



ALBERTA LAW REFORM INSTITUTE

RESIDENTIAL TENANCIES ACT: BEFORE AND DURING A TENANCY

ISSUES
PAPER

7

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2026



ALBERTA
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**RESIDENTIAL TENANCIES ACT: BEFORE AND
DURING A TENANCY**

ISSUES PAPER || **7**

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www.alri.ualberta.ca/2025/11/residential-tenancies-act-issues-paper-7

Our reports are also available on the Canadian Legal Information Institute [CanLII] website:
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Invitation to Comment

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

This Issues Paper discusses problems with the *Residential Tenancies Act* that affect landlords and tenants at the start of or during a tenancy. 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:

Alberta Law Reform Institute
402 Law Centre
University of Alberta
Edmonton, AB T6G 2H5

E-mail: lawreform@ualberta.ca
Website: www.alri.ualberta.ca

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.

Table of Contents

Alberta Law Reform Institute	i
Acknowledgments	iii
Summary	v
Issues	ix
Table of Abbreviations	xiii
Notes About Language	xv
CHAPTER 1 Introduction	1
A. Introduction	1
B. Why Review the Residential Tenancies Act?	1
C. About this Project and this Report	3
1. Scope of the Project	4
a. Right to housing	5
b. Affordability, rent, and rent control	5
c. Supply of housing	5
d. Financialization and consolidation of rental housing	5
e. Other issues affecting landlords and tenants	6
2. Methods and Early Consultation	6
a. Legislation and case law	6
b. Literature review	7
c. Early consultation	8
d. Reports of individual experiences	8
D. Structure of this Report	9
CHAPTER 2 At the Start of a Tenancy	11
A. Finding a Home and Selecting Tenants	11
B. How Do Rules in Other Legislation Affect Selection of Tenants?	12
1. Discrimination	12
2. Personal information and privacy	15
C. How Do Tenants Make Informed Decisions?	17
CHAPTER 3 Making Residential Tenancy Agreements	21
A. Introduction	21
B. General Rules about Residential Tenancy Agreements	21
C. Problems with Oral or Implied Agreements	23
D. Problems with Written Agreements	25
1. What happens if a written agreement does not comply with legislation?	26
2. Could standard form agreements help?	28
CHAPTER 4 Security Deposits and Inspections	31
A. Introduction	31
B. Rules that Work Well	32
1. Continued support for security deposits	32
2. One month's rent as the maximum security deposit	32

C.	Issues That May Require Clarification	35
1.	What is a security deposit for and what can be deducted from it?	35
2.	When does an application fee become a security deposit?	36
3.	Who owns a security deposit?	37
4.	What should a landlord do with a security deposit?	38
5.	Are rules about return of security deposits working?.....	39
6.	What happens to unclaimed security deposits?	41
D.	Interest on Security Deposits.....	43
E.	Inspections and Inspection Reports	44
CHAPTER 5	Rent and Other Payments	47
A.	Introduction.....	47
B.	What Is Rent?.....	49
1.	Examples where tenant pays more than state “rent”	49
a.	Utilities	50
b.	Recurring fees	50
c.	One-time fees or non-refundable deposits.....	51
d.	Fees, penalties, or fines for tenant’s behaviour	51
2.	Examples where tenant pays less than stated “rent”	52
a.	Monthly discounts.....	52
b.	Free month	53
3.	Problems in practice.....	53
C.	How Does Rent Change?.....	55
1.	Resolving disputes about rent increases.....	55
2.	Negotiating rent for a new fixed term tenancy	57
3.	Rent increases after a notice of termination.....	58
D.	When Is Rent Due?	59
E.	How Is Rent Paid?.....	61
CHAPTER 6	Utilities.....	65
A.	Who Pays for Utilities and How?	65
1.	Examples of utility agreements	65
a.	Utilities included in the rent	66
b.	Fixed charge for utilities	66
c.	Tenant pays actual cost for utilities to landlord.....	66
d.	Minimum charge up to actual cost	67
e.	Tenant arranges and pays for utilities	67
f.	Tenants split the cost of utilities	67
g.	Are new rules governing agreements about utilities needed?.....	68
2.	Examples of conflicts about utilities.....	68
a.	A tenant’s non-payment of utilities to a landlord	68
b.	A tenant’s non-payment of utilities to another tenant.....	69
c.	A landlord’s non-payment of utilities	69
d.	Conflicts about consumption of utilities	70
B.	Could Guidance in Legislation Help?.....	71
CHAPTER 7	Fees and Penalties.....	73
A.	What Fees Should a Tenant Pay to a Landlord?.....	73
B.	What Are Unenforceable Fees or Penalties?	74
1.	Late payment fees.....	75
2.	Lease break fees	75
3.	Clawbacks of rental incentives.....	76

4. The problem.....	77
5. Would legislated rules help?.....	79

CHAPTER 8 Behaviour and Rules 83

A. Introduction.....	83
B. Rules to Prevent Interfering With the Rights of Other Tenants.....	84
1. Noise and smells	86
2. Smoking, vaping, and cannabis.....	87
3. Pets and support animals	88
4. What is a landlord’s role in issues between neighbours?	90
C. Rules to Promote Compliance with Laws and Protect People or Property.....	92
D. Visitors, Guests, and Occupants.....	92
E. Other Rules	94
1. Insurance	94
2. Use of the premises	95

CHAPTER 9 Maintenance, Repairs, and Damage..... 97

A. Housing Standards and Maintenance.....	97
B. Obligations of Landlords and Tenants.....	98
1. Wear and tear	99
2. Pests.....	100
3. Hoarding.....	101
C. Damage	103
1. What can a landlord do?	103
2. How can parties and decision makers determine if claims are reasonable?	104
D. Maintenance and Repairs.....	105
1. What can a tenant do?.....	105
a. Inform the landlord	105
b. Public health inspections and orders	106
c. Remedies under the Residential Tenancies Act	107
2. Specific issues	109
a. Should there be guidance about time to fix problems?	109
b. What are a tenant’s obligations?	109
c. What happens if a landlord cannot pay for repairs or maintenance?	110
d. Who should pay for alternate accommodation?	110
E. Entry and Inspections.....	111

CHAPTER 10 Forms and Notices 113

A. Forms.....	113
B. Rules for Delivering Notices.....	114
1. Time for delivering notice.....	116
2. Simplifying or streamlining rules about service of notices	118
a. Steps for service	118
b. Addresses for service.....	120
c. Service of documents for RTDRS applications	121

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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ALRI reports are available to view or download from our website at:

www.alri.ualberta.ca

The preferred method of contact for ALRI is by email:

lawreform@ualberta.ca

402 Law Centre
 University of Alberta
 Edmonton AB T6G 2H5

Phone: (780) 492-5291
 X: @ablawreform
 LinkedIn: [Alberta Law Reform Institute](#)

Acknowledgments

This is the second 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. Lyndon Annetts and Georgia Saunders-McConomy contributed additional research.

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 provided editorial support.

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. Georgia Saunders-McConomy wrote the summary. Georgia Saunders-McConomy and Matthew Mazurek checked the footnotes, with help from Lyndon Annetts.

Summary

This report is the second in a series summarizing issues under Alberta's *Residential Tenancies Act*, SA 2004, c R-17.1. This report, and the others in the series, lay the groundwork for a larger project on residential tenancies. This series of reports does not make any recommendations to reform. Rather, the series is an inventory of issues.

The first report introduced the project and focused on general issues with the *Residential Tenancies Act*. The second report focuses on issues arising at the beginning of or during a tenancy.

1. WHY REFORM THE *RESIDENTIAL TENANCIES ACT*?

The *Residential Tenancies Act* governs the rental housing sector in Alberta. It outlines the rights and responsibilities of landlords and tenants, sets rules for renting homes, and provides ways to resolve disputes.

The *Residential Tenancies Act* affects a wide range of people. Over a quarter of households in the province live in rental housing. Tenants can be from any demographic or background. It also affects landlords, from larger corporate landlords to individuals who rent a basement suite in their home.

The stakes in residential tenancy disputes go beyond money. They can impact a person's health, housing security, and overall quality of life.

The *Residential Tenancies Act* has not undergone a comprehensive review in over 30 years. It is increasingly out of step with social, economic, and technological realities. Many Albertans struggle to understand or comply with the law. These challenges underscore the need for reform to ensure the law remain relevant, accessible, and effective for all.

2. HOW DID ALRI FIND ISSUES WITH THE *RESIDENTIAL TENANCIES ACT*?

The findings in this report are based on the following:

- 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.

3. WHAT ARE ALRI'S FINDINGS ABOUT ISSUES THAT ARISE AT THE BEGINNING OF OR DURING A TENANCY?

a. Selecting tenants or deciding to rent

Chapter 2 considers issues that may arise at the start of a tenancy. Landlords may select tenants based on any criteria, provided they comply with the *Alberta Human Rights Act* and the *Personal Information Protection Act*. However, we heard that many landlords and tenants find the rules difficult to understand. Discrimination, both overt and systemic, remains a concern, especially regarding income sources. There are also privacy concerns, specifically around the collection of financial or personal data.

Tenants also need information about a home and a tenancy. A tenant may change their mind about renting a home if they find a problem after making a residential tenancy agreement. These situations are difficult for both landlords and tenants.

b. Residential tenancy agreements

Chapter 3 focuses on making residential tenancy agreements. Tenancy agreements can be written, oral, or implied. Unwritten agreements can create uncertainty. Even some written residential tenancy agreements may not comply with the law, contradict the *Residential Tenancies Act*, have unconscionable or unenforceable terms, or be misleading.

c. Security deposits and inspections

Chapter 4 discusses issues related to security deposits and inspections. Security deposits are a common source of disputes. While some key rules work well, there are some unresolved issues. The *Residential Tenancies Act* lacks clarity on permissible deductions, when an application fee becomes a security deposit, and ownership of security deposits. There are also practical issues about keeping security deposits in trust, returning security deposits, and what a landlord should do with unclaimed deposits.

The *Residential Tenancies Act* requires landlords to perform inspections and complete inspection reports. Many landlords follow the rules, but some do not. While the *Residential Tenancies Act* sets consequences for failing to follow the rules, the problem persists.

d. Rent and other payments

Chapter 5 considers rent and other payments. Non-payment or late payment of rent is a key issue for landlords. The definition of “rent” under the *Residential Tenancies Act* includes any payments beyond a security deposit.

The legislation offers little guidance on fees, incentives, or varying rent arrangements. It is also unclear how tenants should respond to improper rent increases. The *Residential Tenancies Act* does not say how a tenant should pay rent. As new payment methods, such as electronic payment, become more common, new problems are introduced. Additional clarity is also needed around prepaid rent and rent increases for fixed-term leases.

e. Utilities

Chapter 6 discusses utilities. The *Residential Tenancies Act* does not mention utilities at all. Utilities are a source of frequent disputes about cost allocation and payment. Without any rules in the legislation, landlords and tenants can make their own arrangements. Different kinds of arrangements produce various kinds of conflict, particularly regarding non-payment or usage of shared utilities. It would be helpful to have a clear process for resolving disputes about utilities.

f. Fees and penalties

Chapter 7 focuses on fees and penalties. Some fees are charges for extra amenities or privileges. Other fees are consequences for breaking an obligation. Differences between case law and residential tenancy agreements highlights the need for more clarity about fees and financial consequences. Late payment fees, lease break fees, and claw backs of rental incentives appear frequently in residential tenancy agreements, but courts and tribunals usually do not enforce them.

g. Behaviour and rules

Chapter 8 considers behaviour and rules. Conflicts often arise over noise, smoking, cannabis use, and pets. We heard from landlords that they have few options to deal with difficult behaviour, aside from eviction. Clarifying landlords' responsibilities and intermediate steps to remedy conflict could help balance interests. There are also issues around visitors, guests, and occupants, especially when cultural or family obligations conflict with restrictive tenancy rules.

h. Maintenance, repairs, and damage

Chapter 9 discusses maintenance, repairs, and damage. Landlords and tenants share responsibilities for property upkeep, but the *Residential Tenancies Act* provides little practical guidance. Disputes commonly arise over what is "normal wear and tear," who is responsible for pests, and delays in repairs. There are also issues with landlords entering or inspecting the rental property. The legislation lacks details about how a landlord should request or obtain consent to enter.

i. Forms and notices

Chapter 10 considers forms and notices. Notice and service requirements under the *Residential Tenancies Act* are technical and difficult to follow. Some details regarding written documents are found in the statute, while others are in regulations. Service rules prioritize outdated delivery methods and often fail to reflect modern communication practices. For example, the legislation only allows electronic service if the sender is “unable” to deliver the notice by any other method, such as personal service or by registered mail. These rules are inconsistently followed and poorly understood. Templates and clearer guidance about forms and notices could be helpful.

4. WHAT ARE THE NEXT STEPS?

The law cannot prevent all the issues that people face. However, it should help people resolve their conflicts and legal disputes. Well-designed laws about residential tenancies should help people resolve their problems more quickly and easily.

ALRI plans to publish additional reports cataloguing problems with the *Residential Tenancies Act*. The next report in this series will be about ending a tenancy. As this project continues, ALRI will make recommendations to address some of the problems we have identified. The project will include additional consultation.

Issues

ISSUE 1	
Should residential tenancies legislation address discrimination?	14
ISSUE 2	
Should residential tenancies legislation address what information a landlord may collect, use, or disclose about a potential, current, or past tenant?.....	17
ISSUE 3	
Should legislation include rules about information a landlord should provide to a potential tenant before making a residential tenancy agreement?	19
ISSUE 4	
Should legislation require residential tenancy agreements to be in writing?.....	24
ISSUE 5	
How could legislation clarify the terms of oral or implied residential tenancy agreements?	25
ISSUE 6	
Should there be a standard form for residential tenancy agreements? ...	29
ISSUE 8	
How could legislation clarify what a security deposit is and what deductions a landlord may make from a security deposit?	36
ISSUE 9	
Should legislation have rules about application fees?	37
ISSUE 10	
Could legislation clarify if, how, and when an application fee becomes or may be applied to a security deposit?	37
ISSUE 11	
Should legislation include rules about ownership of a security deposit or how to return a security deposit if there is more than one tenant?	38
ISSUE 12	
Should legislation include rules about ownership of a security deposit or who may apply for return of a security deposit if a person other than a tenant pays a security deposit?	38
ISSUE 13	
What rules should be in legislation about how to keep security deposits during a tenancy?.....	39
ISSUE 14	
How could legislation improve the process for returning security deposits or resolving disputes about return of security deposits?	41

ISSUE 15	
How could legislation clarify what a landlord should do with an unclaimed security deposit?	43
ISSUE 16	
What rules should there be about calculating or paying interest on security deposits?	43
ISSUE 17	
How could legislation clarify rules about inspections and inspection reports?.....	46
ISSUE 18	
How could legislation clarify the definition of rent?.....	55
ISSUE 19	
Should legislation include guidance about resolving disputes about rent increases?	57
ISSUE 20	
What rules should there be about providing notice of a rent increase when renewing a fixed term tenancy?	58
ISSUE 21	
What rules should there be about rent increases after a notice of termination?	59
ISSUE 22	
What rules should there be about requesting, paying, or accepting prepaid rent?.....	61
ISSUE 23	
Should legislation include any rules about how rent is, can be, or should be paid?.....	63
ISSUE 24	
Should there be rules in legislation about utilities, agreements for utilities, or how utilities are to be paid?	71
ISSUE 25	
How could legislation clarify if and when landlords may charge fees in addition to rent?	74
ISSUE 26	
Should legislation limit or prohibit late payment fees or other fees that are a penalty for breaking an obligation?	81
ISSUE 27	
Should legislation clarify or limit the kinds of rules that may be included in a residential tenancy agreement?	84

ISSUE 28	
How could legislation clarify how landlords can deal with tenant behaviour or conflicts between tenants? Should there be consequences other than terminating a tenancy?	91
ISSUE 29	
Should legislation clarify or limit rules about occupants, guests, or visitors?.....	94
ISSUE 30	
Should legislation clarify or limit rules about working from home or using a rental home for a home-based business?.....	96
ISSUE 31	
Should legislation include more guidance about how decision makers should calculate damages?.....	105
ISSUE 32	
How could legislation clarify the obligations of landlords and tenants relating to maintenance or repairs?.....	111
ISSUE 33	
How could legislation clarify when a landlord or others may enter a tenant's home without the tenant's consent?	112
ISSUE 34	
Should there be template forms for all documents that must be in writing?.....	114
ISSUE 35	
If so, should it be mandatory or optional to use the template forms?	114
ISSUE 36	
Should legislation include rules for determining when notice is received?	117
ISSUE 37	
Should legislation include special rules about delivery of certain kinds of notices?..	118
ISSUE 38	
How could rules for service of notices be simplified or streamlined?	121

Table of Abbreviations

LEGISLATION

Residential Tenancies Act *Residential Tenancies Act*, SA 2004, c R-17.1

LAW REFORM PUBLICATIONS

Residential Tenancies Act: General Issues Alberta Law Reform Institute, *Residential Tenancies Act: General Issues*, Issues Paper 6 (2025)

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

Achieving a Balance Ministerial Advisory Committee on Residential Tenancies (Alberta), *Achieving a Balance* (Edmonton: 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. 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.

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

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;

² See eg Sarah Zell & Scott McCullough, *Evictions and Eviction Prevention in Canada* (Winnipeg: Institute of Urban Studies, University of Winnipeg, 2020), online:

Continued

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.

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.

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 Sarah Zell & Scott McCullough, *Evictions and Eviction Prevention in Canada* (Winnipeg: Institute of Urban Studies, University of Winnipeg, 2020) at iii-iv, online:

eppdscrmssa01.blob.core.windows.net/cmhcprodcontainer/sf/project/archive/research_6/evictions-and-eviction-prevention-in-canada.pdf [perma.cc/5LFN-JR3FX]; 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).

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] The Alberta Law Reform Institute [ALRI] is working on a project to review the *Residential Tenancies Act* and other rules for landlords and tenants. The *Residential Tenancies Act* is about the relationship between landlords and tenants.⁶ As the name says, it applies to residential tenancies – those where a person rents a place to live.

