format as we adapted to meet the needs of each group. For example, at one meeting ALRI counsel delivered a formal presentation followed by questions from the audience. Other meetings were more like our interviews, with attendees leading the conversation.

d. Consultation events

[27] In November 2023, ALRI organized meetings to bring together organizations, service providers, and researchers interested in residential tenancy issues. There were three sessions: a virtual meeting on Zoom, an in-person meeting in Edmonton, and an in-person meeting in Calgary. Altogether, 46 people attended, with representation from 25 organizations. The main purpose of the meetings was to share data about residential tenancy issues, identify gaps, and give input on what additional data would be useful. Discussion at the meetings was wide-ranging and covered many topics in addition to data.

[28] In February 2024, ALRI organized two additional meetings for landlords and property managers. Most participants at the November meetings reflected a tenant or service provider perspective, so we organized these additional meetings to ensure we heard the landlord perspective. There were two sessions. Both were virtual meetings on Zoom. Altogether, 14 people attended.

4. REPORTS OF INDIVIDUAL EXPERIENCES

[29] The news stories we gathered often reported on individual experiences. It can be difficult to know if an anecdote in a news story is representative of a general problem but they can shed light on possible issues. Some news stories illustrated problems we had heard about elsewhere.

[30] We also explored a new way to learn about individual experiences, building on the work of the Justice Data and Design Lab. The Justice Data and Design Lab is part of the BC Access to Justice Centre for Excellence, a research institute at the University of Victoria Faculty of Law. The Justice Data and Design Lab uses a machine learning process to collect and analyze posts from the social

media website Reddit. It collects posts from a subreddit called “r/legaladvicecanada”. Posts often include a summary of events from the perspective of the person making the post and the person’s questions. The machine learning process analyzes words in posts to identify topics and which topics come up most often.

[31] The Justice Data and Design Lab shared a dataset with ALRI. There were 627 posts in the dataset. Their analysis indicated the posts in the dataset were related to housing problems in Alberta. ALRI students reviewed each post and categorized them by legal issue. This review showed that most of the posts were about residential tenancy issues. Approximately 425 posts were about residential tenancies, recounting individual experiences or problems. The remaining posts, approximately 200, were about other issues.¹³ In this report, we call this dataset the Reddit data.

5. LACK OF DATA

[32] There is a significant limitation on our research. Any research about residential tenancy issues is challenging because of a lack of data.

a. About tenancies and problems generally

[33] In our research for this project, it quickly became apparent that there are big gaps in the information available. It is hard to get reliable information about even some very basic facts. To name just a few examples:

- We have been unable to find any statistics or estimates about the number of landlords in Alberta.
- We do not know how many tenancies in Alberta are fixed term compared to periodic.
- We do not know how many weekly or yearly periodic tenancies there are.
- We do not know how many tenants live in employee housing where their employer is also their landlord.¹⁴

¹³ ALRI is sharing our analysis with the Justice Data and Design Lab to help improve its machine learning process.

¹⁴ See *Residential Tenancies Act*, ss 7, 9, 11.

[34] Other researchers have noted the lack of data about residential tenancy issues, especially about loss of housing.¹⁵ The main source of data is the number of applications or hearings at landlord and tenant tribunals, like RTDRS. Researchers in other jurisdictions have found that many problems do not result in applications or hearings.¹⁶ In Alberta, the number of applications at RTDRS is almost certainly smaller than the actual number of people who lose their homes but we do not know by how much. The *Residential Tenancies Act* allows a landlord to terminate a tenancy by giving a notice to the tenant.¹⁷ If the tenant moves out, the landlord does not need to make an application and there will be no hearing. No one tracks the number of notices or how many tenants move out after receiving a notice. There is no way to measure how many tenants lose their homes without a hearing.

[35] In recent years, some researchers have tried to fill the gaps in knowledge about loss of housing.¹⁸ Projects like the BC Eviction Mapping Project are collecting data in innovative ways and contributing to a more detailed picture.¹⁹ To our knowledge, no one has collected similar information in Alberta.

[36] It is even more difficult to get information about problems other than terminating a tenancy or losing a home. The Justice Data and Design Lab's project is one of the few collecting information about other kinds of problems. Many posts in the dataset asked questions about maintenance or repairs, security

¹⁵ See eg Zell & McCullough, note 2 at 34:

... there is an overall lack of data and comprehensive or accurate information demonstrating the frequency, scale, or broader impacts of these kinds of evictions. ... Moreover, the social-legal environments that produce residential evictions, as well as access to housing justice for tenants, remain critically understudied. There is also limited research on the impacts of these types of evictions on tenants and the wider housing market, particularly over the longer-term. This only heightens the need for more data and rigorous study of evictions.

¹⁶ First United, *BC's Eviction Crisis: Evidence, Impacts and Solutions for Justice* (Vancouver: First United, 2023) at 24, online: <admin.firstunited.ca/app/uploads/2023/11/First-United_BC-Eviction-Crisis_Evidence-Impacts-and-Solutions-for-Justice.pdf> [perma.cc/SW5Z-NL8B] [First United, *BC's Eviction Crisis*]; Saskatchewan Human Rights Commission, *Access and Equality for Renters in Receipt of Public Assistance: A Report to Stakeholders* (2018) at 14, online: <saskatchewanhumanrights.ca/wp-content/uploads/2020/03/SHRC_RIRPA_web.pdf> [perma.cc/F662-T6QB].

¹⁷ *Residential Tenancies Act*, ss 29, 30.

¹⁸ See eg First United, *BC's Eviction Crisis*, note 16; Silas Xuereb & Craig Jones, *Estimating No-Fault Evictions in Canada: Understanding BC's Disproportionate Eviction Rate in the 2021 Canadian Housing Survey* (Vancouver: Balanced Supply of Housing Research Partnership, 2023), online: <bsh.ubc.ca/wp-content/uploads/2024/06/Estimating-No-Fault-Evictions-in-Canada.pdf> [perma.cc/E8HK-N7MZ].

¹⁹ See First United, "BC Eviction Mapping", online: <firstunited.ca/how-we-help/bc-eviction-mapping/> [perma.cc/D7R7-25VK].

deposits, landlords entering tenants' homes, and other concerns that are not directly related to terminating a tenancy or losing a home.

[37] We found almost no data that would help us estimate how often these other problems occur or who they affect. We have only anecdotal information. For example, in our early consultation, many landlords and property managers shared anecdotes about tenants damaging a home. We found no reliable data about how often tenants damage property or what it costs landlords to repair damage. We also heard a lot about deductions from security deposits. Many tenants seem to think that landlords regularly keep the entire security deposit whether or not they are entitled to do so. There is no data about how often landlords make deductions from security deposits or whether they do so unjustly, so we have no way of measuring whether there is any truth to this belief.

b. About dispute resolution

[38] In Alberta, there is a particular problem with research on dispute resolution. Only a fraction of RTDRS decisions are published.²⁰ Most orders are issued without a written decision. Unlike court orders, which are available upon request for a nominal fee, a researcher seeking information about RTDRS orders would have to make a request to access records using the process in the *Freedom of Information and Protection of Privacy Act*. We spoke with other researchers who explored using this process to access a representative sample of RTDRS decisions. It turned out that the time and cost to access the records made their research project impractical.

[39] In other jurisdictions, researchers have been able to use tribunal decisions to gather statistics about hearings and results, or to calculate how often there are errors or problems with decisions or reasoning.²¹ That kind of research is nearly

²⁰ Jonnette Watson Hamilton has raised this issue in several blog posts: Jonnette Watson Hamilton, "Tenant's Insurance, Ministerial Order No SA:005/2020 and Evictions of Residential Tenants" (25 September 2020), online: ABlawg <ablawg.ca/2020/09/25/tenants-insurance-ministerial-order-no-sa005-2020-and-evictions-of-residential-tenants/> [perma.cc/Y6VB-BAAE]; Jonnette Watson Hamilton, "Setting Aside and Varying Orders of the Residential Tenancies Dispute Resolution Service for Procedural Unfairness" (2 November 2021), online: ABlawg <ablawg.ca/2021/11/02/setting-aside-and-varying-orders-of-the-residential-tenancies-dispute-resolution-service-for-procedural-unfairness/> [perma.cc/3U84-L6E8].

²¹ See eg Sarah Buhler, "Pandemic Evictions: An Analysis of the 2020 Eviction Decisions of Saskatchewan's Office of Residential Tenancies" (2021) 35 J L & Soc Pol'y 68; Jessie Hadley & Kendra Milne, *On Shaky Ground: Fairness at the Residential Tenancy Branch* (Vancouver: Community Legal Assistance Society, 2013), online: <clasbc.net/wp-content/uploads/2019/06/On_Shaky_Ground_October2013.pdf>.

impossible in Alberta. It is hard to evaluate whether the system is effective or consider how to make it better without this kind of information.

[40] As RTDRS conducts only phone hearings, it is not possible for observers, researchers, or journalists to attend hearings. They cannot monitor whether decisions are fair, consistent, and predictable.

D. Structure of this Report

[41] This report is the first in a series ALRI plans to publish about issues with the *Residential Tenancies Act*. This report explains the project and some general or conceptual issues with the *Residential Tenancies Act*. The next report in the series will be about issues that arise at the beginning of or during a tenancy. Later reports will be about ending a tenancy and dispute resolution.

[42] The first three chapters of this report introduce the project. This chapter describes the project and our methods. Chapter 2 discusses the importance of residential tenancy law and why ALRI decided to take on this project. It includes a brief history of the *Residential Tenancies Act* and how it has been reformed over time. It also describes some common problems with residential tenancies and their impact. Chapter 3 is about the scope of the project. It explains why certain topics are outside the scope of ALRI's project.

[43] The next five chapters focus on specific problems. Chapter 4 is about problems with the drafting and organization of the *Residential Tenancies Act*. Chapter 5 reviews the many rules about residential tenancies that are not found in the *Residential Tenancies Act*, including common law rules and other legislation affecting landlords and tenants. Chapter 6 is about the application of the *Residential Tenancies Act*. It does not apply to some types of homes or relationships. This chapter discusses exceptions and grey areas, asking whether the rules about application should be updated. Chapter 7 is about tenants and landlords. The definitions in the *Residential Tenancies Act* are unclear. This chapter asks if they could be clarified. The final chapter, Chapter 8, discusses whether the legislation should address tenant associations or landlord licensing and concludes this report.

CHAPTER 2

Why Is Residential Tenancy Law Important?

A. Why Review Laws About Residential Tenancies?

[44] There are several reasons why ALRI decided to review the *Residential Tenancies Act*.

[45] The *Residential Tenancies Act* is overdue for a review. The last major review was more than 20 years ago. Parts of the legislation are now outdated.

[46] Laws about residential tenancies have a big impact on many people. There are hundreds of thousands of rented homes in Alberta. More than one quarter of households rent their home. There are also many people and organizations who own or manage rental properties. A problem with a rented home or conflict between a landlord and a tenant affects everyone who lives in the home and those who own or manage it.

[47] It is impossible to know the full extent of landlord-tenant problems as they often leave no trace in official records. We do not even know exactly how many problems end up in formal dispute resolution. There are different kinds of formal dispute resolution and not all of them publish statistics. Nonetheless, the information we have suggests the number of problems is very large. RTDRS alone has received more than 10,000 applications every year since 2017, suggesting 2 to 3 per cent of rented homes in Alberta are affected by RTDRS proceedings each year. That number does not include disputes that end up in court, human rights complaints, complaints or investigations about public health requirements, or complaints, investigations, tickets, or charges for violations of the *Residential Tenancies Act*.

[48] The consequences of landlord-tenant problems go beyond money or property. A problem with a rented home or conflict between a landlord and tenant can affect quality of life and wellbeing for everyone involved.

[49] Laws cannot prevent all problems but they should help people resolve them. Well-designed laws about residential tenancies would help people resolve problems quickly and easily. We heard in our early consultation that the *Residential Tenancies Act* often falls short of this goal. Unclear legislation and

inefficient processes may be adding to problems, instead of helping to solve them.

B. A Brief History of the *Residential Tenancies Act*

[50] The *Residential Tenancies Act* used to be regularly reviewed and updated. In recent years, however, it has been overlooked. The last major review was approximately 20 years ago. There have been piecemeal amendments since then but they had a very limited scope.

[51] The Alberta legislature adopted the first version of the legislation, *The Landlord and Tenant Act*, in 1964.²²

[52] A decade later, ALRI (then called the Institute of Law Research and Reform) began a review of Alberta's residential tenancy law. In 1977, we published *Residential Tenancies, Final Report 22*.²³ In 1979, the legislature adopted *The Landlord and Tenant Act, 1979*, implementing recommendations from the report.²⁴

[53] Many features of Alberta's current *Residential Tenancies Act* can be traced back to ALRI's 1977 report. Those features include landlord's and tenant's covenants (promises that are part of every residential tenancy agreement, whether or not they are explicitly stated), landlord's remedies for non-payment of rent, and the rule that a security deposit may not be more than one month's rent.

[54] In 1989, the Minister of Consumer and Corporate Affairs appointed an advisory committee to review the *Landlord and Tenant Act*. The Ministerial Advisory Committee on Residential Tenancies held public meetings, conducted a survey, and invited written submissions. It delivered its report in 1990.²⁵

[55] The following year, the legislature passed the *Landlord and Tenant Amendment Act, 1991*, implementing recommendations from the committee's report.²⁶ Among other things, the amending legislation renamed the statute to

²² *The Landlord and Tenant Act*, SA 1964, c 43.

²³ Institute of Law Research and Reform (Alberta), *Residential Tenancies, Final Report 22* (1977) [*Residential Tenancies 1977*].

²⁴ *The Landlord and Tenant Act, 1979*, SA 1979, c 17.

²⁵ Ministerial Advisory Committee on Residential Tenancies (Alberta), *Achieving a Balance* (Edmonton: Consumer and Corporate Affairs, 1990) [*Achieving a Balance*].

²⁶ *Landlord and Tenant Amendment Act, 1991*, SA 1991, c 18.

the *Residential Tenancies Act*. One of the most significant changes was the introduction of rules giving tenants security of tenure. Before 1991, a landlord could terminate a residential tenancy for any reason. With the new legislation, a landlord could only terminate a periodic residential tenancy for reasons set out in legislation.

[56] There was another review of the *Residential Tenancies Act* in the early 2000s. Alberta Government Services circulated discussion papers to gather opinions on the legislation. To our knowledge, the results of that consultation were never published nor made available to the public.²⁷ As part of our research for this project, ALRI reviewed archival material related to that consultation process.

[57] The legislature adopted a new version of the *Residential Tenancies Act* in 2004 and amended it twice in 2005.²⁸ The most significant change was the creation of RTDRS. RTDRS is a quasi-judicial tribunal. In other words, it is not a court but it has some of the powers of a court. The legislation allowed RTDRS to deal with claims under the *Residential Tenancies Act* and make orders to resolve them.²⁹

[58] Since 2005, there have been three changes worth mentioning.

[59] In 2015, the legislature passed a private member's bill adding some new rules to the *Residential Tenancies Act*. The rules allow a tenant affected by domestic violence to terminate a tenancy early if continuing the tenancy would put them at risk.³⁰

²⁷ When a bill to replace the *Residential Tenancies Act* was introduced in the legislature, the responsible Minister and the member who sponsored the bill mentioned the consultation but did not share results: Alberta, Legislative Assembly, *Hansard*, 25-4 (3 March 2004) at 287 (Hon David Coutts); Alberta, Legislative Assembly, *Hansard*, 25-4 (3 March 2004) at 296 (Hon Gordon Graydon); Alberta, Legislative Assembly, *Hansard*, 25-4 (4 March 2004) at 340-341 (Hon Gordon Graydon).

²⁸ Bill 16, *Residential Tenancies Act*, 4th Sess, 25th Leg, Alberta, 2004; Bill 10, *Residential Tenancies Amendment Act, 2005*, 1st Sess, 26th Leg, Alberta, 2005; Bill 44, *Residential Tenancies Amendment Act, 2005 (No 2)*, 1st Sess, 26th Leg, Alberta, 2005.

²⁹ The legislation did not change the jurisdiction of the courts. A person with a claim under the *Residential Tenancies Act* may apply to the Court of King's Bench of Alberta, the Alberta Court of Justice, or RTDRS. In 2020, RTDRS's jurisdiction was expanded so it can also deal with claims under the *Mobile Home Sites Tenancies Act: Mobile Home Sites Tenancies Amendment Act, 2020*, SA 2020, c 8.

³⁰ *Residential Tenancies (Safer Spaces for Victims of Domestic Violence) Amendment Act, 2015*, SA 2015, c 20.

[60] In 2020, the legislature amended the *Residential Tenancies Act* to prohibit rent increases for a limited time in response to the COVID-19 pandemic.³¹ It was a temporary change. The prohibition on rent increases is no longer in effect.

[61] The last change worth mentioning was in 2022. The Legislature amended section 46, which is about return of security deposits. Before the amendment, section 46 required a landlord to return a security deposit by personal service (meaning hand-delivered directly to the former tenant) or by regular or registered mail. The amendment allowed a landlord to return a security deposit “in any other manner agreed to in writing by the landlord and tenant.”³² The amendment would allow a landlord to return a security deposit by electronic transfer, for example.³³

[62] It is unfortunate that it has been so long since the last review of the *Residential Tenancies Act*, especially because the creation of RTDRS was a major change. There was a review of the *Residential Tenancy Dispute Service Regulation* in 2016, but amendments to the regulation in 2017 were small.³⁴ RTDRS has now operated for nearly 20 years without a real evaluation of whether it works as intended.³⁵

C. Why Is Residential Tenancy Law Important?

[63] Many people who live in Alberta are landlords or tenants. A lucky few may never encounter problems with a tenancy but that is probably not the norm. Our research and early consultation shows that problems are common and

³¹ *Tenancies Statutes (Emergency Provisions) Amendment Act, 2020*, SA 2020, c 6.

³² *Residential Tenancies Act*, s 46(1)(a)(iii).

³³ The sponsor of the bill said this change was to allow landlords to return security deposits by e-transfer: Alberta, Legislative Assembly, *Hansard*, 30-3 (3 May 2022) at 1046 (Hon Tanya Fir); Alberta, Legislative Assembly, *Hansard*, 30-3 (25 May 2022) at 1488 (Hon Tanya Fir).

³⁴ For discussion of the amendments, see Amy Matychuk and Jo-Ann Munn Gafuik, “Alberta Amends the Residential Tenancy Dispute Resolution Service Regulation” (9 May 2017) online: ABlawg <ablawg.ca/2017/05/09/alberta-amends-the-residential-tenancy-dispute-resolution-service-regulation/> [perma.cc/Z5NH-TKUR].

³⁵ See Jonnette Watson Hamilton, “Alberta's Residential Tenancies Dispute Resolution Service has a Complaint Process” (11 April 2023), online: ABlawg <ablawg.ca/2023/04/11/albertas-residential-tenancies-dispute-resolution-service-has-a-complaint-process/> [perma.cc/ZMA4-VKJN]; Jonnette Watson Hamilton, “Another Trap for Unwary Alberta Residential Tenants: Short, Rigid Appeal Periods” (24 February 2023), online: ABlawg <ablawg.ca/2023/02/24/another-trap-for-unwary-alberta-residential-tenants-short-rigid-appeal-periods/> [perma.cc/V9B9-DFUQ].

widespread. These problems can have a significant impact on the people involved.

1. MANY PEOPLE IN ALBERTA ARE AFFECTED

[64] The 2021 census found 465,220 households in Alberta rent their home.³⁶ As the total number of households was 1,633,220, slightly more than one quarter of households are renters.

[65] Tenants can be from any demographic or background but many are marginalized or vulnerable. Newcomers to Canada, low-income people, and young people are usually tenants, not homeowners.

[66] It is harder to find information about the number of landlords in Alberta. In our research, we have not found reliable statistics about the total number of landlords in Alberta or their characteristics.

[67] There is a range of different types of landlords, including large corporations or real estate investment trusts, non-profit organizations, and individuals. There are landlords who have thousands of rental units and others who have just one, like a secondary suite in their home.

[68] Property owners have different reasons for becoming landlords.

[69] Large corporations, real estate investment trusts, or other investors usually motivated by profit. For them, renting property is a business.

[70] Non-profit organizations who own or manage rental homes usually want to help people in need. Often they become landlords to provide affordable or subsidized housing, sometimes to anyone in need and sometimes to specific populations. Some non-profits have a mix of affordable and market rate housing.

[71] Individuals have many reasons to become landlords. Some simply want to make a profit. For them, rental property is purely an investment. Some become landlords to help them afford their own home. For example, they may rent a secondary suite to help pay the mortgage. Some become landlords by circumstance. A person who is unable to sell a former home or a home they inherited they may feel the only choice is to rent it out. Landlords who rent a secondary suite in their own home, a former home, or an inherited home may

³⁶ Statistics Canada, "Dwelling condition by tenure, Canada, provinces and territories", online: <www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810023301> [perma.cc/T54S-66P3].

feel more emotional attachment to the home than someone who buys rental property as an investment.

[72] There are also property managers, resident managers, and employees of rental companies. They do many or all of the things owners may do although they are not the owners themselves.

[73] Many people have a financial interest in rental housing. Many investors have interests in corporations or real estate investment trusts that own or manage rental homes.

[74] Legislation can also affect those who work in the rental housing sector, like property management companies, civil enforcement agencies, and service providers.

2. PROBLEMS ABOUT HOUSING AND TENANCY ARE COMMON EVERYDAY LEGAL PROBLEMS

[75] Surveys about legal problems show that many people experience legal problems related to housing. The National Legal Problems Survey, which the Canadian Forum on Civil Justice conducted from 2013 to 2014, found 2.5% of respondents had housing issues in the previous three years.³⁷ In a similar survey conducted by Statistics Canada in 2021, 9% of respondents had issues about “your house, rent, mortgage, or rent owed to you.”³⁸ A 2017 study of summary legal advice clinics in Alberta found that landlord/tenant issues were the most common non-family law problem for clients.³⁹

[76] Only some people with legal problems use the formal legal system. A legal problem does not always mean going to court, hiring a lawyer, or getting legal advice. Many people resolve their legal problems in other ways.⁴⁰

³⁷ Trevor CW Farrow et al, *Everyday Legal Problems and the Cost of Justice in Canada: Overview Report* (Toronto: Canadian Forum on Civil Justice, 2016) at 8, online: <cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf> [perma.cc/LW4C-Q5B5].

³⁸ Statistics Canada, “Serious Problems or Disputes in the Past 3 Years, by Type of Problem and Gender, Provinces, 2021” (2022) online: Statistics Canada <www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00001/tbl/tbl01-eng.htm > [perma.cc/7YUG-NXAQ].

³⁹ Joanne J Paetsch & Lorne D Bertrand, *Summary Legal Advice Services in Alberta: Year 1 Results from the Community Legal Clinic Surveys* (Canadian Research Institute for Law and the Family, 2017) at 8, online: CanLII Docs <canlii.ca/t/29lr> [perma.cc/CJ2L-JR8R].

⁴⁰ In the National Legal Problems Survey a legal problem was defined as one “that has a legal aspect and has a potential legal solution”: Farrow et al, note 37 at 5, 9-10. The Canadian Legal Problems Survey used a similar definition: Laura Savage & Susan McDonald, “Experiences of

[77] Even so, every year a large number of people in Alberta use the formal legal system to deal with issues about tenancies. Often that means using RTDRS. From April 2023 to March 2024, the latest year for which figures are available, RTDRS received more than 14,000 applications.⁴¹ The number of applications has exceeded 10,000 every year since 2017.⁴² The vast majority are applications for recovery of possession, meaning a landlord sought an order to make the tenant leave the home. An order for recovery of possession authorizes a civil enforcement agency to remove a tenant if they do not leave voluntarily. From April 2023 to March 2024, there were 11,212 applications for recovery of possession under the *Residential Tenancies Act*.⁴³

D. Residential Tenancy Problems and Their Impact

[78] In early consultation, we heard a lot about problems with residential tenancies. We heard about problems that face landlords and property managers, tenants and those who live with them, and others. While we heard about some problems over and over, it is hard to say which problems are most common. It would take a different kind of study to measure how often these problems occur or how many people are affected.

[79] The stakes are high for everyone involved. It is worth noting, however, that there are different kinds of impacts depending on a person's role.

1. FOR LANDLORDS AND PROPERTY MANAGERS

[80] Residential tenancy issues can affect a landlord's money, property, and sometimes their wellbeing or the wellbeing of others.

Serious Problems or Disputes in the Canadian Provinces, 2021" *Juristat* (18 January 2022), online: Statistics Canada <www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00001-eng.htm> [perma.cc/H2EB-ZE7Y]:

A legal problem, in the context of legal problems surveys, includes any problem that could have legal implications or a possible legal solution, and is not limited to problems that were addressed or resolved through the formal justice system or even recognized by the respondent as having a "legal" aspect.

⁴¹ Residential Tenancy Dispute Resolution Service (Alberta), *RTDRS Annual Report: The Fourth Edition Annual Report for Alberta's Residential Tenancy Dispute Resolution Service (2024)* at 8, online: <open.alberta.ca/dataset/01e0066a-c12f-4278-bfc4-2c807d50304d/resource/3cf2fc06-9c6a-4004-a4fa-c39955f09fed/download/sartr-rtdrs-annual-report-2023-2024.pdf> [perma.cc/2XLA-ZGR3] [*RTDRS Annual Report 2024*].

⁴² *RTDRS Annual Report 2024*, note 41 at 5.

⁴³ *RTDRS Annual Report 2024*, note 41 at 8.

[81] The impact often depends on the type of landlord. A large, for-profit landlord that owns hundreds or thousands of homes, a non-profit that operates affordable housing, and an individual with a secondary suite in their home could face the same problem but have different outcomes. Any landlord may be concerned about their money or property. Non-profits must also consider the wellbeing of the people they serve and the organization's ability to fulfill its mission. Individuals are concerned about their own happiness, comfort, health, and safety.

[82] Non-payment of rent and damage to property are common problems. We heard in early consultation that they are the biggest concerns for many landlords.

[83] Non-payment of rent has a direct financial impact on a landlord. If a tenant does not pay rent, the landlord loses money. Although a tenant is legally responsible to pay rent, it is often difficult or impossible to collect the money.

[84] Damage affects a landlord's property. It can decrease the value of property and increase a landlord's costs if they have to pay for repairs. As with lost rent, it can be difficult or impossible to recover the costs from a tenant.

[85] Some landlords are better prepared to absorb financial losses than others. Large landlords can usually anticipate that a fraction of tenants will not pay rent or damage property. They can plan for it as a cost of doing business. For individuals with one or a few properties, however, financial losses can be devastating. Losing several months rent may mean they cannot pay their mortgage or other bills. They may be unable to afford large, unexpected repairs. In the worst cases, the losses can lead to foreclosure or bankruptcy. Whether or not they can manage the financial loss, individuals are likely to experience stress, affecting their wellbeing.

[86] Other common problems are about tenant behaviour. We heard a lot about smoking and noise, for example. Tenants who smoke or make noise can disturb their neighbours, especially in multi-unit buildings where people live in close proximity.

[87] We also heard about cleaning and pests, like mice or bedbugs. Pests often spread between units in a building. If a tenant in one unit does not keep their home clean or does not cooperate with pest control measures, it may be impossible to eradicate the pests.

[88] Many landlords have rules about tenant behaviour and cleaning, but it can be challenging to enforce the rules. These problems can affect the comfort

and health of everyone involved. If the landlord lives in the same building, they can be personally affected by smoke, noise, pests, or similar issues. It can take time and money to resolve these issues. Sometimes the problem leads to losing tenants, either because the landlord ends a tenancy or because other tenants leave. A landlord might lose money, have increased costs, or both.

[89] On occasion, a landlord may have to deal with more serious behaviour issues. We heard that it is uncommon for a tenant to assault, threaten, or harass the landlord or other tenants. If it happens, however, it can have a big impact. A landlord's personal safety can be at risk. It could be especially dangerous or distressing for a landlord who rents a secondary suite in their home or lives in the same building as the tenant. The landlord may not feel safe in their own home.

[90] Another uncommon but serious problem occurs if a tenant will not move out at the end of a tenancy. A landlord has to go through several steps to remove a tenant legally. Each step takes time and costs money. In the meantime, the landlord is usually losing rent. Sometimes a landlord ends a tenancy so the landlord or a family member can move in. In these cases, the landlord or family member can end up without a place to live until the tenant is removed.⁴⁴

[91] Other concerns that came up occasionally included difficulty screening potential tenants when they apply to rent, issues about pets, issues with guests or visitors, illegal behaviour, and utility payments.

[92] We did not hear much in our early consultation about turnover, concerns about losing tenants, or problems finding new tenants. It may be because our early consultation happened when vacancy rates were very low. At a time with high vacancy rates landlords might be more concerned about filling vacancies or losing rent if a tenant leaves.

⁴⁴ Some news stories from Ontario illustrate the kinds of harms landlords can experience when tenants do not leave. In one case a man lived in his car for months: Erica Johnson, "Man sleeping in his car says tenants owe more than \$31K, won't leave his rental property", *CBC News* (7 November 2022), online: <[cbc.ca/news/business/landlord-tenant-eviction-delays-1.6638367](https://www.cbc.ca/news/business/landlord-tenant-eviction-delays-1.6638367)> [perma.cc/TLK5-BG96]. In another, a woman feared she and her daughter would soon be homeless, on top of other hardships: Priscilla Ki Sun Hwang, "Mom, daughter face homelessness after buying home and tenant refuses to leave", *CBC News* (24 October 2022), online: <[cbc.ca/news/canada/ottawa/non-paying-tenant-ottawa-small-landlord-face-homelessness-1.6610660](https://www.cbc.ca/news/canada/ottawa/non-paying-tenant-ottawa-small-landlord-face-homelessness-1.6610660)> [perma.cc/H3M7-URPT].

2. FOR TENANTS, THEIR FAMILIES, AND OTHERS WHO LIVE WITH THEM

[93] Tenants rent because they need a home. Shelter is a basic human need. A safe and secure home is essential to health and wellbeing.⁴⁵

[94] We heard about many different problems that tenants face. We heard about problems at every point in a tenancy: finding a home, during a tenancy, losing a home, and after leaving a home.

[95] Most of the problems tenants face also affect their families or households, including children, adults who cannot live independently, and pets. They are directly affected by problems with a home or landlord but have very little power to address problems.

[96] Some tenants are more likely than others to experience problems, have more difficulty resolving problems, and have worse outcomes. Our early consultation and research suggest these vulnerable groups include young people, seniors, newcomers, racialized people, Indigenous people, people with disabilities, single-parent families, people living in poverty, and people who receive social assistance.⁴⁶ It is harder for them to find a home. With fewer choices, they are more likely to end up in undesirable or substandard homes. They may experience poor treatment or discrimination during a tenancy but have to tolerate it because they have few alternatives. They are more likely to lose their homes⁴⁷ and if they do, are more likely to become homeless.⁴⁸

⁴⁵ Sarah Buhler & Rachel Tang, "Navigating Power and Claiming Justice: Tenant Experiences at Saskatchewan's Housing Tribunal" (2019) 36:2 Windsor YB Access Just 210 at 211.

⁴⁶ See eg Statistics Canada, *Evictions in Canada, 2021* (21 July 2022), online: <www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2022046-eng.htm> [perma.cc/RXD3-6K2H]; Zell & McCullough, note 2 at 35; Emily Paradis, *Access to Justice: The Case for Toronto Tenants: Final Report of the Tenant Duty Counsel Review* (Advocacy Centre for Tenants Ontario, 2016) at 13, online: <acto.ca/production/wp-content/uploads/2017/07/TDCP_Report_2016.pdf> [perma.cc/S85G-NFLQ]; Saskatchewan Human Rights Commission, *Access and Equality for Renters in Receipt of Public Assistance: A Report to Stakeholders* (2018) at 9-12, 21-25, online: <saskatchewanhumanrights.ca/wp-content/uploads/2020/03/SHRC_RIRPA_web.pdf> [perma.cc/F662-T6QB].

⁴⁷ See eg Statistics Canada, *Evictions in Canada, 2021* (21 July 2022), online: <www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2022046-eng.htm> [perma.cc/RXD3-6K2H]; Silas Xuereb & Craig Jones, *Estimating No-Fault Evictions in Canada: Understanding BC's Disproportionate Eviction Rate in the 2021 Canadian Housing Survey* (Vancouver: Balanced Supply of Housing Research Partnership, 2023) 20-22, online: <bsh.ubc.ca/wp-content/uploads/2024/06/Estimating-No-Fault-Evictions-in-Canada.pdf> [perma.cc/E8HK-N7MZ].

⁴⁸ See First United, *BC's Eviction Crisis*, note 16 at 12.

a. Finding a home

[97] We heard about problems that make it hard to get a home in the first place.

[98] For many participants, discrimination was a top concern. Anecdotal evidence and research both show that discrimination is common, affecting all the vulnerable groups mentioned above.⁴⁹ We heard concerns about application fees, onerous application processes, or strict tenant screening. Even without intentional discrimination, these requirements often have a disproportionate effect on people who are already marginalized or vulnerable.⁵⁰ For example, a screening process that requires a credit check and references from previous landlords will exclude most newcomers to Canada.⁵¹

[99] Some people face extra challenges in finding a home that meets their needs. It is hard for large families to find a home to rent as most rental homes are designed for small households.⁵² We heard landlords will often reject applications to rent if more than two people would have to share a bedroom.⁵³ It

⁴⁹ See eg Nicola Seguin, "These single moms say landlords won't rent to them because they have kids – even though that's illegal" *CBC News* (14 March 2024), online: <[cbc.ca/news/canada/nova-scotia/single-mothers-rental-housing-kids-discrimination-1.7142297](https://www.cbc.ca/news/canada/nova-scotia/single-mothers-rental-housing-kids-discrimination-1.7142297)> [perma.cc/P5EF-ER47]; Canadian Centre for Housing Rights, "Sorry, it's rented": *Measuring Discrimination Against Newcomers in Toronto's Rental Housing Market* (2022), online: <housingrightscanada.com/wp-content/uploads/2022/11/CCHR-Sorry-its-rented-Discrimination-Audit-2022.pdf> [perma.cc/8YHW-S9MZ]; Cheryl L Currie, Takara Motz & Jennifer L Copeland, "The Impact of Racially Motivated Housing Discrimination on Allostatic Load Among Indigenous University Students" (2020) 97:3 *J Urban Health* 365 at 371, 373; Lois Gander & Rochelle Johannson, *The Hidden Homeless: Residential Tenancies Issues of Victims of Domestic Violence* (Edmonton: Centre for Public Legal Education, 2014) at 33-34, online: <[cplea.ca/wp-content/uploads/2015/01/FINAL-Report-The-Hidden-Homeless.2014Jun05.pdf](https://www.cplea.ca/wp-content/uploads/2015/01/FINAL-Report-The-Hidden-Homeless.2014Jun05.pdf)> [perma.cc/FMB4-UH8K]; John Kolkman & Joseph Ahorro, *Understanding Tenancy Failures and Successes* (Edmonton: Edmonton Social Planning Council & Edmonton Coalition on Housing and Homelessness, 2012) at 20, online: <edmontonsocialplanning.ca/wp-content/uploads/2013/10/edmontonsocialplanning.ca_joomlatools-files_docman-files_D-HOUSING_2013-Understanding-Tenancy-Failures-and-Successes.pdf> [perma.cc/76SA-DRVM].

⁵⁰ See eg Kolkman & Ahorro, note 49 at 17-18.

⁵¹ See eg Maria Jose Burgos, "Toronto newcomers paying up to 12 months' rent up front to secure housing" *CBC News* (16 July 2024), online: <[cbc.ca/news/canada/toronto/toronto-newcomers-pay-months-rent-up-front-1.7259764](https://www.cbc.ca/news/canada/toronto/toronto-newcomers-pay-months-rent-up-front-1.7259764)> [perma.cc/RZQ6-342].

⁵² See eg Natalie Stechyson, "'Rare and expensive': Why is it so hard to find a 3-bedroom rental these days?" *CBC News* (18 June 2024), online: <[cbc.ca/news/business/three-bedroom-apartment-1.7233690](https://www.cbc.ca/news/business/three-bedroom-apartment-1.7233690)> [perma.cc/VR2S-ZC8T].

⁵³ We heard that many landlords mistakenly believe there are rules requiring them to comply with the National Occupancy Standard. The National Occupancy Standard is a measure of whether housing is suitable for a household. Among other things, a home is suitable if there are a maximum of two people per bedroom, each adult has a separate bedroom unless they share with a spouse or partner, and children five and up share a bedroom only with another child of the same sex. The National Occupancy Standard is meant to be used as a tool for policy development, not as a rule

can be hard for people with pets to find a home to rent, as many landlords have rules against pets or will only allow certain kinds of pets. It is especially challenging for people with physical disabilities to find a home that meets their needs. There is a shortage of accessible rental homes.⁵⁴ Available homes for rent may not have the features a person needs. It can be expensive to modify a home to make it accessible. Landlords are often unable or unwilling to renovate a home for a potential tenant.

[100] We also heard that many people are unable to find a home they can afford to rent. At the time we did our consultation, vacancy rates were low and rents were high.⁵⁵ There were steep increases in rent, far outpacing increases in wages. There is not enough social or affordable housing. There are long waitlists, so many people who would qualify for social or affordable housing must seek a home in the private rental market. Many people have trouble finding a home they can afford. It can be nearly impossible for people who rely on social assistance.

b. During a tenancy

[101] During a tenancy, repairs or maintenance are top concerns. We heard many anecdotes about tenants experiencing problems with the condition of a home. Participants mentioned pests, mould, structural issues, problems with heating systems, plumbing or sewer issues, flooding, problems with appliances, problems with elevators, and many others. We heard about cases where a tenant told their landlord about the issue but the landlord did not fix it or took a long time to fix it.

[102] Maintenance issues can have a big impact on health and quality of life. Pests or mould can cause or contribute to illness. When an elevator is out of service, a tenant or family member who uses a wheelchair or walker could be trapped at home until it is fixed. Sometimes maintenance issues affect a tenant's safety. For example, doors or windows that do not close or lock properly are a

that landlords or households must follow: Canada Mortgage and Housing Corporation, *National Occupancy Standard*, online: <cmhc-schl.gc.ca/professionals/industry-innovation-and-leadership/industry-expertise/affordable-housing/provincial-territorial-agreements/investment-in-affordable-housing/national-occupancy-standard> [perma.cc/J796-9KCV].

⁵⁴ See Vanessa Balintec, "Amid a countrywide housing shortage, what will it take to build more accessible homes?" *CBC News* (28 July 2023), online: <cbc.ca/news/canada/accessible-housing-stock-barriers-canada-1.6918374> [perma.cc/V9LS-U6AL].

⁵⁵ See eg Lily Dupuis, "Calgary's average rental cost increases by 14.3% in 2023, highest jump in Canada, says new report" *CBC News* (31 January 2024), online: <cbc.ca/news/canada/calgary/cmhc-report-rental-housing-market-data-1.7100712> [perma.cc/9RDN-H7VH].

safety issue. Some issues can also have a financial impact. If the refrigerator stops working, a tenant may have to throw out all their perishable food and pay to replace it. Broken windows, inadequate insulation, or air leaks can increase the cost of heating a home. If the tenant pays for utilities, they bear these additional costs.

[103] Another group of issues were about landlord behaviour. We heard concerns about landlords entering a tenant's home often or without enough warning, sharing a tenant's personal information inappropriately, or not answering a tenant's messages or questions. We also heard concerns about landlords taking advantage of tenants, making inappropriate demands, or not following rules in the *Residential Tenancies Act*. For example, we heard about landlords demanding that tenants pay for repairs or pest control when the tenant did not cause the issue. We occasionally heard about more serious problems, like landlords harassing or bullying tenants. These kinds of issues can make tenants or household members feel uncomfortable or unsafe in their home.

[104] We also heard concerns about the behaviour of other tenants or neighbours. Smoke, noise, conflict with neighbours, or similar issues can affect a tenant or household's health, quality of life, and sometimes their safety.

[105] The cost of rent is a concern for many tenants. A change in a tenant's financial circumstances can make it hard to pay rent. A tenant might struggle to pay rent if they lose their job, if a roommate moves out, or if they separate from a partner. Rent increases can also make it hard to pay rent. During our consultation, we heard about many tenants facing large rent increases. When vacancy rates are low and rents are high, a rent increase can put a tenant in a difficult situation. They may know they cannot afford the increased rent but it may be nearly impossible to find another home they can afford.

[106] If issues during a tenancy are very serious and cannot be resolved, a tenant may feel they have no choice but to move. A tenant may experience all the issues that come with losing a home.

c. Losing a home

[107] There are many reasons a tenant can lose a home.⁵⁶ Often it is because of something the tenant does. For example, a landlord can end a tenancy if the

⁵⁶ One report classifies the reasons for losing a home into tenant factors and landlord factors. Tenant factors are about the tenant's economic situation or behaviour. Landlord factors are about the landlord's choices or behaviour: Zell & McCullough, note 2 at 15-18.

tenant does not pay rent or damages the home. Tenants may have to leave a home because they cannot pay the rent, either because their financial circumstances have changed or because the landlord increases the rent more than they can afford. A 2012 study in Edmonton found that “inability to afford suitable and safe rental accommodation” was a major reason why low-income people had trouble maintaining stable housing.⁵⁷ A tenant may feel compelled to leave because of a problem with the home or landlord, like the ones discussed above.⁵⁸ Sometimes a landlord ends a tenancy for a reason that has nothing to do with the tenant or their behaviour. It may be so the landlord can move in, to do major renovations, or another reason allowed under the *Residential Tenancies Act*.

[108] No matter the reason a tenant loses their home, losing a home is a serious problem. It often leads to other problems.⁵⁹ Even the threat of losing a home can be harmful.⁶⁰

[109] When a tenant loses their home, they must find a new home and arrange to move. The time and hassle involved can interfere with other important responsibilities, like employment or parenting. There are also financial costs, like paying a new security deposit and moving costs. Tenants who have limited time, money, or resources to move may end up losing property because they cannot move all their belongings in time.

[110] A person under pressure to find a new home quickly may not have much choice about where to live. They may have to pay higher rent.⁶¹ Sometimes they have to pay more than they can afford, which can lead to debt or being unable to pay for other basic needs. They may have to take any place they can get, even if it is uncomfortable, unsafe, in poor condition, or does not meet their needs. Large families may be unable to find a home the right size for their family. A person

⁵⁷ Kolkman & Ahorro, note 49 at 39.

⁵⁸ Losing a home because of a rent increase or a problem with a landlord are examples of what many researchers call “informal evictions”. An informal eviction means a landlord compels a tenant to leave without using a formal legal procedure: see eg Zell & McCullough, note 2 at iii-iv:

Informal eviction: An eviction that occurs outside of the legal process and is ‘negotiated’ between the landlord and tenant. Informal evictions are situations in which tenants abandon their housing or leave it ‘voluntarily’ before receiving a formal eviction order. Informal evictions occur following a range of actions, from a simple landlord request that a tenant vacate their unit to actions by a landlord that effectively force a tenant to leave. In this study, informal evictions also include instances in which housing expenses, particularly rent increases, exceed tenants’ budgets, effectively leading to their involuntary displacement.

⁵⁹ See eg Zell & McCullough, note 2 at 43.

⁶⁰ Hugo Vásquez-Vera et al, “The threat of home eviction and its effects on health through the equity lens: A systematic review” (2017) 175 *Soc Science & Medicine* 199 at 202, 205.

⁶¹ See First United, *BC’s Eviction Crisis*, note 16 at 7-8.

with a pet may be unable to find a home that allows pets. They may have to rehome or surrender their pet in order to get a place to live. A person with physical disabilities may be unable to find a home that is accessible. A person who needs a new home quickly may end up living far from their job or social network.⁶² If they have children, the children may have to change schools or childcare. It can disrupt shared parenting arrangements and cause family law issues.

[111] Sometimes the reason for losing a home makes it harder for a person to find a new one. For example, it can be hard to pass a tenant screening process after losing a home for non-payment of rent.⁶³

[112] Some people get caught in a cycle. Losing their home once might push them into housing that that they cannot afford or that does not meet their needs. These problems can make it more likely they will lose their home again.

[113] Losing a home or housing instability can affect nearly every aspect of a person's life. A person without stable housing may have difficulty maintaining employment. A parent who cannot provide a home for their children may lose parenting time or child protection workers may apprehend the children. Research shows a link between losing a home and poor health outcomes.⁶⁴

[114] Sometimes losing a home leads directly to homelessness. While most people who lost their home do not become homeless, "in the literature on

⁶² The British Columbia Eviction Mapping project found that "community displacement is a very common and harmful consequence of eviction in British Columbia": First United, *BC's Eviction Crisis*, note 16 at 6. Of respondents in the lowest income group, 92% had to leave their neighbourhoods after losing a home. Those in higher income brackets were also very likely to have to leave their neighbourhood: First United, *BC's Eviction Crisis*, note 16 at 6-7. There are examples in case law too. One case mentions that a tenant had to give up his job after losing his home because his new place was too far away: *Singh v RJB Developments Inc.*, 2016 ABPC 305 at para 18 [*Singh*].

⁶³ See Gander & Johannson, note 49 at 40.

⁶⁴ See eg Lauren A. Taylor, "Housing and Health: An Overview of the Literature" (2018), online : Health Affairs <melkinginstitute.org/resources/reports/housing-and-health-overview-literature> [perma.cc/L28X-ZZR2]; Megan E Hatch & Jinhee Yun, "Losing Your Home Is Bad for Your Health: Short- and Medium-Term Health Effects of Eviction on Young Adults" (2021) 31:3-5 *Housing Pol'y Debate* 469 at 481; Robert Collinson & Davin Reed, "The Effects of Eviction on Low-Income Households" (2018) at 3-4, 6, online: <law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf> [perma.cc/VTX5-VFRN]; Matthew Desmond & Rachel Tolbert Kimbro, "Eviction's Fallout: Housing, Hardship, and Health" (2015) 94:1 *Soc Forces* 295 at 316.

homelessness, evictions are cited as one of the most common pathways to homelessness.”⁶⁵

d. After a tenancy ends

[115] Finally, we heard about two problems that often occur after a tenancy ends.

[116] Many participants had concerns about return of security deposits. A landlord is supposed to return a security deposit to a tenant at the end of a tenancy. If certain conditions are met, the landlord can take money from the security deposit to pay amounts that the tenant owes. Some participants told us that many tenants do not expect to get their security deposits back, believing landlords routinely keep them whether or not they have a legitimate claim.

[117] A tenant loses money when a landlord keeps a security deposit. Sometimes it leads to bigger problems. A tenant with no other savings may need their security deposit back to pay the security deposit for a new home. Without it, they will have fewer options and more difficulty finding a new home.

[118] Participants also had concerns about tenants losing belongings at the end of a tenancy. Sometimes a tenant does not or cannot remove all their things from a home at the end of a tenancy. They often lose anything left behind, either because the landlord disposes of everything immediately or because the tenant cannot pay for storage or retrieve their belongings in time. It can cost a lot for a tenant to replace furniture and household items, even if the ones they lost were nearly worthless. Some sentimental items are irreplaceable.

3. FOR GOVERNMENT

[119] While landlords and tenants feel the immediate impact of these problems, there are ripple effects on others.

[120] All orders of government are involved in housing, but the provincial government has a key role for residential tenancy issues.

[121] Residential tenancy problems lead to disputes, which require dispute resolution. If landlords and tenants cannot solve their own problems, they often take their disputes to court or RTDRS. Other kinds of problems or disputes go to

⁶⁵ Zell & McCullough, note 2 at 39 [citations omitted]. The BC Eviction Mapping Project gathered information from 698 people who had lost their home. Twenty-three said they lived in a vehicle after losing their home: see First United, *BC's Eviction Crisis*, note 16 at 8-9.

the Consumer Investigations Unit, the Alberta Human Rights Commission, or Alberta Health Services Environmental Public Health. The provincial government funds all of them.

[122] It takes money, staff, and time to resolve disputes. The cost for these tribunals and services depends partly on the number of disputes and partly on how difficult they are to resolve.

[123] There are also indirect costs. As discussed above, unstable housing can contribute to problems with employment, parenting, and health. People who lose their homes may need shelter, social assistance, and health care. They may be involved in family law disputes or child protection matters. The provincial government provides or pays for most of these services and supports.

[124] Some researchers calculate that governments could save money overall if they provided services to prevent people from losing their homes.⁶⁶

4. FOR THE COMMUNITY

[125] Problems with residential tenancies can also affect other people or organizations in the community.

[126] When a person has a residential tenancy problem, they may turn to family or friends for help. Family and friends can offer emotional support and advice but they can also offer practical help. A friend might help write a tenant write an email to their landlord or fill out a form. If there is a language barrier between a tenant and landlord, a family member might interpret. A family member might give a tenant money to pay their rent. If a person or family loses their home, they often end up staying with family or friends. If their host also rents their home, there is sometimes a ripple effect. The host may risk losing their own home if they are in violation of a residential tenancy agreement that limits the number of guests or how long they can stay.⁶⁷

[127] A person with a residential tenancy problem may get support from charities or non-profit organizations. They may need shelter, help finding a new home, money for a security deposit, healthcare, mental health services, legal

⁶⁶ Sarah Buhler, *The Right to Counsel for Tenants Facing Eviction: Security of Tenure in Canada* (Ottawa: Office of the Federal Housing Advocate, 2022) at 19, online: <homelesshub.ca/sites/default/files/attachments/Buhler-the_right_to_counsel_for_tenants_facing_eviction-security_of_tenure.pdf> [perma.cc/E4KN-6T48].

⁶⁷ Gander & Johannson, note 49 at 37.

advice or information, or help meeting their basic needs, like food or clothing. Charities and non-profit organizations provide all these things and more.

[128] The law cannot prevent all these problems, but it should provide an effective and fair way to resolve them.

CHAPTER 3

Scope of the Project

A. Introduction

[129] As the rest of this report will make clear, there are many problems with the *Residential Tenancies Act*. Fixing these issues could have a significant impact by reducing disputes and helping people resolve problems quickly. It could improve housing stability and help avoid financial losses, which would benefit both landlords and tenants.

[130] There are also issues that cannot be solved by legislation or that are not appropriate for a law reform project. We heard a lot about these issues in early consultation.

[131] This chapter briefly discusses what we heard in early consultation about these problems and why ALRI will not make recommendations about them.

B. Tenancies or Living Arrangements Not Covered by the *Residential Tenancies Act*

[132] Our early consultation was focused on the *Residential Tenancies Act*. This report is specifically about the *Residential Tenancies Act*.

[133] Some types of tenancies or living arrangements are beyond the scope of the *Residential Tenancies Act* and therefore this project.

[134] This project is not about commercial tenancies. The *Residential Tenancies Act* does not apply to commercial tenancies and the issues are likely to be very different.

[135] This report does not discuss the *Mobile Homes Sites Tenancies Act*. There is a lot of overlap between the *Residential Tenancies Act* and the *Mobile Home Sites Tenancies Act*. Many of the issues described in this report might also apply to tenancies of mobile home sites, but as we did not seek input specifically about the *Mobile Homes Sites Tenancies Act* in our consultation it would be premature to comment on it.

[136] There are other types of tenancies or living arrangements not covered by the *Residential Tenancies Act*. Chapter 6 discusses the exceptions in the current legislation and whether they are appropriate.

[137] There is other legislation that affects residential landlords and tenants. ALRI's project does not focus on this other legislation but there are some specific issues about the interaction between the *Residential Tenancies Act* and other legislation. Chapter 5 discusses these issues.

C. Issues Outside the Scope of ALRI's Project

[138] In our early consultation, we heard about many issues that are outside ALRI's expertise or not suitable for a law reform project. While they are important, they are better addressed by others. These issues are outside the scope of ALRI's project.

1. RIGHT TO HOUSING

[139] Many participants in our early consultation said that there is or should be a right to housing.

[140] International and federal law already recognizes a right to housing. Canada is a party to several international treaties and conventions that affirm a right to housing.⁶⁸ The UN Committee on Economic, Social and Cultural Rights has adopted a General Comment listing seven characteristics of adequate housing.⁶⁹ They are:

- legal security of tenure;

⁶⁸ See especially *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 art 11 (entered into force 3 January 1976, accession by Canada 19 May 1976), which begins:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing ...

See also *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 UNTS 195 art 5 (entered into force 4 January 1969, accession by Canada 14 October 1970); *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, 1249 UNTS 13 art 14 (entered into force 3 September 1981, accession by Canada 10 December 1981); *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 art 27 (entered into force 2 September 1990, accession by Canada 13 December 1991); *Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515 UNTS 3 art 28 (entered into force 3 May 2008, accession by Canada 11 March 2010).