[2] This report is the second in a series summarizing issues with the *Residential Tenancies Act*. This report is about issues that arise at the beginning of or during a tenancy.

[3] The first report in this series covered general or conceptual issues with the *Residential Tenancies Act*, as well as providing a general introduction to this project. Readers interested in the background to this project or our methods will find more information in that report.⁷ Later reports will be about ending a tenancy and dispute resolution.

B. Why Review the Residential Tenancies Act?

[4] The *Residential Tenancies Act* and related laws affect many people.

[5] More than one quarter of Alberta households rent their homes. The 2021 census found 465,220 households in Alberta rent their home.⁸ Many, if not most, individuals will be a tenant at some point in their lives. Some people live in a rented home for a time but eventually become homeowners. Others live in rented homes for their entire lives. 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.

⁶ *Residential Tenancies Act*, SA 2004, c R-17.1 [*Residential Tenancies Act*].

⁷ Alberta Law Reform Institute, *Residential Tenancies Act: General Issues*, Issues Paper 6 (2025) [*Residential Tenancies Act: General Issues*].

⁸ Statistics Canada, “Dwelling condition by tenure: Canada, provinces and territories, census divisions and census subdivisions”, online: <www150.statcan.gc.ca/t1/tb1/en/tv.action?pid=9810023301> [perma.cc/89G5-34GE].

[6] 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. There are different kinds of landlords, including large corporations or trusts, non-profit organizations, and individuals. There are landlords who own thousands of rental homes and others who have just one, like a secondary suite in their home.

[7] Residential tenancy legislation affects people other than landlords and tenants. It affects those who work in the rental housing sector, like property management companies or civil enforcement agencies. It affects governments, especially the provincial government. The provincial government funds the services that enforce the law or resolve disputes between landlords and tenants. It also pays for services and supports for people who have unstable housing or who have lost their homes. Residential tenancy problems have ripple effects on others in the community, like charities, non-profit organizations, and family and friends who provide support, advice, and practical help to landlords or tenants.

[8] Research shows that problems about housing, including rental housing, are very common.⁹ Every year, a large number of people in Alberta use the formal legal system to deal with issues about tenancies. The Residential Tenancy Dispute Resolution Service [RTDRS] is just one of the services that people may use, although it is almost certainly the busiest. There have been more than 10,000 RTDRS applications every year since 2017. It is likely that more people experience problems but do not use the formal legal system.

[9] 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. The consequences go beyond money or property. Quality of life and wellbeing are also at stake.¹⁰

⁹ See eg 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: <cfjc-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf> [perma.cc/LW4C-Q5B5]; Statistics Canada, "Serious problems or disputes in the past 3 Years, by type of problem and gender, provinces, 2021", online: <www150.statcan.gc.ca/n1/pub/85-002-x/2022001/article/00001/tbl/tbl01-eng.htm> [perma.cc/7YUG-NXAQ]; 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].

¹⁰ The first report in this series has more details about residential tenancy problems and how they affect landlords, tenants, and others: *Residential Tenancies Act: General Issues* at paras 78-128.

[10] While the law cannot prevent all problems with residential tenancies, it should provide an effective and fair way to resolve them.

[11] 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. Parts of the legislation do not reflect social changes or modern technology.¹¹

[12] There are also signs that the *Residential Tenancies Act*, related legislation, and 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.

[13] The *Residential Tenancies Act* is overdue for a review. The last major review was more than 20 years ago.¹²

C. About this Project and this Report

[14] This series of reports will lay the groundwork for the rest of ALRI's project. This report, and the others in this series, do not have any recommendations for reform. They are intended to be an inventory of all the issues that should be considered in updating or replacing the *Residential Tenancies Act*.

[15] In later phases of the project, when ALRI makes recommendations for reform, we may not address 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.

[16] 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

¹¹ There have been some small amendments to bring parts of the legislation up to date. A 2022 amendment allows landlords to use modern payment options to return security deposits to tenants: see Chapter 4 at para 147. A 2025 amendment allowed landlords or tenants to deliver notices using electronic communication: see Chapter 10 at para 420.

¹² The first report in this series includes a brief history of the *Residential Tenancies Act*, including how it has been reviewed and reformed over the years: *Residential Tenancies Act: General Issues* at paras 50–62.

legislative drafting. ALRI generally avoids making recommendations about the specific wording of legislation.

[17] 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.

1. SCOPE OF THE PROJECT

[18] ALRI's project is specifically about residential tenancies.

[19] This project is not about commercial tenancies, where the tenant rents a place of business. The *Residential Tenancies Act* does not apply to commercial tenancies and the issues are likely to be very different.

[20] This report does not discuss tenancies of mobile home sites, which are regulated by the *Mobile Home Sites Tenancies Act*.¹³ There is a lot of overlap between the *Residential Tenancies Act* and the *Mobile Home Sites Tenancies Act*. Many of the issues we describe in this report might also apply to tenancies of mobile home sites, but as we did not seek input specifically about the *Mobile Home Sites Tenancies Act* it would be premature to comment.

[21] This project does not discuss issues specific to residential tenancies on reserve lands. There may be a gap in the law that affects homes on reserves. Courts have held that provincial legislation, like the *Residential Tenancies Act*, cannot affect possession of land on reserves as the federal Parliament has exclusive jurisdiction under the Constitution.¹⁴ Parts of the *Residential Tenancies Act* that do not affect possession of land might apply.¹⁵ It might be helpful if First Nations could fill the gap with their own legislation but it would be outside ALRI's role to make recommendations about federal law or laws that First Nations might enact.

[22] We heard about many other issues that are outside ALRI's expertise or not suitable for a law reform project. While they are important, they are better

¹³ *Mobile Home Sites Tenancies Act*, RSA 2000, c M-20.

¹⁴ *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*, 2022 NSSC 274.

¹⁵ *Little Leaf v Houle*, 2011 ABPC 31 at paras 29-35.

addressed by others. Issues outside the scope of ALRI's project include the ones summarized below.¹⁶

a. Right to housing

[23] This project does not consider whether there is or should be a right to housing. ALRI will not make recommendations about whether Alberta legislation should explicitly recognize a right to housing.

b. Affordability, rent, and rent control

[24] ALRI has determined that issues about affordability and rent are not suitable for a law reform project. In particular, ALRI will not make recommendations about rent control. We will leave it to others to make recommendations or advocate for their views.

c. Supply of housing

[25] Issues about the supply of housing or vacancy rates are outside the scope of this project. The *Residential Tenancies Act* is not about the supply of housing. Other legislation or government policies are involved.

[26] It is worth mentioning some specific topics that could affect the supply of housing. This project does not address:

- Funding for social or affordable housing;
- Land use and zoning;
- Short-term rentals; or
- Insurance.

d. Financialization and consolidation of rental housing

[27] Financialization and consolidation are related processes. In recent years, large corporations, investment trusts, and institutional investors have bought more and more rental homes. The purpose of these entities is to make money for investors. Financialization refers to treating housing primarily as a way to make money. Consolidation refers to a process where a few large landlords come to dominate the rental housing market, so there are fewer landlords overall. Some

¹⁶ The first report in this series explains why these issues are outside the scope of ALRI's project: *Residential Tenancies Act: General Issues*, Chapter 3.

participants in our consultation raised concerns about these processes. Other organizations and researchers are studying financialization of housing and its effects.¹⁷ These issues are outside the scope of ALRI's project.

e. Other issues affecting landlords and tenants

[28] We heard about other issues that affect landlords and tenants but which are not directly related to the *Residential Tenancies Act*. They include things like government benefits that some people rely on to pay rent or security in rental buildings. ALRI will not address those issues in this project.

2. METHODS AND EARLY CONSULTATION

[29] 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.

[30] The first report in this series has more details about our methods.¹⁸ Without repeating all the details, it is worthwhile to briefly describe some of the sources we relied on.

a. Legislation and case law

[31] ALRI counsel carefully reviewed the *Residential Tenancies Act*, its regulations, and other legislation.

[32] We reviewed case law considering or applying the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*. The case law included reported Alberta court decisions from 2000 or later, all published RTDRS decisions, and

¹⁷ 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].

¹⁸ *Residential Tenancies Act: General Issues* at paras 13–31.

any reported Alberta Human Rights Tribunal decisions from 2000 or later considering discrimination in tenancy.

b. Literature review

[33] ALRI counsel reviewed secondary sources like books, articles, research reports, government reports, news articles, and blog posts, focusing on sources from Canada.

[34] Our research also included news stories, with particular attention to news from Alberta.

[35] We also researched past reviews of the *Residential Tenancies Act*. The Alberta legislature adopted the first version of the legislation in 1964.¹⁹ There have been three major reviews of the legislation since then.

[36] ALRI (then called the Institute of Law Research and Reform) did the first review in the 1970s. In 1977 we published *Residential Tenancies, Final Report 22*.²⁰ In 1979, the legislature adopted *The Landlord and Tenant Act, 1979*, implementing recommendations from the report.²¹

[37] The second review began in 1989. The Minister of Consumer and Corporate Affairs appointed a committee to review the legislation. The Ministerial Advisory Committee on Residential Tenancies delivered its report in 1990.²² The following year, the legislature passed the *Landlord and Tenant Amendment Act, 1991*, implementing many recommendations from the committee's report.²³

[38] The third review was 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. As part of our research for this project, however, ALRI was able to review archival material including summaries of responses to the

¹⁹ *The Landlord and Tenant Act*, SA 1964, c 43.

²⁰ Institute of Law Research and Reform (Alberta), *Residential Tenancies, Final Report 22* (1977) [*Residential Tenancies 1977*].

²¹ *The Landlord and Tenant Act, 1979*, SA 1979, c 17.

²² Ministerial Advisory Committee on Residential Tenancies (Alberta), *Achieving a Balance* (Edmonton: Consumer and Corporate Affairs, 1990) [*Achieving a Balance*].

²³ *Landlord and Tenant Amendment Act, 1991*, SA 1991, c 18.

discussion papers.²⁴ In this report, we call them the 2002 Discussion Paper responses.

[39] The legislature adopted a new version of the *Residential Tenancies Act* in 2004 and amended it twice in 2005.²⁵ There have been smaller changes since then, including amendments to allow a tenant experiencing domestic violence to terminate a tenancy early, to respond to the COVID-19 pandemic, to update rules about return of security deposits, and to update rules about notices.

c. Early consultation

[40] Our early consultation process included interviews, meetings and presentations, and consultation events. Altogether, we had input from 140 individuals. Many were employees or members of organizations, with over 40 organizations represented. Participants included:

- Tenants and organizations that work with tenants;
- Landlords and organizations that work with landlords;
- Service providers;
- People who apply or enforce the legislation; and
- Researchers.

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

d. Reports of individual experiences

[42] We explored a new way to learn about individual experiences, building on the work of the Justice Data and Design Lab.²⁶ It used a machine learning process to collect and analyze posts from the social media site Reddit, specifically

²⁴ Alberta Government Services, *Landlord and Tenant Legislation Discussion Paper and Analysis* (unpublished) [on file with ALRI] [2002 Discussion Paper Analysis]. When the document was prepared, in November 2002, Alberta Government Services had received a total of 1,311 responses to the discussion paper. There were 501 responses from landlords, 465 from tenants, and 148 from organizations. The rest were from others.

²⁵ 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.

²⁶ The Justice Data and Design Lab was part of the BC Access to Justice Centre for Excellence, a research institute at the University of Victoria Faculty of Law.

from a subreddit called “r/legaladvicecanada.” The Justice Data and Design Lab shared a dataset with ALRI. 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. In this report, we call this dataset the Reddit data.

D. Structure of this Report

[43] This report focuses on issues that affect landlords and tenants at the start of a tenancy or during a tenancy.

[44] The first chapter of this report introduces the project, briefly describing the project and our methods.²⁷ The remaining chapters discuss specific problems.

[45] Chapters 2 and 3 are about issues arising at the start of a tenancy. Chapter 2 is about issues before a tenancy begins, including how tenants find a home and how landlords select tenants. Chapter 3 is about residential tenancy agreements and how landlords and tenants make them.

[46] Chapters 4 to 7 are about the different kinds of payments that tenants make to landlords. Chapter 4 is about security deposits. It also deals with inspections. Chapter 5 is about rent and other regular payments that tenants make during a tenancy. It raises questions about the definition of rent. It also discusses issues about rent increases and when and how rent is paid. Chapter 6 is about utilities. It discusses different ways that landlords and tenants approach payment of utilities and some of the conflicts that can arise. Chapter 7 is about fees and penalties that tenants may pay as a consequence for breaking an obligation.

[47] Chapters 8 and 9 are about some other common sources of conflict between landlords and tenants. Chapter 8 is about rules and tenant behaviour. Chapter 9 is about maintenance and damage.

[48] The final chapter, Chapter 10 is about forms and notices. It concludes this report.

²⁷ The first report in this series has more details: *Residential Tenancies Act: General Issues*, Chapter 1.

CHAPTER 2

At the Start of a Tenancy

A. Finding a Home and Selecting Tenants

[49] Some problems with residential tenancies occur before the tenancy even begins. In our consultation, we heard a lot of concerns about finding a home, applications, or tenant screening and selection. The *Residential Tenancies Act* says nothing about the time before a tenancy begins. The rules in the legislation apply during a tenancy or when it ends, but not before.

[50] There are lots of ways landlords and tenants can find each other. Typically, it begins with a landlord or property manager advertising a home for rent. A person looking for a home to rent may contact the landlord or property manager. They often arrange a meeting to see the home. If the potential tenant wants to rent the home, the next step is to make an agreement with the landlord. At this point, the process varies. A landlord and potential tenant might make an agreement quickly and informally. Sometimes it takes only a few minutes of conversation. Other times, it is a longer process. It could involve negotiations or a formal application process.

[51] A landlord does not have to rent to anyone who offers to rent a home. If there are several people interested in renting, a landlord can choose which one to accept.²⁸ They can use any criteria to choose tenants as long as their choice does not involve a prohibited kind of discrimination. They could also reject all potential tenants and choose not to rent the home to anyone.

[52] Some landlords use an application process to select tenants. Landlords can set their own application processes and requirements. They might ask potential tenants to fill out an application form, to show identification, to provide proof of their income, to provide references, or to consent to a credit check, among other

²⁸ This feature is one difference between a residential tenancy and other kinds of accommodation. 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.

things. Some landlords ask potential tenants to pay a fee or deposit when they apply. We discuss fees and deposits later in this report.²⁹

B. How Do Rules in Other Legislation Affect Selection of Tenants?

[53] The *Residential Tenancies Act* does not have any rules about applications or how landlords select their tenants, with one small exception. The exception applies if a current tenant asks to sublet or assign a residential tenancy agreement to another person. A landlord can only refuse a sublease or assignment if “there are reasonable grounds for the refusal.”³⁰ The landlord has to give the tenant written reasons.³¹ Otherwise, there is no requirement to be reasonable when a landlord selects a tenant. A landlord does not have to give any reason for refusing to rent to a potential tenant.

[54] There are some rules in legislation outside the *Residential Tenancies Act*, which we discuss in this section. In our consultation we heard concerns that they are not working well. One reason could be that people do not know or understand the law. We heard that many landlords and tenants find the rules difficult to understand. They do not know what they can or cannot do.

1. DISCRIMINATION

[55] We heard that discrimination is a major concern for people seeking a home to rent.

[56] The *Alberta Human Rights Act* prohibits discrimination against tenants or potential tenants. A landlord cannot refuse to rent to a person or treat them differently from others because of the person’s “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.”³² There are some exceptions allowing age restrictions in

²⁹ See Chapter 4 at paras 134-135, Chapter 7 at paras 261-265.

³⁰ *Residential Tenancies Act*, s 22(2).

³¹ *Residential Tenancies Act*, s 22(5).

³² *Alberta Human Rights Act*, RSA 2000, c A-25.5, s 5(1):

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,

Continued

some kinds of homes.³³ There are also specific rules that prohibit landlords from discriminating against tenants or potential tenants who have service dogs or guide dogs.³⁴

[57] Despite the *Alberta Human Rights Act*, there is little doubt that discrimination is common. Multiple kinds of research shows that many people experience discrimination when seeking a home to rent.³⁵ Our consultation provided further evidence. Many participants shared information about facing or observing discrimination.

[58] Some examples were about direct discrimination, where a landlord intentionally excludes people with certain characteristics. For instance, we heard about landlords who suddenly claim a home is not available for rent when they realize a potential tenant has a distinctively Indigenous name or appears to be Indigenous.

[59] Other examples were about policies or practices that negatively affect people with certain characteristics, whether or not the landlord intends to discriminate. For instance, a landlord's application process might require a credit check and references from previous landlords. Recent newcomers to Canada might be unable to provide them. If the application process has the effect of excluding recent newcomers to Canada, it could be discrimination because of a potential tenant's place of origin.

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.

³³ *Alberta Human Rights Act*, RSA 2000, c A-25.5, ss 4, 5(2), 5(5).

³⁴ *Service Dogs Act*, SA 2007, c S-7.5, s 3(2); *Blind Persons' Rights Act*, RSA 2000, c B-3.

³⁵ See eg Megan Earle, Gordon Hodson & Sophie O'Manique, *Measuring Discrimination in Rental Housing Across Canada* (Canadian Centre for Housing Rights, 2025), online: <housingrightscanada.com/reports/measuring-discrimination-in-rental-housing-across-canada/> [perma.cc/WE32-MDNZ]; Canadian Centre for Housing Rights, "Sorry, it's rented.": *Measuring Discrimination Against Newcomers in Toronto's Rental Housing Market* (Canadian Centre for Housing Rights, 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 & University of Alberta, 2014) at 33-34, online: <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].