⁶⁹ CESCR *General Comment No 4: The Right to Adequate Housing (Art 11(1) of the Covenant)*, OHCHR, 6th Sess, UN Doc E/1992/23 (1991).

- availability of services, materials, facilities, and infrastructure;
- affordability;
- habitability;
- accessibility;
- location; and
- cultural adequacy.

[141] In 2019, Parliament adopted the *National Housing Strategy Act*. It recognizes a right to housing and requires the Government of Canada to develop a national housing strategy.⁷⁰

[142] In Canada, housing is a shared responsibility between federal, provincial, and municipal governments. Although there is no Alberta legislation that specifically mentions a right to housing, several provincial laws are concerned with characteristics of adequate housing.⁷¹ Municipal bylaws and policies also address some characteristics of adequate housing, like location.

[143] On its own, legislation recognizing a right to housing does not ensure everyone has adequate housing. There are many questions about how the right could be implemented or realized. One challenge is that most homes in Alberta are privately owned, including rental homes. Any legislation or policy that affects private homes must consider the interests of owners. In our early consultation, some participants pointed out that most landlords want to make a profit. If renting homes to tenants was unprofitable, they would not do it. It could affect the supply of housing, ultimately making things worse for tenants.

[144] ALRI has decided not to make any recommendations on whether Alberta legislation should explicitly recognize a right to housing. This project might contribute to realizing some aspects of the right to housing for some people. It would not be feasible to consider all the legislation or policies that might be required to realize a right to housing for everyone.

⁷⁰ *National Housing Strategy Act*, SC 2019, c 29, s 313, ss 4, 5.

⁷¹ For example, the *Alberta Housing Act*, RSA 2000, c A-25 is concerned with affordable housing. The *Safety Codes Act*, RSA 2000, c S-1 and the *Public Health Act*, RSA 2000, c P-37 allow the government to adopt minimum standards for housing, which address availability of services, materials, facilities and infrastructure, habitability, and accessibility.

2. AFFORDABILITY, RENT, AND RENT CONTROL

[145] As we did our research and consultation, rents were rising rapidly in parts of Alberta.⁷² There were many news articles about low vacancy rates and high rents.⁷³ Other news articles reported on individual cases where rent increases caused hardship.⁷⁴ In spring 2024, the Alberta legislature considered a private member's bill that would have introduced temporary rent controls.⁷⁵ The bill did not pass.

[146] Nearly everyone we spoke with in our early consultation mentioned rent. For many, it was a top concern. Many participants raised rent control. Some participants were strongly in favour of introducing some form of rent control. Some were strongly opposed.

[147] The amount of rent is important to both landlords and tenants. Tenants obviously care very much about the cost to rent a home and whether they can afford it. Landlords obviously care very much about how much they receive in rent and whether it covers their expenses.

⁷² Canada Mortgage and Housing Corporation, *Rental Market Report* at 23-35 (2024), online: <cmhc-schl.gc.ca/blog/2024/canadas-rental-landscape-2023-show-record-low-vacancies-affordability-concerns>; Alberta Seniors, Community and Social Services, *2023 Apartment Vacancy and Rental Cost Survey* (2023), online: <open.alberta.ca/publications/2369-8780> [perma.cc/GPY4-9FFW].

⁷³ See eg Paula Duhatschek, "Why rent is so expensive in 3 Canadian cities (that aren't Toronto or Vancouver)" *CBC News* (8 February 2023), online: <cbc.ca/news/business/high-rent-canada-cities-1.6738966> [perma.cc/N9FA-VSWZ]; Karina Zapata, "Calgary's rental prices climbing faster than anywhere else in the country" *CBC News* (29 August 2023), online: <cbc.ca/news/canada/calgary/calgary-rent-increase-report-1.6951129> [perma.cc/74KA-4C2X]; Pete Evans, "Average rent went up another 11% in past year – and even getting a roommate doesn't help much" *CBC News* (14 October 2023), online: <cbc.ca/news/business/rentals-ca-urbanation-september-1.6995438> [perma.cc/7SK3-C6T3]; Matt Scafe, "Rents up 'astronomically' in Calgary the past year; More increases are on the horizon amid continued migration: report", *Calgary Herald* (19 January 2024) A1.

⁷⁴ Scott Strasser, "Tenants speak out about 46 per cent rent spike at seniors' living facility" *Calgary Herald* (1 November 2023) A3; Nicholas Frew, "Renters tighten purse strings as prices in Alberta grow at fastest pace in 40 years" *CBC News* (19 December 2023), online: <cbc.ca/news/canada/edmonton/alberta-rent-inflation-cost-of-living-1.7061756> [perma.cc/9VE9-3HA6].

⁷⁵ Bill 205, *Housing Statutes (Housing Security) Amendment Act*, 2023 1st Sess, 31st Leg, Alberta, 2023.

[148] Some other Canadian jurisdictions have laws that limit rent increases.⁷⁶ Alberta had this kind of law for a short time in 1976 to 1977.⁷⁷

[149] Issues about rent and rent control have come up in previous reviews of the *Residential Tenancies Act*. It came up in ALRI's work on residential tenancies in the 1970s. ALRI began to study rent control but ultimately did not make any recommendations about it in its 1977 report on *Residential Tenancies*.⁷⁸ A little more than a decade later, the Ministerial Advisory Committee on Residential Tenancies recommended against introducing rent control in Alberta.⁷⁹

[150] ALRI has determined that rent control is not suitable for a law reform project. It is about economic and social policy more than law. Other researchers with better qualifications have studied rent control.⁸⁰ Those for or against rent control are already advocating for their views and continue to do so.⁸¹ It is unlikely that ALRI could make an original contribution that would significantly advance the conversation. We will leave it to others to make recommendations or advocate for their views.

3. SUPPLY OF HOUSING

[151] The supply of housing and vacancy rates are closely linked with affordability but also affect other aspects of the landlord-tenant relationship. Vacancy rates have a big impact on the balance of power between tenants and landlords.

⁷⁶ British Columbia, Manitoba, Ontario, New Brunswick, Nova Scotia, and Prince Edward Island have legislation that sets annual guidelines for rent increases. In some circumstances, landlords can seek approval to raise rents above the guideline amounts. In Quebec, a tenant can request that a tribunal review a proposed rent increase.

⁷⁷ The *Temporary Rent Regulation Measures Act*, SA 1975, c 84; see also Robson Fletcher, "Amid inflation, a housing crisis and conflict with Trudeau, Alberta adopted rent control -- 48 years ago" *CBC News* (19 October 2023), online: <[cbc.ca/news/canada/calgary/rent-control-history-alberta-1975-lougheed-ghitter-1.6992836](https://www.cbc.ca/news/canada/calgary/rent-control-history-alberta-1975-lougheed-ghitter-1.6992836)> [perma.cc/K7AG-427F].

⁷⁸ *Residential Tenancies 1977* at 1-2. The *Temporary Rent Regulation Measures Act* was passed before ALRI published its report.

⁷⁹ *Achieving a Balance* at 165-170.

⁸⁰ See eg Hugh Grant, *An Analysis of Manitoba's Rent Regulation Program and the Impact on the Rental Housing Market* (2011), online: <[gov.mb.ca/cca/pubs/rental_report.pdf](https://www.gov.mb.ca/cca/pubs/rental_report.pdf)> [perma.cc/M5YF-R9MN]; KPMG LLP, *Study of the Impacts of Rent Control Policies* (Canada Mortgage and Housing Corporation, 2020), online: <[eppdscrmssa01.blob.core.windows.net/cmhcprodcontainer/sf/project/archive/research_5/study-of-the-impacts-of-rent-control-policies.pdf](https://www.eppdscrmssa01.blob.core.windows.net/cmhcprodcontainer/sf/project/archive/research_5/study-of-the-impacts-of-rent-control-policies.pdf)> [perma.cc/8KNE-NK95].

⁸¹ Scott Strasser, "Tenants' rights group holds, protest demanding Alberta cap rent hikes" *Calgary Herald* (29 August 2024) A6.

[152] When vacancy rates are high, tenants have more bargaining power. They have more choices. They are more likely to find a comfortable, safe home that meets their needs for a rent they can afford. If they have a serious problem, such as conflict with the landlord, they can often get away from the problem by moving. Landlords may be more motivated to resolve problems so they can keep tenants. When vacancy rates are high, losing a tenant may mean losing rent income while taking a lot of time and effort to find a new tenant.

[153] In contrast, when vacancy rates are low tenants have less bargaining power.⁸² They have fewer choices and may have to take any home they can find, even if it is not safe, comfortable, or affordable. It is hard to escape a bad situation by moving because it is hard to find a place to go. Landlords may not be concerned about losing tenants because they can easily rent the home to someone else. Unresponsive, uncooperative, or even exploitative landlords can still prosper.

[154] Many advocates and researchers claim that increasing the supply of housing would solve many problems.⁸³ Among other things, it would affect the balance of power between landlords and tenants. They say that more housing and higher vacancy rates would level the playing field between tenants and landlords. Tenants and landlords would be motivated to treat each other fairly. If issues arose, either tenants or landlords could exercise their rights freely, without fear of repercussions.

[155] While the supply of housing affects the relationship between landlords and tenants, the *Residential Tenancies Act* is not about the supply of housing. Other legislation or government policies are involved.

[156] ALRI has decided that the supply of housing or vacancy rates are outside the scope of this project. We do not have the capacity to consider all the legislation and policies involved. There are already many experts studying the issues and many ideas about how to increase the supply of housing. We will leave it to those experts to make recommendations.

⁸² ALRI summarized the issue in *Residential Tenancies 1977* at 6:

The shortage of rental accommodation in the urban centres of Alberta today puts the tenant at a great disadvantage. A tenant who is desperate for a place to live may pay excessive rent. He may pay other substantial sums of money to the landlord, and these may not be refundable. He may accept bad repair. He may refrain from asserting his legal rights against the landlord if he fears eviction. In this environment, legislation conferring additional rights and remedies will still not place the tenant on an equal bargaining position with the landlord. ...

⁸³ See eg Gregor Craigie, *Our Crumbling Foundation: How We Solve Canada's Housing Crisis* (Toronto: Random House Canada, 2024).

[157] It is worth mentioning some specific topics about supply of housing that are outside the scope of this project. These topics came up in our early consultation. Some participants suggested specific policies to address these issues.

a. Funding for affordable and social housing

[158] Lack of affordable housing is a big concern. Many participants told us there are not enough social or affordable housing units to meet the needs of Albertans. Some said lack of funding is a problem.⁸⁴

[159] All orders of government in Canada have a role in affordable housing. In Alberta, the *Alberta Housing Act* provides a structure for provincial government funding and oversight.⁸⁵ The stated purpose of the *Alberta Housing Act* is to provide housing support to “persons who because of financial, social or other circumstances require assistance to obtain or maintain housing accommodation.”⁸⁶ The provincial government provides funding and support for different kinds of housing programs. They include affordable housing projects operated by non-profit organizations, seniors lodges, and rent supplements to help people pay for private housing. The *Residential Tenancies Act* applies to some kinds of housing funded or supported by the *Alberta Housing Act*, but not all.

[160] The *Alberta Housing Act* has a different purpose and scope than the *Residential Tenancies Act*. A review of the *Alberta Housing Act* would involve completely different issues, so it would not be feasible to add it to this project.

[161] ALRI does not usually make recommendations about funding or allocation of resources. It would not be appropriate to make recommendations about how much or what kind of support the provincial government should provide for affordable housing.

⁸⁴ This concern is not new. In 1990, the Ministerial Advisory Committee on Residential Tenancies reported hearing about lack of affordable housing in its consultation. It wrote “The largest single complaint regarding public housing received was that substantially more subsidized public housing units are required”: *Achieving a Balance* at 187.

⁸⁵ *Alberta Housing Act*, RSA 2000, c A-25.

⁸⁶ *Alberta Housing Act*, RSA 2000, c A-25, s 2.

b. Land use and zoning

[162] We occasionally heard about land use or zoning issues. Some researchers and advocates suggest that changing land use or zoning rules could improve the supply of housing.

[163] In Alberta, municipalities are responsible for land use rules, including zoning.⁸⁷ Municipalities can have different approaches depending on local conditions and needs. ALRI generally makes recommendations about provincial legislation, not municipal bylaws. In any case, it would be impractical for ALRI to make recommendations that would work for all the different municipalities in Alberta.

[164] Alberta's two largest cities have recently updated their land use bylaws, partly to increase the supply of housing.⁸⁸ It will take time to see results or assess whether the changes were effective.

c. Short-term rentals

[165] We heard some concerns about short-term rentals. Short-term rentals became increasingly common starting around 2007, when Airbnb was founded. Airbnb and similar online platforms help individual "hosts" connect with guests who pay to stay in homes. Usually the guests stay for relatively short periods: days or weeks. Sometimes the host actually lives in the home and rents part of the home or the entire home when they are away. There are also homes that are only used as short-term rentals. They have no permanent occupant, just a series of short-term guests.

[166] A common concern is that homes used exclusively for short-term rentals reduce the supply of housing. They have been taken off the long-term market, reducing the number of homes available to renters who live in the community.

⁸⁷ See *Municipal Government Act*, RSA 2000, c M-26, s 640.

⁸⁸ See Lauren Boothby, "Council adopts high-density zoning; Only Rice, Principe vote against controversial new building rules" *Edmonton Journal* (24 October 2023) A1; Emily Rae Pasiuk, "Edmonton city council passes massive zoning overhaul after days of public hearings" *CBC News* (23 October 2023), online: <[cbc.ca/news/canada/edmonton/edmonton-city-council-passes-massive-zoning-overhaul-after-days-of-public-hearings-1.7005691](https://www.cbc.ca/news/canada/edmonton/edmonton-city-council-passes-massive-zoning-overhaul-after-days-of-public-hearings-1.7005691)> [perma.cc/4CP3-4835]; Scott Strasser, "Blanket rezoning to start in August; Council backs amended proposal, pivoting city toward densification" *Calgary Herald* (16 May 2024) A1; Kylee Pedersen, "Calgary city council passes amended rezoning bylaw after longest meeting ever held" *CBC News* (14 May 2024), online: <[cbc.ca/news/canada/calgary/calgary-city-council-rezoning-land-use-bylaw-amended-1.7204465](https://www.cbc.ca/news/canada/calgary/calgary-city-council-rezoning-land-use-bylaw-amended-1.7204465)> [perma.cc/B8SG-NEJB].

Other researchers have studied short-term rentals and their effect on housing markets in Canada.⁸⁹

[167] Some other jurisdictions have legislation that limits or regulates short-term rentals. British Columbia recently adopted legislation that only allows hosts to rent their own homes or a secondary suite at their home.⁹⁰ The legislation includes other rules to help municipalities enforce bylaws about short-term rentals. In Quebec, hosts must register short-term rentals as tourist accommodation and comply with municipal bylaws.⁹¹

[168] Within Alberta, most regulation of short-term rentals has been at the municipal level. Some municipalities are considering new rules or reviewing existing ones.⁹²

d. Insurance

[169] An issue about insurance may affect the supply of housing. It can be difficult to get appropriate or affordable insurance for rental properties. This issue can discourage landlords or potential landlords from renting their property.

[170] For example, a news article described a Calgary landlord's problems getting insurance.⁹³ She owned a three-bedroom house. Her two tenants asked to add a third roommate. Her insurance company and four others refused to insure the property if three unrelated tenants lived there. She was eventually able to insure the property but her premiums more than doubled. As the article explained, many insurance companies consider a property with three or more unrelated tenants to be a rooming house with more risk than a property rented to

⁸⁹ See eg Jennifer Combs, Danielle Kerrigan & David Wachsmuth, "Short-term Rentals in Canada: Uneven Growth, Uneven Impacts" (2020) 29:1 Can J Urban Research 119; The Conference Board of Canada, *Airbnb Activity and Rental Markets in Canada: Analyzing the Impact of Short-term Rentals* (2023), online: <conferenceboard.ca/wp-content/uploads/2022/10/airbnb-activity-and-rental-markets-in-canada_october2023.pdf> [perma.cc/89SW-D9CT]; Gillian Petit & Lindsay Tedds, *A Detailed Portrait of the Short-term Rental Market in Calgary* (2023), online: <papers.ssrn.com/sol3/papers.cfm?abstract_id=4605394>; Larry Arbensee et al, *Short-term Rentals in the Canadian Housing Market*, Catalogue no 11-621-M (Statistics Canada, 2024) online: <www150.statcan.gc.ca/n1/pub/11-621-m/11-621-m2024010-eng.htm> [perma.cc/6CGP-A2RU].

⁹⁰ *Short-Term Rental Accommodations Act*, SBC 2023, c 32, s 14.

⁹¹ *Tourist Accommodation Act*, CQLR c H-1.01, ss 4, 5.

⁹² See eg Scott Strasser, "Short-term rental study wants public feedback" *Calgary Herald* (27 August 2024) A2; Toula Mazloum, "Group representing short-term rentals urges regulations instead of partial ban" *Edmonton Journal* (24 October 2023) A3.

⁹³ Karina Zapata, "Renting to 3 or more unrelated tenants? You might have trouble finding affordable insurance" *CBC News* (23 August 2023), online: <cbc.ca/news/canada/calgary/insurance-unrelated-tenants-1.6943647> [perma.cc/H839-6REY].

a family. The landlord and others interviewed for the article were concerned that insurance company rules might deter property owners from renting, affecting the supply of housing.

[171] Other legislation applies to insurance companies and their practices. This issue may deserve review, but it would be better addressed in another project.

[172] This project is about the *Residential Tenancies Act*. To make recommendations about increasing the supply of housing, we would have to consider many other kinds of legislation and government policies. It would take a different kind of project to review things like support for affordable housing, land use bylaws, restrictions on short-term rentals, and insurance.

4. FINANCIALIZATION AND CONSOLIDATION OF RENTAL HOUSING

[173] We heard concerns about financialization of housing. Financialization refers to treating housing primarily as a way to make money.

[174] Investors play an increasingly important role in the housing market. Large corporations, investment trusts, and institutional investors own many rental units. Over time, they have bought more and more multi-family rental buildings. They now control a significant part of that market.⁹⁴ The purpose of corporations, investment trusts, and institutional investors is to maximize profits for investors.

[175] There is a related concern about consolidation. As large corporations, investment trusts, and institutional investors buy rental housing, there are fewer landlords overall. In some communities, a few large landlords dominate the market. There is less competition and fewer options for tenants. To give just one example of the effects: sometimes after a problem or conflict with a tenant, a landlord will decide not to rent to that tenant in the future. If it is a large corporate landlord that controls a significant percentage of rental homes in the area, the tenant may find themselves shut out of many homes in their community.

[176] Issues about financialization of housing are mostly about economic and social policy. Other organizations and researchers are studying financialization

⁹⁴ See Martine August, *The Financialization of Multi-Family Rental Housing in Canada: A Report for the Office of the Federal Housing Advocate* (2022) at 3-13, online: <homelesshub.ca/sites/default/files/attachments/august-financialization-rental-housing-ofha-en.pdf> [perma.cc/A47M-VVJY].

of housing and its effects.⁹⁵ The issues involve legislation and government policies other than the *Residential Tenancies Act*. We have determined financialization is outside the scope of ALRI's project.

5. OTHER ISSUES FACING LANDLORDS AND TENANTS

[177] Some participants mentioned other concerns that affect landlords or tenants but which are not directly related to the *Residential Tenancies Act*. These issues are outside the scope of ALRI's project.

[178] For example, some participants were concerned that government benefits, like Assured Income for the Severely Handicapped or Income Support, are not adequate to pay for suitable housing in the current market. This issue involves other legislation, government policies, and decisions about funding.

[179] Another issue that came up in consultation is security in rental buildings. Some participants mentioned problems like mail theft or people in the building who were not residents or guests. One participant was concerned about people who did not live in the building sleeping in laundry rooms. Depending on the situation, these issues might be covered by criminal law, trespass, or other offences. The *Residential Tenancies Act* does not address these kinds of issues.

D. Problems that Cannot Be Solved By Legislation

1. LACK OF INFORMATION OR KNOWLEDGE ABOUT THE LAW

[180] The root of many problems is lack of information or knowledge. It is a persistent problem that has been observed many times.⁹⁶ Many reviews of

⁹⁵ For example, the Office of the Federal Housing Advocate published a series of research papers on financialization of housing: Canadian Human Rights Commission, "Financialization of housing", online: <housingchrc.ca/en/financialization-housing#research> [perma.cc/XPJ6-5HZF]. The Affordable Housing Solutions Lab published a series of blog posts about financialization of housing in 2023. The first one in the series is Affordable Housing Solutions Lab, "The Financialization of Housing: What Is It?" (24 April 2023), online: The Pivot <affordablehousinglab.com/2023/04/24/the-financialization-of-housing-what-is-it/> [perma.cc/PPA6-NJHL].

⁹⁶ See eg *Achieving a Balance* at 26, 199-200; British Columbia Rental Housing Task Force, *Rental Housing Review: Recommendations and Findings* (2018) at 6, online: <engage.gov.bc.ca/app/uploads/sites/121/2018/12/RHTF-Recommendations-and-WWH-Report_Dec2018_FINAL.pdf> [perma.cc/D4EU-RZN4]; Sarah Buhler & Rachel Tang, "Navigating Power and Claiming Justice: Tenant Experiences at Saskatchewan's Housing Law Tribunal" (2019) 36:2 Windsor YB Access Just 210 at 220-221; Zell & McCullough, note 2 at 108.

residential tenancy legislation have included recommendations about public education or other measures to improve knowledge.⁹⁷

[181] In our consultation, many participants mentioned that some landlords and tenants do not understand their rights or responsibilities. We heard many examples of landlords or tenants failing to do things required by the legislation, doing things prohibited by the legislation, or not seeking remedies available to them. Often, it seems they did not know or had misunderstood the law.

[182] Our consultation uncovered an interesting example that shows how many problems cannot be fixed by changing legislation alone. As mentioned in the previous chapter, the Legislature amended rules about return of security deposits in 2022. Previously, landlords had to return security deposits to a tenant in person or by mail. In most cases, this meant the landlord had to issue a cheque. The amendment added an option to return a security deposit “in any other manner agreed to in writing by the landlord and tenant.”⁹⁸ The change was supposed to modernize a part of the legislation that was out-of-date.⁹⁹ More than a year later, however, several participants who were generally well-informed about the legislation told us that they always returned security deposits by cheque to comply with the rules. They did not appear to know that the legislation had been changed to allow other methods of payment. We do not know how many others may have missed the change to the legislation. This example shows, however, that improvements to legislation only work when people know about them.

[183] Lack of information or knowledge affects both landlords and tenants. Although education and information are available through various organizations – sometimes for free – only some people take advantage. Anyone can become a landlord or a tenant. They do not have to take a course or read a handbook first. Even for those who are well-informed about the law, it can be a challenge to keep up with new developments.

[184] Tenants most in need of protection often have the least knowledge and the most difficulty getting help. Newcomers to Canada, English-language learners, people with limited education, and young people are some examples of those

⁹⁷ *Achieving a Balance* at 199-200; British Columbia Rental Housing Task Force, *Rental Housing Review: Recommendations and Findings* (2018) at 15, online: <engage.gov.bc.ca/app/uploads/sites/121/2018/12/RHTF-Recommendations-and-WWH-Report_Dec2018_FINAL.pdf> [perma.cc/D4EU-RZN4].

⁹⁸ *Residential Tenancies Act*, s 46(1)(a)(iii).

⁹⁹ Alberta, Legislative Assembly, *Hansard*, 30-3 (25 May 2022) at 1488 (Hon Tanya Fir).

who may not know their rights, how to enforce their rights, or where to get reliable information or advice.

[185] Among landlords, new landlords and small landlords seem to face the most challenges. Often, the only thing a person needs to become a landlord is a home to rent. They do not need to get a licence, join an organization, or take any training. There is no way to provide information to every potential landlord because they do not have to inform any authorities before they begin renting to tenants. Although there are ways to get support if they choose, they may not know about the organizations, resources, or training available. Even if they do know about them, they may have difficulty accessing them due to cost, time, distance, or other barriers. They may experience other barriers because of identity or background. For example, landlords who are English-language learners may face language barriers or landlords with disabilities may be unable to access certain resources without accommodation. Those with the fewest resources are least able to get support.

[186] Those who manage rental property as their main occupation are more likely to be well informed. Independent property managers must be licensed by the Real Estate Council of Alberta. The licensing process includes mandatory education. Employees of corporations have a built-in support network and often have opportunities for training through their employer. Nonetheless, we heard there are varying levels of knowledge.

[187] Many participants said that education or information would help. They had many suggestions about ways to help landlords and tenants learn about the law.

[188] Information and knowledge are important. ALRI agrees landlords and tenants would benefit from education and information about the law. We encourage efforts to provide education and information or improve access. This project will not include recommendations about how to do it, however, as it is not our expertise. This project focuses on changing the law. Others are better equipped to make decisions about effective communications, including how to raise awareness of any changes that may come from this project.

2. LACK OF INFORMATION OF KNOWLEDGE ABOUT OTHER TOPICS

[189] We also heard about other kinds of problems or conflicts where lack of knowledge was a factor. It came up sometimes in the context of discrimination. Although many landlords know they should not discriminate against tenants or

potential tenants on protected grounds, they may not always recognize when a protected ground is involved.

[190] One example that came up often was about smudging, a traditional practise for many Indigenous people. It involves burning sweetgrass, sage, or other herbs. The smoke is used to purify people, spaces, or objects. Many landlords have rules forbidding smoking on their property, even in the tenant's home. We heard that some landlords treat smudging like smoking tobacco or cannabis and consider it a violation of the lease or rules.¹⁰⁰ If they do not know about smudging and its significance to Indigenous people, they may not realize the impact of forbidding it.

[191] Another example that came up occasionally is about hoarding. A mental health condition can contribute to a person keeping a large number of items in their home, sometimes making it difficult to keep the home clean. We heard that some landlords do not seem to know that this behaviour can be related to mental disability, which is a protected ground under the *Alberta Human Rights Act*.

[192] It takes more than legislation to avoid these kinds of misunderstandings. Laws can forbid discrimination but they can only go so far in helping people learn about others.

¹⁰⁰ See eg *Abel v Faraja Mwenembembe*, 2021 AHRC 5.

CHAPTER 4

Unclear Legislation

A. The Importance of Clear Legislation

[193] All legislation should be clear. Clarity is especially important for residential tenancy legislation. All landlords and tenants benefit from knowing their rights and responsibilities. To follow the law, they need to know what it is. If a problem or conflict arises, knowing the law can help resolve it.

[194] Whenever possible, landlords and tenants should be able to read and understand the legislation themselves, without an expert explaining it to them.¹⁰¹ Few people get help from a lawyer or legal professional to deal with residential tenancy issues. Even in formal dispute resolution processes, like RTDRS, most people represent themselves.

[195] Landlords and tenants have diverse backgrounds, different kinds of life experiences, and varying abilities. They include English-language learners, people with learning disabilities, people with cognitive disabilities, and those with limited literacy.¹⁰² Even for those who usually have no difficulties with literacy, stress can make it difficult to focus or retain information. A person worried about losing their home may be under intense stress. They need clear, plain-language legislation.

[196] Unfortunately, the *Residential Tenancies Act* is unclear and difficult to understand. Many participants raised this issue in our early consultation. It is even a problem for experienced lawyers who are used to reading legislation. One participant mentioned that volunteer lawyers providing summary legal advice at

¹⁰¹ See Jonnette Watson Hamilton, “*Street v Mountford* Applied to Decide: A Residential Tenancy Agreement or License?” (13 January 2017), online: ABlawg <ablawg.ca/2017/01/13/street-v-mountford-applied-to-decide-a-residential-tenancy-agreement-or-a-licence/> [perma.cc/BK27-8N5K].

¹⁰² See Emily Paradis, *Access to Justice: The Case for Toronto Tenants: Final Report of the Tenant Duty Counsel Review* (Advocacy Centre for Tenants Ontario, 2016) at 66, online: <acto.ca/production/wp-content/uploads/2017/07/TDCP_Report_2016.pdf> [perma.cc/S85G-NFLQ]:

Many tenants ... require accommodations in areas such as literacy; English as a second language; comprehension and cognitive barriers; mental health issues such as anxiety and trauma; and the general impacts of chronic poverty on mental, emotional, and physical health. Informants emphasized that the LTB is an overwhelmingly stressful environment in which it is unlikely that most tenants will be able to function to their full capacity. They cautioned that all tenants, regardless of dis/ability, require clear communication. “A lot of times when clients end up at the clinic for advice and come back to our office, the legal jargon is confusing and they misunderstand,” one service provider said.

legal clinics frequently misinterpret the legislation. It is easy to miss important information. Even if a reader finds all the relevant provisions, the meaning can be obscure.

[197] It may not be possible to write legislation that everyone can understand, but the legislation should be as clear as possible.

B. Problems with Residential Tenancies Legislation

[198] This section includes examples to illustrate problems but we have not tried to compile an exhaustive list of every issue with the form of the current legislation. Eventual reforms to the *Residential Tenancies Act* could require significant changes to the legislation or even replacing it entirely. The problems could be resolved by starting fresh, drafting new legislation that would be modern and clear.

ISSUE 1

Should the *Residential Tenancies Act* be redrafted or replaced?

1. POOR ORGANIZATION

a. Within the *Residential Tenancies Act*

[199] There is no clear logic to the organization of the *Residential Tenancies Act*. It is probably because the legislation was drafted in pieces. It began as a short statute dealing specifically with termination of tenancies. Over the years the scope of the legislation changed to apply only to residential tenancies. Many new rules have been added over the years, sometimes in response to particular concerns of the time. Piecemeal amendments can create inconsistencies or gaps.¹⁰³ The organization of sections sometimes seems haphazard. The result is legislation that is very difficult to navigate.¹⁰⁴

¹⁰³ Nickie Vlavianos, "Recovering Increased Rent from a Residential Tenant After Serving a Termination Notice" (19 October 2008), online: ABlawg <ablawg.ca/2008/10/19/recovering-increased-rent-from-a-residential-tenant-after-serving-a-termination-notice/> [perma.cc/D6B6-X9U6].

¹⁰⁴ In a blog post, Jonnette Watson Hamilton suggested that legislation in the Northwest Territories is a better model, with each obligation set out separately and immediately followed by the possible consequences for breach of that obligation: Jonnette Watson Hamilton, "Landlords, Tenants, and Domestic Violence: Landlords' Power to Terminate Residential Tenancies for Acts of Domestic Violence (and an Argument for Publicly-Accessible RTDRS Reasons for Decisions)" (8 September

ISSUE 2

How could the *Residential Tenancies Act* be reorganized to make it easier to understand?

b. Between the *Residential Tenancies Act* and regulations

[200] The *Residential Tenancies Act* does not include all the rules landlords and tenants need to follow. Some important ones are in regulations. While it is normal to put some details in regulations, rules are scattered between the *Residential Tenancies Act* and regulations in odd ways. It is often necessary to flip back and forth between the statute and the regulations, even for issues that should be fairly straightforward.

[201] An example helps to illustrate the difficulty. Finding the maximum amount of money a person can claim in an RTDRS application requires several steps. It begins with section 54.5 of the *Residential Tenancies Act*, which says RTDRS “has the authority to order remedies in accordance with the regulations.”¹⁰⁵ Turning to the *Residential Tenancy Dispute Resolution Service Regulation*, section 15(4) says:¹⁰⁶

15(4) Subject to this Regulation, a tenancy dispute officer may grant any remedy that a judge of the Court of Justice may grant under Part 3 or 4 of the *Residential Tenancies Act*

[202] Turning back to the *Residential Tenancies Act*, Parts 3 and 4 mention a court’s power to award monetary remedies in sections 26(1), 27(3), 27(7), 32, 37(1), 38, 39, and 46(4). The only mention of a maximum claim, however, is in Part 5. In Part 5, section 48(1) says the Court of Justice may grant judgment for amounts up to the limit under the *Court of Justice Act*.¹⁰⁷ One has to turn to the *Court of Justice Act* and finally the *Court of Justice Civil Procedure Regulation* to find out that the Court of Justice, and therefore RTDRS, can award a maximum of \$100,000.¹⁰⁸

2017), online: ABlawg <ablawg.ca/2017/09/08/landlords-tenants-and-domestic-violence-landlords-power-to-terminate-residential-tenancies-for-acts-of-domestic-violence-and-an-argument-for-publicly-accessible-rtdrs-reasons-for-decision/> [perma.cc/A7ZX-75W4].

¹⁰⁵ *Residential Tenancies Act*, s 54.5.

¹⁰⁶ *Residential Tenancy Dispute Resolution Service Regulation*, Alta Reg 98/2006, s 15(4).

¹⁰⁷ *Residential Tenancies Act*, s 48(1).

¹⁰⁸ *Court of Justice Act*, RSA 2000, c C-30.5, s 9.6; *Court of Justice Civil Procedure Regulation*, Alta Reg 176/2018, s 2.

[203] In a 2016 case, a Master in Chambers of the Court of Queen’s Bench commented on the difficulty of finding rules about RTDRS’s powers, which he said “requires an analysis of the *Residential Tenancies Act*, the RTDRS Regs, the RTDRS Rules of Practice and Procedures, [t]he *Provincial Court Act*, and the *Alberta Rules of Court*.”¹⁰⁹ He compared it to a treasure hunt.

[204] As another example, to find the reasons a landlord may terminate a periodic tenancy one must consult at several different sections of the *Residential Tenancies Act* and a regulation.¹¹⁰

c. Regulations that change the statute

[205] In at least one place, the plain words in the statute do not mean what they say.¹¹¹ Section 70(1)(c.1) of the *Residential Tenancies Act* allows the Minister to modify certain time periods by regulation.¹¹² This power has been exercised to change section 12(2) of the *Residential Tenancies Act*. On its face, the Act says a landlord must provide at least 180 days notice to terminate a tenancy if the premises are being converted to a condominium unit. In fact, a landlord must actually provide 365 days notice.¹¹³ A landlord reading the *Residential Tenancies*

¹⁰⁹ *Hewitt v Barlow*, 2016 ABQB 81 at para 8.

¹¹⁰ *Residential Tenancies Act*, ss 6, 11, 12, 29, 30; *Residential Tenancies Ministerial Regulation*, Alta Reg 211/2004, s 2 [*Ministerial Regulation*].

¹¹¹ There were some additional examples in 2020, when Ministerial Orders changed parts of the *Residential Tenancies Act* and regulations. As Jonnette Watson Hamilton pointed out, the changes were not reflected in official versions of the legislation and it was difficult to find the Ministerial Orders: Jonnette Watson Hamilton, “Residential Tenancies in Alberta: Evictions for Non-Payment of Rent No Longer Suspended” (30 April 2020), online: ABlawg <ablawg.ca/2020/04/30/residential-tenancies-in-alberta-evictions-for-non-payment-of-rent-no-longer-suspended/> [perma.cc/JS6Z-8KWP].

¹¹² *Residential Tenancies Act*, s 70(1)(c.1):

70(1)(c.1) The Minister may make regulations ... modifying any period of notice required by section 7, 8, 9, 11, 12, or 14.

¹¹³ Compare *Residential Tenancies Act*, s 12(2) [emphasis added]:

12(2) If after the commencement of a periodic tenancy of residential premises
 (a) a condominium plan that includes or is proposed to include those residential premises is registered or is proposed to be registered in the land titles office, and
 (b) termination of that tenancy is sought for the purpose of obtaining vacant possession of the residential premises in order that the residential premises or any part of them may be sold as a condominium unit or as part of a condominium unit,
 the landlord may terminate that tenancy by serving a notice of termination on the tenant at least 180 days before the day named in the notice for the termination of the residential tenancy agreement.

Ministerial Regulation, note 110, s 2.1(2):

2.1(2) The reference to “180 days” in section 12(2) of the Act shall be read as a reference to “365 days”.

Act to find out how much notice to give could easily be misled and accidentally violate the law.

ISSUE 3

Which rules should be in the statute? Which ones should be in regulations?

2. READING BETWEEN THE LINES

[206] Some key rules are not directly stated in the *Residential Tenancies Act*. One has to read between the lines. Three examples illustrate the point.

a. When a tenant can withhold rent

[207] With one exception, a tenant cannot withhold rent when a landlord breaches an agreement.¹¹⁴

[208] If a tenant believes their landlord has breached the agreement, the tenant can apply to court or RTDRS for abatement of rent.¹¹⁵ In other words, the court or RTDRS can reduce their rent. Unless and until a tenant gets an order for abatement, they must pay the rent in full when it is due. If they do not, they risk having their tenancy terminated.

[209] The *Residential Tenancies Act* does not clearly explain this rule.¹¹⁶ A reader would have to piece it together by reading several sections together. Section 21(a) says that a tenant must pay the rent when due. Section 37(1)(b) says a tenant may apply for abatement of rent. There is no definition of abatement in the *Residential Tenancies Act*, so they might also have to consult a dictionary to find out what it means. Section 17(2) says a tenant may withhold rent until they receive a copy of a written residential tenancy agreement. Section 17(2) is the only section that mentions withholding rent. A person who is experienced in reading legislation might observe that section 17(2) is an exception, suggesting that withholding rent

¹¹⁴ The one exception is if there is a written residential tenancy agreement but the landlord does not give the tenant a copy. Section 17(2) says a tenant may withhold rent until the landlord gives the tenant a copy of the written agreement: *Residential Tenancies Act*, s 17(2).

¹¹⁵ *Residential Tenancies Act*, s 37(1)(b). They could also apply for damages or compensation for performing the landlord's obligation, which might offset the rent they pay, or for termination of tenancy, which would end their obligation to pay rent.

¹¹⁶ Compare *Residential Tenancy Act*, SBC 2002, c 78, s 26(1):

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

is only allowed if explicitly stated. This kind of sophisticated statutory interpretation will not be obvious to most readers.

b. Process for eviction

[210] A landlord cannot remove a tenant from premises or change the locks so the tenant is locked out. If a landlord wants to make a tenant leave, they must apply for an order for recovery of possession. If the order is granted, the landlord can hire a civil enforcement agency to evict the tenant.

[211] Again, the *Residential Tenancies Act* does not clearly explain this rule. Sections 34 and 34.1 mention that a civil enforcement agency may evict a tenant. They do not clearly state that a landlord may not evict a tenant. Further, the words “evict” and “eviction” are not defined in the *Residential Tenancies Act*. A person would have to read the *Civil Enforcement Act* – which is not mentioned by name in the *Residential Tenancies Act* – to find out what an eviction is and that only civil enforcement agencies may carry out evictions.¹¹⁷ Section 24 states that a landlord may not add or change locks unless they provide a key to the tenant immediately, but it may not be clear to a reader that this rule applies even if a tenancy has been terminated or the landlord has received an order for recovery of possession.

c. Fixed term tenancies

[212] There are two kinds of tenancies: fixed term and periodic. A fixed term tenancy has an end date. A periodic tenancy does not.

[213] In our consultation, we heard that fixed term tenancies are extremely common. It is possible that they are more common than periodic tenancies. Yet the *Residential Tenancies Act* says very little about them.

[214] Two sections of the *Residential Tenancies Act* mention the end of a fixed term tenancy. The definition of “fixed term tenancy” in section 1(1)(e) says that a fixed term tenancy is “for a term that ends on a day specified in the agreement.” Section 15 says “Notwithstanding any agreement to the contrary, notice to terminate is not required in order to terminate a fixed term tenancy.”

[215] These two sections hint at an important difference between fixed term and periodic tenancies without spelling it out clearly. A landlord can only terminate a

¹¹⁷ *Civil Enforcement Act*, RSA 2000, c C-15, ss 1(1)(s) “eviction”, 2, 9, 10, 15(1).

periodic tenancy for specific reasons.¹¹⁸ If the landlord does not have a reason to terminate the tenancy, a tenant can stay indefinitely if they fulfill their obligations. In contrast, a fixed term tenancy only lasts until the end date. When the end date comes, either party can choose not to renew the tenancy. A landlord does not need a reason not to renew. They do not even have to provide any notice that they will not renew. No matter how long a tenant has lived in a home or how well they have fulfilled their obligations, if the landlord decides not to renew at the end of the fixed term the tenant has no recourse. This rule might not be clear to a reader.

ISSUE 4

Which rules should be clearly stated or explained in legislation?

3. TIME PERIODS

[216] Time periods in the *Residential Tenancies Act* are inconsistent, likely due to piecemeal amendments. There are 38 different time periods mentioned.¹¹⁹ Most are expressed as days but some are hours, weeks, or months.

[217] It is hard to find logical patterns to some time periods. For example, a tenant has to give different amounts of notice to end a tenancy depending on the reason: one month to end a periodic tenancy for any reason, 28 days to end a tenancy for domestic violence, and 14 days to end a tenancy if the landlord has not complied with an order under the *Public Health Act*.¹²⁰

[218] At the beginning or end of a tenancy, landlords have many different deadlines to keep in mind. At the beginning of a tenancy, they have two banking days to put the tenant's security deposit into a trust account,¹²¹ one week to perform a move-in inspection with the tenant,¹²² 7 days to provide a notice of

¹¹⁸ *Residential Tenancies Act*, ss 6, 11, 12, 29, 30; *Ministerial Regulation*, note 110, s 2.

¹¹⁹ *Residential Tenancies Act*, ss 7, 8, 9, 11, 14, 17, 18, 19, 23, 28, 29, 30, 31, 33, 36, 41, 44, 46, 47.3, 47.4, 53; *Ministerial Regulation*, note 110 ss 2.1, 3(1), 5(2).

¹²⁰ *Residential Tenancies Act*, ss 8(1)(a), 28(1), 47.3(2)(a). There is also a difference in how the notice periods are calculated. A tenant must give notice to end a periodic tenancy "on or before the first day of a tenancy month to be effective on the last day of that tenancy month": *Residential Tenancies Act*, s 8(1)(a). If a tenant gives notice after the first day of the month the tenancy will not terminate until the end of the next month, meaning it can take nearly two months. Notice under sections 28(1) and 47.3(2)(a) can be given at any time.

¹²¹ *Residential Tenancies Act*, s 44(1)(a).

¹²² *Residential Tenancies Act*, s 19(1).

landlord to the tenant,¹²³ and 21 days to provide a signed copy of a written residential tenancy agreement to the tenant.¹²⁴ At the end of a tenancy, they have one week to perform a move-out inspection¹²⁵ and ten days to return a security deposit or a statement of account showing deductions.¹²⁶

ISSUE 5

How could time periods be simplified and made more consistent?

4. UNCLEAR TERMS OR CONCEPTS

[219] Many important concepts are not defined or explained in the *Residential Tenancies Act*. Others are defined but the definitions are circular or confusing. We discuss problems with the concepts in more detail elsewhere, so this section only mentions a few examples briefly.

[220] Important concepts that are not defined include tenancy, abatement of rent, abandonment, assignment, sublease, eviction, and repudiation of tenancy.

[221] Circular or confusing definitions include residential premises, substantial breach, and tenant.

ISSUE 6

Which words or concepts should be defined in legislation?

¹²³ *Residential Tenancies Act*, s 18(2).

¹²⁴ *Residential Tenancies Act*, s 17(1).

¹²⁵ *Residential Tenancies Act*, s 19(2).

¹²⁶ *Residential Tenancies Act*, s 46(2).

CHAPTER 5

Rules Outside the *Residential Tenancies Act*

A. Benefits of Comprehensive Legislation

[224] Although the *Residential Tenancies Act* may seem to have all the rules about residential tenancies, it is not a complete code.¹²⁷ Many important rules are not in the *Residential Tenancies Act* or its regulations. Some are in other legislation. Others are common law rules that are not in any legislation. There are also policies that can affect how the legislation is interpreted and applied.

[225] Landlords and tenants should be able to find the laws that apply to them. It is more difficult to find those laws when they have to search many sources. It is especially difficult to find rules that are only in case law or policies. Most people who do not have legal training will not know how to look for these rules. Others have pointed out this problem.¹²⁸

[226] In theory, public legal information or education can help fill the gaps. In reality, most public legal information about residential tenancies simply summarizes the *Residential Tenancies Act*. Handbooks or guides for landlords and tenants rarely mention case law or policies.¹²⁹ It is understandable that public

¹²⁷ Jonnette Watson Hamilton, “Punitive Damages and the *Residential Tenancies Act*” (18 April 2017), online: ABlawg <ablawg.ca/2017/04/18/punitive-damages-and-the-residential-tenancies-act/> [perma.cc/BZL7-VTJ7].

¹²⁸ See Jonnette Watson Hamilton, “*Street v Mountford* Applied to Decide: A Residential Tenancy Agreement or License?” (13 January 2017), online: ABlawg <ablawg.ca/2017/01/13/street-v-mountford-applied-to-decide-a-residential-tenancy-agreement-or-a-licence/> [perma.cc/BK27-8N5K].

[T]he more landlords and tenants are required to research the law outside the confines of the *RTA*, the greater the barriers to access to justice for parties who cannot afford lawyers.

See also *Achieving a Balance* at 95 [emphasis added]:

All landlords and tenants in the Province are expected to be familiar with the Act and to use it as a guide for their actions. Those trained in statutory interpretation might be aware that not all available legal remedies would be included in the Act and would know how to refer to the *Seizures Act*. Landlords and tenants not trained in those matters cannot be expected to operate with that level of sophistication.

¹²⁹ See eg Service Alberta and Red Tape Reduction, *RTA Handbook for Landlords and Tenants: Residential Tenancies Act and Regulations* (2024), online: <open.alberta.ca/publications/rta-handbook-for-landlords-and-tenants> [perma.cc/85LT-647E]; Centre for Public Legal Education Alberta, *Renting 101: A Renting Basics Guide in Alberta* (2024), online: <cplea.ca/wp-content/uploads/HLIP_Renting101.pdf> [perma.cc/WQ3C-2Q4U]; Student Legal Services of Edmonton, *Landlords & Tenants: A 2023 Alberta Guide to the Law* (2023) online:

legal information providers would be hesitant to delve into case law or policies. They can change frequently, so materials can quickly become outdated. Providers may also have concerns that interpreting case law would cross the line between providing legal information and providing legal advice.

[227] The idea of codifying residential tenancy law – bringing all the rules together in one statute – has come up before.¹³⁰ The idea would be to make it easier for landlords and tenants to find the rules they need to follow as they would all be in one place.

ISSUE 7

Should all or most of the rules about residential tenancies be included in a single piece of legislation?

B. Distress for Rent

[228] Distress for rent – a common law remedy for unpaid rent – illustrates how difficult it can be to piece together laws that are not codified. As the authors of *Debt Recovery in Alberta* put it, the law of distress is “an arcane hodgepodge of common law and statutory rules.”¹³¹

[229] If a tenant does not pay rent, a landlord may direct a civil enforcement agency to seize and sell the tenant’s property to recover the amount owing. A landlord can only use distress during a tenancy, which means they usually have to choose between distress or terminating a tenancy. A landlord does not need to get approval from a court or tribunal first or even warn the tenant before a seizure.

[230] There are some important limits on distress for rent. It can only be used to collect unpaid rent, not any other debts that the tenant may owe the landlord. A landlord cannot seize the property themselves. They must hire a civil enforcement agency. There are certain kinds of property that are exempt from

static1.squarespace.com/static/5b19871eee1759f2bea0f69b/t/64c2c2d41581063948340cc7/1690485462603/2023+-+LANDLORDS+%26+TENANTS.pdf [perma.cc/3L5R-9MDQ].

¹³⁰ In its 1990 report, the Ministerial Advisory Committee on Residential Tenancies recommended “the Act should codify all aspect[s] of residential tenancy law and refer to relevant rights and responsibilities in other Acts”: *Achieving a Balance* at 95.

¹³¹ Charles RB Dunlop & Tamara M Buckwold, *Debt Recovery in Alberta* (Toronto: Carswell, 2012) at 767.

seizure, including food, medical and dental aids, clothing worth up to \$4,000, and household furnishings and appliances worth up to \$1,000.¹³²

[231] There is a process for a tenant to object to a seizure. If a tenant objects, the civil enforcement agency cannot sell the property without a court order. If the tenant does not object or the court approves a sale, the civil enforcement agency will sell the property and give the proceeds to the landlord.¹³³

[232] Most tenants would probably be shocked if a civil enforcement agency came to their home and seized their possessions. They might have questions about why their landlord can seize their property and whether the seizure was lawful. If they looked for answers in Alberta law, it would be very difficult to find the rules that apply.

[233] There is no Alberta legislation that explains what distress for rent is or when a landlord can exercise this remedy. The *Residential Tenancies Act* does not mention distress for rent at all. There are some rules about the process in the *Civil Enforcement Act* but they only explain how a civil enforcement agency would carry out distress proceedings.¹³⁴

[234] Case law does not fill in the gaps. Our research turned up only two reported cases about distress for rent in residential tenancies.¹³⁵ Both are short decisions about specific issues. A person looking for a general explanation of what distress is or a summary of the law would have to look elsewhere.

[235] Most public legal information does not mention distress for rent.¹³⁶ A notable exception is the *RTA Handbook for Landlords and Tenants*, a plain-language

¹³² *Civil Enforcement Act*, RSA 2000, c C-15, ss 88, 104; *Civil Enforcement Regulation*, Alta Reg 276/1995, s 38.

¹³³ If the tenant has other creditors there might be competing claims. There is some uncertainty about how competing claims might be resolved: see Charles RB Dunlop & Tamara M Buckwold, *Debt Recovery in Alberta* (Toronto: Carswell, 2012) at 779-781; Dylan Esch, “Pre-Judgment Enforcement Remedies” in *Civil Enforcement Fundamentals* (Alberta: Legal Education Society of Alberta, 2019) at 7-8.

¹³⁴ *Civil Enforcement Act*, RSA 2000, c C-15, s 104.

¹³⁵ *M & S Equity v Benjamin* (1994), 156 AR 128 (QB); *Landsdowne Equity Ventures Ltd. v Folland*, 2000 ABQB 809. There are more decisions about distress for rent in commercial tenancies but still few that discuss general principles.

¹³⁶ See eg Centre for Public Legal Education Alberta, *Renting 101: A Renting Basics Guide in Alberta* (2024), online: <cpela.ca/wp-content/uploads/HLIP_Renting101.pdf> [perma.cc/WQ3C-2Q4U]; Student Legal Services of Edmonton, *Landlords & Tenants: A 2023 Alberta Guide to the Law* (2023) online: <static1.squarespace.com/static/5b19871eee1759f2bea0f69b/t/64c2c2d41581063948340cc7/1690485462603/2023+-+LANDLORDS+%26+TENANTS.pdf> [perma.cc/3L5R-9MDQ].

guide published by the Alberta government. It has a clear explanation about what distress is, when a landlord can exercise the remedy, and the process.¹³⁷ There are also textbooks that explain distress for rent but it is unlikely most landlords or tenants would have access to them.¹³⁸

[236] We heard very little about distress for rent in early consultation, probably because it is rarely used. The Office of the Sheriff – Civil Enforcement reports on the activity of civil enforcement agencies, including distress proceedings. From April 2023 to March 2024, the most recent full year for which statistics are available, civil enforcement agencies opened 203 files about distress for rent. They carried out 158 seizures.¹³⁹ While the official statistics do not say whether the files and seizures were for commercial or residential tenancies, we heard anecdotally that most or all distress proceedings are for commercial tenancies.

[237] Even if distress for rent is rarely used in residential tenancies, it is possible some people still find it useful. For example, a landlord might warn a tenant that distress is an option if the tenant does not pay rent. If the warning is effective, there would be no need to hire a civil enforcement agency.

[238] Other Canadian jurisdictions have abolished distress for rent in the context of residential tenancies.¹⁴⁰ Alberta is an outlier, as no other Canadian common law jurisdiction permits landlords to seize a tenant’s personal property without an order from a court or tribunal.

[239] ALRI previously recommended that distress for rent should be retained in Alberta.¹⁴¹ The Ministerial Advisory Committee on Residential Tenancies came to the same conclusion.¹⁴² More than three decades later, with distress rarely used, it may be time to revisit the question.

¹³⁷ Service Alberta and Red Tape Reduction, *RTA Handbook for Landlords and Tenants: Residential Tenancies Act and Regulations* (2024) at 36-37, online: <open.alberta.ca/publications/rta-handbook-for-landlords-and-tenants> [perma.cc/85LT-647E].