[60] Sometimes it is difficult to distinguish a reasonable policy from indirect discrimination. An example that came up in our consultation was about income. Some landlords ask potential tenants about their income and only accept tenants with incomes above a certain level. The *Alberta Human Rights Act* does not prohibit discrimination based on amount of income and it seems reasonable for a landlord to check that a tenant can afford the rent. The *Alberta Human Rights Act* does, however, prohibit discrimination based on source of income. A landlord should not refuse to rent to a person who receives social assistance or disability payments instead of employment income. A participant pointed out that it would be unlawful discrimination if a landlord screened out potential tenants who receive Assured Income for the Severely Handicapped benefits. It is harder to say if it is unlawful discrimination if a landlord sets a minimum income requirement slightly higher than those benefits and screens out potential tenants who earn less.

[61] Many participants told us the existing legislation is not effective at preventing discrimination before a tenancy begins. There are many possible reasons, including lack of knowledge, difficulty interpreting or applying the law, and problems with enforcing the law.

[62] While there are legal remedies, very few people pursue them. A person who believes they were discriminated against can complain to the Alberta Human Rights Commission. From April 2023 to March 2024, the latest year for which statistics are available, the Commission received a total of 1,047 complaints. Only 3% were about discrimination in tenancy.³⁶

[63] For the few who do pursue legal remedies, it can take a long time to resolve the issue. It can take months or years to resolve a human rights complaint. In the meantime, the person making a complaint still needs a place to live.

ISSUE 1

Should residential tenancies legislation address discrimination?

³⁶ Alberta Human Rights Commission, *2023-2024 Annual Report: Alberta Human Rights Commission* (Alberta Human Rights Commission, 2024) at 32, online: <albertahumanrights.ab.ca/media/jfjjhzzp/annual-report-2023-24.pdf> [perma.cc/R8G9-MLAX].

2. PERSONAL INFORMATION AND PRIVACY

[64] We also heard concerns about the kinds of information that landlords request or collect from prospective tenants.

[65] There is legislation about personal information and privacy. The legislation has rules about how landlords may collect, use, or disclose personal information. Most private landlords in Alberta must follow the rules in the *Personal Information Protection Act*.³⁷ The rules in the *Personal Information Protection Act* are not specific to landlords. They apply to many different kinds of organizations and information. The rules are drafted very broadly. They say an organization may collect, use, and disclose information only for a reasonable purpose.³⁸ An organization can collect, use, and disclose information “only to the extent that is reasonable for meeting the purposes.”³⁹ In most situations, an organization must have a person’s consent to collect, use, or disclose personal information about the person.⁴⁰

[66] Some landlords ask potential tenants for a lot of personal information as part of the application process.⁴¹ A landlord might ask for pay stubs, bank statements, or a credit check, which reveal details about a potential tenant’s finances. We heard anecdotes about landlords asking for other sensitive information, like social insurance numbers or criminal records checks.⁴² A potential tenant may feel they have to provide all the information a landlord requests, even if they do not think it is reasonable. If they do not, the landlord may reject their application and they will lose their chance to rent the home.

³⁷ The specific legislation depends on the identity of the landlord. If the landlord is a private entity, the *Personal Information Protection Act*, SA 2003, c P-6.5 applies. Different legislation applies if the landlord is a public body. If the landlord is a provincial, municipal, or local public body, the applicable legislation would be the *Protection of Privacy Act*, SA 2024, c P-28.5. If the landlord is a federal public body, the applicable legislation is the *Privacy Act*, RSC 1985, c P-21.

³⁸ *Personal Information Protection Act*, SA 2003, c P-6.5, ss 7(2), 11(1), 16(1), 19(1).

³⁹ *Personal Information Protection Act*, SA 2003, c P-6.5, ss 11(2), 16(1), 19(1).

⁴⁰ *Personal Information Protection Act*, SA 2003, c P-6.5, s 7.

⁴¹ It is difficult to say how much personal information is too much. There are many factors to balance. It may not be a simple contest between a landlord’s interest in making an informed decision and a potential tenant’s interest in maintaining their privacy. It may benefit a potential tenant to provide more information. Some research suggests that providing more information can reduce discrimination: see Scott McCullough et al, *Shut Out - Discrimination in the Rental Housing Market: Barriers to Tenancy Access and Maintenance, Its Impacts, and Possible Interventions* (Winnipeg: Institute of Urban Studies, The University of Winnipeg, 2023) at 39-40, online: <assets.cmhc-schl.gc.ca/sf/project/archive/research_6/shut-out--discrimination-in-the-rental-market-ius-2023.pdf> [perma.cc/739N-8HV4].

⁴² See eg Karina Zapata, “Lineups, upfront fees – a tight rental market amps up risk and anxiety in Calgary, *CBC News* (10 November 2022), online: <cbc.ca/news/canada/calgary/rental-search-calgary-changing-1.6641471> [perma.cc/9P9U-HDPQ].

[67] In our consultation, we heard concerns about the amount and kind of information some landlords seek from prospective tenants. Some participants thought landlords often ask for too much information. We also heard concerns about landlords inappropriately disclosing information about prospective, current, or former tenants. Several participants mentioned “bad tenant” lists. A 2022 news article reported on one such list in a Facebook group for Edmonton area landlords.⁴³ Members of the group had posted the names of hundreds of people they claimed were “bad tenants”. Some posts included names of tenants’ family members, including children. The article quoted a spokesperson for the Office of the Information and Privacy Commissioner of Alberta, who said these kinds of lists “are likely against the law” and raise issues “including ensuring accuracy of private information and getting consent.” If the *Personal Information Protection Act* applies, a landlord would need consent to disclose information about a tenant on such a list or collect information about a prospective tenant from such a list. Even with consent, it may be unreasonable to collect, use, or disclose unproven allegations.

[68] A few participants had the opposite view. They said privacy legislation and other rules prevent landlords from collecting all the information they need to choose tenants.

[69] There is a process to resolve complaints. A person who believes a landlord requested or collected too much personal information or misused personal information could make a complaint to the Office of the Information and Privacy Commissioner. The process takes time. It can take months or years to resolve a complaint. No matter how the complaint is resolved, it is usually too late to change the outcome. If a landlord decides not to rent to a potential tenant because they did not provide all the information the landlord requested or because the potential tenant’s name was on a bad tenant list, the potential tenant still needs a place to live. A decision from the Office of the Information and Privacy Commissioner cannot go back in time and change the landlord’s decision.

[70] Many participants would like to see more specific guidance about the kinds of information landlords can collect. We heard that the rules in the *Personal Information Protection Act* and other legislation are too difficult to interpret and apply. The Office of the Information and Privacy Commissioner has published a

⁴³ Lauren Boothby, “Landlord association bans tenant blacklist”, *Edmonton Journal* (21 June 2022) A1.

thorough and helpful guide but it does not have the force of law.⁴⁴ It would be helpful to have clear rules that say exactly what information a landlord can request or what information they cannot request.

[71] One participant suggested there should be a standard application form. A form designed to comply with privacy legislation could help landlords avoid missteps.

ISSUE 2

Should residential tenancies legislation address what information a landlord may collect, use, or disclose about a potential, current, or past tenant?

C. How Do Tenants Make Informed Decisions?

[72] Just as a landlord wants information about a potential tenant, a potential tenant wants information about a home and a tenancy before making a residential tenancy agreement. The *Residential Tenancies Act* says nothing about the information a landlord should provide to a potential tenant. It does not put any limits on the information tenants may request or put any obligations on landlords to disclose information. There may be some common law rules that apply but they would be in case law, not legislation.

[73] Usually a potential tenant gets information from an advertisement, talking to the landlord, and a visit to the home. Some potential tenants are very thorough and careful, asking a lot of questions and inspecting a home carefully. Others are less diligent. Some people will enter into a residential tenancy agreement without visiting the home. It could happen, for example, if a person is moving from far away and cannot travel to find a home before the move. A person might make a residential tenancy agreement with a landlord after viewing the home by video or after a friend or relative visits it.

[74] Occasionally a tenant finds a surprise when they have already made a residential tenancy agreement. It can happen even if they were very diligent about seeking information. Some problems with a home might not be visible during a visit. It is not easy for a potential tenant to check whether a home complies with municipal bylaws or building codes. They might learn after

⁴⁴ Office of the Information and Privacy Commissioner of Alberta, "Guidance for Landlords and Tenants" (December 2023), online: <oipc.ab.ca/resource/guidance-for-landlords-and-tenants/> [perma.cc/27EV-2C7L].

moving in that their home is an illegal suite. A tenant might only discover issues with the noise, smells, or neighbours after moving in. Even with a careful inspection, it can be hard to detect some maintenance issues like leaks, pests, or mould. A tenant might not realize the roof leaks until it rains. There were several posts in the Reddit data about tenants who only found out about a bedbug infestation after they moved in.⁴⁵

[75] When a tenant finds a problem after making a residential tenancy agreement, they may change their mind about renting the home. There were more than a dozen examples in the Reddit data where a tenant changed their mind before or right after moving in because of a problem with the home.⁴⁶

[76] A similar problem can occur if a landlord presents a tenant with a written agreement after the tenant has agreed to rent and even paid a security deposit or rent. We found examples in the Reddit data and case law.⁴⁷ If a tenant does not want to accept the terms in the written agreement, it can lead to conflict between the landlord and tenant. A tenant may not want to go ahead with the tenancy or the landlord may not allow them to move in if they do not sign the written agreement.

[77] Once a landlord and tenant make a residential tenancy agreement, there is no easy way out. It is true even if they have not signed a written agreement. If the landlord and tenant have agreed on the home, rent, and start date, they likely already have an oral or implied agreement.⁴⁸

[78] If the tenancy is a periodic tenancy, the easiest option for a tenant will usually be to give notice to terminate the tenancy. A tenant can terminate a periodic tenancy for any reason as long as they provide notice. The tenant will

⁴⁵ See also *Hometime Property Services Ltd. v Girumesh*, 2022 ABPC 172 at para 16, which describes how a new tenant discovered a mouse infestation while moving into a home.

⁴⁶ There were also a handful of examples where a tenant changed their mind for other reasons, like because they decided not to move, to rent a different place, or to buy a home instead.

⁴⁷ See eg *Re 24010018*, 2024 ABRTDRS 17. The tenants viewed an apartment and completed an application form. After the landlord said their application had been accepted, the tenants paid a security deposit to the landlord. The landlord then asked them to sign a written residential tenancy agreement. The tenants refused, claiming the written agreement included terms they had not accepted. The tenants did not move in and the landlord kept the security deposit. They applied to RTDRS for return of the security deposit but were unsuccessful. See also *Re 24014716*, 2025 ABRTDRS 2. The landlord allowed the tenant to move in before signing a written agreement. The landlord said at an RTDRS hearing that when she allowed the tenant to move in she “expected to formalize the tenancy agreement in writing in the near future”.

⁴⁸ See *Re 24010018*, 2024 ABRTDRS 17.

have to pay at least one month's rent and sometimes two.⁴⁹ If the tenancy is a fixed term tenancy, a tenant has very few options to end the tenancy early. The easiest option will usually be to repudiate the tenancy. They will have to pay rent or damages equal to the amount they would have paid to the end of the tenancy, less any rent the landlord receives from a new tenant.⁵⁰

[79] These situations are difficult for both landlords and tenants. The tenant may need to find another place to live on short notice. The landlord may have an unexpected vacancy and lose rent.

[80] Could legislation help avoid these situations? Would it help to have legislated rules about information that a landlord should provide to a potential tenant before they make a residential tenancy agreement?

ISSUE 3

Should legislation include rules about information a landlord should provide to a potential tenant before making a residential tenancy agreement?

⁴⁹ In a monthly periodic tenancy, a tenant must give the landlord a written notice "on or before the first day of a tenancy month to be effective on the last day of that tenancy month." If they give the notice late, the tenancy terminates "on the last day of the first complete tenancy month following the date on which the notice is served": *Residential Tenancies Act*, ss 8(1)(a), 10(2)(b)(i). In other words, the tenancy continues another month. An example helps to illustrate. If a tenancy begins on March 1 and a tenant realizes that day that they do not want to continue the tenancy, they could give the landlord written notice to terminate the tenancy. If they give the landlord the notice on March 1, the tenancy will end March 31. If they give notice on March 2, however, the tenancy will continue to April 30.

⁵⁰ See *Residential Tenancies Act*, s 27.

CHAPTER 3

Making Residential Tenancy Agreements

A. Introduction

[81] An agreement that a tenant will rent a home from a landlord is a kind of contract. The *Residential Tenancies Act* calls this contract a residential tenancy agreement. A residential tenancy agreement governs the relationship between a landlord and tenant. It describes their rights and obligations to each other.

[82] A residential tenancy agreement can be simple or complicated. There are some things that are essential to a residential tenancy agreement, like which home the tenant will rent, the amount of rent, and when the tenancy starts. Beyond that, the agreement can include any number of details. Some written residential tenancy agreements are many pages long.

[83] It is important for the landlord and tenant to know their obligations. If there is a dispute, it is also important for a decision maker to know what their obligations are. Courts and RTDRS not only interpret and apply the *Residential Tenancies Act*, they also interpret and apply residential tenancy agreements. Among other things, a breach of a residential tenancy agreement can be a reason to terminate a tenancy.⁵¹ To determine whether there was a breach, a decision maker first needs to know what the agreement requires.

[84] The wide variety of agreements can make it complicated for courts and RTDRS to interpret and apply agreements.

B. General Rules about Residential Tenancy Agreements

[85] Landlords and tenants can make their own residential tenancy agreements as long as they are consistent with rules in *Residential Tenancies Act*. An agreement cannot change or contradict rules that are in the *Residential Tenancies Act*, no matter what the landlord and tenant want. Section 3 of the *Residential Tenancies Act* says a tenant cannot agree to give up any “rights, benefits or protections under this Act.”⁵²

⁵¹ *Residential Tenancies Act*, ss 26(1)(c), 28, 29, 37(1)(d).

⁵² *Residential Tenancies Act*, s 3(1).

[86] Some parts of a residential tenancy agreement are completely up to the landlord and tenant. For example, the rent can be any amount, as long as they agree. Other parts can be negotiated but only within certain limits. For example, a security deposit cannot be more than one month's rent.⁵³ A landlord and tenant could agree that it will be any amount from nothing to one month's rent, as long as it is not more. The *Residential Tenancies Act* also has some rules that are considered part of every residential tenancy agreement. Section 16 lists the landlord's covenants – in other words, the landlord's obligations.⁵⁴ Section 21 lists the tenant's covenants.⁵⁵

[87] Under the *Residential Tenancies Act*, a residential tenancy agreement may be “written, oral or implied”.⁵⁶ Once the landlord and tenant agree, they have a residential tenancy agreement. It does not have to be in writing. They can make an oral agreement by speaking to each other or make an implied agreement by their actions. For example, if a tenant gave a landlord money and the landlord gave the tenant keys to the home, they might have an implied agreement.

[88] When there is a written residential tenancy agreement, it is almost always prepared by the landlord.⁵⁷ Landlords and tenants can negotiate any terms in an agreement but usually, if they negotiate at all, it is about the rent, the security deposit, or the start date. If they agree on those terms, the landlord may present a written agreement with additional terms for the tenant to sign. It is unlikely that a tenant will present an agreement to the landlord.

[89] If a residential tenancy agreement is in writing, there is one very specific requirement. It must include a prescribed statement, “in print larger than the other print in the agreement,” saying that a written agreement cannot change or take away any requirements or protections in the *Residential Tenancies Act*.⁵⁸

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

⁵³ *Residential Tenancies Act*, s 43(1).

⁵⁴ *Residential Tenancies Act*, s 16.

⁵⁵ *Residential Tenancies Act*, s 21.

⁵⁶ *Residential Tenancies Act*, s 1(1)(m).

⁵⁷ The *Residential Tenancies Act* seems to assume a landlord will prepare a written agreement. It requires a landlord to give a tenant a copy of a written agreement but does not require a tenant to give a copy to the landlord: *Residential Tenancies Act*, s 17.

⁵⁸ *Residential Tenancies Act*, s 3(2).

[90] Further, if a residential tenancy agreement is in writing the landlord must give a copy of the agreement to the tenant. Once the tenant signs an agreement and gives it to the landlord, the landlord has 21 days to give the tenant a copy signed by the landlord.⁵⁹

C. Problems with Oral or Implied Agreements

[91] Oral or implied residential tenancy agreements can cause problems because it is difficult to prove what the agreement requires. We found examples of these problems in consultation, in the Reddit data, and in case law. Landlords and tenants can sometimes have disagreements about very basic things, like the amount of rent,⁶⁰ what day it is due,⁶¹ or when the tenancy begins or ends.⁶² It is very difficult to prove the details of an oral or implied agreement. Without a written agreement, landlords and tenants have to rely on their memory. They may have different memories of what they said or did. If they tell a decision maker different versions of events, it is very hard for the decision maker to know what actually happened.

[92] It is impossible to know how many residential tenancy agreements are oral or implied. In *Residential Tenancies: General Issues*, we noted that it is hard to get reliable information about even some very basic facts.⁶³ We have not found

⁵⁹ *Residential Tenancies Act*, s 17(1).

⁶⁰ See eg *Re 22008798*, 2023 ABRTDRS 1. When the tenancy started, there was a written agreement saying rent was \$2,700 per month. When the tenant had financial difficulties, the landlord agreed “the existing lease is null and void.” A series of oral and implied agreements followed. At an RTDRS hearing after the tenancy ended, the landlord claimed the rent was \$2,000 per month and the tenant claimed it was \$1,900 per month.

⁶¹ See eg *Re 22006641*, 2022 ABRTDRS 38. The tenant thought they had agreed rent was due on the 15th of each month. The landlord thought rent was due on the first day of the month. The tenant regularly paid in the first week of the month. The tenant thought he was paying early. The landlord thought he was paying late. Their relationship deteriorated over several months and eventually the landlord tried to terminate the tenancy.

⁶² See eg *Re 24010731*, 2024 ABRTDRS 18. There was a fixed term lease expiring 31 August. In a phone call, the tenant asked the landlord about staying an extra month, until the end of September. The landlord claimed they agreed the tenancy would continue until 30 September. The tenant claimed they discussed it but did not make an agreement. The tenant moved out at the end of August but the landlord claimed he was responsible to pay rent for September.