¹³⁸ See eg Charles RB Dunlop & Tamara M Buckwold, *Debt Recovery in Alberta* (Toronto: Carswell, 2012) at 767-768; Bruce Ziff, *Principles of Property Law*, 7th ed (Thomson Reuters, 2018) at 343.

¹³⁹ Alberta Office of the Sheriff – Civil Enforcement, “Civil Enforcement Agencies Activity: April 2023 – March 2024” (2024), online: <open.alberta.ca/dataset/0cef2cfd-37f7-4b00-8b56-78b9d5ce1ba5/resource/35389d1d-f44e-474b-8361-e0126ce7d952/download/pses-civil-enforcement-agency-activity-2023-2024.pdf> [perma.cc/2M7W-MQQ3].

¹⁴⁰ See eg *Residential Tenancy Act*, SBC 2002, c 78, s 26(3):

26(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant ...

¹⁴¹ *Residential Tenancies 1977* at 62-63, 66.

¹⁴² *Achieving a Balance* at 93-95.

ISSUE 8

Should distress for rent be abolished for residential tenancies?

ISSUE 9

If distress for rent is not abolished, should the rules for distress be codified in legislation?

C. Received Legislation and Common Law Rules

[240] Other important rules that affect landlords and tenants are found in old English statutes or common law rules developed through case law.

1. RECEIVED STATUTES

[241] Some English statutes remain in effect in Alberta. English laws in effect in 1870 were said to have been “received” when settlers moved to the land we now call Alberta.

[242] The legislature has limited some English statutes so they do not apply to tenancies in Alberta.¹⁴³ Some other English statutes about tenancies may remain in effect in Alberta, including ones with rules about distress for rent.¹⁴⁴ They could apply to either residential or commercial tenancies.

[243] Reforming the *Residential Tenancies Act* would be an opportunity to modernize and consolidate Alberta law. If the rules in these English statutes are still useful for residential tenancies, they could be replaced with modern, Alberta legislation. It would be easier to find rules in Alberta legislation than in English statutes that are hundreds of years old.

¹⁴³ See eg *Law of Property Act*, RSA 2000, c L-7, ss 65(2), 66(2), which limits the application of three English statutes:

65(2) The *Grantees of Reversions Act*, 1540, 32 Hen. VIII c34 (U.K.), does not apply to the rights of a landlord or of a tenant.

...

66(2) The *Landlord and Tenant Act*, 1730, 4 Geo. II c28 (U.K.), and section 18 of the *Distress for Rent Act*, 1737, 11 Geo. II c19 (U.K.), do not apply to tenancies.

¹⁴⁴ *Landlord and Tenant Act*, 1709 8 Ann c 18; *An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid within a reasonable Time*, 2 Will & Mar, c 5. It is difficult know which English statutes are still in force. While ALRI has done some work on this issue, we have not yet created a complete list.

[244] If the rules are no longer relevant, legislation could state that they do not apply to residential tenancies. If they are still useful for commercial tenancies, they could remain in effect only for commercial tenancies.

ISSUE 10

Are any rules in English statutes still relevant to residential tenancies in Alberta?

ISSUE 11

If there are any rules in English statutes that are still relevant to residential tenancies, should they be replaced with modern, Alberta legislation?

2. COMMON LAW

[245] The *Residential Tenancies Act* seems to assume that the reader is a lawyer, already familiar with many legal terms and concepts. It refers to various common law concepts without explaining them. Two examples illustrate the problem.

[246] In contract law, repudiation occurs if one party shows they are unwilling to perform the contract. In a nineteenth century English case that is still quoted today, one judge said a party repudiates a contract if “the acts and conduct of the party evince an intention no longer to be bound by the contract.”¹⁴⁵ Three sections of the *Residential Tenancies Act* mention repudiation.¹⁴⁶ The most important is section 27. It discusses the consequences of a tenant’s repudiation in detail but does not explain what it is or how a landlord could determine if the tenant has repudiated the tenancy.¹⁴⁷

[247] Section 44(2), about security deposits, says “A landlord is the trustee of [a security deposit] on behalf of the tenant who paid it ...” The drafters seems to assume that readers would be familiar with the role and duties of a trustee. A trustee has significant responsibilities. They are found in case law and legislation, with the *Trustee Act* being the most important source.¹⁴⁸ A landlord would need

¹⁴⁵ *Freeth v Burr* (1874), LR 9 CP 208 (UK).

¹⁴⁶ *Residential Tenancies Act*, ss 1(4)(b), 27, 38(a).

¹⁴⁷ In its 1990 report, the Ministerial Advisory Committee on Residential Tenancies reported hearing the provision “was too complex for landlords and tenants to understand.” Nonetheless, the committee recommended against changing it: *Achieving a Balance* at 95-97.

¹⁴⁸ *Trustee Act*, SA 2022, c T-8.1.

to look beyond the *Residential Tenancies Act* to find out what it means to be a trustee.

ISSUE 12

Should legislation explain common law concepts that would not be familiar to people without legal training?

D. Rules in Other Alberta Legislation

[248] Many important rules that affect landlords and tenants are in other legislation. They include some of the topics that came up most often in our early consultation.

[249] Sometimes the *Residential Tenancies Act* mentions these rules. More often, it does not. Landlords and tenants would have to find out about them from other sources.

1. MINIMUM STANDARDS FOR RENTAL HOMES

[250] One of the biggest issues in our early consultation was about maintenance, repairs, and standards for rental homes.

[251] There are minimum standards for rental homes. Landlords are responsible for ensuring that any place they rent meets the minimum standards.

[252] The *Public Health Act* allows the government to set these minimum standards.¹⁴⁹ The actual rules are in the *Housing Regulation* and the *Minimum Housing and Health Standards* adopted under that regulation.¹⁵⁰

[253] The *Residential Tenancies Act* mentions the *Public Health Act* in several places. In section 16, it explicitly states that a landlord must ensure “that the premises will meet at least the minimum standards prescribed for housing premises under the *Public Health Act* and regulations.”¹⁵¹ A person reading the *Residential Tenancies Act* would at least know that there are standards, although they may not know exactly how to find them.

¹⁴⁹ *Public Health Act*, RSA 2000, c P-37, ss 1(1)(ii)(viii), 66(1)(ff).

¹⁵⁰ *Housing Regulation*, Alta Reg 173/1999; Alberta Health, *Minimum Housing and Health Standards* (2013), online: <open.alberta.ca/publications/minimum-housing-and-health-standards> [perma.cc/S5XV-3QEC].

¹⁵¹ *Residential Tenancies Act*, s 16(c).

2. LAWS PROHIBITING DISCRIMINATION

[254] We heard a lot about discrimination in our early consultation.

[255] There are rules prohibiting discrimination in residential tenancies but it is not obvious from the *Residential Tenancies Act*. The *Residential Tenancies Act* does not mention discrimination, human rights, the *Alberta Human Rights Act*, or the process for resolving complaints about discrimination.

[256] The *Alberta Human Rights Act* has rules prohibiting discrimination in tenancy. The general rule in section 5(1) prohibits discrimination against tenants or potential tenants because of their “race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation.”¹⁵² There are some exceptions allowing age restrictions in some kinds of homes.¹⁵³

[257] There are also specific rules in the *Service Dogs Act* and the *Blind Persons’ Rights Act* prohibiting discrimination against tenants or potential tenants who have service dogs or guide dogs.¹⁵⁴ The *Residential Tenancies Act* does not mention either statute.

[258] Other important rules in the *Alberta Human Rights Act* prohibit retaliation and making malicious complaints.¹⁵⁵ The *Residential Tenancies Act* mentions retaliation but only for exercising a tenant’s rights under the *Residential Tenancies Act* or the *Public Health Act*. It does not mention retaliation for making a human rights complaint.¹⁵⁶ A person reading the *Residential Tenancies Act* might not

¹⁵² *Alberta Human Rights Act*, RSA 2000, c A-25.5, s 5(1) [*Alberta Human Rights Act*]:

5(1) No person shall

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

(b) discriminate against any person or class of persons with respect to any term or condition of the tenancy of any commercial unit or self-contained dwelling unit,

because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or class of persons or of any other person or class of persons.

¹⁵³ *Alberta Human Rights Act*, note 152, ss 4.2, 5(2), 5(3).

¹⁵⁴ *Service Dogs Act*, SA 2007, c S-7.5, s 3(2); *Blind Persons’ Rights Act*, RSA 2000, c B-3.

¹⁵⁵ *Alberta Human Rights Act*, note 152, s 10.

¹⁵⁶ *Residential Tenancies Act*, s 25:

25 No landlord shall

(a) terminate a tenancy, or

realize a landlord may not retaliate against a tenant for making or assisting in a human rights complaint unless they also read the *Alberta Human Rights Act*.

[259] The *Alberta Human Rights Act* includes a process for making, investigating, and resolving complaints of discrimination.¹⁵⁷ A person who believes they were discriminated against can begin the process by making a complaint to the Alberta Human Rights Commission. RTDRS does not have jurisdiction to consider human rights issues.¹⁵⁸ If a human rights issue comes up in an RTDRS matter, the applicant must either withdraw the application or transfer it to a court.¹⁵⁹

3. PERSONAL INFORMATION AND PRIVACY

[260] Personal information and privacy also came up often in our early consultation. We heard concerns about the kind or amount of information landlords ask from people applying for an apartment, background checks, how much information landlords can or should share about issues that affecting neighbours, and blacklists where landlords share information about “bad tenants.”

[261] Landlords collect and use a lot of personal information about their tenants. There are rules about the collection, use, and disclosure of personal information but, with one exception, they are not in the *Residential Tenancies Act*. The *Residential Tenancies Act* does not mention the other legislation that applies.

[262] One section in the *Residential Tenancies Act* mentions a tenant’s personal information. It applies only in situations involving domestic violence. There is a special procedure for a tenant to terminate a tenancy because of domestic violence. If a tenant uses this procedure, section 47.7 requires a landlord to keep the tenant’s information confidential.¹⁶⁰

(b) take any kind of retaliatory action against a tenant including, without limitation, the imposition of a financial penalty,

by reason only of the tenant’s having made an application, filed a statement, made a complaint, assisted in an investigation or inquiry or given evidence at a hearing under this Act or the *Public Health Act*.

¹⁵⁷ *Alberta Human Rights Act*, note 152, ss 20-35. The Alberta Human Rights Commission does not investigate or resolve complaints about violations of *Service Dogs Act* or *Blind Persons’ Rights Act*. A person who violates those laws may be fined: *Service Dogs Act*, SA 2007, c S-7.5, s 6(1); *Blind Persons’ Rights Act*, RSA 2000, c B-3, s 8(1).

¹⁵⁸ *Residential Tenancy Dispute Resolution Service Regulation*, Alta Reg 98/2006, s 17(1).

¹⁵⁹ *Residential Tenancy Dispute Resolution Service Regulation*, Alta Reg 98/2006, s 17(2).

¹⁶⁰ *Residential Tenancies Act*, s 47.7.

[263] Aside from this one section, readers have to look outside the *Residential Tenancies Act* to find rules about personal information.¹⁶¹ Most private landlords must follow the rules in the *Personal Information Protection Act*.¹⁶² Privacy legislation can be complex. We heard that many landlords are confused about what they can or cannot do.

[264] Tenants do not have the same obligations to follow privacy legislation. The legislation does not apply to individuals acting in a personal capacity.¹⁶³ Almost all tenants in residential tenancies will fit that description.

4. EVICTIONS

[265] When a landlord wants to end a tenancy against the will of a tenant, there are several steps to go through. The final step is eviction, where the tenant and their belongings are actually removed from the home. We heard in early consultation that very few cases actually reach this point. Usually tenants move out before an eviction is necessary. In the rare case where an eviction is necessary, however, the rules become very important to everyone involved.

¹⁶¹ The specific legislation depends on the identity of the landlord. If the landlord is a private entity, the applicable legislation is *Personal Information Protection Act*, SA 2003, c P-6.5. If the landlord is a provincial, municipal, or local public body, the applicable legislation is *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25. If the landlord is a federal public body, the applicable legislation is *Privacy Act*, RSC 1985, c P-21.

¹⁶² The *Personal Information Protection Act* applies to organizations. The definition of “organization” in *Personal Information Protection Act*, SA 2003, c P-6.5, s 1(1)(i) includes:

- (i) a corporation,
 - (ii) an unincorporated association,
 - (iii) a trade union as defined in the *Labour Relations Code*,
 - (iv) a partnership as defined in the *Partnership Act*, and
 - (v) an individual acting in a commercial capacity,
- but does not include an individual acting in a personal or domestic capacity;

Although we are not aware of any decisions directly considering whether an individual landlord is an organization for the purpose of the *Personal Information Protection Act*, the Office of the Information and Privacy Commissioner of Alberta has published guidance stating that the legislation “applies to any residential property owner who is renting out all or part of their property, including ... an individual acting in a commercial capacity, i.e., renting for profit”: Office of the Information and Privacy Commissioner of Alberta, *Guidance for Landlords and Tenants* (December 2023) at 1, online: <oipc.ab.ca/wp-content/uploads/2023/12/Landlord-Tenant-Guidance-Dec-13-2023.pdf> [perma.cc/27EV-2C7L]. See also *Veterans Villa Housing Project (Re)*, 2024 CanLII 58481 (AB OIPC) where an adjudicator found a non-profit organization was operating in a commercial capacity when it rented homes to tenants and therefore the *Personal Information Protection Act* applied to it in its role as landlord.

¹⁶³ *Personal Information Protection Act*, SA 2003, c P-6.5, s 1(1)(i) “organization”.

[266] It is particularly important for landlords to understand the rules for evictions. They are responsible for following the rules and making sure an eviction is carried out lawfully. If they do not follow the rules, they can get into trouble, escalate a conflict, and cause unnecessary hardship to the people being evicted. We heard about some very difficult situations that could have been avoided if landlords knew and followed the rules.

[267] The *Residential Tenancies Act* describes how to get an order for recovery of possession, which is the step before eviction. The rules for carrying out an eviction, however, are in the *Civil Enforcement Act*. The *Residential Tenancies Act* does not directly mention the *Civil Enforcement Act*. The closest it comes is in sections 34(b) and 34.1, which mention a civil enforcement agency. It may not be obvious to a person reading the *Residential Tenancies Act* that there is other legislation governing evictions.

5. COLLECTIONS

[268] We heard concerns about the difficulty of collecting money, even after a court or tribunal makes an order.

[269] A court or tribunal can order a landlord or tenant to pay money to the other.¹⁶⁴ The *Residential Tenancies Act* has details about when and how a landlord or tenant can seek such an order. It does not, however, describe how to collect the money if the debtor does not pay voluntarily. To find those rules, a person would need to look in the *Civil Enforcement Act*, its regulations, and sometimes other legislation.

[270] We heard in early consultation that many people never collect the money they are entitled to. There are many possible reasons. It may be because they do not know how to collect the money. It may be because they do not want to spend the time or money it would take to collect. It may also be because they decide it is not likely to be worthwhile. Landlords often have a good idea about a tenant's income and finances. If they know the tenant has a low income, they may decide it would be pointless to try collecting a debt. As one participant put it, "you can't get blood from a stone."

¹⁶⁴ The *Residential Tenancies Act* mentions several different kinds of remedies, including recovery of arrears of rent, recovery of a security deposit, abatement of rent, compensation for use and occupation of the premises, compensation for the cost of performing the landlord's obligations, and damages: *Residential Tenancies Act*, ss 26(1), 32, 37(1), 38, 46. The nuances of the different remedies are not important to this discussion.

6. POSSESSION OR OCCUPATION BY A TENANT'S FAMILY MEMBER

[271] There are a few laws that can affect who can live in a rented home. On occasion, a law or court order may allow a person to live in the home or assume the role of tenant. A landlord has to follow these rules, whether or not they want to rent to the person.

[272] We did not hear much about these rules in our early consultation. It seems either our participants did not encounter these situations often or they did not have difficulty when they did encounter them.¹⁶⁵

[273] Several family law statutes give courts powers to grant a spouse, partner, or family member exclusive possession of a family home, including a rented home.¹⁶⁶ A court can make this kind of order without any input from a landlord. A landlord will often find out after the order is made. An order for exclusive possession can effectively change who is a tenant in a residential tenancy agreement. Whether or not the landlord intended to rent to the person with exclusive possession, the landlord has to treat them as the tenant. The *Residential Tenancies Act* does not mention these statutes or the effect of an exclusive possession order on a residential tenancy agreement.

[274] If a tenant dies, the *Wills and Succession Act* allows their surviving spouse or partner to stay in a rented home for 90 days after the tenant's death.¹⁶⁷ The surviving spouse or partner becomes a tenant for most purposes, although the estate is responsible to pay rent. The spouse or partner has this right automatically. They do not need to get a court order or do anything else to take the place of the tenant. The *Residential Tenancies Act* mentions this rule indirectly in section 29.1, which says:

29.1 If residential premises are occupied by a surviving spouse or adult interdependent partner pursuant to Division 1 of Part 5 of the

¹⁶⁵ But see Lois Gander, *Domestic Violence: Roles of Landlords and Property Managers*, Final Report (Edmonton: Centre for Public Legal Education Alberta, 2017) at 45, online: <cplea.ca/wp-content/uploads/2017/04/HTE-DV-Roles-LL-and-PM-FinalReportFEB2017.pdf> [perma.cc/5CGZ-6GLL].:

Property managers and their staff find the array of no-contact orders available to tenants experiencing domestic violence confusing. They are unclear about how and in what circumstances a tenant might seek a particular order. They may also be confused as to the implications of various orders for requests from the victim to have the locks changed.

¹⁶⁶ *Family Law Act*, SA 2003, c F-4.5, ss 68, 72; *Family Property Act*, RSA 2000, c F-4.7, ss 19, 24; *Protection Against Family Violence Act*, RSA 2000, c P-27, ss 2(3)(c), 4(2)(c), 9(2).

¹⁶⁷ *Wills and Succession Act*, SA 2010, c W-12.2, s 75.

Wills and Succession Act, any application under section 26, 28 or 29 must be made to the Court of King's Bench.

[275] Although the *Residential Tenancies Act* does not directly tell a reader about a surviving spouse or partner's rights, it points to the legislation where they could find the rules.

7. LAWS ALLOWING THIRD PARTIES TO SEEK TERMINATION OF A TENANCY

[276] In some specific circumstances, laws give third parties a right to apply to end a tenancy. Even if the landlord and tenant both want the tenancy to continue, a court can make an order to terminate the tenancy.

[277] We heard very little about these laws in our early consultation, suggesting they do not often cause problems.

[278] One of these laws is the *Condominium Property Act*. If a tenant rents a condominium, the condominium corporation can step in to deal with certain problems. If the tenant causes damage, breaks condominium bylaws, or endangers other residents, the condominium corporation can give the tenant a notice or seek a court order to end the tenancy.¹⁶⁸ The *Residential Tenancies Act* does not mention these rules.

[279] Another is the *Safer Communities and Neighbourhoods Act*. If crime or drug activities in a home affect neighbours, a court can make a community safety order to address the problem. Among other things, a court can terminate a tenancy.¹⁶⁹ The *Residential Tenancies Act* specifically mentions this rule in section 3.1:¹⁷⁰

3.1 Notwithstanding anything in this Act, if an order is made pursuant to the *Safer Communities and Neighbourhoods Act* that terminates a residential tenancy or entitles a landlord to possession of residential premises, the tenancy terminates and the landlord regains possession in accordance with the order.

8. ADDITIONAL RULES FOR SOCIAL AND AFFORDABLE HOUSING

[280] The *Residential Tenancies Act* applies to some types of social and affordable housing, although not all. If the *Residential Tenancies Act* applies, there are

¹⁶⁸ *Condominium Property Act*, RSA 2000, c C-22, ss 54-57.

¹⁶⁹ *Safer Communities and Neighbourhoods Act*, SA 2007, c S-0.5, ss 7(3)(b), 35.

¹⁷⁰ *Residential Tenancies Act*, s 3.1.

regulations that add to or modify some rules.¹⁷¹ There are regulations under both the *Residential Tenancies Act* and the *Alberta Housing Act*. While section 69 of the *Residential Tenancies Act* mentions regulations, there is nothing to tell a reader to look for regulations under the *Alberta Housing Act*.¹⁷²

9. FINES

[281] Finally, the *Residential Tenancies Act* and its regulations set out offences and maximum fines for offences.¹⁷³ The maximum fines are either \$5,000 or \$10,000, depending on the offence.

[282] In many cases, however, a person who violates the *Residential Tenancies Act* will get a ticket with a much smaller penalty. The penalty may be \$150 to \$400 depending on the offence. The amounts are in the *Procedures Regulation*, adopted under the *Provincial Offences Procedure Act*.¹⁷⁴ A person reading the *Residential Tenancies Act* and regulations will not find any mention of tickets, the *Provincial Offences Procedure Act*, or the *Procedures Regulation*.

ISSUE 13

Should the *Residential Tenancies Act* mention rules in other legislation that affects residential tenancies?

E. Policies

[283] Still other rules are in policies.

[284] RTDRS has some policies that guide decision-making. These policies are not laws. They have nearly the same effect if RTDRS tenancy dispute officers always follow them when making decisions. However, courts are not required to

¹⁷¹ *Alberta Housing Act*, RSA 2000, c A-25, ss 34(1)(i), 34(2); *Housing Accommodation Tenancies Regulation*, Alta Reg 242/1994, ss 4, 5, 7; *Subsidized Public Housing Regulation*, Alta Reg 191/2004, ss 2, 3, 4. Among other things, tenants in affordable housing have to provide information about their household and finances, tenants may be required to move if the home is too big or too small for the household, and a tenancy may be terminated if the household is no longer eligible for affordable housing.

¹⁷² *Residential Tenancies Act*, s 69.

¹⁷³ *Residential Tenancies Act*, s 60; *Ministerial Regulation*, note 110 s 11.

¹⁷⁴ *Procedures Regulation*, Alta Reg 63/2017, Schedule Parts 22, 23, 24; *Provincial Offences Procedure Act*, RSA 2000, c P-34.

follow RTDRS policies. It creates a risk of inconsistent decisions if RTDRS relies on these policies but courts do not.

[285] An important RTDRS policy is about depreciation.¹⁷⁵ It is called a tip sheet but tenancy dispute officers rely on it to calculate damages.¹⁷⁶ For example, the policy states that the expected useful life of carpet is 16 years. If a tenant damages or stains carpet that has been in place at least that long, the landlord may not be able to recover any damages as the tenancy dispute officer will assume that the landlord would have to replace the carpet in any case.

[286] Another tip sheet says that tenancy dispute officers “typically award between \$15 and \$35 per hour for cleaning expenses.”¹⁷⁷

[287] There are benefits to policies like these. They help ensure consistency in decision making. They could also help landlords and tenants know what to expect, and possibly resolve or narrow some of the issues without a hearing.

[288] To know what to expect, however, landlords and tenants would have to know where to find these policies. To our knowledge, they are only published on the RTDRS website. Landlords and tenants may not know that these rules exist or where they could find them. The statutes and regulations do not mention

¹⁷⁵ Residential Tenancy Dispute Resolution Service (Alberta), “RTDRS Depreciation Tip Sheet”, online: <open.alberta.ca/publications/rtdrs-depreciation-tip-sheet> [perma.cc/52NY-EUPU].

¹⁷⁶ See eg *Re 20008400*, 2021 ABRTDRS 3 (J Young):

At the RTDRS, a standard depreciation of 16 years is applied to carpeting. This means that if eight year old carpeting is damaged by a tenant, a landlord may only be entitled to up to half the value of new carpeting. ... I think it is likely that at least some of the carpeting was installed prior to 2014. I think it is reasonable to assess the carpeting at approximately half past its depreciable lifespan. Therefore, I would assess the depreciated value of the carpet replacement at half of the estimate provided by the Landlord;

Re 21009593, 2022 ABRTDRS 8 (M Baron):

I have factored in 4 years of depreciation on the paint job. ... RTDRS depreciation tables use 6 years for paint life expectancy, so there were at least 2 years left had there been no extensive damage.

Re 22010836, 2023 ABRTDRS 21 (L Bilton):

This tribunal’s depreciation policy lists the reasonable useful lifespan of interior paintwork at 6 years, after which point it is assumed a home will require a full repaint. The paintwork from 2016 had depreciated to the point that it had a value of \$0 and needed to be redone. The Tenants are not responsible for this cost.

¹⁷⁷ Residential Tenancy Dispute Resolution Service (Alberta), “Applying for Damages” (2021) at 2, online: <open.alberta.ca/publications/rtds-applying-for-damages> [perma.cc/M7HM-DUNJ].

these policies. It might be easier for landlords and tenants to find the rules if they were in legislation or at least mentioned in legislation.

ISSUE 14

Should any rules that are currently in RTDRS policies or other policies be in legislation?

CHAPTER 6

Tenancies and Premises

A. Introduction

[289] The *Residential Tenancies Act* does not clearly describe the types of homes it applies to. There is a list of situations it does not apply to but it leaves many grey areas.

[290] Many people own, manage, or live in places other than houses or apartments. Some of these types of homes existed long before the *Residential Tenancies Act*, like shared houses or motels. Others have become popular since the last review of the *Residential Tenancies Act*, like life leases or stays arranged through short-term rental platforms, like Airbnb. If people who own, manage, or live in these types of homes look in the *Residential Tenancies Act* to find if it applies, they will not find clear answers.

[291] Whether they realize it or not, the question of whether the legislation applies can be very important to anyone who owns, manages, or lives in these types of homes. If it applies, they have the rights and responsibilities in the *Residential Tenancies Act*, and they benefit from its protection. If it does not apply, they do not have the protections in the *Residential Tenancies Act*. Their rights and responsibilities may be determined by a complex mix of agreements, other legislation, and common law. If a problem or dispute arises, it is especially important to know how they can resolve it and what protections each person should have.

[292] Courts and tribunals can resolve these questions on a case-by-case basis but it is an unsatisfactory way to find out if the legislation applies. For the parties themselves, going to a court or tribunal costs money, takes time, and is a hassle. It is also risky. If they lose, they will have spent the money and time for nothing.

[293] More importantly, the process is usually too slow to prevent a person from losing their home or experiencing other harm. By the time a court or tribunal decides whether the *Residential Tenancies Act* applies, the harm is done. A court or tribunal can award financial compensation but cannot take away the stress and fallout.