⁶³ *Residential Tenancies Act: General Issues* at paras 32-37. In our research, we found only one attempt to gather data about types of residential tenancy agreements. One of the questions in the Alberta Government Services’ 2002 discussion paper asked “Do you have or use a tenancy agreement?” Most respondents answered yes, with 1,005 answering yes out of 1,311 total respondents: *2002 Discussion Paper Analysis*, note 24 at 3. It is difficult to draw conclusions from this data for several reasons. First, it is not clear if all the respondents who answered yes had a written residential tenancy agreement. Second, respondents were not randomly selected so may not have been representative of all landlords and tenants in Alberta. Finally, the data is more than twenty years old.

any reliable data about the types of residential tenancy agreements, including how many are oral or implied versus written.

[93] Some participants thought there should be a requirement that residential tenancy agreements be in writing. This idea has come up before. In its 1977 report, ALRI considered and rejected the idea of requiring all residential tenancy agreements to be in writing.⁶⁴ More than two decades later, Alberta Government Services explored this issue in its consultation. One of the questions in the 2002 discussion paper asked “Should there be a requirement that all tenancy agreements be in writing?” The vast majority of respondents agreed. Of all the respondents, 84% answered yes and 12% answered no.⁶⁵ Among landlords, 81% answered yes. Among tenants, it was 93%.

[94] Some other jurisdictions require landlords to prepare written residential tenancy agreements or provide certain information in writing.⁶⁶

ISSUE 4

Should legislation require residential tenancy agreements to be in writing?

[95] A rule requiring all residential tenancy agreements to be in writing would not be a complete solution. It is very likely that some people would overlook the rule and still make oral or implied agreements. Even jurisdictions that require written residential tenancy agreements treat oral or implied agreements as binding.⁶⁷

[96] Legislation could fill some gaps or clarify the terms of oral or implied agreements. Some other Canadian jurisdictions have legislation that says oral or implied agreements are deemed to be in a particular form.⁶⁸ There are also examples of legislation setting default terms. An oral or implied agreement is deemed to include the default terms. A landlord and tenant can only change those terms by making a written agreement.⁶⁹

⁶⁴ *Residential Tenancies* 1977 at 15.

⁶⁵ *2002 Discussion Paper Analysis*, note 24 at 3.

⁶⁶ See eg *Residential Tenancy Act*, SBC 2002, c 78, s 13(1) [BC Act]; Art 1895 CCQ.

⁶⁷ See eg BC Act, note 66, s 1 “tenancy agreement”; Art 1895 CCQ.

⁶⁸ See eg *Residential Tenancies Act*, SNB 1975, c R-10.2, s 9(5); *Residential Tenancies Act*, RSNS 1989, c 401, s 8(5).

⁶⁹ See eg *Residential Tenancies Act, 2006*, SS 2006, c R-22.0001, ss 20, 21; *Residential Tenancies Act*, RSNWT 1988, c R-5, s 9(2).

ISSUE 5

How could legislation clarify the terms of oral or implied residential tenancy agreements?

D. Problems with Written Agreements

[97] A written agreement can have its own problems.

[98] There are various ways a landlord can prepare a written residential tenancy agreement. Some have a lawyer draft an agreement for them. Landlord organizations sell forms to their members, including residential tenancy agreements. Some private companies also sell residential tenancy agreement forms. Some landlords write their own residential tenancy agreements or copy from another example.

[99] A written agreement prepared by a lawyer or a landlord organization usually has been reviewed to ensure it complies with the *Residential Tenancies Act*. When landlords write their own agreements, it is easy to go astray.

[100] Our research and consultation suggests that some landlords use written residential tenancy agreements that may not comply with the law,⁷⁰ that contradict the *Residential Tenancies Act*,⁷¹ that have unconscionable or unenforceable terms,⁷² or that are misleading. It is not a new problem. Other researchers have pointed it out. In 1990, after more than a year of study and consultation, the Ministerial Advisory Committee on Residential Tenancies wrote: “The Committee’s experience with the written leases utilized by landlords is that a substantial number contain information which is not in compliance with the present legislation.”⁷³

⁷⁰ A participant in our consultation who had seen many residential tenancy agreements told us it is common to see agreements without the prescribed statement required by section 3(2).

⁷¹ See eg 24010731, 2024 ABRTDRS 18. The written residential tenancy agreement said that the tenant would have to provide two months written notice to end a fixed term tenancy on its end date. This part of the agreement directly contradicts section 15 of the *Residential Tenancies Act*.

⁷² See Chapter 7 at paras 266-283.

⁷³ *Achieving a Balance* at 200, 201. Jonnette Watson Hamilton made a similar observation in a 2019 blog post: Jonnette Watson Hamilton, “Wear and Tear, Cleanliness, Repair, Replacement and Betterment: A Landlord’s Claims for Compensation at the End of a Residential Tenancy” (8 November 2019), online: ABLawg <ablawg.ca/2019/11/08/wear-and-tear-cleanliness-repair-replacement-and-betterment-a-landlords-claims-for-compensation-at-the-end-of-a-residential-tenancy/> [perma.cc/UE53-BEXC]:

Almost all leases used by Alberta landlords that I have seen do try to impose more onerous obligations on their tenants than the RTA allows. Not enough tenants seem to be aware that the RTA governs if their lease contradicts or attempts to extend the RTA’s statutory covenants.

[101] In our consultation, we heard anecdotes about harsh or unconscionable terms. There were some striking examples, like an agreement requiring a tenant to forfeit their car to the landlord if they do not pay rent.

[102] Even if a landlord uses a standard written agreement that was carefully drafted to comply with the *Residential Tenancies Act*, it can be difficult to keep it up to date. When laws change, landlords may not realize they have changed or that they affect their agreements.⁷⁴

[103] Landlords and tenants may both incorrectly believe that a written agreement complies with the law. Some participants in our consultation who work with tenants told us tenants usually assume whatever is in a written residential tenancy agreement is correct and legally binding. They may not recognize that there is a problem.

[104] Courts and RTDRS can refuse to enforce a term in an agreement that is unlawful, unenforceable, or unconscionable. It is not the best way to protect tenants.⁷⁵ It works only if a dispute ends up in court or RTDRS. A tenant who does not recognize that there is a problem with an agreement or does not know that a court or RTDRS can help is unlikely to benefit. It is also not an effective way to educate landlords or help them comply. By the time a dispute reaches court or RTDRS, it is usually too late to correct the problem.

1. WHAT HAPPENS IF A WRITTEN AGREEMENT DOES NOT COMPLY WITH LEGISLATION?

[105] There are some gaps in the legislation about written residential tenancy agreements. While section 3(2) requires a specific statement, there is no consequence for failing to include it. The section of the *Residential Tenancies Act* about offences does not mention a contravention of these requirements.⁷⁶ One participant in our consultation brought up this problem. They represented tenants and said they sometimes saw written residential tenancy agreements that

⁷⁴ We saw an example in our consultation. Before 2022, section 46(1)(a) required a landlord to return a security deposit by personal service (meaning hand-delivered directly to the former tenant) or by mail. In 2022, the legislature amended this section to allow landlords to return security deposits to tenants by any method if the landlord and tenant agreed in writing, which could include an electronic transfer: *Residential Tenancies Act*, s 46(1)(a)(iii). In meetings we held in fall 2023 and winter 2024, after this amendment had been made, several landlords told us the legislation should be amended to allow security deposits to be returned by electronic transfer.

⁷⁵ We discuss some examples in Chapter 7 at paras 268-283.

⁷⁶ *Residential Tenancies Act*, s 60.

did not comply. When they tried to address it, however, they realized there was nothing to be done.

[106] A landlord also has to give a tenant a copy of a written residential tenancy agreement.⁷⁷ The legislation includes a consequence: a tenant can refuse to pay rent until the tenant receives a copy of the agreement.⁷⁸ This section is unique in the *Residential Tenancies Act*. It is the only reason a tenant may withhold rent without an order from a court or tribunal. If a tenant does not withhold rent, however, there is no other consequence. It is not an offence.⁷⁹ In one RTDRS case where a tenant sought damages, the tenancy dispute officer said damages were not warranted.⁸⁰

[107] More broadly, when landlords and tenants are free to prepare their own agreements, there is no way to prevent them from preparing or signing unenforceable agreements.⁸¹ There is no penalty for including unenforceable terms in a written agreement. While many landlords are conscientious and want to follow the law, a careless or unscrupulous landlord is unlikely to experience any consequences.

⁷⁷ *Residential Tenancies Act*, s 17(1).

⁷⁸ *Residential Tenancies Act*, s 17(2).

⁷⁹ See *Residential Tenancies Act*, s 60(1).

⁸⁰ *Re 23006938*, 2023 ABRTDRS 18. There were several schedules to the residential tenancy agreement. The tenant did not receive copies. Nearly a year later, when signing a new agreement, she realized she should have received copies of the schedules. "When the Tenant asked the Landlord for copies, she found the Landlord to be resistant and rude to her." The tenancy dispute officer pointed out that the landlord had breached section 17 of the *Residential Tenancies Act* but said "I find this breach to be minor because the Landlord's oversight did not cause the Tenant to suffer any discernable losses. Damages are therefore not warranted."

⁸¹ In *Re 20003928*, 2020 ABRTDRS 29, a tenancy dispute officer wrote:

The "system" that exists in this context is freedom of contract. This tribunal, and the courts, have jurisdiction to provide relief from contractual penalties, on a case-by-case basis, as they arise. This power does not extend so far as to abridge parties' freedom of contract by declaring that they shall not write penalty clauses into their contracts, as to do so would be, in my view, both impossible to enforce and likely to amount to a dangerous pre-judgement of issues before their specific facts have even arisen.

2. COULD STANDARD FORM AGREEMENTS HELP?

[108] Some other jurisdictions in Canada have standard forms for residential tenancy agreements.⁸² Some participants in our consultation said Alberta should have standard forms for residential tenancy agreements.⁸³

[109] A standard form can help landlords and tenants avoid problems. It could include all the required terms without any unlawful or unenforceable ones. A form can allow some options, while limiting choices so it is difficult to go outside the bounds of the law. A standard form can also be an educational tool. For example, the form provided by British Columbia's Residential Tenancy Branch includes information about rights and responsibilities under that province's *Residential Tenancy Act*.⁸⁴

[110] A standard form could also address problems with oral or implied agreements. Even if the law required landlords and tenants to have a written agreement, it is likely that some would overlook or ignore the rule. Legislation could say that an oral or implied agreement is deemed to be in the standard form. In other words, landlords and tenants would have all the rights and obligations in the standard form even without signing it.

[111] In 2002, a government consultation found strong support for introducing a standard form agreement in Alberta. Alberta Government Services asked about introducing a standard form agreement in its 2002 discussion paper. After asking "Should there be a requirement that all tenancy agreements be in writing?", the next question asked "Would it be useful to have a clearly written standard agreement?" Nearly 90% of respondents answered yes. Another question asked if the standard agreement should be required by law or optional. Of the 1,150 respondents who thought there should be a standard agreement, 60% thought it should be required by law.⁸⁵

⁸² See eg *The Residential Tenancies Act*, CCSM c R119, s 7(2); Art 1895 CCQ. British Columbia's Residential Tenancy Branch provides a standard form agreement that landlords and tenant may use, although it is not required: see Residential Tenancy Branch (British Columbia), "Residential Tenancy Agreement" online: <www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1.pdf> [perma.cc/BP4X-QALV].

⁸³ We also heard some concerns about introducing a standard form agreement. One concern was about the possible impact on landlord organizations who sell residential tenancy agreement forms, as they could lose a source of revenue.

⁸⁴ See Residential Tenancy Branch (British Columbia), "Residential Tenancy Agreement" online: <www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/forms/rtb1.pdf> [perma.cc/BP4X-QALV].

⁸⁵ 2002 *Discussion Paper Analysis*, note 24 at 3. The documents we reviewed show the total numbers of responses to these questions but do not show the number of responses from landlords or tenants.

ISSUE 6

Should there be a standard form for residential tenancy agreements?

ISSUE 7

If so, should it be mandatory or optional to use the standard form?

CHAPTER 4

Security Deposits and Inspections

A. Introduction

[112] At the beginning of a tenancy, a landlord may require a tenant to pay a security deposit. While the *Residential Tenancies Act* says a security deposit may be anything that has value, in practice it is usually money.⁸⁶

[113] A landlord keeps a security deposit during the tenancy. If the tenant fulfills all their obligations, the landlord should return the full amount to them at the end of the tenancy. If a tenant breaks their obligations, the landlord can use the security deposit to offset losses. If a tenant does not pay rent, the landlord can take the amount owing from the security deposit. If a tenant damages the home, the landlord can use the security deposit to pay for repairs. It gives a landlord some protection against financial losses and may encourage tenants to fulfill their obligations.

[114] In our consultation, we did not hear many issues about the rules for security deposits. A few participants said that the rules are clear and work well. There are a few specific issues about the legislation that might require clarification but they do not seem to cause widespread problems.

[115] While the rules are generally clear, security deposits are nonetheless a frequent source of conflict between landlords and tenants. Usually the conflict is about what happens with the security deposit at the end of a tenancy. It has been an issue throughout the history of the *Residential Tenancies Act*.⁸⁷ It was a common issue in the Reddit data, with approximately 20 posts mentioning a dispute about security deposits. Most of them were from tenants who were concerned about a landlord making deductions from a security deposit. In the

⁸⁶ See *Residential Tenancies Act*, s 1(1)(n):

1(1)(n) “security deposit” means any money, property or right paid or given by a tenant of residential premises to a landlord

(i) to be held by or for the landlord as security for the performance of an obligation or the payment of a liability by the tenant, or

(ii) to be returned to the tenant on the happening of a condition.

Although the definition includes property or a right, in our research and consultation we did not hear any anecdotes or find any examples where a tenant provided something other than money as a security deposit.

⁸⁷ See *Residential Tenancies 1977* (“[t]he return of the security deposit is one of the major causes of dispute between landlords and tenants” at 94); *Achieving a Balance* (“[t]he survey disclosed that ‘deductions from a security deposit’ was third ... in the ranking of tenant complaints” at 137).

tenants' view, the deductions were unjustified or inflated. We heard similar concerns in consultation.

B. Rules that Work Well

[116] Some key rules about security deposits have been reviewed several times, with similar results each time. Our consultation and research did not turn up significant new concerns.

1. CONTINUED SUPPORT FOR SECURITY DEPOSITS

[117] Two previous reviews of the *Residential Tenancies Act* considered whether legislation should prohibit security deposits. ALRI's 1977 *Residential Tenancies* report reviewed arguments for and against security deposits, concluding that they should be allowed.⁸⁸ The Ministerial Advisory Committee on Residential Tenancies reached the same conclusion in 1990.⁸⁹ Each review noted that many people had complaints about security deposits but few people said they should be abolished altogether.⁹⁰

[118] Our consultation had similar results. We heard many concerns about how security deposits work in practice but participants seemed to accept that security deposits should be allowed.

[119] Most other jurisdictions in Canada allow security deposits, so Alberta is not unusual.⁹¹

2. ONE MONTH'S RENT AS THE MAXIMUM SECURITY DEPOSIT

[120] A security deposit may be up to one month's rent.⁹² A landlord and tenant could agree to a lower amount but a landlord cannot require a tenant to pay more. The limit is based on the rent at the start of the tenancy. Even if the rent

⁸⁸ *Residential Tenancies 1977* at 87-89.

⁸⁹ *Achieving a Balance* at 139-141.

⁹⁰ See *Residential Tenancies 1977* ("[w]hile we received many complaints concerning the administration of security deposits, we heard few serious representations in favour of complete abolition of them" at 89); *Achieving a Balance* ("[t]enants do not complain about legitimate deductions from their security deposit, nor do they object to the landlord being in a position to require a security deposit" at 141).

⁹¹ Only Quebec prohibits security deposits altogether: see Art 1904 CCQ. In Ontario, a landlord can keep a deposit during the tenancy but it can only be used to pay the last month's rent: *Residential Tenancies Act, 2006*, SO 2006, c 17, ss 105(1), 106(10) [Ontario Act]. Other provinces and territories allow security deposits although there are some differences in rules about them.

⁹² *Residential Tenancies Act*, s 43(1). See also *Subsidized Public Housing Regulation*, Alta Reg 191/2004, s 4.

increases during the tenancy, a landlord cannot require a tenant to pay an increased security deposit.⁹³

[121] We have not found any data about how much tenants pay as security deposits in Alberta today. Historical data and anecdotal evidence suggest at least some pay less than a month's rent.⁹⁴

[122] This limit has been in place for nearly 50 years. In 1977, ALRI recommended that a security deposit should be a maximum of one month's rent.⁹⁵ The legislature implemented this recommendation in 1979.⁹⁶ Since then, the amount of the security deposit has been reviewed from time to time but the reviews have not resulted in any change. In 1990, the Ministerial Advisory Committee on Residential Tenancies considered the limit on security deposits. It recommended no change.⁹⁷ When Alberta Government Services circulated a discussion paper in 2002, it included a question about what the limit on security deposits should be. Almost 70% of respondents said that a security deposit should be no more than one month's rent.⁹⁸ Through several reforms to the legislation, the maximum security deposit has stayed at one month's rent.

[123] Alberta's limit fits the general pattern in Canada. In every other Canadian jurisdiction that allows security deposits, legislation limits the amount. The limits vary but not by much. They range from half a month's rent⁹⁹ to one month's rent.¹⁰⁰

⁹³ *Residential Tenancies Act*, s 43(2):

43(2) A landlord shall not require a tenant to pay an increase in a security deposit.

⁹⁴ In 1977, ALRI wrote "At the inception of our study the security deposit was usually substantially less than one month's rent, although we have heard recent reports of increasing amounts": *Residential Tenancies 1977* at 89. The Ministerial Advisory Committee on Residential Tenancies commissioned a survey that collected information about rents and security deposits. It found "the overall rate of security deposits charged by landlords is less than one full month's rent." It added "The Committee heard from landlords that the amount of security deposits they can actually charge is regulated more by the market place than by the maximum set out in the legislation": *Achieving a Balance* at 143.