[294] A 2016 case illustrates the kind of harm that can occur before a court can intervene. In *Singh v RJB Developments Inc.*, a student rented a furnished room in

a shared house.¹⁷⁸ One evening in January, the student had friends in his room. The landlord believed the student or one of the friends smoked cannabis, which was against the building rules. The next day, the landlord gave the student a termination notice. Relying on a written agreement, the landlord claimed the student had a licence to occupy the room but not a residential tenancy, so the landlord could make the student leave with 24 hours notice. The student moved out within days. He had to stay with a friend until he found a new home. When he found one, it was too far from his part-time job so he had to quit. He eventually brought the issue to court. In December, more than eleven months after the landlord gave the termination notice, the court ruled that the *Residential Tenancies Act* applied and the landlord acted wrongfully in terminating the agreement. The court awarded the student \$700 to compensate for stress and inconvenience but by that time he had long since lost his home and his job.

[295] Court decisions may clarify the law but they are an ineffective way to help landlords and tenants understand the law. Most landlords and tenants will not know how to find rules in case law. If they do find cases, it is unlikely they will be exactly on point. Unless their home is exactly like one in a reported case, cases may not help them answer whether the *Residential Tenancies Act* applies.

B. Determining If the *Residential Tenancies Act* Applies

[296] To decide if the *Residential Tenancies Act* applies to a particular home, there are three questions to answer.

1. IS THE HOME RESIDENTIAL PREMISES?

[297] The first question is whether the home is residential premises. Section 2(1) of the *Residential Tenancies Act* says “this Act applies only to tenancies of residential premises.”¹⁷⁹ Section 1(1)(l) defines residential premises as a “place occupied by an individual as a residence.”¹⁸⁰ This definition seems circular.¹⁸¹

¹⁷⁸ *Singh*, note 62

¹⁷⁹ *Residential Tenancies Act*, s 2(1).

¹⁸⁰ *Residential Tenancies Act*, s 1(1)(l).

¹⁸¹ Jonnette Watson Hamilton, “*Street v Mountford* Applied to Decide: A Residential Tenancy Agreement or License?” (13 January 2017), online: ABLawg <ablawg.ca/2017/01/13/street-v-mountford-applied-to-decide-a-residential-tenancy-agreement-or-a-licence/> [perma.cc/BK27-8N5K].

2. IS THE RELATIONSHIP A TENANCY?

[298] The next question is the most difficult: is the legal relationship between the property owner and the renter a tenancy? The *Residential Tenancies Act* does not define “tenancy”.¹⁸² Courts have instead had to turn to the common law to decide if a relationship is a tenancy.

[299] In the two leading cases about application of the *Residential Tenancies Act*, courts have considered whether the relationship between an owner and a renter is a lease or a licence.¹⁸³ In common law, a lease is a contract about possession of land. The owner of the land temporarily gives the tenant exclusive possession of the land. During the lease, the tenant has an interest in the land.¹⁸⁴ In contrast, a licence would only give a person permission to use or occupy land. The owner does not give up possession.¹⁸⁵ These cases say that the *Residential Tenancies Act* applies if a renter has a lease but not if they have a licence. The main question is usually whether the renter has exclusive possession.

[300] In *990713 Alberta Ltd. (Airport Motel) v Cook*, a man lived in a motel for more than five years.¹⁸⁶ The court found the relationship was not a tenancy as the man did not have exclusive possession of the room. The most important fact was that the motel provided housekeeping throughout his stay, which meant that staff regularly entered his room.¹⁸⁷

[301] The other leading case is *Singh*, about a student renting a room in a shared house.¹⁸⁸ When he agreed to rent the room he signed a written agreement, prepared by the landlord. It said the landlord could enter his room “to make necessary repairs, maintain safety and health standards and assure compliance

¹⁸² It seems to have been a deliberate choice, following ALRI’s recommendation. In its 1977 report, ALRI said legislation should not attempt to define tenant or tenancy as it was “more properly a judicial than a legislative function: *Residential Tenancies 1977* at 11.

¹⁸³ *Singh*, note 62 at paras 19–52; *990713 Alberta Ltd. (Airport Motel) v Cook*, 2013 ABPC 36 at para 30 [Cook]. See also *Stiekema v Ross*, 2020 ABPC 240.

¹⁸⁴ See generally Bruce Ziff, *Principles of Property Law*, 7th ed (Thomson Reuters, 2018) at 329–331.

¹⁸⁵ See generally Bruce Ziff, *Principles of Property Law*, 7th ed (Thomson Reuters, 2018) at 329–331.

¹⁸⁶ *Cook*, note 183. The exception in *Residential Tenancies Act*, s 2(2)(d) did not apply as the man lived in the hotel longer than six months.

¹⁸⁷ *Cook*, note 183 at para 39. But see *R v Lowry*, 2006 ABPC 209, where the court found police did not have the authority to remove a man from a motel where he had lived more than seven months. The court’s decision implies the relationship had become a tenancy that could only be terminated in accordance with the *Residential Tenancies Act*.

¹⁸⁸ *Singh*, note 62.

with rules, regulations and policies.”¹⁸⁹ The court said the renter “was entitled to privacy and peaceful possession of the premises”.¹⁹⁰ The landlord could only enter his room for the reasons in the agreement, which did not interfere with his exclusive possession.

[302] *Singh* illustrates another important point. The agreement said the renter had a licence to occupy the room but did not have exclusive possession. It explicitly said that the *Residential Tenancies Act* did not apply. Despite what the agreement said, the court decided the relationship was a tenancy and the *Residential Tenancies Act* applied.

[303] If the *Residential Tenancies Act* applies, a tenant cannot agree to give up the rights.¹⁹¹ If the relationship is in fact a tenancy, an agreement cannot change that fact. A tenant cannot agree that a tenancy is a licence and therefore lose rights they would otherwise have. A court or tribunal would consider all the circumstances to determine whether the *Residential Tenancies Act* applies.

[304] While a misleading agreement is not legally binding, it can nonetheless deprive a person of protections they should have under the *Residential Tenancies Act*. People usually only go to court or a tribunal if they have a dispute they cannot resolve. Owners who prepare these agreements or make these statements probably believe they correctly state the law. Most renters probably will too. Unless they have legal training, it is unlikely that they would recognize a problem with the agreement or research case law. Renters almost never get legal advice before agreeing to rent a place or signing a written agreement. It would cost too much and take too long. Most renters will probably rely on a written agreement and believe it means what it says. The owner and renter may never have a dispute that requires going to court or a tribunal, so may never know they were mistaken.

¹⁸⁹ *Singh*, note 62 at para 31.

¹⁹⁰ *Singh*, note 62 at para 45.

¹⁹¹ *Residential Tenancies Act*, s 3(1):

3(1) Any waiver or release by a tenant of the rights, benefits or protections under this Act is void.

3. EXCEPTIONS

[305] The final question is whether the home is one of the exceptions listed in the legislation. Most of the exceptions are in section 2(2) of the *Residential Tenancies Act*:¹⁹²

2(2) This Act does not apply to

- (a) a mobile home site as defined in the *Mobile Home Sites Tenancies Act*,
- (b) premises occupied for business purposes with living accommodation attached and rented under a single agreement,
- (c) rooms in the living quarters of the landlord, if the landlord actually resides in those quarters,
- (d) a hotel, motel, motor hotel, resort, lodge or tourist camp, a cottage or cabin located in a campground, or a trailer park, tourist home, bed and breakfast establishment or farm vacation home, if a person resides there for less than 6 consecutive months,
- (e) a tenancy agreement between an educational institution as landlord and a student of that institution as tenant if the tenant does not have exclusive possession of a self-contained dwelling unit,
- (f) a continuing care home as defined in the *Continuing Care Act*;
- (g) lodge accommodation as defined in the *Alberta Housing Act* that is operated
 - (i) by a management body under a ministerial order under section 5 of that Act, or
 - (ii) under an agreement with the Minister responsible for that Act,
- ...
- (h.1) a supportive living accommodation as defined in the *Continuing Care Act*,
- (i) a correctional institution, or
- (j) any other prescribed premises.

¹⁹² *Residential Tenancies Act*, s 2(2).

[306] The *Residential Tenancies Exemption Regulation* adds two other exceptions:¹⁹³

1 The following are exempt from the application of the *Residential Tenancies Act*:

- (a) an approved hospital as defined in the *Hospitals Act*;
- (b) a provincial cancer hospital operated by the Provincial Cancer Hospitals Board under the *Cancer Programs Act*.

[307] There is another exception in the *Cooperatives Act*:¹⁹⁴

393 Notwithstanding anything in the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*, those Acts do not apply to the relationship between a non-profit continuing housing cooperative and its members unless or except to the extent that the bylaws of the cooperative expressly provide for the application of those Acts.

[308] This step is usually straightforward. There are some drafting issues, however, that make the legislation more complex than it should be. Section 2(2) includes some terms that are not defined in the *Residential Tenancies Act* and that appear only in that section. It is not clear exactly what “living quarters of the landlord” and “self-contained dwelling unit” mean. These terms are not defined in other legislation and we have not found any case law on point. If these exceptions remain in the legislation, they could be replaced with more specific descriptions.

C. Examples of Homes Not Mentioned in the *Residential Tenancies Act*

[309] People have always lived in places other than houses and apartments. When vacancy rates are low and rents are high, more people live in non-traditional types of homes.

[310] In our early consultation and research, we learned about some examples of homes that seem to cause problems.

¹⁹³ *Residential Tenancies Exemption Regulation*, Alta Reg 189/2004, s 1.

¹⁹⁴ *Cooperatives Act*, SA 2001, c C-28.1, s 393.

1. ROOMS, ROOMMATES, AND SHARED ACCOMMODATIONS

[311] Some renters share part of their home with others. Often a renter has their own bedroom but shares a bathroom, kitchen, living room, or other space. Other variations are possible. The tenants are effectively roommates but the landlord chooses and replaces the roommates.

[312] Renting a room is usually more affordable than renting a whole home. Renters in a shared home are often students or single, low-income people who could not afford to rent a whole home for themselves.

[313] These kinds of arrangements are not new. There were rooming houses and boarding houses long before the Alberta legislature enacted the first *Landlord and Tenant Act*.¹⁹⁵

[314] While the definition of residential premises in the *Residential Tenancies Act* is unclear, the history of the legislation shows it was meant include a room in a shared home.

[315] Between 1979 and 1991, the *Residential Tenancies Act* did not apply if a person rented a room in a shared home. In its 1977 report, ALRI recommended that the legislation should not apply to roomers and boarders. The report said the relationship between an owner and roomer or boarder “is more personal than a tenancy” and the legislation “would impose more rigidity upon such personal relationships than we think desirable.”¹⁹⁶ ALRI recommended that the legislation should only apply if a person rented a self-contained dwelling unit.¹⁹⁷ The legislature followed ALRI’s recommendation. The 1979 version of the *Landlord and Tenant Act* defined “residential premises” as “a self contained dwelling unit used for residential purposes”.¹⁹⁸

[316] When the Ministerial Advisory Committee on Residential Tenancies reviewed the legislation, it came to the opposite conclusion. It said the legislation should apply to “boarding houses, rooming houses, or lodging houses, as well as shared accommodation in which each of the residents who share the

¹⁹⁵ A rooming house offers shared accommodation, often but not always in the landlord’s home. A person who lives in a rooming house may be called a roomer or a lodger. A boarding house offers shared accommodation and meals. A person who lives in a boarding house may be called a boarder.

¹⁹⁶ *Residential Tenancies 1977* at 12.

¹⁹⁷ *Residential Tenancies 1977* at 12, 14.

¹⁹⁸ *The Landlord and Tenant Act, 1979, SA 1979, c 17, s 1(f)(i).*

accommodation sign a separate lease with the landlord.”¹⁹⁹ In the *Landlord and Tenant Amendment Act, 1991*, the legislature implemented the Committee’s recommendation.²⁰⁰ The definition of “residential premises” changed to “any place occupied by an individual as a residence”, which is still the definition today.

[317] On occasion, a court or tribunal has to decide if the *Residential Tenancies Act* applies to a room in a shared home. They usually interpret the law as the Ministerial Advisory Committee on Residential Tenancies intended: the *Residential Tenancies Act* applies to a room in a shared home unless the landlord actually lives in the home.²⁰¹ The decisions show a residence can be as simple as one room where a person can sleep. It does not need to have cooking facilities or a bathroom. It may not even need a door.²⁰²

2. HOTELS, MOTELS, AND SIMILAR PLACES

[318] Hotels, motels, and similar places usually serve travellers who stay temporarily but some people stay for months or years.²⁰³ Some motels offer monthly rates.

[319] There could be many reasons for living in a hotel or motel long-term, but it becomes more common when vacancy rates are low, rents are high, and affordable housing is scarce. Some people end up living in a motel because they cannot find a place to rent and have nowhere else to go.

[320] In *Cook*, the court decided a five-year stay in a motel was not a tenancy.²⁰⁴ The decision seems contrary to the original intention of the legislation. In its 1990 report, the Ministerial Advisory Committee on Residential Tenancies “saw a

¹⁹⁹ *Achieving a Balance* at 46. The committee recommended there should be an exception if the renter lived with the landlord as “any restrictions on the landlord’s ability to remove someone from his own home would be an undue infringement on the landlord’s right to privacy”: *Achieving a Balance* at 47.

²⁰⁰ *Landlord and Tenant Amendment Act, 1991*, SA 1991, c 18.

²⁰¹ See eg *Singh*, note 62; *Re 22004071*, 2022 ABRTDRS 23 (J Young); *Re 24000733*, 2024 ABRTDRS 11 (J Young).

²⁰² See *Re 24000733*, 2024 ABRTDRS 11 (J Young).

²⁰³ We did not find statistics measuring how many people live in hotels or motels but there is anecdotal information: see eg Joel Dryden & Allison Dempster, “‘Everyone deserves to have a roof over their head’: How some are turning to motels and campgrounds for housing” *CBC News* (27 November 2023), online: <[cbc.ca/news/canada/calgary/calgary-motels-campgrounds-ashley-halas-meaghen-reid-1.7039101](https://www.cbc.ca/news/canada/calgary/calgary-motels-campgrounds-ashley-halas-meaghen-reid-1.7039101)> [perma.cc/GUV5-TB5S]; See also *Cook*, note 183.

²⁰⁴ *Cook*, note 183

need to recognize that there are, in some hotel settings, long-term residents who do require the protection of the Act.”²⁰⁵ It recommended the legislation should apply after six months.

3. STAYS ARRANGED THROUGH SHORT-TERM RENTAL PLATFORMS

[321] Online platforms like Airbnb usually market short-term rentals as an alternative to hotels and motels. The platforms act as an intermediary between “hosts”, who have a home, and “guests” who pay to stay in homes. Hosts can offer a wide range of accommodation, from a guest room in the host’s home to an entire apartment or house.

[322] Like hotels and motels, most guests are travellers who stay temporarily but hosts can offer and guests can book longer stays. Airbnb has a feature that allows guests to search for monthly rentals and some hosts offer discounts if a guests stays a month or more.

[323] Among other reasons, we heard about people staying in a short-term rental for months because of relocation. Some people book a long stay for a temporary move, like for a work assignment or sabbatical.²⁰⁶ Others might book a stay when they first arrive in a new community but keep extending their stay as they search unsuccessfully for a permanent home.

[324] We have not found any Alberta cases considering whether a stay in a short-term rental could be a residential tenancy.²⁰⁷ There are several factors that a court or tribunal might consider.

[325] One is the type of accommodation. If a guest stays in the same home as the host, the act would not apply. Section 2(2)(c) says the *Residential Tenancies Act* does not apply to a room in the living quarters of the landlord.

²⁰⁵ *Achieving a Balance* at 48.

²⁰⁶ A news story from Ontario provides an example. A family came to Toronto so one spouse could spend a sabbatical at York University. Unable to find another place to rent, the family arranged a 10 month stay through Airbnb: Mrinali Anchan, “Canadians are being crushed by a housing crisis. Are short-term rentals to blame?” *CBC News* (14 August 2023), online: <[cbc.ca/news/canada/edmonton/canadians-are-being-crushed-by-a-housing-crisis-are-short-term-rentals-to-blame-1.6911344](https://www.cbc.ca/news/canada/edmonton/canadians-are-being-crushed-by-a-housing-crisis-are-short-term-rentals-to-blame-1.6911344)> [perma.cc/AK7J-P2L5].

²⁰⁷ There are cases from other jurisdictions but there are differences in legislation that might lead to different results in Alberta: see eg *Bhalla v Bryan*, 2023 ONLTB 74357; *Porter v Ning*, 2023 ONLTB 43064.

[326] Another is the length of stay. A court or tribunal might decide short-term rental platforms provide tourist accommodation like the ones listed in section 2(2)(d). The exception might apply if a guest stays less than six months.

[327] A court or tribunal might also consider whether the relationship is a lease or a licence. If the guest has exclusive possession, it might be a lease. If the host provides housekeeping, inspects the home regularly, or enters the home regularly for any other reason, it is probably a licence.

4. EMPLOYER-PROVIDED HOUSING

[328] Some employers provide housing to employees. In effect, the employer is also the employee's landlord. A couple of Reddit posts asked if employees living in homes provided by their employer have the same rights as other tenants. One poster said that employees living in this kind of housing are especially vulnerable. They might be afraid to raise issues about housing because it could also endanger their job.

[329] There are different kinds of employee housing.²⁰⁸ A resident manager or on-site caretaker working for a landlord might have their own apartment in a building owned by the employer. Seasonal employees in Banff, Jasper, and other tourist areas might have a separate apartment but often live in a place more like a student dorm, sharing a furnished bedroom with one or two other employees and eating meals at a staff cafeteria. Agricultural workers might live on the employer's farmland or in a nearby community, sometimes in shared accommodation. Employees working in remote areas often stay at work camps, usually for days or weeks at a time. Work camps resemble student dorms or motels, with furnished rooms and meals provided.

[330] In its 1977 report, ALRI recommended that employees should have the same protections as other tenants, with one exception.²⁰⁹ It recommended a shorter notice period to terminate a tenancy when the employment relationship ended. The legislature implemented this recommendation in 1979.²¹⁰ It has been part of the *Residential Tenancies Act* ever since.²¹¹

²⁰⁸ At least one kind of employee housing is clearly excluded from the *Residential Tenancies Act*. The legislation would not apply if an employee shares a home with their employer, like a live-in caregiver: *Residential Tenancies Act*, s 2(2).

²⁰⁹ *Residential Tenancies* 1977 at 13, 82.

²¹⁰ *The Landlord and Tenant Act*, 1979, SA 1979, c 17, ss 1, 9.

²¹¹ *Residential Tenancies Act*, s 11:

[331] Other than section 11, which is about notice periods to terminate a tenancy when an employment relationship ends, the *Residential Tenancies Act* does not specifically mention employee housing. It does not explicitly say that the legislation applies or does not apply to employee housing. Instead, the application has shifted with rules on shared accommodations.

[332] There is no question that the legislation applies if an employee has an entire home or apartment. It has been this way since 1979. Our research and consultation did not turn up any significant concerns or problems about application of the *Residential Tenancies Act* in these situations.

[333] Shared accommodation for employees is a different story. Over the years, there have been debates about whether the *Residential Tenancies Act* should apply. These debates have focused on shared accommodation in tourist communities, although similar issues could apply to housing for agricultural workers or work camps.

[334] In 1989, the Ministerial Advisory Committee on Residential Tenancies met with Banff residents. At that time, the legislation applied only to self contained dwelling units. The committee heard that employees living in shared accommodation were often forced to leave with just one hour of notice.²¹² They also heard about problems with security deposits, maintenance or repairs, discrimination, and owners entering employees' living spaces without notice.²¹³ Some employees said owners not only entered their living spaces but sexually harassed them there. The committee recommended that the legislation should apply to shared accommodation, meaning employees in this kind of employee housing would benefit from the same protections as other tenants. The legislature implemented the committee's recommendation.²¹⁴

¹¹ If a periodic tenancy of residential premises has been entered into by reason of the tenant's employment by the landlord and that employment is terminated, either the landlord or the tenant may terminate the tenancy by serving notice on the other party in sufficient time to provide a period of notice of termination of the tenancy that is

(a) a period equal to

(i) the period of notice of termination of employment required under any law in force in Alberta that is applicable to the tenant's employment,
(ii) the period of notice of termination of employment agreed on by the landlord and the tenant, or
(iii) one week,
whichever is longest, or

(b) a period prescribed in or determined in accordance with the regulations.

²¹² *Achieving a Balance* at 204.

²¹³ *Achieving a Balance* at 204-205.

²¹⁴ *Landlord and Tenant Amendment Act, 1991*, SA 1991, c 18.

[335] A decade later, when Alberta Government Services did its consultation, several employers and organizations shared a different perspective. In the archival material we reviewed, they said practical issues had come up since they were required to follow the rules in the *Residential Tenancies Act*. Many were concerned about the minimum notice period to terminate an employee's tenancy. If the employer fired the employee, the employee could stay in employee housing for at least one week. Employers and organizations said former employees might cause damage or disturb other occupants during that week. To our knowledge, neither the employers nor the government attempted to measure how often this problem actually occurred. Employers also said the notice period caused delays in filling vacant positions, as they could not provide a new employee with a place to live until the previous one left.

[336] Shared employee housing and work camps have a lot in common with hotels and motels or student dorms. They are particularly comparable to student dorms. Both are shared accommodation and only available to those who have a particular relationship with the owner – either as a student or employee.²¹⁵ It is difficult to find a principled reason why student dorms are in the list of exceptions²¹⁶ but shared employee housing and work camps are not.

5. LIFE LEASES

[337] A life lease is a contract that allows a person to live in a home for the rest of their life. They are marketed to seniors, as a type of seniors housing. Typically the home is an apartment in a purpose-built building. The contract usually says that the renter can stay in the home until they die, are no longer able to stay (for example, if they need full-time residential care), or they choose to leave.

[338] Most life lease contracts require the renter to pay an initial lump sum, called an entrance fee. The entrance fee can be hundreds of thousands of dollars. The renter or their estate may receive part or all of the entrance fee back at the end of the life lease. The renter usually also has to pay monthly payments. The

²¹⁵ In contrast, a hotel or motel provides accommodation to anyone who can pay: see *Innkeepers Act*, RSA 2000, c I-2, s 1(b):

1(b) “innkeeper” ... includes a keeper of a hotel, motel, auto court, cabin or other place or house who holds out that to the extent of the innkeeper's available accommodation the innkeeper will provide lodging to any person who presents himself or herself as a guest, who appears able and willing to pay a reasonable sum for the services and facilities offered and who is in a fit state to be received.

²¹⁶ *Residential Tenancies Act*, s 2(2)(e).

idea is that the monthly payments should be less than the renter would pay to rent a similar home.

[339] In 2024, the legislature passed the *Consumer Protection (Life Leases) Amendment Act*. The legislation does not say explicitly whether the *Residential Tenancies Act* applies to life leases, but it seems the drafters assumed it does not. The *Consumer Protection (Life Leases) Amendment Act* sets some requirements for life leases but does not mention minimum standards. For example, a life lease must include a provision about how often monthly payments can increase but the legislation does not say anything about what the provision should be. It seems there is no limit on how often or how much monthly payments can increase, as long as the operator and renter agree.

[340] If the legislature intended to exclude life leases from the *Residential Tenancies Act*, it would be helpful to make the exception explicit.

6. RENT-TO-OWN AGREEMENTS

[341] A rent-to-own agreement allows a renter to live in a home that they hope to buy. Rent-to-own agreements vary. Sometimes a renter pays a lump sum and regular payments to the owner. Sometimes the renter makes regular payments that are more than they would otherwise pay for rent. In exchange for the additional amount, the renter gets an option to purchase or part of their payments are credited towards an eventual purchase price.

[342] Our research has not turned up cases clearly deciding whether the *Residential Tenancies Act* applies to a rent-to-own agreement. There are some cases that mention a rent-to-own agreement. In nearly all of them, by the time the dispute reached a court or tribunal it was clear that the renter no longer planned to buy the home.²¹⁷

7. HOUSING WITH SUPPORTIVE SERVICES

[343] Some charities or non-profit organizations provide housing together with other services to meet the needs of their clients. Examples might include programs to support survivors of domestic violence after leaving a short-term shelter, programs to house people who experienced homelessness, or programs

²¹⁷ See eg *Gosine v Hepas*, 2008 ABQB 321; *Dreamworks Ventures Ltd v Dye*, 2017 ABPC 20; *Re 19010109*, 2020 ABRTDRS 38 (B Hewitt).

that support people recovering from addictions. These types of housing are sometimes called transitional housing or supportive housing.²¹⁸

[344] Non-profits operating this kind of housing do not have clear guidance about whether the *Residential Tenancies Act* applies.²¹⁹ We heard that they sometimes face conflicting expectations or requirements. Funding agreements or agreements with clients may require them to do things that landlords cannot normally do. For example, a funding agreement might require staff to enter clients' homes to check on them.

[345] Non-profits, funders, and clients would benefit from clarity about whether the *Residential Tenancies Act* applies. If it does, they should ensure that agreements, policies, or practices do not conflict with the legislation.

8. HOMES ON RESERVE LAND

[346] There could be more residential tenancies on reserve lands in the coming years, especially in places with new developments. For example, the Tsuut'ina Nation near Calgary has developed communities for residents who may be Indigenous or non-Indigenous. It recently announced plans for a new community that will include purpose-built rental housing.²²⁰

[347] Some important parts of the *Residential Tenancies Act* do not apply to homes on reserves. Courts have held that provincial legislation cannot affect possession of land on reserves, as the federal Parliament has exclusive jurisdiction under the Constitution.²²¹ For example, a landlord could not use the

²¹⁸ The type of housing we are describing here is not the same as "supportive living accommodation," which is a specific type of accommodation governed by the *Continuing Care Act*, SA 2022, c C-26.7, s 1(v). Supportive living accommodations under the *Continuing Care Act* may be called lodges, group homes, seniors' residences, or assisted living, among other terms: see Alberta Health, *Supportive Living Accommodations in Alberta: A Guide to New Continuing Care Legislation* (2024) at 7, online: <open.alberta.ca/publications/supportive-living-accommodations-alberta-guide> [perma.cc/WVE9-2VFH].

²¹⁹ In our consultation, one participant directly involved with transitional housing told us their organization operates on the assumption that the *Residential Tenancies Act* applies. Other researchers found evidence of organizations taking the opposite position, operating on the assumption that the *Residential Tenancies Act* does not apply to transitional housing: Gander & Johansson, note 49 at 39.