⁹⁵ *Residential Tenancies 1977* at 90, 97-98.

⁹⁶ *The Landlord and Tenant Act, 1979*, SA 1979, c 17, s 37(1).

⁹⁷ *Achieving a Balance* at 142.

⁹⁸ It was an open-ended question, asking respondents to fill in the blank: "Security deposits should be worth no more than ____ months' rent." Of the 1,311 total respondents, 1,074 answered this question. 738 respondents said 1. 290 respondents gave a higher number. 42 gave a lower number. The remaining 4 responses suggested amounts calculated some other way. The documents we reviewed do not show which responses were from landlords, tenants, or other respondents: *2002 Discussion Paper Analysis*, note 24 at 6.

⁹⁹ See eg BC Act, note 66, s 19(1); *The Residential Tenancies Act*, CCSM c R119, s 29(1).

¹⁰⁰ See eg *Residential Tenancies Act*, 2006, SS 2006, c R-22.0001, s 25(1); *Residential Tenancies Act*, RSNWT 1988, c R-5, s 14(1)(b).

[124] Our research and consultation did not turn up widespread concerns about the limit. Participants in our consultation had little to say about it. There are occasionally suggestions to decrease it, often with the goal of helping low-income people.¹⁰¹ There could also be an argument for increasing it to improve protection for landlords. In our consultation, several participants said a landlord usually loses two months of rent when they terminate a tenancy for non-payment of rent.¹⁰² Although participants did not directly suggest it, making a security deposit up to two months' rent would make it closer to landlords' usual losses.

[125] It seems the limit is clear and most people understand it. There are some small issues that could be addressed. One is about whether the limit applies to the stated rent or the amount the tenant actually pays.¹⁰³ Another is a small drafting issue. Section 43(1) says "A landlord shall not require a tenant provide a security deposit that is greater than one month's rent ...". It might raise a question about whether a landlord could accept a higher security deposit if they tenant offered it.¹⁰⁴

¹⁰¹ See eg Lois Gander & Rachel Johansson, *The Hidden Homeless: Residential Tenancies Issues of Victims of Domestic Violence*, (Edmonton: Centre for Public Legal Education & University of Alberta, 2014) at 55, online: <cplea.ca/wp-content/uploads/2015/01/FINAL-Report-The-Hidden-Homeless.2014Jun05.pdf> [perma.cc/FMB4-UH8K]. See also John Kolkman & Joseph Ahorro, *Understanding Tenancy Failures and Successes* (Edmonton Social Planning Council & Edmonton Coalition on Housing and Homelessness, 2012) at 19, 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] (suggesting that allowing tenants to pay a security deposit over time could help low-income people obtain housing).

¹⁰² The usual process to terminate a tenancy for non-payment of rent has several waiting periods. Altogether, they usually add up to more than a month. By that time, the tenant has also missed the next month's payment so the landlord loses two months of rent. A landlord will often wait a few days to see if the tenant pays rent. If they do not, a landlord may give the tenant a notice to terminate a tenancy. The notice must state a termination date at least 14 days in the future: *Residential Tenancies Act*, s 29(2). At the end of the 14 days, if the tenant has not paid rent or moved out, the landlord may apply for an order for recovery of possession. After filing an application, a landlord must wait for a hearing at court or RTDRS. RTDRS has short wait times. In the 2023-2024 fiscal year the average time from a landlord filing an application for recovery of possession to a hearing was nine business days: Residential Tenancy Dispute Resolution Service (Alberta), *RTDRS Annual Report: The Fourth Edition Annual Report for Alberta's Residential Tenancy Dispute Resolution Service* (2024) at 7, 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]. Nonetheless, the total time from the missed payment to a hearing is usually more than a month. It may take longer to actually remove a tenant, especially if an eviction is required.

¹⁰³ See Chapter 5

¹⁰⁴ A news article from Ontario describes a similar issue about prepaid rent. Some landlords there apparently believe they cannot require a tenant to prepay rent but may accept it if the tenant offers it: Maria Jose Burgos, "Toronto newcomers paying up to 12 months' rent up front to secure housing", *CBC News* (16

[126] When problems come up, they are mostly about not following the law. Our research turned up a few examples. There were a handful of posts in the Reddit data about landlords asking tenants to pay an increased security deposit. We found a few RTDRS cases where landlords required tenants to pay security deposits above the limit.¹⁰⁵ It is unlikely that changing legislation would solve this problem.

[127] Given that the limit has been revisited several times with no changes, we do not think another review of the limit would be productive or necessary.

C. Issues That May Require Clarification

1. WHAT IS A SECURITY DEPOSIT FOR AND WHAT CAN BE DEDUCTED FROM IT?

[128] It would be hard to understand what a security deposit is for by reading the *Residential Tenancies Act*. The definition is very technical:¹⁰⁶

1(1)(n) security deposit” means any money, property or right paid or given by a tenant of residential premises to a landlord

(i) to be held by or for the landlord as security for the performance of an obligation or the payment of a liability by the tenant, or

(ii) to be returned to the tenant on the happening of a condition;

[129] Other sections say a landlord may make deductions from a security deposit “in accordance with the conditions agreed to by the tenant.”¹⁰⁷

[130] Neither section says clearly when a landlord can make a deduction from a security deposit. It may be that the drafters expected landlords and tenants to make agreements clearly stating the conditions. Some written residential tenancy agreements include these kinds of details. Others do not. It would be especially

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/HG2A-3NY7]:

[S]ome landlords and realtors will have a conversation where landlords will suggest that if a prospective tenant offers multiple months' rent up front, they'll be accepted.

"The landlords might say that and then put in the lease agreement that it was offered [by the tenant], thinking that this protects them," said Page [a paralegal], whose clients are 95 per cent landlords.

¹⁰⁵ See eg *Re 19001233*, 2019 ABRTDRS 34; *Re 22007223*, 2022 ABRTDRS 25.

¹⁰⁶ *Residential Tenancies Act*, s 1(1)(n). The definition was added to the legislation in 1970 and has remained almost unchanged since then. While ALRI's 1977 report described the definition as “satisfactory” (*Residential Tenancies 1977* at 87), others have a different view. The Ministerial Advisory Committee on Residential Tenancies said “The present definition of security deposit is not sufficiently clear”: *Achieving a Balance* at 141.

¹⁰⁷ *Residential Tenancies Act*, s 46(2)(b), (c) .

difficult to determine the conditions for making a deduction from a security deposit in an oral or implied agreement.

[131] Most people would probably agree that a landlord can make a deduction from a security deposit for at least two reasons: to cover unpaid rent or to pay for repairs if the tenant damages the home.

[132] Sometimes landlords make deductions for other reasons. Our research suggests that tenants may be unsure whether a landlord is allowed to make these deductions. There were several posts in the Reddit data asking about deductions for things other than unpaid rent or damage. Posters asked if landlords can make deductions for unpaid utilities, penalties like lease break fees, carpet cleaning, repainting, and travel expenses when a landlord travelled from another community to personally perform work at the rental home.¹⁰⁸ In a couple posts, tenants asked if a landlord can make deductions for damage even if the landlord does not intend to repair the damage. For example, a landlord who intends to sell or demolish a home might not repair damage after a tenancy.¹⁰⁹

[133] It could be helpful to have more specific guidance in legislation about the reasons a landlord may make a deduction from a security deposit.¹¹⁰

ISSUE 8

How could legislation clarify what a security deposit is and what deductions a landlord may make from a security deposit?

2. WHEN DOES AN APPLICATION FEE BECOME A SECURITY DEPOSIT?

[134] Some landlords require a potential tenant to pay a fee or deposit when they apply to rent a home. If the landlord accepts the application, the money becomes the tenant's security deposit.¹¹¹ On occasion, there are disputes about

¹⁰⁸ There are also examples of landlords making deductions for things other than unpaid rent or damage in RTDRS cases. See eg *Re 21002671*, 2021 ABRTDRS 41. A landlord paid a person \$140 to supervise the tenants when they made repairs. The landlord deducted the amount from the security deposit but the tenancy dispute officer did not allow the deduction.

¹⁰⁹ See eg *Re 20006369*, 2020 ABRTDRS 39; *Re 22012953*, 2023 ABRTDRS 9.

¹¹⁰ The Ministerial Advisory Committee on Residential Tenancies considered this issue. It recommended changing the definition of security deposit to clearly state the kinds of deductions a landlord may make. Its recommendation was: "that the definition of 'security deposit' should refer not only to liabilities of the tenant to the landlord (inclusive of rental arrears) but to those that may attach to the premises": *Achieving a Balance* at 141-142.

¹¹¹ We heard about this practice in consultation and found other examples in case law and news stories: see eg *Re 22002084*, 2022 ABRTDRS 17; "Ukrainian newcomer warns others after nearly losing \$1K deposit on

when or if the money becomes a security deposit and whether a landlord must return it. It can happen if a potential tenant applies to rent and pays the fee or deposit but decides not to rent after their application has been accepted. For example, a news story described a couple who were surprised to learn after paying a deposit that a landlord would require them to pay several months rent in advance. When they told the landlord that they would not move in, the landlord refused to refund the money they had paid.¹¹²

[135] The *Residential Tenancies Act* does not have rules about application fees, when a landlord can require a tenant to pay a security deposit, or when an application fee becomes a security deposit. Without legislated rules, landlords and tenants have little guidance about how to handle these disputes. Courts and tribunals can resolve these issues on a case-by-case basis, applying common law rules but it is not easy or straightforward. One participant said these disputes are difficult to resolve, describing the common law rules as “Byzantine”.

ISSUE 9

Should legislation have rules about application fees?

ISSUE 10

Could legislation clarify if, how, and when an application fee becomes or may be applied to a security deposit?

3. WHO OWNS A SECURITY DEPOSIT?

[136] There can be an issue about who owns the security deposit or who may apply for the return of a security deposit.

[137] The issue may come up when there is more than one tenant. In the first report in this series, we pointed out that while it is common for two or more people to be co-tenants, the *Residential Tenancies Act* hardly mentions the possibility.¹¹³ It can raise practical questions, including ones about returning a security deposit. If there are two or more co-tenants, who should the landlord return the security deposit to? Does it matter which tenant paid the security

apartment”, *CBC News* (22 November 2022), online: <[cbc.ca/news/canada/calgary/security-deposit-calgary-rent-1.6660292](https://www.cbc.ca/news/canada/calgary/security-deposit-calgary-rent-1.6660292)> [perma.cc/6QM3-ENV5].

¹¹² “Ukrainian newcomer warns others after nearly losing \$1K deposit on apartment”, *CBC News* (22 November 2022), online: <[cbc.ca/news/canada/calgary/security-deposit-calgary-rent-1.6660292](https://www.cbc.ca/news/canada/calgary/security-deposit-calgary-rent-1.6660292)> [perma.cc/6QM3-ENV5].

¹¹³ *Residential Tenancies Act: General Issues* at paras 404-409.

deposit? Landlords and tenants could fill the gap by explicitly addressing the issue in a residential tenancy agreement but many do not. It might be helpful to have default rules in legislation.

[138] The issue can also come up if someone else pays a security deposit on behalf of a tenant. It could be a relative or friend, a non-profit, or a government benefit program.¹¹⁴ The legislation allows a tenant to apply for return of a security deposit.¹¹⁵ The person who actually paid the security deposit is also affected but the legislation does not allow them to start or participate in a claim. They might be able to make a claim in court but it would rarely be worth the time, hassle, or expense.

ISSUE 11

Should legislation include rules about ownership of a security deposit or how to return a security deposit if there is more than one tenant?

ISSUE 12

Should legislation include rules about ownership of a security deposit or who may apply for return of a security deposit if a person other than a tenant pays a security deposit?

4. WHAT SHOULD A LANDLORD DO WITH A SECURITY DEPOSIT?

[139] A landlord holds a security deposit in trust for the tenant. They are responsible for it but it does not belong to them unless or until the tenant breaches an obligation. The *Residential Tenancies Act* requires a landlord to keep security deposits in a separate trust account.¹¹⁶

¹¹⁴ For example, a person receiving Assured Income for the Severely Handicapped (AISH) benefits can get a special payment to cover a security deposit in an emergency situation. An individual or couple may receive up to \$405 and a family with children may receive up to \$1,153: see Government of Alberta, "AISH Policy Manual: Emergency", online: <manuals.alberta.ca/aish-policy-manual/aish-program-policy/benefits/personal-benefits/emergency/> [perma.cc/X2RS-8V7K]. Similar benefits are available to people receiving Income Support benefits: see Government of Alberta, "Financial Benefits Summary" (1 January 2025), online: <cfr.forms.gov.ab.ca/Form/EMP0433> [perma.cc/E6AZ-F7KB].

¹¹⁵ *Residential Tenancies Act*, s 46(3):

46(3) If a landlord fails to return all or part of a security deposit to a tenant in accordance with subsection (2), then, whether or not a statement of account was delivered to the tenant, the tenant may commence an action in a court to recover the whole of the deposit or that part of the deposit to which the tenant claims to be entitled.

¹¹⁶ *Residential Tenancies Act*, s 44(1).

[140] The requirement to keep a security deposit in a trust account was added to the legislation in 1991, implementing a recommendation of the Ministerial Advisory Committee in Residential Tenancies.¹¹⁷

[141] While this requirement is a good idea in theory, it does not always work in practice. We heard that some landlords do not keep security deposits in a separate trust account. In some cases, it may be that the landlord simply does not know about the requirement. In others, a landlord might try to comply but finds it is impractical. One common barrier affects individual landlords or ones who own a small number of rental homes. They might have a few hundred or thousand dollars in security deposits. We heard many banks or financial institutions do not offer trust accounts for low amounts of money or charge high fees for them. A landlord might try to open a trust account but find they cannot or that it comes at too high a cost.

ISSUE 13

What rules should be in legislation about how to keep security deposits during a tenancy?

5. ARE RULES ABOUT RETURN OF SECURITY DEPOSITS WORKING?

[142] The *Residential Tenancies Act* requires a landlord to either return a security deposit or inform the former tenant of any deductions within ten days after a tenant moves out.¹¹⁸ If a landlord makes deductions, they should give the former tenant a statement of account that shows the deductions and return the rest of the deposit. Usually they have ten days to do it but the legislation will allow more time if the landlord cannot determine the exact amount of a deduction within ten days. For instance, if the tenant damaged the home it may take some time to get estimates for repairs. In that case, a landlord has up to 30 days to determine the exact amount and return the rest of the deposit.¹¹⁹

[143] These rules have been in place since 1970. Almost from the beginning, return of security deposits has been a common source of conflict. This issue came up when ALRI reviewed the legislation in 1977.¹²⁰ It came up again more than a

¹¹⁷ *Landlord and Tenant Amendment Act, 1991*, SA 1991, c 18, s 33; *Achieving a Balance* at 156-158.

¹¹⁸ *Residential Tenancies Act*, s 46(2).

¹¹⁹ *Residential Tenancies Act*, s 46(2)(c).

¹²⁰ *Residential Tenancies 1977* at 93-94.

decade later, when the Ministerial Advisory Committee on Residential Tenancies reviewed the legislation.¹²¹

[144] We heard a few suggestions for improving the rules.

[145] A few participants said ten days is not enough time for a landlord to assess damage and get estimates for repairs. They would like the legislation to give landlords more time to return a security deposit or a statement of account. A landlord has up to a week after the tenant moves out to perform an inspection but must return the security deposit or provide a statement of account or estimated statement of account within ten days after the tenant moves out.¹²² It could leave a landlord with as little as three days to estimate how much money they will need for repairs.

[146] Another suggestion was that if a landlord does not return a security deposit, a tenant should have a short time to apply for its return. One participant suggested claims should be made within two months after the end of the tenancy. Right now a tenant can wait up to two years to make a claim.¹²³ Usually both parties benefit when claims are resolved quickly.

[147] One suggestion that came up in our consultation has already been addressed. Several participants in our consultation said that landlords should be allowed to return security deposits to tenants using electronic transfers or other modern payment options. Before 2022, section 46(1)(a) required a landlord to return a security deposit by personal service (meaning hand-delivered directly to the former tenant) or by mail. In 2022, the legislature amended this section to allow landlords to return security deposits “in any other manner agreed to in writing by the landlord and tenant,” which could include an electronic transfer.¹²⁴

[148] We also heard more ambitious ideas for reform. Other jurisdictions show some different options for resolving disputes about return of security deposits. Some jurisdictions require a landlord to apply to a court or tribunal before they

¹²¹ The Committee found that security deposits were one of the most common issues between landlords and tenants, although not the top issue: *Achieving a Balance* at 137, 138.

¹²² *Residential Tenancies Act*, ss 19(2), 46(2).

¹²³ See Residential Tenancy Dispute Resolution Service (Alberta), *Rules of practice and procedure*, s 2.1, online: <<https://open.alberta.ca/dataset/65e3d06c-7a6e-40c9-8d30-e0aba219e4a1/resource/0bbc3d7d-5895-47fb-9ee3-81ae81b276a3/download/sartr-rtdrs-rules-of-practice-and-procedure-2025-08.pdf>> [perma.cc/XUA7-PVGS].

¹²⁴ *Residential Tenancies Act*, s 46(1)(a)(iii).

can make deductions from a security deposit.¹²⁵ Others have central offices or authorities that hold security deposits, return them at the end of a tenancy, and resolve disputes.¹²⁶

[149] Some of these ideas came up in previous reviews of the *Residential Tenancies Act*. In our 1977 report, ALRI considered whether Landlord and Tenant Advisory Boards should keep security deposits during the tenancy but did not recommend it.¹²⁷ The Ministerial Advisory Committee on Residential Tenancies recommended establishing a commission that would hold security deposits and resolve disputes about them.¹²⁸

ISSUE 14

How could legislation improve the process for returning security deposits or resolving disputes about return of security deposits?

6. WHAT HAPPENS TO UNCLAIMED SECURITY DEPOSITS?

[150] There is a gap in the legislation about unclaimed security deposits.