²²⁰ Karina Zapata, "Massive development project to bring 6,500 new homes to Tsuut'ina Nation" *CBC News* (12 March 2025), online: <cbc.ca/news/canada/calgary/taza-park-6500-homes-1.7482236> [perma.cc/K2SQ-BG66].

²²¹ *Little Leaf v Houle*, 2011 ABPC 31 at paras 8-28; *Sechelt Indian Band v British Columbia (Manufactured Home Park Tenancy Act, Dispute Resolution Officer)*, 2013 BCCA 262; *McCaleb v Rose*, 2017 BCCA 318; *Glooscap First Nation v McLellan*, 2002 NSSC 274.

procedure in the *Residential Tenancies Act* to get an order for recovery of possession for a home on a reserve. There could be a gap in the law. It might be helpful if Nations could fill the gap with their own legislation. Otherwise, without federal legislation equivalent to the *Residential Tenancies Act*, landlords and tenants might have to rely on common law.

[348] Parts of the *Residential Tenancies Act* that do not affect land might apply. In one Alberta case, a judge decided he could resolve issues about money, like a claim for arrears of rent.²²² It would help landlords and tenants to have clear guidance about which rules apply when renting a home on a reserve.

D. If the *Residential Tenancies Act* Does Not Apply

[349] If the *Residential Tenancies Act* does not apply, it can be very difficult to determine the rights and responsibilities of the owner or renter. Some legislation, like the *Public Health Act*, applies to any rented home.²²³ Beyond that, the exact mix of legislation, agreement, and common law will be different depending on the situation.

[350] Different situations may have very different consequences. To illustrate, consider how much notice an owner must give before making a renter leave.

[351] If a renter lives in a hotel, motel, or similar place for less than six months, the *Innkeepers Act* would apply.²²⁴ It may apply to stays longer than six months or stays arranged through short-term rental platforms. An innkeeper can require a person to leave immediately if they cause a disturbance. If they do not leave, a peace officer may arrest them.²²⁵ It is much faster and easier than terminating a tenancy.

[352] If neither the *Residential Tenancies Act* nor the *Innkeepers Act* applies, the owner and renter may have an agreement about how much notice the owner must give. The agreement could be written or oral. If the agreement is written, it will usually be easy to determine how much notice the owner must give. If the

²²² *Little Leaf v Houle*, 2011 ABPC 31 at paras 29-35.

²²³ *Public Health Act*, RSA 2000, c P-37, s 1(1)(ii)(viii); *Housing Regulation*, Alta Reg 173/1999, s 1(b); *BPCL Holdings Inc. v Alberta*, 2008 ABCA 153 at paras 11-12; *Peter v Public Health Appeal Board of Alberta*, 2019 ABQB 989 at para 71-72; *Layeghpour v Paproski*, 2024 ABCJ 140 at paras 14-21 [Layeghpour].

²²⁴ *Innkeepers Act*, RSA 2000, c I-2.

²²⁵ *Innkeepers Act*, ss 9, 10.

agreement is oral, they may disagree about exactly what they agreed to.²²⁶ They may have to seek a ruling from a court or tribunal. As discussed earlier in this chapter, going to court takes time and money. It involves hassle and it is risky. Cases about oral agreements are particularly difficult and uncertain because the evidence depends on what each witness remembers.

[353] If the owner and renter did not make an agreement about notice, common law might fill the gaps. An owner would probably have to provide reasonable notice.²²⁷ Reasonable notice would vary depending on all the circumstances. It would be nearly impossible for an owner to know in advance how much notice they must give. After the fact, if either party sued, a court might decide the owner did not give enough notice and order them to pay damages to the renter. It would be too late to prevent the renter from losing their home.

[354] The Reddit data illustrates how people can struggle when there is no legislation clearly describing their rights and responsibilities. Of the 627 posts in the dataset, 26 raised issues about sharing a home, which is not governed by any legislation. Some asked generally about their rights and responsibilities. Eleven posts asked how to make an unwelcome occupant leave. Unwelcome occupants included roommates who broke agreements or house rules, adult children who had overstayed their welcome, and ex-partners. Posters were unsure what rights the unwelcome occupants had, if they had to give notice to end the arrangement, and what they could do if the unwelcome occupant refused to leave. On the other side of the coin, there were five posts from occupants who were worried about being forced to leave a home or had been told to leave with very little notice.

E. Updating and Clarifying the Legislation

[355] It would be helpful to have clear rules so owners and renters can easily determine if the *Residential Tenancies Act* applies.

[356] There is also an opportunity to ask whether the *Residential Tenancies Act* should apply to more kinds of homes and legal relationships. If the *Residential Tenancies Act* does not apply, there is very little protection for owners and renters. They will have to negotiate their own agreements about rights and responsibilities or rely on the minimal protections in common law.

²²⁶ See eg *Layeghpour*, note 223

²²⁷ See *Singh*, note 62 at para 80.

1. UPDATING DEFINITIONS AND EXCLUSIONS

[357] Is there a better way to determine whether the *Residential Tenancies Act* applies?

[358] Updated lists might help. The list of exceptions has hardly changed in more than 30 years.²²⁸ It is worth asking whether all of the exceptions are still necessary and appropriate. Some argue that a person sharing a home with their landlord deserves the same protections as other renters.²²⁹ It is also worth asking if there are other types of homes or relationships that should be in a list of exceptions.

ISSUE 15

Is the list of exceptions in the *Residential Tenancies Act* still appropriate?

[359] Another option would be to add a list of homes that are covered by the *Residential Tenancies Act*.

[360] Lists may not be a complete solution. They can become outdated. When the Ministerial Advisory Committee on Residential Tenancies made its recommendations about things that should be specifically excluded from the legislation, it did not anticipate the emergence of short-term rental platforms or life leases. Similarly, a list that is up-to-date now might be incomplete in the future, as new kinds of housing are developed.

[361] New definitions might help, including plain-language descriptions. For example, the legislation might say that residential premises include a single room where an individual can sleep. Phrases like “self-contained dwelling unit” could

²²⁸ The Ministerial Advisory Committee on Residential Tenancies recommended most of the exceptions in its 1990 report: *Achieving a Balance* at 46-51. The legislature followed the recommendations in the *Landlord and Tenant Amendment Act, 1991*, SA 1991, c 18.

²²⁹ See eg *Layeghpour*, note 223 at para 25 [citations omitted]:

It would be helpful if the legislature would consider including shared accommodation in the RTA's application. This would afford both landlords and tenants with significantly more protection than afforded by the common law, and would ensure that Albertans are afforded shared rental accommodation that meets PHA and HR minimum standards regarding safety, structural soundness, and good repair; provision of adequate sanitary facilities, heating, water, and sleeping spaces; and provision of clean and sanitary common areas. The current RTA was enacted in 2004, and in 20 years, there have been changes regarding the rental market, and the diversity and flexibility of living spaces and alternate accommodations available to Albertans. Albertans accessing alternate affordable accommodation should be entitled to the same protections as those accessing accommodation to which the RTA is applicable.

be replaced with more specific descriptions, like a unit with a bathroom, kitchen, and a separate entrance with a door that locks.

[362] It may be time to revisit the decision not to define residential tenancy. Another option would be to have a description of features or characteristics that make something a residential tenancy, or features or characteristics that make something not a residential tenancy. Some things to consider might be the type of place or premises, whether the renter shares rooms with the owner or other renters, the duration of the renter's stay, and whether the owner provides other services.

ISSUE 16

Should legislation include a definition of residential tenancy?

ISSUE 17

If legislation includes a definition of residential tenancy, what are the key features or characteristics of a residential tenancy? What features or characteristics are inconsistent with a residential tenancy?

2. ARE COMMON LAW RULES STILL RELEVANT?

[363] Case law can clarify what the law is, but it cannot tell us what the law should be. Courts have found that the distinction between leases and licences still matters for residential tenancies. But should it matter?

[364] It is doubtful whether the drafters of the *Residential Tenancies Act* intended "residential tenancy" to mean the same thing as "lease". The *Residential Tenancies Act* does not say that a residential tenancy is a lease.²³⁰ The word lease only appears once in the *Residential Tenancies Act*, referring to a written agreement.²³¹ It is possible that the drafters chose to use residential tenancy instead of lease

²³⁰ Common law rules about leases developed before residential tenancies were common: see *Reference re Amendments to the Residential Tenancies Act (N.S.)*, [1996] 1 SCR 186 at paras 40-47, Lamer CJC.

²³¹ See *Residential Tenancies Act*, s 70(1)(a) [emphasis added]:

70(1) The Minister may make regulations

(a) establishing forms that may be used by landlords and tenants for leases, inspection reports, notices of default and other documents under this Act;

It would be consistent with the rest of the legislation if it said "residential tenancy agreement" instead.

deliberately to avoid equating the two. Further, the definition of tenant starts with “a person who is permitted by the landlord to occupy residential premises”.²³² The words permitted and occupy suggest a licence rather than a lease.²³³

[365] More importantly, case law does not answer the policy question: why would a renter who does not have exclusive possession of their home deserve fewer protections than one with exclusive possession?

[366] Legislation could clarify whether a residential tenancy is a lease or another type of legal relationship. If it is not a lease, it would be helpful if the legislation clearly said so, so that courts would no longer apply common law rules.

ISSUE 18

Should legislation say that a residential tenancy is not a lease?

F. Extending Some Rules

[367] The application of the *Residential Tenancies Act* is currently all-or-nothing. A person either has all the rights, responsibilities, and protections of the legislation or they have none.

[368] Even if some owners and renters should not have all the rights and responsibilities in the *Residential Tenancies Act*, they might benefit from some protections. It is worth considering whether some aspects of the *Residential Tenancies Act* could apply more broadly.

[369] For example, the *Residential Tenancies Act* does not apply if a renter shares a home with the owner. The owner might collect a security deposit from the renter.²³⁴ There is no legislation that would limit the amount the owner could collect from the renter or that says when the owner must return the security deposit.

[370] There is no legislation that describes the rights or responsibilities roommates have to each other or that subtenants have to tenants. There is very

²³² *Residential Tenancies Act*, s 1(1)(t)(i).

²³³ Jonnette Watson Hamilton, “*Street v Mountford* Applied to Decide: A Residential Tenancy Agreement or License?” (13 January 2017), online: ABlawg <ablawg.ca/2017/01/13/street-v-mountford-applied-to-decide-a-residential-tenancy-agreement-or-a-licence/> [perma.cc/BK27-8N5K].

²³⁴ See eg *Layeghpour*, note 223 at paras 56-61.

little to help them resolve disputes. RTDRS will not hear cases about disputes between roommates or between tenants and subtenants. If they cannot resolve their own disputes, they would have to go to court. If they do not have a written agreement, the court will have to decide what they agreed on based on evidence about their discussions or actions. Approximately 30 of the posts in the Reddit data were about problems between roommates. Some were about money issues, like roommates who had not paid their share of rent or utilities. Some asked about roommates breaking agreements or house rules. For example, there were questions about what to do if a roommate allows another person to move into their room or gets a pet despite the other roommates' objections. There were also a few posts about harassment or violence between roommates. Many posters wanted to end the arrangement but were unsure how to make the roommate leave or were worried about consequences if they moved out before the end of the tenancy.

[371] Agreements and common law can leave many gaps and leave people uncertain about their rights. It is not reasonable to expect people to go to court to get answers. It might help if owners, renters, roommates, or subtenants could look to the *Residential Tenancies Act* to fill some of those gaps.

ISSUE 19

Should some parts of residential tenancy legislation apply to homes or relationships that are currently outside the *Residential Tenancies Act*?

CHAPTER 7

Tenants and Landlords

A. Who Is a Tenant?

[372] It is important to know who can exercise the rights of a tenant under the legislation or who has the responsibilities of a tenant. It is surprisingly difficult to describe a tenant or identify who is a tenant.

[373] A couple examples illustrate why it is important to know who is a tenant.

[374] A landlord can require a person who is not a tenant to leave the home on short notice.²³⁵ To exercise this right, it is essential for a landlord to be able to distinguish a tenant from a person who is not a tenant.²³⁶

[375] A tenant is responsible to pay rent and a landlord may recover arrears of rent from a tenant.²³⁷ As long as the rent is paid, a landlord may not care who pays but if the rent goes unpaid, the landlord needs to know who is responsible. If they have to make an application to court or RTDRS, they will need to know who they should pursue and if they are successful, who they could collect the money from.

[376] The Reddit data illustrated how these issues can matter to individuals. Of the approximately 425 posts about residential tenancy issues, 20 raised issues about whether a particular person was a tenant. Often the posters used words like “adding my name to the lease” or “removing me from the lease”.

[377] Some posters wanted to be tenants so they could stay in the home. A few were living with family members or roommates and worried the landlord could make them leave if they were not a tenant. A few others encountered problems being recognized as a tenant or being able to renew an agreement after the original tenant moved out.²³⁸

²³⁵ *Residential Tenancies Act*, ss 33, 36.

²³⁶ See eg *Re 22010877*, 2022 ABRTDRS 37 (R Ferrier).

²³⁷ *Residential Tenancies Act*, ss 21(a), 26(1).

²³⁸ A recent news story from Ontario provides another example. A woman lived with her boyfriend for four years in a rented home. There was a written lease that listed several tenants, including the boyfriend and his father, but it did not list the woman. When the boyfriend was arrested for assaulting the woman, his father asked the landlord to end the lease. The landlord did not consider the woman to be a tenant. The landlord gave her a notice to leave and would not accept rent from

[378] Other posters wanted to be sure they were not tenants. Their main concern was usually about financial or legal responsibility. A few posters moving out of homes they shared with roommates asked how to get off the lease. They wanted to be sure they would not be on the hook if the remaining roommates did not pay rent or breached other obligations.

[379] A few posters were going through a breakup and wanted to get their former partners off the lease, making sure they were the only remaining tenant.

[380] There are issues with the definition of tenant in the *Residential Tenancies Act*. There are also practical issues.

1. TERMS

[381] It is helpful to have some consistent terms for the following discussion. We use the following terms to describe the different kinds of people who may live in a rented home or have responsibilities to the landlord:

- Occupant means anyone who lives in the rented home. There can be at least three kinds of occupants:
 - Primary renter means a person who enters a residential tenancy agreement with a landlord and lives in the rented home.²³⁹ There may be more than one primary renter.
 - Permitted occupant means a person who is not a primary renter but lives in the rented home with the landlord's knowledge and consent. A permitted occupant may be a member of the primary

her. In a hearing at the Ontario Landlord and Tenant Board, an adjudicator ordered the woman could stay in the home: Kate Dubinski, "She feared she'd be homeless after abusive ex was jailed. Here's how she won her eviction case" *CBC News* (7 February 2025), online: <[cbc.ca/news/canada/london/she-feared-she-d-be-homeless-after-abusive-ex-was-jailed-here-s-how-she-won-her-eviction-case-1.7452229](https://www.cbc.ca/news/canada/london/she-feared-she-d-be-homeless-after-abusive-ex-was-jailed-here-s-how-she-won-her-eviction-case-1.7452229)> [perma.cc/NVB2-HX9P].

²³⁹ The *Residential Tenancies Act* does not contemplate a primary renter but other legislation appears to. The *Housing Accommodation Tenancies Regulation* refers to an "individual representing a household who enters into a tenancy agreement with a management body", or in other words, the primary renter: *Housing Accommodation Tenancies Regulation*, Alta Reg 242/1994, s 3. Further, it separates responsibility from occupancy, making the primary renter responsible for the actions of other occupants. *Housing Accommodation Tenancies Regulation*, Alta Reg 242/1994, s 3:

3 The individual representing a household who enters into a tenancy agreement with a management body in respect of housing accommodation is, in addition to the individual's responsibilities under the *Residential Tenancies Act*, responsible for the actions and consequences of those actions of the members of the household and any other person who occupies the housing accommodation with the consent of a member of the household.

renter's family or household, including a child. A permitted occupant could also be a roommate of the primary renter.

- Non-permitted occupant means a person who is not a primary renter and lives in the rented home without the landlord's knowledge or consent.²⁴⁰
- Guest means a person who stays at the rented home temporarily with the knowledge and consent of an occupant.
- Co-signer means a person who does not live in the rented home but enters a residential tenancy agreement with the landlord. For example, they could be named as a tenant in a written residential tenancy agreement. A co-signer serves as a kind of guarantor, agreeing to be responsible to the landlord as if they were a primary renter.
- A personal representative means a person who does not live in the rented home but becomes a party to a residential tenancy agreement because a primary renter dies or loses capacity to manage their affairs.

2. UNCERTAINTY IN THE DEFINITION OF "TENANT"

[382] One of the problems is that the word tenant can have at least two meanings. The definition in the *Residential Tenancies Act* has aspects of both. The definition is:²⁴¹

1(1)(t) "tenant" means

- (i) a person who is permitted by the landlord to occupy residential premises under a residential tenancy agreement,
- (ii) a person who is permitted to occupy residential premises under an assignment or sublease of a residential tenancy agreement to which the landlord has consented under section 22, and
- (iii) an heir, assign or personal representative of a person referred to in subclause (i) or (ii).

²⁴⁰ In the *Residential Tenancies Act* they are called "a person living in the premises who is not a tenant": *Residential Tenancies Act*, s 33(1):

33(1) If the tenant having the right to occupy residential premises has abandoned the premises, the landlord may require a person living in the premises who is not a tenant to vacate the premises by serving the person with a notice to vacate.

²⁴¹ *Residential Tenancies Act*, s 1(1)(t).

[383] The first meaning of tenant focuses on occupancy: a tenant is a person who lives in the rented home. This meaning is suggested by sections 1(1)(t)(i) and (ii): “a person who is permitted to occupy residential premises”. Tenant in this sense would include primary renters and permitted occupants.

[384] The second meaning of tenant focuses on responsibility: a tenant has obligations to the landlord and is responsible if they do not fulfill the obligations. An heir, assign, or personal representative may not live in the rented home but can nonetheless be a tenant. Tenant in this sense would include primary renters and personal representatives.

[385] There is some overlap between the two meanings but they are not always the same. If occupancy alone makes a person responsible to the landlord, any permitted occupant might have the rights and responsibilities of a tenant.²⁴² It is reasonable to assume that some permitted occupants do not. A child living with a parent or guardian would not usually have responsibilities to a landlord.²⁴³ It is unclear whether the intention to assume legal responsibility matters or whether a landlord and primary renters could agree that other adult permitted occupants will not be tenants. It would be helpful if the legislation were clearer.

ISSUE 20

How could legislation clarify which individuals have the rights and responsibilities of a tenant?

[386] The definition also leaves some grey areas.

[387] A co-signer could only be a tenant in the second sense, if they can be a tenant at all. The definition in the *Residential Tenancies Act* suggests that a tenant must either be an occupant or the successor to an occupant. It seems doubtful that a person who never lives in the home could fit the definition of tenant, especially if the landlord knows they will not be living there. Nonetheless, there

²⁴² *Housing Accommodation Tenancies Regulation*, Alta Reg 242/1994, s 3 may suggest the opposite but a regulation under a different statute would have little weight in interpreting the *Residential Tenancies Act*.

²⁴³ A person under 18 could be a primary renter with legal responsibility to the landlord in certain circumstances: see Jonnette Watson Hamilton, “Landlords, Tenants, and Domestic Violence: Who is a ‘Tenant’ under the *Residential Tenancies Act*?” (14 August 2017), online: ABlawg <ablawg.ca/2017/08/14/landlords-tenants-and-domestic-violence-who-is-a-tenant-under-the-residential-tenancies-act/> [perma.cc/578D-XYWA].

are several RTDRS cases where tenancy dispute officers seem to accept that a co-signer is a tenant and responsible to the landlord.²⁴⁴

ISSUE 21

Should co-signers have all the rights and responsibilities of a tenant?

ISSUE 22

If not, should legislation clarify which rights or responsibilities co-signers have?

[388] There is a question about whether a corporation can be a tenant. One might argue that a corporation cannot “occupy” residential premises and therefore could only be a tenant in the second sense, as successor to an individual, if at all.²⁴⁵ When courts and tribunals have faced the issue, however, they have decided that corporations can be tenants.²⁴⁶

[389] It would be helpful if the legislation clarified whether a corporation can be a tenant.

ISSUE 23

Should legislation clarify whether a corporation can be a tenant?

3. PRACTICAL ISSUES

[390] Another problem is that it can be difficult to tell the difference between a primary renter, a permitted occupant, a non-permitted occupant, and a guest.

a. Difficulty identifying the parties to oral or implied agreements

[391] Part of the problem is that a residential tenancy agreement can be oral or implied.²⁴⁷ A landlord’s permission to occupy the rented home can also be oral or implied. Sometimes there will be clear evidence of an agreement or permission.

²⁴⁴ See *Re 19001357*, 2019 ABRTDRS 11 (J Young); *Re 23009644*, 2023 ABRTDRS 25 (J Young).

²⁴⁵ But see *Re 22005383*, 2023 ABRTDRS 27 (J Lambert); *Re 22006800*, 2023 ABRTDRS 28 (J Lambert).

²⁴⁶ *Morris v Elkaderi*, 2011 ABQB 449; *Re 22006800*, 2023 ABRTDRS 28 (J Lambert).

²⁴⁷ *Residential Tenancies Act*, s 1(1)(m).

Often the evidence will have to be pieced together from many conversations or interactions.²⁴⁸

[392] A scenario helps illustrate. A woman meets with a landlord to view an apartment. In that meeting, they agree that she will rent the apartment. They agree on key terms, including how much she will pay in rent and when she can move in. They do not make a written agreement. When she moves in, her mother also moves in. Is the mother a primary renter, a permitted occupant, or a non-permitted occupant?

[393] To answer that question, one has to ask many other questions. When the woman viewed the apartment, did she mention that her mother would or might live with her? What did the landlord say? If she did not mention it to the landlord at the first meeting, did she mention it later? Did the landlord see the mother coming and going from the apartment? How often and over what period of time? Did the landlord ever speak with the mother? If the landlord knocked on the apartment door, did the mother answer? Did the mother contact the landlord directly about maintenance issues? Did the mother pay rent directly to the landlord? Did the landlord ever tell the woman or her mother that the mother did not have permission to live there or ask her to leave? All these questions and many more might be relevant to whether the landlord knew the mother lived in the apartment, permitted her to live there, or had an implied agreement with her.

[394] Another part of the problem is that individuals do not always behave or live in ways that fit neatly into legal categories. It can be hard to tell the difference between an occupant and a guest. Is a grandparent who stays several months to help with a new baby a guest? Is a friend who loses their home and stays until they can find a new place a guest? Is a romantic partner who sleeps over several times a week a guest?

b. Difficulty determining tenants when the occupants change

[395] There can be further complications when occupants change.²⁴⁹ Sometimes roommates or family members move in or out without formal notice to a

²⁴⁸ For example, in one case a tenant informed the landlord a friend would be assuming the tenancy. The landlord posted a notice requiring any person other than the original tenant to leave the home, but later accepted a payment from the friend. The friend applied to sublet the home but the landlord denied the application. A tenancy dispute officer found the friend was not a tenant: *Re 20002754*, 2020 ABRTDRS 8 (J Young).

²⁴⁹ The Ministerial Advisory Committee on Residential Tenancies noted this problem: see *Achieving a Balance* at 52.

landlord. For example, a primary renter might get a roommate, then later move out. If the roommate continues paying the rent, they might become a primary renter by an oral or implied agreement.

[396] It is unclear whether and when a primary renter or permitted occupant who moves out ceases to be a tenant.²⁵⁰ If a person can become a tenant by an oral or implied agreement, can they also stop being a tenant by an oral or implied agreement?²⁵¹ If so, how long does it take? In the example above, if the landlord knew the original primary renter had moved out and accepted rent from the roommate, would the original primary renter have to pay if the roommate stopped paying rent? Could the landlord seek rent from the original primary renter? It might make sense in the first month or two after they moved out, but what about a year or two later?

[397] The problem with ceasing to be a tenant is likely to come up when a couple separates. There were several examples in the Reddit data. It can get even more complicated when there is a protection order or an exclusive possession order.²⁵² If one of the primary renters or permitted occupants moves out, how long are they still responsible to the landlord? If the remaining occupant asks the landlord to change the locks, must the landlord provide a copy of the key to the partner who no longer lives there?

c. Written agreements cannot solve the problem

[398] It might seem that written agreements could resolve the problem. A written residential tenancy agreement should have the name and signature of each tenant. We heard in consultation that many landlords who use written residential tenancy agreements require every adult who will live in a rented

²⁵⁰ See eg *Morguard Residential Inc. v Adams*, 2005 ABPC 271; *Re 23014540*, 2024 ABRTDRS 2 (J Young).

²⁵¹ In one case a mother and son were both listed as tenants in a written agreement but the landlord believed the son had moved out. A tenancy dispute officer found in effect the son was no longer a tenant: *Re 23014540*, 2024 ABRTDRS 2 (J Young):

... prior to November 18, 2023, the Landlord was operating under the assumption the son had not been a lawful tenant or occupant since May 2023, and had not concerns with the arrangement. Therefore, I cannot find I am foisting an unacceptable arrangement upon the Landlord by merely making a decision that ends the son's tenancy.

²⁵² See generally Jonnette Watson Hamilton, "Landlords, Tenants, and Domestic Violence: Changing Locks and Barring Access" (12 September 2017), online: ABlawg <ablawg.ca/2017/09/12/landlords-tenants-and-domestic-violence-changing-locks-and-barring-access/> [perma.cc/SJ3K-54Y2].

home to be named as a tenant in the written agreement.²⁵³ Many written residential tenancy agreements also list the permitted occupants, sometimes by name.

[399] Even the clearest written agreement, however, may not eliminate the possibility that an individual who is not named in it could nonetheless be a permitted occupant or that a permitted occupant could be a tenant. The *Residential Tenancies Act* includes a section that an agreement cannot take away a tenant's rights:²⁵⁴

3(1) Any waiver or release by a tenant of the rights, benefits or protections under this Act is void.

[400] If a person has the landlord's oral or implied permission to occupy the rented home, they may be a tenant. A written agreement cannot take away rights they would have as a tenant.²⁵⁵

[401] Some written residential tenancy agreements have rules about guests. For example, they might limit the number of days a guest may stay or require the landlord's permission if a guest will stay more than a certain number of days, weeks, or months.²⁵⁶ A written agreement might help answer the question of when a guest becomes an occupant. However, leaving it up to a written agreement means the rules could be different depending on the agreement and the landlord's practices. Some landlords might allow guests to stay for weeks or months. Others might insist that a person must be listed as a tenant if they stay more than a few days.