[151] We heard that occasionally a landlord has difficulty returning a security deposit to a former tenant. It can happen if a tenant moves out without giving the landlord a forwarding address or any other contact information.

[152] The *Residential Tenancies Act* does not say what a landlord should do if they do not know how to deliver the security deposit or how to contact the former tenant. It can put a landlord in a difficult situation, as failing to deliver a security deposit or statement of account within ten days after a tenant gives up possession of a home is an offence.¹²⁹

¹²⁵ See eg BC Act, note 66, s 38.

¹²⁶ In New Brunswick, security deposits must be paid to a government office. At the end of a tenancy, a landlord may make a claim against the security deposit. A government official may investigate the claim. Depending on their findings, the security deposit may be paid to the landlord or returned to the tenant: see *Residential Tenancies Act*, SNB 1975, c R-10.2, s 8. New Zealand has a similar system: see Tenant Services (New Zealand), "Bond", online: <tenancy.govt.nz/rent-bond-and-bills/bond/> [perma.cc/HUG8-A9D2].

¹²⁷ *Residential Tenancies 1977* at 94–97.

¹²⁸ *Achieving a Balance* at 158–164.

¹²⁹ *Residential Tenancies Act*, ss 46(2), 60(1).

[153] The *RTA Handbook for Landlords and Tenants*, a public legal education resource prepared by Service Alberta and Red Tape Reduction, offers some practical suggestions for landlords in this situation:¹³⁰

If no forwarding address was left with the landlord, the landlord is responsible for attempting to locate the tenant. The cheque/statement of account is to be mailed to the last known address of the tenant, which may be the rented premises. If the mail is returned as undeliverable, the landlord is to keep the returned item for their records in order to prove they tried to comply with the legislation. The landlord is not entitled to keep the security deposit money for themselves if it is undeliverable to the tenant.

[154] While these suggestions are helpful, they leave one big unanswered question. The handbook says “The landlord is not entitled to keep the security deposit money for themselves.” If so, what should they do with the money? Alberta has legislation about unclaimed property but it does not apply to security deposits.¹³¹ A conscientious landlord might conclude they have to leave the money in a trust account forever.

[155] The gap about unclaimed security deposits is more conspicuous in contrast to another part of the *Residential Tenancies Act*. Section 31 has detailed rules about abandoned goods, including what to do with any surplus proceeds of sale.¹³² In certain circumstances a landlord can sell a tenant’s abandoned goods. The landlord may use the proceeds to cover the costs and any amount the tenant owes the landlord. If any money remains, the landlord must pay it to the Minister. A tenant has one year to claim the money. After that, the money is paid to the General Revenue Fund.

[156] It would be helpful if legislation included similarly clear guidance about what a landlord should do if they cannot contact a former tenant within ten days. What steps should they take to locate the tenant? What should they do with the security deposit if they are unable to return it?

¹³⁰ Service Alberta and Red Tape Reduction, *RTA handbook for landlords and tenants: Residential Tenancies Act and Regulations* at 31, online: <open.alberta.ca/dataset/b20cb59c-1727-42e5-a1e6-bc253f2c904f/resource/3a353c8b-d656-49e7-aa11-4a3d9595002d/download/sartr-rta-handbook-2025-06.pdf> [perma.cc/5R8Z-8H6U].

¹³¹ *Unclaimed Personal Property and Vested Property Act*, SA 2007, c U-1.5; *General Regulation*, Alta Reg 104/2008, s 3(h):

3 Personal property in trusts governed by and personal property distributable from trusts pursuant to the following legislation do not constitute tangible or intangible personal property for the purposes of the Act:

...

(h) the *Residential Tenancies Act*.

¹³² *Residential Tenancies Act*, s 31.

ISSUE 15

How could legislation clarify what a landlord should do with an unclaimed security deposit?

D. Interest on Security Deposits

[157] The *Residential Tenancies Act* says a landlord must pay interest on a security deposit.¹³³ The minimum interest rate is set in a regulation.¹³⁴ Since 2005, the interest rate is set by a formula so it automatically adjusts each year. The formula is based on interest rates for Alberta Treasury Branch guaranteed investment certificates. If a landlord invests the security deposit and receives a higher rate of interest than they must pay to the tenant, the landlord can keep the difference.¹³⁵

[158] From 2009 to 2023, the formula resulted in the interest rate being 0%, meaning that landlords did not have to pay any interest to tenants.

[159] In 2024, landlords had to pay interest for the first time in 15 years.¹³⁶ This change was announced as we did our consultation. Some participants mentioned possible issues. Some expected that calculating and paying interest would be an administrative burden for some landlords. At the time of writing, we do not have enough information to say whether those problems have materialized.

ISSUE 16

What rules should there be about calculating or paying interest on security deposits?

¹³³ *Residential Tenancies Act*, s 45. The legislation requires a landlord to pay interest on a security deposit annually, unless the landlord and tenant agree in writing that it will be paid at the end of the tenancy: *Residential Tenancies Act*, s 45(2). Many written residential tenancy agreements include a term that the interest will be paid at the end of the tenancy.

¹³⁴ *Security Deposit Interest Rate Regulation*, Alta Reg 190/2004.

¹³⁵ *Residential Tenancies Act*, s 45(3).

¹³⁶ See Service Alberta and Red Tape Reduction, “Annual security deposit interest rate”, online: <alberta.ca/annual-security-deposit-interest-rate> [perma.cc/5M7J-UDJV].

E. Inspections and Inspection Reports

[160] Inspections are closely related to security deposits. The *Residential Tenancies Act* requires landlords and tenants to inspect the home together at the start and end of a tenancy.¹³⁷ Each time, the landlord must prepare a report.

[161] There are detailed rules about inspections and reports. There are certain statements that must be included in a report.¹³⁸ The landlord and tenant should each sign the report and the landlord must give a copy to the tenant.¹³⁹ There are also rules about what a landlord should do if a tenant does not cooperate.¹⁴⁰

[162] For a long time, many landlords have recognized that it is best practice to perform inspections and prepare reports. Many landlords did it even when it was not required.¹⁴¹ The Ministerial Advisory Committee on Residential Tenancies recommended inspection reports should be mandatory.¹⁴² The legislature implemented this recommendation in 1991.¹⁴³

[163] When the legislature made inspections and reports mandatory, it also added a consequence for a landlord who does not follow the rules. It is now section 46(6) of the *Residential Tenancies Act*:¹⁴⁴

46(6) A landlord shall not make a deduction from a tenant's security deposit for damages to the residential premises unless the requirements respecting inspection reports under section 19 have been met.

[164] In our consultation, we heard very few concerns about the rules themselves. Most people seem to believe the rules are clear and fair.

[165] There were a few small suggestions for improvement.

[166] Some participants said that the time for completing an inspection report should be shorter. The *Residential Tenancies Act* says inspections must be

¹³⁷ *Residential Tenancies Act*, s 19.

¹³⁸ *Residential Tenancies Ministerial Regulation*, Alta Reg 211/2004, s 4 [*Ministerial Regulation*].

¹³⁹ *Residential Tenancies Act*, s 19(1), (2); *Ministerial Regulation*, note 138, s 4.

¹⁴⁰ If a tenant does not agree to a time for the inspection or attend, a landlord may propose two different times. If the tenant does not attend either time, the landlord may complete the inspection without the tenant at the second time: *Residential Tenancies Act*, s 19(3), (4). If a tenant refuses to sign the report, there is a prescribed statement the landlord must include in the report: *Ministerial Regulation*, note 138, s 4(4).

¹⁴¹ *Achieving a Balance* at 151.

¹⁴² *Achieving a Balance* at 151-153.

¹⁴³ *Landlord and Tenant Amendment Act, 1991*, SA 1991, c 18, s 15.

¹⁴⁴ *Landlord and Tenant Amendment Act, 1991*, SA 1991, c 18, s 35; *Residential Tenancies Act*, s 46(6).

completed “within a week before or after” a tenant takes possession or gives up possession of a home.¹⁴⁵ A landlord has ten days after a tenant gives up possession to return a security deposit or provide a statement of account.¹⁴⁶ A participant suggested inspections should have to be completed within two days instead, which might make it easier for landlords to meet the ten day deadline. It might also be more accurate, as damage could occur in the first or last week of a tenancy.

[167] Some participants thought that there should be more detailed guidance about inspection reports. Other than the required statements, the legislation does not say what should be in an inspection report. It can be hard for a landlord, especially an individual landlord with limited experience, to design an inspection form that complies with legislation and covers all relevant information. We heard that some landlords overlook the required statements. Some landlords might appreciate having standard forms that include the required statements and provide guidance about what to include in a report.

[168] Many landlords are diligent about following the rules. We heard about some landlords who have developed best practices that exceed the rules. Some landlords do regular inspections during a tenancy. It allows them to find problems and make repairs promptly, instead of waiting until the end of a tenancy. We heard about one landlord that has standard charges for certain kinds of damage. They include the standard charges on the inspection form. It informs tenants about the deductions they can expect from their security deposit if there is damage at the end of the tenancy.

[169] It seems, however, that there are landlords who do not follow the rules. We heard about this issue in our consultation, saw examples in the Reddit data, and found other examples in RTDRS cases.¹⁴⁷

[170] In practice, it turns out that the consequence in the legislation is ineffective. When a landlord does not return a security deposit, the onus is on the tenant to apply for return of the security deposit.¹⁴⁸ If the tenant makes such an application, a landlord may respond with their own application for damages. Section 46(6) does not prevent a landlord from seeking compensation if a tenant

¹⁴⁵ *Residential Tenancies Act*, s 19(1), (2).

¹⁴⁶ *Residential Tenancies Act*, s 46(2).

¹⁴⁷ See eg *Re 19001233*, 2019 ABRTDRS 34; *Re 20002060*, 2020 ABRTDRS 19; *Re 21002885*, 2021 ABRTDRS 17; *Re 21010513*, 2022 ABRTDRS 11; *Re 22008798*, 2023 ABRTDRS 1; *Re 23001275*, 2023 ABRTDRS 16.

¹⁴⁸ *Residential Tenancies Act*, s 46(3).

caused damage.¹⁴⁹ In several reported cases, a judge or tenancy dispute officer noted that the landlord had not completed inspection reports but in the end, the tenant has to pay the landlord more than the security deposit.¹⁵⁰

ISSUE 17

How could legislation clarify rules about inspections and inspection reports?

¹⁴⁹ See *Safri v Maclean*, 2022 ABPC 113 at para 18; Jonnette Watson Hamilton, “The Importance of Move-In Inspection Reports to the Return of Security Deposits in Residential Tenancies” (8 July 2022), online: ABawg <ablawg.ca/2022/07/08/the-importance-of-move-in-inspection-reports-to-the-return-of-security-deposits-in-residential-tenancies/> [perma.cc/EQZ9-7NQG].

¹⁵⁰ See eg *Re 19001233*, 2019 ABRTDRS 34. The landlords did not complete a move-in inspection report and collected a security deposit that was more than three months’ rent. Rent was \$1,195 per month but the landlords collected a deposit of \$4,195. They were able to keep most of the deposit, returning only \$997.92 to the tenants. See also *Safri v Maclean*, 2022 ABPC 113; *Re 20002060*, 2020 ABRTDRS 19; *Re 21002885*, 2021 ABRTDRS 17.

CHAPTER 5

Rent and Other Payments

A. Introduction

[171] At first glance, the rules about rent or payments in the *Residential Tenancies Act* seem straightforward.

[172] The *Residential Tenancies Act* does not say anything about the amount of rent. In private rental homes, the rent can be any amount as long as the landlord and tenant agree.¹⁵¹ As discussed in Chapter 1, it is outside the scope of our project to consider whether legislation or government should have a role in setting the amount of rent or how landlords and tenants agree on rent.

[173] Landlords and tenants can agree on when rent is due. Typically, the rental period is a month and rent is due at the beginning of the month.¹⁵² To illustrate, a tenant would have to pay the rent for October on October 1.

[174] There is a clear rule that tenants must pay the rent on time. The *Residential Tenancies Act* has a list of a tenant's obligations in section 21. The first one is "that the rent will be paid when due."¹⁵³

[175] If a tenant does not pay the rent on time, a landlord has several remedies. They may seek an order requiring the tenant to pay arrears of rent, terminate the tenancy, or both.¹⁵⁴ If a landlord seeks to terminate a tenancy for non-payment of rent, a tenant often has a last chance to save the tenancy by paying the rent that is due.¹⁵⁵

[176] We heard from landlords that one of their most common problems is non-payment or late payment of rent. It does not seem that there is a problem with the law or with lack of knowledge about the law. Rather, we heard non-payment or late payment are usually about the tenant's financial circumstances. When a

¹⁵¹ In social and affordable housing, rent is often set as a percentage of the tenant's income: see Government of Alberta, "Affordable housing programs", online: <alberta.ca/affordable-housing-programs> [perma.cc/X8QG-J99T].

¹⁵² *Residential Tenancies Act*, s 1(1)(q):

1(1)(q): "tenancy month" means the period on which a monthly periodic tenancy is based whether or not it is a calendar month, and the month begins on the day rent is payable unless another date is specified in the residential tenancy agreement.

¹⁵³ *Residential Tenancies Act*, s 21(a).

¹⁵⁴ *Residential Tenancies Act*, ss 26(1)(a), (c), 29.

¹⁵⁵ *Residential Tenancies Act*, s 29(3), (4).

tenant does not pay rent, it is usually because they do not have the money or cannot prioritize paying the rent. They may be facing hard choices between paying rent and other expenses.

[177] There are also rules about rent increases. Legislation does not limit how much a landlord can increase the rent, only how often they can increase it.¹⁵⁶ Section 14 of the *Residential Tenancies Act* says a landlord cannot increase rent until at least a year has passed from the beginning of the tenancy or from the last rent increase.¹⁵⁷ If the tenancy is a periodic tenancy, a landlord must give the tenant written notice of a rent increase approximately three months before it takes effect.¹⁵⁸

[178] A closer look shows the rules are not as straightforward as they seem. A major reason is that landlords and tenants make agreements or operate in ways that are not contemplated by the *Residential Tenancies Act*. Many common practices are in grey areas: there is no rule against them but there is no guidance in the legislation either.

[179] Another part of the problem is that the *Residential Tenancies Act* is not entirely consistent. Over time, the legislature has added or amended provisions to address specific issues. Some of these changes are like patches: added on top of the existing legislation rather than smoothly woven in. In particular, there are

¹⁵⁶ While legislation does not limit how much a landlord can increase the rent, it is not quite correct to say a landlord can raise rent any amount. Courts and the RTDRS will occasionally disallow a rent increase if its real purpose is to force the tenant to leave: see *Milner's Aloha Mobile Home Park (1998) Ltd v Jenkins*, 2014 ABQB 229; *Re 20001013*, 2020 ABRTDRS 40; *Re 23001188*, 2023 ABRTDRS 3; *Re 23013513*, 2024 ABRTDRS 6; see also Julia Wong, "Alberta's tenancy dispute board rules Edmonton man faced 'economic eviction'", *CBC News* (6 June 2023), online: <[cbc.ca/news/canada/edmonton/alberta-tenancy-dispute-board-economic-eviction-1.6866226](https://www.cbc.ca/news/canada/edmonton/alberta-tenancy-dispute-board-economic-eviction-1.6866226)> [perma.cc/RP6U-YCXT].

¹⁵⁷ *Residential Tenancies Act*, s 14(4):

14(4) A landlord shall not increase the rent payable under a residential tenancy agreement or recover any additional rent resulting from an increase unless the prescribed amount of time has passed, which shall not be less than 1 year.

The prescribed period is 365 days. A landlord may not raise the makes the prescribed period: see *Ministerial Regulation*, note 138, s 3.

¹⁵⁸ The amount of notice varies slightly depending on the type of periodic tenancy: *Residential Tenancies Act*, s 14(1):

14(1) A landlord shall not increase the rent payable under a residential tenancy agreement or recover any additional rent resulting from an increase unless the landlord serves on the tenant a written notice of the increase in rent

- (a) in respect of a weekly tenancy, at least 12 tenancy weeks,
- (b) in respect of a monthly tenancy, at least 3 tenancy months, and
- (c) in respect of any other periodic tenancy, at least 90 days,

before the date on which the increase is to be effective.

specific provisions about fees and prepaid rent.¹⁵⁹ On their own they make sense but they seem to conflict with other parts of the *Residential Tenancies Act*.¹⁶⁰

B. What Is Rent?

[180] There is a mismatch between the definition of rent in the *Residential Tenancies Act* and the way some landlords, tenants, or residential tenancy agreements use the term. When the stated rent is different than the consideration the tenant actually pays, it can make it difficult to apply some of the rules in the *Residential Tenancies Act*, including those about termination of a tenancy, damages, rent increases, and security deposits.

[181] The *Residential Tenancies Act* seems to assume that there are only two kinds of payments a tenant makes to a landlord: a security deposit and rent. The definition of rent is:¹⁶¹

1(1)(k) “rent” means the consideration to be paid by a tenant to a landlord under a residential tenancy agreement, but does not include a security deposit.”

[182] In other words, anything a tenant pays to a landlord (other than a security deposit) is rent.

[183] It is often more complicated in practice. Landlords and tenants may make agreements with more detailed rules about the payments a tenant must make to a landlord. Often these agreements use the word rent in a narrower sense than the definition in the *Residential Tenancies Act*.

[184] There are two common kinds of mismatches: one where the amount the tenant actually pays is more than stated rent and one where the amount the tenant pays is lower than the stated rent. We have included some scenarios below to illustrate.

1. EXAMPLES WHERE TENANT PAYS MORE THAN STATE “RENT”

[185] An agreement may require a tenant to pay the landlord amounts that are not described as rent. The effect is that the tenant actually pays more than the

¹⁵⁹ See *Residential Tenancies Act*, ss 1(3)(a), 22(6), 60(4), 70(1)(j).

¹⁶⁰ See Chapter 5 at paras 221-226; Chapter 7 at paras 261-265.

¹⁶¹ *Residential Tenancies Act*, s 1(1)(k).

stated rent. In our research and consultation, we heard about several different kinds.

a. Utilities

[186] There are many different approaches to paying for utilities, raising different issues. We discuss issues about utilities in more detail in Chapter 7.

[187] For now, we simply note that some residential tenancy agreements require tenants to pay the landlord directly for utilities or for certain ones. A tenant might pay the landlord a fixed amount every month for utilities, pay an amount that varies based on consumption, or some other arrangement.¹⁶²

b. Recurring fees

[188] Some residential tenancy agreements break down the total amount a tenant must pay each rental period, showing separate charges for specific amenities or privileges. Common examples are separate charges for storage units or parking stalls.¹⁶³ Some landlords require tenants who have pets to pay an extra amount each month, commonly called a pet fee or pet rent.¹⁶⁴

Example 1: Separate charges

Antonio rents an apartment in a large apartment building. The residential tenancy agreement includes this statement:

The tenant agrees to pay the following amount to the landlord each month:

Rent:	\$1,500
Utilities:	\$200
Parking:	\$100
Total:	\$1,800

¹⁶² There is at least one RTDRS case suggesting a payment for utilities may be rent according to the definition in the *Residential Tenancies Act*, if the tenant pays the amount to the landlord: *Re 22006641*, 2022 ABRTDRS 38:

I am less certain that I agree with the Tenant that utilities are not “rent”. The definition of “rent” provided by the RTA is “consideration to be paid by a tenant to a landlord under a residential tenancy agreement”, which is broad and potentially ambiguous. However, I do think it was not unreasonable for the Tenant to question the charges for utilities until he was provided with copies of the bills. The monthly rent is unambiguous, the amount owing for utilities can be more debatable.

¹⁶³ See eg *Re 21002380*, 2021 ABRTDRS 43. The tenant paid \$80 per month for parking.

¹⁶⁴ See eg *Pro Landscaping v Boyd*, 2014 ABPC 144; *Re 23006938*, 2023 ABRTDRS 18. In *Pro Landscaping Ltd. v Boyd* the pet fee was an extra \$200 per month. In *Re 23006938* it was \$50 per month.

c. One-time fees or non-refundable deposits

[189] Some landlords require one-time payments. It may be for an amenity or privilege. It may also be a way of recovering costs that the landlord expects to incur. A landlord cannot require a tenant to pay more than one month's rent as a security deposit but they can charge a non-refundable fee. The Ministerial Advisory Committee on Residential Tenancies described some examples:¹⁶⁵

The Committee received information that some landlords in Alberta require tenants to pay a non-refundable "up front fee". This fee is stated to be for the replacement of keys, cleaning carpets, damage from pets and other expenses which the landlord anticipates he may [incur] as a result of the tenancy. Where this payment is structured as a non-refundable fee rather than a deposit it appears not to be caught by the definition of security deposit and is therefore not prohibited.

[190] A common example is a one-time payment for a tenant who has a pet, sometimes called a non-refundable pet deposit.¹⁶⁶ A landlord may anticipate that a pet may cause damage to a home or that there will be more wear and tear than they would expect from a tenant without a pet. The tenant should be responsible for the cost of repairing damage but it can be difficult to collect from a tenant at the end of a tenancy. A landlord cannot require a tenant to pay more than one month's rent as a security deposit, whether or not the tenant has a pet.¹⁶⁷ Instead, they may require a tenant with a pet to pay an additional amount up front, which gives the landlord some extra money that can be used for repairs if needed. Although it is sometimes called a non-refundable pet deposit it is not actually a deposit, as the landlord keeps it whether or not there is any damage to the home.

d. Fees, penalties, or fines for tenant's behaviour

[191] Some residential tenancy agreements require tenants to pay additional amounts if the tenant does not fulfill their responsibilities. Common examples include late payment fees, NSF fees for returned cheques or payments that cannot be completed due to insufficient funds, or fines for breaking rules in a

¹⁶⁵ The Committee recommended prohibiting these kinds of fees: *Achieving a Balance* at 150.

¹⁶⁶ Several reported RTDRS cases mention a tenant paying a one-time payment for a pet. For example, in *Re 22007020*, 2022 ABRTDRS 35, the tenant paid a security deposit equal to one month's rent plus a "non-refundable pet fee" of \$500. In *Re 24005842*, 2024 ABRTDRS 15, the tenant paid a security deposit equal to one month's rent plus a "pet deposit" of \$300. See also *Re 19004759*, 2019 ABRTDRS 15; *Re 2003458*, 2020 ABRTDRS 32; *Re 20001952*, 2020 ABRTDRS 34; *Re 22004594*, 2022 ABRTDRS 28.

¹⁶⁷ *Residential Tenancies Act*, s 43(1).

residential tenancy agreement. Chapter 7 discusses issues about these kinds of fees, fines, or penalties in more detail.

2. EXAMPLES WHERE TENANT PAYS LESS THAN STATED “RENT”

[192] The other kind of mismatch occurs when a tenant pays less than the stated rent. It often occurs with rental incentives, also called specials, promotions, or other terms.

[193] Landlords sometimes offer deals to attract or retain tenants. They may also offer a deal in exchange for something the landlord wants. A landlord who wants a tenant to stay at least a year might offer a deal if a tenant agrees to a one-year fixed term tenancy. Other times, a tenant negotiates with a landlord to get a deal. A rental incentive could be almost anything but two common ones can affect rent: discounts or free months of rent.

a. Monthly discounts

[194] If the incentive is a discount, the tenant pays less than the stated rent each month.

Example 2: A Discount

Min negotiated with her landlord to get a 10% discount on rent. The residential tenancy agreement says that rent is \$2,000 per month but Min receives a 10% discount if she pays the rent on time each month. The residential tenancy agreement includes this statement:

Rent:	\$2,000 per month
Rental incentive deducted from rent:	\$200
Net amount:	\$1,800

Rent must be paid on or before the first day of each and every month, otherwise the rental incentive will be forfeited for that month.

b. Free month

[195] If the incentive is a free month of rent, the tenant pays the stated rent most months but in certain months – often the first or the last month – pays nothing.

Example 3: Free month of rent

Rory's landlord offered free rent for the first month if Rory agreed to a one-year fixed term tenancy. Rory pays nothing in the first month and \$1,200 per month for the remaining 11 months. Over the 12 months of the tenancy, Rory pays a total of \$13,200, averaging to \$1,100 per month.

[196] Often a rental incentive is conditional. An agreement might say that the rental incentive applies only if the tenant pays rent on time every month or stays until the end of the fixed term. A rental incentive might also be for a limited time.

3. PROBLEMS IN PRACTICE

[197] The *Residential Tenancies Act* says almost nothing about extra charges and nothing about rental incentives.

[198] It can be difficult to figure out how some of the rules in the *Residential Tenancies Act* apply when "rent" is different than the amount the tenant actually pays.

[199] The *Residential Tenancies Act* includes remedies for non-payment of rent. Are the same remedies available if a tenant does not pay amounts that are not called rent? Consider Example 1 above. Imagine that Antonio pays \$1,700 every month for six months but does not pay the additional \$100 for parking. After six months, Antonio owes \$600 for parking. Can Antonio's landlord terminate the tenancy? Can Antonio's landlord apply to RTDRS for recovery of the \$600?

[200] Another problem is about security deposits. Section 43(1) of the *Residential Tenancies Act* says a security deposit cannot be more than "one month's rent" or more "than the rent that would be payable for one month ... if the rent were payable monthly."¹⁶⁸ In Example 2, the agreement says rent is \$2,000 but Min

¹⁶⁸ *Residential Tenancies Act*, s 43(1).

actually pays \$1,800 per month. Is the maximum security deposit \$2,000 or \$1,800?¹⁶⁹

[201] There could be questions about whether rules about rent increases apply to charges that are not called rent. Consider the following example:

Example 4: Amenity increase

Fatima rents an identical apartment across the hall from Antonio. When she moved in, she did not own a car and did not want a parking stall. The residential tenancy agreement includes this statement:

The tenant agrees to pay the following amount to the landlord each month:

Rent:	\$1,500
Utilities:	\$200
<hr/>	
Total:	\$1,700

[202] Three months after moving in, Fatima buys a car. The landlord has a parking space available and offers to make it available to Fatima if she pays an additional \$100 per month. Fatima begins paying the landlord a total of \$1,800 per month. Is this an increase that violates the *Residential Tenancies Act*?

[203] Similar issues can come up if a landlord requires a tenant to pay separately for something that was previously included in the rent. There were several posts in the Reddit data about a landlord adding new charges for utilities or informing tenants that they would have to pay for utilities that were previously included in the rent. Is it a rent increase?¹⁷⁰

¹⁶⁹ There is at least one example of a landlord collecting the larger amount. In *Re 21002380*, 2021 ABRTDRS 43, the agreement said rent was \$1,515 but with a rental incentive, the tenant actually paid \$1,325.62. The security deposit was \$1,515.

¹⁷⁰ There is at least one RTDRS case finding that this kind of change is effectively an increase in rent: *Re 24000158*, 2024 ABRTDRS 7. In its 1990 report, the Ministerial Advisory Committee on Residential Tenancies recommended a landlord should have to provide notice before removing or reducing an amenity included in rent, like the notice required for a rent increase. It wrote: "The Committee proposes that an additional clause be added to the Act preventing the landlord from removing any amenities that existed at the beginning of the tenancy without the same notice to the tenant as required for rental increases": *Achieving a Balance* at 66.

[204] There is one more question: Does it matter whether these extra charges are in the residential tenancy agreement itself or in separate agreements? Our consultation suggests that some landlords or tenants make agreements specifically about extra charges. For example, one participant mentioned a separate agreement about utilities. The definition of rent in the *Residential Tenancies Act* says rent is “consideration ... under a residential tenancy agreement.”¹⁷¹ If an additional charge is in a separate agreement, does that mean it is not rent? It would seem like an unfair technicality if putting the same terms on a different piece of paper produced different results.

ISSUE 18

How could legislation clarify the definition of rent?

C. How Does Rent Change?

[205] There are several specific issues about rent increases.

1. RESOLVING DISPUTES ABOUT RENT INCREASES

[206] While the *Residential Tenancies Act* has rules about rent increases, there is no clear process to resolve a dispute about a rent increase.

[207] Section 14 has rules about how often a landlord can increase rent and the required notice for a rent increase. Section 14(6) says “A notice of increase in rent that does not comply with or is not given in accordance with this section is void.”¹⁷² It does not, however, say what a tenant should do if they believe a rent increase does not comply with section 14.

[208] A similar problem can occur if a tenant believes a landlord is using a rent increase to force them to leave. While the *Residential Tenancies Act* does not say anything about the amount of rent or how much a landlord can raise rent, it is not entirely correct to say a landlord can increase rent by any amount. Courts have held that a landlord cannot raise the rent by an exorbitant amount to make the tenant end the tenancy.¹⁷³ It is sometimes called an economic eviction or

¹⁷¹ *Residential Tenancies Act*, s 1(1)(k).

¹⁷² *Residential Tenancies Act*, s 14(6).

¹⁷³ *Milner’s Aloha Mobile Home Park (1998) Ltd v Jenkins*, 2014 ABQB 229; *Boisselle v Maple Leaf Property Management Inc*, 2024 ABCJ 35.

constructive eviction. There are a handful of RTDRS cases applying this principle, finding a rent increase was actually intended to end a tenancy.¹⁷⁴

[209] It is unclear what a tenant should do if they believe a rent increase is actually an economic eviction. The *Residential Tenancies Act* has a list of applications tenants can make or remedies a court or RTDRS can grant.¹⁷⁵ None of them say that a court or RTDRS can review a rent increase or declare what the rent should be. The RTDRS application form requires a tenant to pick from a list of remedies, matching the ones in the *Residential Tenancies Act*.¹⁷⁶

[210] A tenant faces a difficult choice if they object to a rent increase but want to stay in the home. Without a clear process to review a rent increase, they have to decide whether to move out, pay the increase, or stay but refuse to pay the increase. The last option is especially risky. It is likely that the landlord will take the position that the tenant is not fulfilling their obligation to pay the rent. The landlord may try to terminate the tenancy. Disputes about rent increases sometimes end up in RTDRS as a landlord's application for unpaid rent, termination of tenancy, or both.¹⁷⁷

[211] It is very difficult for a tenant to predict whether they will succeed, especially if they claim that a rent increase is an economic eviction. There is no

¹⁷⁴ *Re 20001013*, 2020 ABRTDRS 40; *Re 23001188*, 2023 ABRTDRS 3; *Re 23013513*, 2024 ABRTDRS 6. See also Julia Wong, "Alberta's tenancy dispute board rules Edmonton man faced 'economic eviction'", *CBC News* (6 June 2023), online: <[cbc.ca/news/canada/edmonton/alberta-tenancy-dispute-board-economic-eviction-1.6866226](https://www.cbc.ca/news/canada/edmonton/alberta-tenancy-dispute-board-economic-eviction-1.6866226)> [perma.cc/RP6U-YCXT].

¹⁷⁵ *Residential Tenancies Act*, s 37(1):

37(1) If a landlord commits a breach of a residential tenancy agreement or contravenes this Act, the tenant may apply to a court for one or more of the following remedies:

- (a) recovery of damages resulting from the breach or contravention;
- (b) abatement of rent to the extent that the breach or contravention deprives the tenant of the benefit of the residential tenancy agreement;
- (c) compensation for the cost of performing the landlord's obligations;
- (d) termination of the tenancy by reason of the breach or contravention if in the opinion of the court the breach or contravention is of such significance that the tenancy should be terminated.

¹⁷⁶ The tenant's application form is available on the RTDRS website: Residential Tenancy Dispute Resolution Service (Alberta), "RTDRS - Forms and documents: Tenant's Application", online: <alberta.ca/rtdrs-forms-documents> [perma.cc/3UXR-Z2CL]. The form requires a tenant to pick from the following:

- Termination of the tenancy (*Residential Tenancies Act*, s 37(1)(d));
- Abatement (reduction) of rent (*Residential Tenancies Act*, s 37(1)(b));
- Damages (losses) for breach of tenancy agreement (*Residential Tenancies Act*, s 37(1)(a));
- Compensation for performing the landlord's obligation (*Residential Tenancies Act*, s 37(1)(c));
- Recovery of the security deposit.

"The list of remedies corresponds to those mentioned in *Residential Tenancies Act*, ss 37(1), 46(3).

¹⁷⁷ See eg *Re 22008798*, 2023 ABRTDRS 1; *Re 23001188*, 2023 ABRTDRS 3.

particular formula or rule to determine whether a rent increase is an economic eviction.¹⁷⁸ They must simply wait to see what a court or RTDRS decides.

[212] If a court or RTDRS finds the rent increase was valid, it can order a tenant to pay the rent they should have paid. If the dispute lasted for a long time, a tenant may suddenly find they owe a large amount to the landlord.

[213] The Ministerial Advisory Committee on Residential Tenancies considered this problem in its 1990 report but did not come up with a solution that would resolve these disputes before a tenant lost their home.¹⁷⁹

ISSUE 19

Should legislation include guidance about resolving disputes about rent increases?

2. NEGOTIATING RENT FOR A NEW FIXED TERM TENANCY

[214] The amount of notice a tenant must receive before a rent increase depends on whether they have a periodic or fixed term tenancy.

[215] A periodic tenancy is one with no end date. A landlord can increase rent during the tenancy, as long as it has been at least one year since the tenancy began or the last increase. The landlord must give a tenant written notice of a

¹⁷⁸ See Jonnette Watson Hamilton, “Constraining a Landlord’s Ability to Terminate a Residential Tenancy by Raising the Rent” (15 May 2015), online: ABLawg <ablawg.ca/2014/05/15/constraining-a-landlords-ability-to-terminate-a-residential-tenancy-by-raising-the-rent/> [perma.cc/7XEY-X6BE]. The blog post points out that there is uncertainty in applying a decision based on particular facts to other facts:

Singling out and tripling one mobile home park tenant’s rent for the sole purpose of evicting that tenant amounted to an illegitimate termination in this case, but what about a doubling of the rent? Or a fifty per cent increase? Is it the percentage increase that was most important here? Or is it the singling out of one tenant that was key in this case? What if there are no comparables with tenants in similar premises, as there was here? Does evidence of the market have to be introduced? Or is it the fact that termination of the residential tenancy was the only motive for increase in rent? What if termination is instead the primary or only an important motive? What if evidence of motive is lacking, as it probably will be in most cases?

In *Re 24005158*, 2024 ABRTDRS 14, a tenancy dispute officer suggested three factors a tribunal might consider to decide whether a rent increase is an economic eviction. They all depend on specific facts, some of which may be outside a tenant’s knowledge:

- Whether the relationship between the landlord and tenant, or other circumstances, show that the landlord has a motive to evict the tenant.
- Whether the rent increase is part of a broader program of rent increases the landlord is pursuing, or whether the tenant facing the rent increase is being singled out.
- The amount of the rent increase should be considered in the context of the rental rate for similar units in a similar location (particularly other similar units in the same building), and whether there is a rationale that could justify the amount of the rent increase, such as a change in the market or upgrades to the unit or building in question.

¹⁷⁹ The Committee considered several options to address a situation where a tenant objects to a rent increase. It recommended “that a tenant should have a remedy if the landlord evicts the tenant through a rent increase,” allowing the tenant to recover damages after losing a home: *Achieving a Balance* at 125–129.

rent increase approximately three months before it takes effect. The exact amount of notice depends on the type of periodic tenancy.¹⁸⁰

[216] A fixed term tenancy has an end date. A one-year term is common, although they can be for any length. Once the fixed term agreement expires, the landlord and tenant can negotiate a new agreement.

[217] If the landlord proposes to increase rent in the new agreement, there is no requirement to provide notice. A landlord could wait until the last day of the tenancy and then offer the tenant a renewal at a much higher rent. It can cause hardship for a tenant because they do not know if they will be able to afford to stay or if they should look for a new home.¹⁸¹ Fixed term tenancies are very common, so this issue can affect many people.