[402] It can be hard to enforce a written agreement. Landlords may not know about guests or additional occupants unless the tenant tells them. A few Reddit posts suggested why a tenant might hesitate to tell a landlord about guests or new occupants. A couple posters thought their landlord would raise the rent if a new occupant moved in. A few others implied that their landlord might refuse permission for a new occupant to live in the home. In some cases, they seemed

²⁵³ Other researchers have found the same: see eg Lois Gander, *Domestic Violence: Roles of Landlords and Property Managers*, Final Report (Edmonton: Centre for Public Legal Education Alberta, 2017) at 17, online: <cplea.ca/wp-content/uploads/2017/04/HTE-DV-Roles-LL-and-PM-FinalReportFEB2017.pdf> [perma.cc/5CGZ-6GLL].

²⁵⁴ *Residential Tenancies Act*, s 3(1).

²⁵⁵ See Jonnette Watson Hamilton, "Landlords, Tenants, and Domestic Violence: Who is a 'Tenant' under the *Residential Tenancies Act*?" (14 August 2017), online: ABLawg <ablwg.ca/2017/08/14/landlords-tenants-and-domestic-violence-who-is-a-tenant-under-the-residential-tenancies-act/> [perma.cc/578D-XYWA].

²⁵⁶ See eg *Re 20002754*, 2020 ABRTDRS 8 (J Young) (tenancy agreement required a person to be listed as an occupant if they stayed more than a month).

worried that the landlord would try to terminate their tenancy if the landlord learned about a non-permitted occupant. The primary renter and the non-permitted occupant could both lose their home. A written agreement with strict rules or harsh consequences might have the unintended consequence of making tenants less likely to tell their landlord who else is staying in the home.

[403] It might help if the legislation included a definition or factors to consider in determining whether a person is or is not a tenant. For example, must a person live in the home to be a tenant? Should there be a minimum length of stay? If they move out, how long will they remain a tenant? Does age, legal capacity, an agreement, or intention to assume the responsibilities of a tenant matter?

ISSUE 24

Should legislation include definitions to clarify who is and is not a tenant?

B. Co-tenants

[404] A related problem is that the *Residential Tenancies Act* hardly mentions the possibility of having more than one tenant.²⁵⁷ Two sections suggest that more than one person can be a tenant²⁵⁸ but most simply refer to “a tenant” or “the tenant”.²⁵⁹

[405] In practice, it is common to have more than one tenant. Many landlords require all adult occupants be named as tenants in a written residential tenancy agreements. An agreement might say a primary renter and co-signer are both

²⁵⁷ Jonnette Watson Hamilton made this point in a blog post, writing “the RTA does not contemplate co-tenants and so says nothing about how liability is shared Jonnette Watson Hamilton, “Landlords, Tenants, and Domestic Violence: Changing Locks and Barring Access” (12 September 2017), online: ABlawg <ablawg.ca/2017/09/12/landlords-tenants-and-domestic-violence-changing-locks-and-barring-access/> [perma.cc/SJ3K-54Y2].

²⁵⁸ *Residential Tenancies Act*, ss 19(3), 58(2). Section 19(3) says [emphasis added]:

19(3) A landlord may complete the inspection without the tenant if the landlord proposes 2 inspections to take place
 (a) on different days,
 (b) on days that are not holidays, and
 (c) between 8 a.m. and 8 p.m.,
 and no adult person who falls within the definition of tenant agrees to take part.

Section 58(2) says [emphasis added]:

58(2) A requirement under this Act to give or serve a notice, order or document to or on the tenant of residential premises is satisfied if the notice, order or document is given to or served on one adult person who falls within the definition of tenant of those premises.

²⁵⁹ See eg *Residential Tenancies Act*, ss 5(1), 21, 24(2), 29, 30, 37.

tenants. Whether or not there is a written residential tenancy agreement, any adult permitted occupant might be a tenant because of an oral or implied agreement.

[406] Although the *Residential Tenancies Act* does not directly say so, courts and tribunals seem to assume that all tenants are jointly and severally liable to the landlord.²⁶⁰ In other words, if one tenant fails to pay rent or causes damage, the landlord can collect from any of them. Some written residential tenancy agreements make it explicit.²⁶¹

[407] There are other practical questions that can arise when two or more people are tenants. For example, if the landlord changes the locks, do they have to give keys to all the tenants? If one tenant gives notice to the landlord to terminate the tenancy, does it terminate the tenancy for all the tenants?²⁶² When a landlord returns a security deposit at the end of a tenancy, who should they return it to?

[408] The usual solution seems to be to assume that any tenant represents all of them. The underlying assumption is that the tenants cooperate and make decisions together. Most of the time it is probably a fair assumption.

[409] If the tenants are in conflict or not cooperating with each other, however, it may cause problems to assume that one tenant represents all of them. The problems are particularly clear in situations involving domestic violence or coercive control between co-tenants. A partner might exert control over another by ending a tenancy or threatening to do so. If a victim wants the abuser to leave, they might ask the landlord to change the locks but it would be futile if the landlord has to provide a key to both of them.²⁶³

[410] If a victim shares responsibility for the abuser's actions, it can cause significant hardship. For example, if one tenant assaults another in the home, the

²⁶⁰ See *Re 19001357*, 2019 ABRTDRS 11 (J Young); *Re 20005526*, 2021 ABRTDRS 13 (M Hui).

²⁶¹ See eg *Morguard Residential Inc. v Adams*, 2005 ABPC 271 at paras 13, 23.

²⁶² See eg *Re 22010877*, 2022 ABRTDRS 37 (R Ferrier). See also Kate Dubinski, "She feared she'd be homeless after abusive ex was jailed. Here's how she won her eviction case" *CBC News* (7 February 2025), online: <[cbc.ca/news/canada/london/she-feared-she-d-be-homeless-after-abusive-ex-was-jailed-here-s-how-she-won-her-eviction-case-1.7452229](https://www.cbc.ca/news/canada/london/she-feared-she-d-be-homeless-after-abusive-ex-was-jailed-here-s-how-she-won-her-eviction-case-1.7452229)> [perma.cc/NVB2-HX9P].

²⁶³ See Gander & Johannson, note 49 at 24; Jonnette Watson Hamilton, "Landlords, Tenants, and Domestic Violence: Changing Locks and Barring Access" (12 September 2017), online: ABlawg <[ablawg.ca/2017/09/12/landlords-tenants-and-domestic-violence-changing-locks-and-barring-access/](https://www.ablawg.ca/2017/09/12/landlords-tenants-and-domestic-violence-changing-locks-and-barring-access/)> [perma.cc/SJ3K-54Y2].

landlord may have grounds to terminate the tenancy. The *Residential Tenancies Act* does not contemplate terminating the tenancy of just one co-tenant, so if the landlord terminates the tenancy both the abuser and the victim will lose their home.²⁶⁴ The harm may be compounded if the victim is financially responsible for damage caused by their abuser. As a report about the intersection of domestic violence and residential tenancy issues pointed out, victims of domestic violence can end up paying for the abuser's wrongdoing:²⁶⁵

[Victims of domestic violence] may be liable for debts related to unpaid rent, utility charges, and damages to the premises from which they were evicted (even though they did not cause the damage). Even when the abuser is also a tenant and shares the liability for these costs, the landlord may pursue the victim if she is the easiest to locate.

ISSUE 25

How could legislation clarify the rights and responsibilities of each tenant when more than one person meets the definition of tenant?

C. Sublease and Assignment

[411] A person can also become a tenant by sublease or assignment.²⁶⁶ The *Residential Tenancies Act* does not define the terms or explain the difference between sublease and assignment. Both are agreements where another person takes on some or all of the tenant's rights and responsibilities. In a sublease, the primary renter remains a tenant. The subtenant might be a roommate living with the primary renter. Other times, a subtenant temporarily takes the place of the primary renter. A primary renter might sublet their home while they are away if they intend to return at the end of the sublease. In an assignment, a new person (the assignee) becomes the primary renter. The assignee replaces the original primary renter, taking over their rights and responsibilities permanently.

²⁶⁴ Gander & Johannson, note 49 at 38-39:

Breaches that arise from domestic violence and typically lead to eviction notices include failure to pay rent, interfering with the rights of either the landlord or other tenants, performing illegal acts on the premises, significantly damaging the property, and endangering persons or property. The victim may find herself served with a notice simply because of the noise associated with the abuse or of the presence of police. She may be evicted simply [because] she was threatened but not actually assaulted and there may be no damage to any property. The victim may be evicted whether or not she played any role in the breach ...

²⁶⁵ Gander & Johannson, note 49 at 38.

²⁶⁶ *Residential Tenancies Act*, s 1(1)(t)(ii).

[412] At common law, a tenant can sublet or assign a residential tenancy agreement.²⁶⁷ Under section 22 of the *Residential Tenancies Act*, an assignment or sublease is only valid if the landlord has consented. The legislation suggests that landlords should not usually stand in the way of a sublease or assignment. Section 22(2) says a landlord “shall not refuse consent to an assignment or sublease unless there are reasonable grounds for the refusal” and section 22(4) says if a landlord does not respond to the tenant’s request for consent within 14 days, the landlord’s consent is presumed.²⁶⁸

[413] The ability to sublet or assign is often important to tenants with fixed term tenancies. It is often the only way to escape their obligations if they need to end a tenancy early.²⁶⁹

[414] While the rules seem clear on the surface, it can be difficult to apply them in practice. Section 22(2) says a landlord can only refuse consent if there are reasonable grounds, but there is little to help landlords, courts, or tribunals decide what would be reasonable grounds to refuse consent.²⁷⁰ Even if a court or tribunal were to decide a landlord’s refusal was unreasonable, there is no consequence.

ISSUE 26

Should legislation include more guidance about when a landlord can refuse to approve an assignment or sublease?

[415] Other times approval is granted but landlords and tenants make an agreement casually without thinking through important terms. While a landlord’s consent to a sublease or assignment must be in writing, there are no further requirements. A landlord and tenant may not discuss whether the agreement is a sublease or an assignment or when it becomes effective. It may

²⁶⁷ Jonnette Watson Hamilton, “The Right of a Landlord to Withhold Consent to the Sub-leasing of Residential Premises” (30 November 2010), online: ABlawg <ablawg.ca/2010/11/30/the-right-of-a-landlord-to-withhold-consent-to-the-sub-leasing-of-residential-premises/> [perma.cc/D2NN-XCLG].

²⁶⁸ *Residential Tenancies Act*, ss 22(2), 22(4).

²⁶⁹ A future report in this series will discuss fixed term tenancies.

²⁷⁰ There is one reported decision where the court said a landlord’s policy requiring a potential subtenant to submit a written application was reasonable. The court did not have to decide whether the landlord’s criteria for accepting or rejecting subtenants were reasonable: *Botar v Mainstreet Equity Corp*, 2010 ABQB 710. There is also one RTDRS case where a tenancy dispute officer found it was not reasonable for a landlord to refuse to consider any subletting: *Re 19003421*, 2019 ABRTDRS 4 (J Young).

not matter if all goes smoothly, but if there is a problem they will need to know the rights and responsibilities of everyone involved. For example, if the original tenant causes damage, should an assignee have to pay to repair it at the end of the tenancy?²⁷¹ At the end of the tenancy, who should the landlord return the security deposit to? A couple of Reddit posts raised questions about who was entitled to a security deposit when roommates changed.

[416] The *Residential Tenancies Act* does not have any default terms about which rights or responsibilities are transferred to the new tenant. Without clear legislation or agreements, landlords and tenants would have to take these disputes to a court or tribunal to resolve. Courts or tribunals would probably apply common law rules. In a sublease the original tenant would be responsible to the landlord. In an assignment, the original tenant's responsibility would end when the assignment becomes effective and the new tenant takes over. If the landlord and tenant did not clearly agree, however, these cases could be very difficult to resolve and the results will be unpredictable. It might be helpful to have clearer rules in legislation.

ISSUE 27

Should legislation have default terms to clarify the effects of an assignment or sublease?

D. Who Is a Landlord?

[417] A tenant needs to know who their landlord is. They need to know who they should pay rent to. They need to know who to contact if there is a problem. If they would like to renew, change, or terminate a residential tenancy agreement, they need to know who they should negotiate with and who has the authority to make an agreement. If there is a dispute and they decide to pursue formal dispute resolution, they need to know who to name in an application and if they are successful, who they can collect from.

[418] Some property owners own and manage rental property by themselves. Others have employees, property managers, or other kinds of agents to help. There are countless ways they might divide the work of being a landlord. Some owners hire property managers to do everything a landlord might do, including deciding whom to rent to, collecting rent, handling all maintenance, and

²⁷¹ See eg *Re 21002885*, 2021 ABRTDRS 17 (J Young).

terminating tenancies. Only licensed property managers can negotiate or enter residential tenancy agreements on behalf of an owner or collect or hold money for an owner.²⁷² Some owners hire help only for specific tasks. Relatives or friends of owners sometimes help informally.²⁷³

[419] Some owners, property managers, or agents are individuals, acting in their personal capacity. Others are corporations who act through employees or contractors.

[420] The *Residential Tenancies Act* has a broad definition of landlord. Owners, property managers, and agents may all be landlords.

1(1)(f) “landlord” means

- (i) the owner of the residential premises,
- (ii) a property manager who acts as agent for the owner of the residential premises and any other person who, as agent for the owner, permits the occupation of the residential premises under a residential tenancy agreement,
- (iii) the heirs, assigns, personal representatives and successors in title of the owner of the residential premises, and
- (iv) a person who is entitled to possession of the residential premises, other than a tenant, and who attempts to enforce any of the rights of a landlord under a residential tenancy agreement or this Act;

[421] There can be more than one landlord at the same time. In a common scenario where an owner hires a property manager, both would be landlords.

1. DAY-TO-DAY ISSUES

[422] In our early consultation, we did not hear that tenants are confused about who to contact for day-to-day issues. It may be because the *Residential Tenancies Act* requires landlords to provide a “notice of landlord”. The notice must include the name of one landlord and their address. When a tenant needs to deliver a notice to the landlord, they may send it to that address.²⁷⁴ If the information changes, the landlord must update the information.²⁷⁵

²⁷² See *Real Estate Act*, RSA 2000, c R-5, ss 1(1)(s.1), 17.

²⁷³ See eg *Re 19001357*, 2019 ABRTDRS 11 (J Young).

²⁷⁴ *Residential Tenancies Act*, s 57(2).

²⁷⁵ *Residential Tenancies Act*, ss 18(4), 47(2)(a).

[423] It might be more useful if legislation or the notice of landlord included more details about the powers or responsibilities of each landlord. If a tenant makes an agreement with the person named in the notice of landlord, does the agreement bind all the landlords? If a landlord not named in the notice of landlord gives a tenant a notice, is it effective? While we did not hear about different landlords contradicting each other or refusing to be bound by the other's decisions, it would be helpful for tenants to have clear information.

2. FINANCIAL RESPONSIBILITY

[424] Problems seem to come up if a dispute goes to court or RTDRS. The *Residential Tenancies Act* does not say whether all landlords are financially responsible to a tenant. It does not say whether they are jointly and severally liable. Although common law rules about the responsibility of agents or employees could answer these questions, they are hard to find and interpret.

[425] RTDRS cases show tenants, landlords, and even tenancy dispute officers seem unsure about who is financially responsible. Some tenants name all the possible landlords in an application, including individuals who are employees of corporations.²⁷⁶ Others only name one of the possible landlords.²⁷⁷ In some cases, people who might be landlords did not seem to know that agreeing they were a landlord also meant assuming responsibility to pay.²⁷⁸ In one case, a property management company sought an order against a tenant but when the tenant

²⁷⁶ See eg *Re 22008439*, 2022 ABRTDRS 4 (M Baron).

²⁷⁷ See eg *Re 19009359*, 2019 ABRTDRS 37 (J Lambert); *Re 22007020*, 2022 ABRTDRS 35 (J Young).

²⁷⁸ See eg *Re 20003149*, 2020 ABRTDRS 18 (J Young):

I then read the names of the Landlords named as respondents and asked the property manager if that was correct. Her response was "that is correct".

The property manager did not raise as a preliminary matter any issue about who was named in this application. If she felt that she was improperly named, she ought to have raised it. It is not my duty as adjudicator to make a full inquiry into whether the respondents named are actually individuals who are liable under the tenancy agreement. If a party is not present or if something appears amiss, I may make inquiries on that question, but if the named respondent is present and makes no issue about being named as a respondent, I cannot be expected to know that the respondent does not believe themselves to be under any contractual liability to the applicant.

See also *Re 20001688*, 2022 ABRTDRS 4 (J Young):

During the last appearance for this hearing, I asked the Landlord representatives who appeared (the property manager and one of the owners) for their position on who is properly named as a respondent to the Tenant's application. Their first response indicated a failure to understand the question and its significance. I restated the question and stressed that if I find in the Tenant's favour, I will be issuing a judgment in the form of a binding court order and, therefore, it is relevant to determine whether all or some of the named respondents are liable. The essential response to this was that the Landlord representatives did not know the answer to my question.

made a counter-application, the company said the tenant's application should have named the owner instead. The tenancy dispute officer found the property management company responsible to the tenant, writing "there is no reason why the Landlord in this case should not be liable to the Tenant merely because they are the property manager and not the owner."²⁷⁹ In other cases, tenancy dispute officers have said that any landlord can be financially liable to a tenant.²⁸⁰ There are cases that say the opposite.²⁸¹

3. WHEN LANDLORDS CHANGE

[426] Finally, the *Residential Tenancies Act* says little about responsibility when landlords change. Landlords can change for many reasons: if the owner sells the home or building, of course, but also if the owner hires or dismisses a property manager or uses different agents.

[427] Section 47 requires a new landlord to give a tenant a new notice of landlord. The new landlord assumes responsibility for the security deposit.²⁸² The legislation says nothing about who is responsible for other obligations to a tenant.

[428] It is unclear if a landlord should be responsible for problems before or after their time as landlord. For example, if a tenant performs a landlord's obligations, then the landlord sells the building, which landlord is responsible to compensate the tenant for the cost?²⁸³

[429] A 2019 RTDRS case illustrates how a change in landlords can cause confusion about responsibility.²⁸⁴ In a tenancy that lasted less than a year, the tenant had four landlords: the original owner, a new owner, and two different property management companies. The new owner hired one property

²⁷⁹ *Re 22007223*, 2022 ABRTDRS 25 (J Young).

²⁸⁰ See eg *Re 19005465*, 2019 ABRTDRS 42 (J Young); *Re 22007020*, 2022 ABRTDRS 35 (J Young).

²⁸¹ See eg *Re 20007821*, 2020 ABRTDRS 36 (J Young):

The property manager fits the definition of "landlord" under the RTA. Any individual or entity coming under the definition of "landlord" may be subject to certain rights and responsibilities under the RTA. ... However, not every person who fits the definition of "landlord" is financially liable to a tenant. Holding the property manager liable would defeat the well established rationale for the forming of corporate entities. ...

...

Accordingly, I will not issue any order that names the property manager. Rather, my order will name only the corporate landlord.

²⁸² *Residential Tenancies Act*, s 47.

²⁸³ See *Residential Tenancies Act*, s 37(1)(c).

²⁸⁴ *Re 19009359*, 2019 ABRTDRS 37 (J Lambert).

management company, then replaced it three months later. During the entire tenancy, there were issues with bedbugs and cockroaches. When the tenant made a claim for abatement of rent, she only named one of the property management companies. The tenancy dispute officer decided a landlord could not be responsible for a pest problem before or after their time as landlord. The tenant was entitled to abatement of rent but only for the three months that the company she named act as property manager.

[430] If a landlord is only responsible for obligations that arise during their time as landlord, it would be helpful to have a clear statement in legislation.

ISSUE 28

How could legislation clarify the rights and responsibilities of each landlord when more than one person meets the definition of landlord?

CHAPTER 8

Other Issues and Next Steps

A. Other Issues

[431] There are two other general issues about residential tenancies that came up in our research and consultation.

1. TENANT ASSOCIATIONS OR ADVOCACY

[432] Either tenants or landlords might want to advocate for their interests or work together with others to do so. There are organizations that represent the interests of landlords or tenants, as well as providing education, support, and other services to members.²⁸⁵ People may also form their own informal groups or support networks.

[433] Landlords do not usually have to worry about the consequences of joining a group or participating in advocacy. It can be different for tenants. They may hesitate to speak out or support others if they think their landlord might retaliate against them. A recent news story shows why they might worry.²⁸⁶ The story describes two groups of tenants who held protests: one group in Toronto and another in Vancouver. The protests included distributing flyers or putting up posters. Shortly afterwards, their landlords sued the tenants who participated in the protests.

[434] Even more than lawsuits, tenants may fear losing their home. The Ministerial Advisory Committee on Residential Tenancies heard from tenants who received notices to terminate their tenancies after complaining about their landlord. The Committee wrote: “In some circumstances these types of evictions were used so indiscriminately that tenants, who were merely sympathetic (in the

²⁸⁵ For example, the Alberta Residential Landlord Association and the Calgary Residential Rental Association are organizations for landlords. Alberta ACORN is an organization that advocates for tenants, among other issues.

²⁸⁶ Zach Dubinsky & Kimberly Ivany, “Landlords’ latest tactic in public battles with tenants: sue them for libel” *CBC News* (24 October 2024), online: <[cbc.ca/news/canada/landlords-libel-lawsuits-tenants-1.7361387](https://www.cbc.ca/news/canada/landlords-libel-lawsuits-tenants-1.7361387)> [perma.cc/B73A-TTLD].

landlord's mind) with the tenants who lodged complaints, received eviction notices."²⁸⁷

[435] The *Residential Tenancies Act* and the *Alberta Human Rights Act* prohibit retaliation if a tenant participates in certain kinds of proceedings.²⁸⁸ There is no legislation that explicitly protects a tenant who takes other kinds of action, like joining an organization, participating in a protest, speaking to the media, sharing concerns with neighbours, or even just talking to their landlord about a concern. One participant in our consultation pointed out when there is protection only for those who participate in formal dispute resolution, it encourages tenants to go straight to formal dispute resolution instead of trying to resolve a problem directly with their landlord first.

[436] The Ministerial Advisory Committee on Residential Tenancies recommended that the *Residential Tenancies Act* should encourage tenants to form tenant associations and work together to address concerns. It recommended that:

- 1) the formation and activities of tenant associations should be explicitly recognized and approved in the legislation;
- 2) landlords should be prohibited from evicting a tenant if one of the reasons for such eviction is the tenant's involvement in the tenant association;
- 3) landlords should be required to recognize, meet with and discuss tenant issues, in good faith with such tenant associations.

[437] These recommendations were not implemented. It may be worth revisiting them now.

ISSUE 29

Should legislation recognize tenant associations?

ISSUE 30

Should the legislation prohibit retaliation against tenants who are involved in tenant associations or other kinds of advocacy?

²⁸⁷ *Achieving a Balance* at 86.

²⁸⁸ *Residential Tenancies Act*, s 25; *Alberta Human Rights Act*, note 152, s 10.

2. LANDLORD LICENSING

[438] Several participants in our early consultation would like to see some form of landlord licensing.

[439] Some municipalities in other parts of Canada have programs requiring landlords to register or obtain a licence to operate rental housing. These programs sometimes include inspections or other requirements. In Toronto, for example, a landlord must register any “residential rental apartment [building that has] three or more storeys and 10 or more apartment units.”²⁸⁹ They must renew the registration every year and pay a fee. Bylaw officers regularly inspect buildings and can perform more comprehensive audits if an inspection uncovers potential problems. In contrast, residential rental unit licences in London, Ontario are for small rental buildings. A building with four or fewer rental units requires a licence.²⁹⁰ The building must be inspected the first time an owner applies for a licence. There is a fee for initial licence and an annual renewal fee.

[440] Some advocates and researchers would like to see similar programs here.²⁹¹ The City of Edmonton has explored creating a licensing system but it is not in place at the time of writing.²⁹²

[441] Although most existing licensing systems are operated by municipalities, there is nothing to prevent the province from creating or operating a licensing system. A licensing system could help coordinate services and support. For example, if landlords were required to register or apply for a licence the office that processed applications could also distribute information about the law. It

²⁸⁹ City of Toronto, *RentSafeTO Apartment Building Standards Program: Building Owner Handbook* (2024) at 3, online: <toronto.ca/wp-content/uploads/2024/03/9752-Building-Owner-Handbook2024-FINAL.pdf> [perma.cc/BAJ5-LR2A].

²⁹⁰ See City of London, Ontario, “Residential rental unit licences”, online: <london.ca/business-development/business-licences/residential-rental-unit-licences> [perma.cc/V6P8-Q648].

²⁹¹ See eg Karina Zapata, “Renters advocacy group calls for landlord licensing in Alberta” *CBC News* (2 November 2022), online: <cbc.ca/news/canada/calgary/acorn-landlord-licensing-alberta-1.6637568> [perma.cc/UBR5-YUZ6]; Student Legal Services, *The Business of Housing: Implementing a Residential Rental Licensing Program in Edmonton* (2023), online: <static1.squarespace.com/static/5b19871eee1759f2bea0f69b/t/650db4a761691c5d4abe52f9/1695397032506/The+Business+of+Housing+-+Report+%26+Recommendations.pdf> [perma.cc/HM5D-ECRQ].

²⁹² See Lauren Boothby, “City eyes changes to target rule-breaking landlords” *Edmonton Journal* (5 April 2023) A2; Lauren Boothby, “Edmonton would create landlord registry in affordable housing plan” *Edmonton Journal* (16 January 2024), online <edmontonjournal.com/news/local-news/edmonton-would-create-landlord-registry-in-affordable-housing-plan> [perma.cc/4A48-LXG3].

could be a convenient way to inform landlords about training, resources, or support available to them.

ISSUE 31

Should there be a licensing system for landlords?

B. Next Steps

[442] ALRI will publish additional reports cataloguing problems with the *Residential Tenancies Act*. The next report in this series will be about issues that arise at the beginning of or during a tenancy. Later reports will be about ending a tenancy and dispute resolution.

[443] As this project continues, ALRI will make recommendations to address some of the problems we have identified. The project will include additional consultation.

[444] ALRI welcomes comments on any issues in this report or any other issues that we should consider in this project.

contact us



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We encourage you to contact us. The Contact page on our website was designed to let you provide comments on the current projects we are working on. You can also use this option to suggest an area for review that we are not currently addressing.

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