ISSUE 20

What rules should there be about providing notice of a rent increase when renewing a fixed term tenancy?

3. RENT INCREASES AFTER A NOTICE OF TERMINATION

[218] There is a specific gap about rent increases after a notice of termination.

[219] If a landlord terminates the tenancy for condo conversion or to make major renovations, they may not increase the rent after delivering the notice.¹⁸² But the legislation is silent on whether the rent can be increased after a notice to terminate is delivered for any other reason. In at least one case, the Provincial Court found a tenant had to pay an increased rent for the last month of their tenancy.¹⁸³

¹⁸⁰ *Residential Tenancies Act*, s 14(1).

¹⁸¹ See eg *Re 23006938*, 2023 ABRTDRS 18.

¹⁸² *Ministerial Regulation*, note 138, s 3(2):

Despite subsection (1), a landlord shall not increase the rent payable by a tenant under a residential tenancy agreement in respect of a periodic tenancy after the landlord has served a notice of termination on the tenant under section 12(2) of the Act or for the reason prescribed in section 2(2)(c)(ii) of this Regulation.

¹⁸³ *Merkel v Wallburger*, 2008 ABPC 264.

[220] It is difficult to see why these two reasons are different than a termination for any other reason.¹⁸⁴

ISSUE 21

What rules should there be about rent increases after a notice of termination?

D. When Is Rent Due?

[221] There is no clear rule about whether a landlord can require or accept prepaid rent.

[222] Sometimes a landlord might ask or a tenant might offer to pay rent for several months – or even an entire year – upfront. We found a few examples in news stories¹⁸⁵ and in case law.¹⁸⁶ There were also two posts in the Reddit data that mentioned a tenant prepaying rent. News stories and other anecdotal information mentions this issue affecting newcomers to Canada, which suggests discrimination may be involved.¹⁸⁷

¹⁸⁴ 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/J8MU-TP8F]:

[I]t is difficult to understand the difference between these two special circumstances and another prescribed reason which allows a periodic tenancy to be terminated where a landlord intends to use or rent the residential premises for a non-residential purpose.

¹⁸⁵ See eg “Ukrainian newcomer warns others after nearly losing \$1K deposit on apartment” *CBC News* (22 November 2023), online: <cbc.ca/news/canada/calgary/security-deposit-calgary-rent-1.6660292> [perma.cc/6QM3-ENV5]. The story was about a couple who applied to rent an apartment. The landlord approved their application but according to the couple, “the company wanted several months of rent in advance.” The couple could not afford to pay. See also 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> [perma.cc/HG2A-3NY7].

¹⁸⁶ See eg *Singh v RJB Development Inc.*, 2016 ABPC 305 at para 18; *Re 21008126*, 2021 ABRTDRS 37; *Re 22000341*, 2022 ABRTDRS 7.

¹⁸⁷ See eg “Ukrainian newcomer warns others after nearly losing \$1K deposit on apartment” *CBC News* (22 November 2023), online: <cbc.ca/news/canada/calgary/security-deposit-calgary-rent-1.6660292> [perma.cc/6QM3-ENV5]; 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> [perma.cc/HG2A-3NY7]. See also Canadian Centre for Housing Rights, “Sorry, it’s rented.”: *Measuring Discrimination Against Newcomers in Toronto’s Rental Housing Market* (Canadian Centre for Housing Rights, 2022) at 43, online: <housingrightscanada.com/wp-content/uploads/2022/11/CCHR-Sorry-its-rented-Discrimination-Audit-2022.pdf> [perma.cc/8YHW-S9MZ]:

The barriers to accessing rental housing [for newcomers] are compounded by the common practice of housing providers imposing large deposits and advance payments of rent, which they tell applicants they require because they do not have a Canadian guarantor, credit, or employment history.

Continued

[223] There might be an argument that prepaid rent is a kind of security deposit.¹⁸⁸ It is a difficult argument to make, however, as the only section in the *Residential Tenancies Act* that mentions prepaid rent seems to imply security deposits and prepaid rent are different. Sections 60(3) and 60(4) read:¹⁸⁹

60(3) A justice who convicts a landlord of contravening section 46(2) or (6) may, on the application of a tenant who is entitled to all or part of a security deposit, order the landlord to pay to the tenant the whole or part of the security deposit together with interest calculated under section 45.

(4) Where a landlord is convicted of contravening a provision referred to in subsection (1) or (1.1) and the justice considers that the landlord has wrongfully withheld prepaid rent paid by the tenant, the justice may order the landlord to pay all or part of that prepaid rent to the tenant.

[224] Section 60(4) was added when the legislation was replaced in 2004. It seems it was added to address a specific problem.¹⁹⁰ Unfortunately, the legislature left other questions about prepaid rent unanswered.

[225] Case law does not fill the gap. There are no cases directly on point. There are at least three cases that mention a tenant giving a landlord prepaid rent in addition to a security deposit.¹⁹¹ If prepaid rent is a security deposit, one might expect a court or RTDRS to point out a possible violation of section 43, which says a security deposit may not be more than one month's rent.¹⁹² Decision makers in the reported cases did not mention it, suggesting they saw no problem with prepaid rent.

It would be discrimination contrary to the *Alberta Human Rights Act* if a landlord only asks some tenants to prepay rent and the tenant's place of origin is a factor in the decision.

¹⁸⁸ See *Residential Tenancies Act*, s 1(1)(n):

1(1)(n) "security deposit" means any money, property or right paid or given by a tenant of residential premises to a landlord

(i) to be held by or for the landlord as security for the performance of an obligation or the payment of a liability by the tenant ...

¹⁸⁹ *Residential Tenancies Act*, s 60(3), (4).

¹⁹⁰ The member who sponsored the bill explained the problem as follows:

Currently if a landlord is successfully prosecuted for violating the act, the tenant needs to launch a civil action to recover any prepaid rent. It is proposed that if a tenant prosecutes successfully, the courts be allowed to award refunds of prepaid rent to the tenant. This will save time for both the tenant and the courts.

Alberta, Legislative Assembly, *Hansard*, 25-4 (4 March 2004) at 341 (Hon Gordon Graydon).

¹⁹¹ See eg *Singh v RJB Development Inc.*, 2016 ABPC 305 at para 18; *Re 21008126*, 2021 ABRTDRS 37; *Re 25005189*, 2025 ABRTDRS 8.

¹⁹² *Residential Tenancies Act*, s 43.

[226] It would be helpful to have clear rules about prepaid rent. There are many unanswered questions that could be answered in legislation. May a landlord require a tenant to prepay rent? May a landlord accept prepaid rent if a tenant offers it?¹⁹³ How much prepaid rent can a landlord require or accept? Does all the prepaid rent belong to the landlord as soon as the tenant pays it or does each month's rent belong to the landlord only when that month arrives? In the meantime, what should a landlord do with prepaid rent that does not yet belong to them? Do they have to keep it in trust? Should they pay interest on it? What happens if a tenancy ends earlier than expected? Does a landlord have to return prepaid rent for upcoming months?

ISSUE 22

What rules should there be about requesting, paying, or accepting prepaid rent?

E. How Is Rent Paid?

[227] The *Residential Tenancies Act* does not say how a tenant can or should pay their rent. In 2005, when the current version of the *Residential Tenancies Act* was adopted, most tenants paid their rent with a physical form of payment, like cash, cheques, or money orders. In the last 20 years, however, other payment methods have become common. Many landlords or tenants prefer to use electronic payments, like email money transfer or pre-authorized debit. Some landlords accept payment by debit or credit card.

[228] New payment methods have introduced some new problems. Some electronic payment methods involve delays or multiple steps. In our research and consultation, we found a few examples of disagreements about whether rent

¹⁹³ A news article from Ontario shows some landlords there believe they cannot require a tenant to prepay rent but may accept it if the tenant offers it. The article also shows a problem with this kind of rule. A tenant might feel they have to offer to prepay. It is hard to ensure that an offer to prepay is truly voluntary: 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/HG2A-3NY7]:

[S]ome landlords and realtors will have a conversation where landlords will suggest that if a prospective tenant offers multiple months' rent up front, they'll be accepted.

"The landlords might say that and then put in the lease agreement that it was offered [by the tenant], thinking that this protects them," said Page [a paralegal], whose clients are 95 per cent landlords.

In fact, Ontario's *Residential Tenancies Act* says "[t]he only security deposit that a landlord may collect is a rent deposit ..." Ontario Act, note 91, s 105(1) [emphasis added]. A rent deposit cannot be more than one month's rent: Ontario Act, note 91, s 106(2).

had been paid or paid on time.¹⁹⁴ Is the rent paid when the tenant completes their part of the transaction or only when the landlord receives the money? An electronic funds transfer can take a few days. If the tenant sends the rent before it is due but the landlord receives it late, is the rent paid on time? Some people allow email money transfers to be deposited directly into their account but if a person does not, they have to review and accept a transfer before it is deposited. If a tenant sends an email money transfer but the landlord does not accept it, has the rent been paid?

[229] We also heard about landlords requiring tenants to use certain payment methods.¹⁹⁵ There are many reasons a landlord might prefer one method over others. They might not want the hassle and risk of dealing with cash, or delays and uncertainty of cheques. They might prefer a method like preauthorized debit, which lets a landlord withdraw money directly from a tenant's bank account. A landlord with many tenants may want to streamline administration by having all tenants use the same payment method.

[230] Some tenants also have preferences or concerns about payment methods. Among other things, we heard about problems with post-dated cheques and concerns about preauthorized debit. Preauthorized debit gives a landlord control over the amount and timing of withdrawals. One participant was concerned a landlord could use preauthorized debit to withdraw more than the tenant expected, like a fee that the tenant did not know about.

[231] Some residential tenancy agreements have terms about payment methods, requiring a tenant to pay in a particular way. There is nothing in the *Residential Tenancies Act* to prohibit or limit these kinds of terms. We also heard about other ways a landlord can encourage or pressure a tenant to use a certain payment method, like charging an extra fee if the tenant pays in another way.

[232] Some other Canadian jurisdictions have rules about payment methods.¹⁹⁶

¹⁹⁴ There were several examples in the Reddit data. See also *Re 21004801*, 2021 ABRTDRS 21. A tenant claimed she sent an electronic transfer to the landlord and the landlord accepted it. The landlord said the tenant cancelled the transfer before the landlord could deposit it.

¹⁹⁵ See eg *Re 22007223*, 2022 ABRTDRS 25.

¹⁹⁶ See eg Ontario Act, note 91, s 108:

108 Neither a landlord nor a tenancy agreement shall require a tenant or prospective tenant to,

- (a) provide post-dated cheques or other negotiable instruments for payment of rent; or
- (b) permit automatic debiting of the tenant's or prospective tenant's account at a financial institution, automatic charging of a credit card or any other form of automatic payment for the payment of rent.

ISSUE 23

Should legislation include any rules about how rent is, can be, or should be paid?

CHAPTER 6

Utilities

A. Who Pays for Utilities and How?

[233] Utilities can be a source of conflict between landlords and tenants. Most issues are about the cost of utilities or paying for utilities.

[234] The *Residential Tenancies Act* does not mention utilities at all. It has no guidance about who should pay for utilities or how the cost should be calculated.¹⁹⁷ Without clear rules in the legislation, it is hard for landlords and tenants to decide what is fair or resolve their own conflicts.

1. EXAMPLES OF UTILITY AGREEMENTS

[235] Utilities can mean different things. Different homes may have different services, depending on the type of home, location, providers, and other factors.

[236] Every rental home must have electricity, hot and cold running water, a connection to a sewage system, and heat. These requirements are in the *Minimum Housing and Health Standards*, which are minimum standards for rental housing adopted under the *Public Health Act*.¹⁹⁸ There are different ways to meet the requirements. For example, a home could be heated by a boiler, a furnace, baseboard heaters, heat pump, or another system. The heating system might use natural gas, electricity, or another fuel. Urban homes are usually connected to municipal water and sewage systems. Rural homes may have wells and private sewage systems. The *Minimum Housing and Health Standards* do not say who must pay for these services.

[237] There may be other services that are mandatory and have a cost. For example, in some municipalities there are fees for garbage collection, recycling, and other kinds of waste disposal.

¹⁹⁷ In *Re 19004062*, 2019 ABRTDRS 25, a tenancy dispute officer pointed out the lack of legislated rules:

Furthermore, there are no explicit rules governing utility billing in situations such as these under the *Residential Tenancies Act*. Because there is no obvious legislative provisions governing these arrangements, I can only look to the terms of the contract agreed upon between the parties.

¹⁹⁸ See *Public Health Act*, RSA 2000, c P-37, ss 1(1)(ii)(viii), 66(1)(ff); *Housing Regulation*, Alta Reg 173/199; *Minimum Housing and Health Standards*, MO 57/2012, online: <open.alberta.ca/dataset/2eac3fa0-43c5-4e4d-9a25-fd0a7bf96293/resource/4d3c2c51-43f1-4d85-b47c-cf92d1cad9c5/download/standards-housing-minimum.pdf> [perma.cc/S5XV-3QEC] [*Minimum Housing and Health Standards*].

[238] There are also optional services that landlords might offer or tenants might want in their home, like phone, television, or internet services.

[239] Costs and methods of calculating costs for utilities vary. Some services have a fixed cost. Others depend on consumption.

[240] Without any rules in the legislation, landlords and tenants can make their own agreements. There are many different approaches or arrangements. Often they depend on the kind of service and how it is charged. The following list describes some possible arrangements. It does not cover all possibilities but shows that there is a wide range.

a. Utilities included in the rent

[241] Certain utilities may be included in the rent. The landlord deals with the utility providers.¹⁹⁹ The bills come to the landlord and the landlord is responsible for paying them. The tenant does not pay anything extra for utilities.

b. Fixed charge for utilities

[242] A landlord may charge tenants a fixed amount for certain utilities. The landlord deals with the utility providers and is responsible for paying the bills. The tenant pays the landlord a fixed amount every month. The fixed amount stays the same, even if the landlord's actual costs go up or down.²⁰⁰

c. Tenant pays actual cost for utilities to landlord

[243] A landlord may pay for certain utilities but require a tenant to reimburse them. The tenant may be responsible for the entire cost or only for a portion.²⁰¹ Usually the landlord deals with the utility providers and is responsible for paying the bills. The landlord tells the tenant the amount of each bill and collects that amount from the tenant.

¹⁹⁹ See eg *Re 20001376*, 2020 ABRTDRS 15. At the start of the tenancy, the tenants paid \$2,850 per month for rent, which included "utilities, cable and internet".

²⁰⁰ See eg *Re 22003688*, 2022 ABRTDRS 29; *Re 21009978*, 2022 ABRTDRS 36. In *Re 22003688* the tenant paid \$480 per month for rent plus \$80 for utilities. In *Re 21009978* the tenant paid \$800 per month for rent plus \$150 for utilities.

²⁰¹ See eg *Re 21001005*, 2021 ABRTDRS 8. The tenant paid \$650 per month for rent plus one quarter of utilities.

d. Minimum charge up to actual cost

[244] We found a few examples of an arrangement that blends a fixed cost and reimbursement of the actual cost. Usually the landlord deals with the utility providers and is responsible for paying the bills. The tenant pays at least a fixed amount every month. If the actual cost is higher than the fixed amount, the landlord requires the tenant to pay the difference.

e. Tenant arranges and pays for utilities

[245] A tenant may be responsible for certain utilities. The tenant deals with the utility provider. In other words, the tenant puts the utilities in their name. The bills come to the tenant and the tenant is responsible for paying them.²⁰²

f. Tenants split the cost of utilities

[246] Sometimes there is an arrangement for two or more tenants to split the cost of certain utilities. It tends to happen if two or more rental homes share a utility account or meter. A common example is a detached house divided into suites, like a main floor suite and a basement suite.

[247] The arrangement may be that one tenant pays the utility provider. That tenant then collects the other tenant's share directly from them.

Example 5: Splitting Utilities

Dani and Kris rent separate suites in a house from the same landlord. Dani rents the main floor and Kris rents the basement. When Dani moved in, the landlord explained that the cost of electricity is split 60/40. The landlord told Dani to put the electricity in their name. Every month, Dani pays the bill. Kris is supposed to pay 40% of the total to Dani.

²⁰² See eg *Re 19004432*, 2019 ABRTDRS 26; *Re 22006708*, 2022 ABRTDRS 41. In both cases there were residential tenancy agreements saying the tenant was responsible for paying utilities.

g. Are new rules governing agreements about utilities needed?

[248] It is common to see a mix of arrangements, with different ones for different utilities. For example, a residential tenancy agreement might say heat and water are included in the rent but a tenant is responsible to arrange and pay for electricity.

[249] There are benefits to allowing landlords and tenants to make their own agreements. It allows them to choose an approach suited to their circumstances. In a large apartment building with a boiler system heating the entire building, it may make sense to include heat in the rent. In a single family home, it may make sense to have the tenant arrange and pay for utilities that are billed based on consumption.

2. EXAMPLES OF CONFLICTS ABOUT UTILITIES

[250] There are also downsides to any arrangement. We found many examples of conflict between landlords and tenants about utilities and sometimes between different tenants. Different kinds of arrangements tend to produce different kinds of conflicts.

a. A tenant's non-payment of utilities to a landlord

[251] A lot of conflicts are about non-payment. If a tenant is supposed to pay for utilities but does not, it can mean financial losses for a landlord. A conflict can be especially messy if there is poor communication or the tenant is surprised by the amount of the bill. In one RTDRS case, for example, the residential tenancy agreement required the tenants to pay for electricity and garbage removal. The bills were sent to the landlord. The landlord did not ask the tenants to reimburse him for more than a year. Eventually the landlord asked the tenants to pay all the costs for electricity and garbage removal from the start of the tenancy. By then, the total was over \$4,000. RTDRS found the tenant was responsible to pay although "the Landlord's tardy approach to bill collection contributed in a small way to the genesis of this dispute."²⁰³

[252] The *Residential Tenancies Act* does not specifically mention whether a court or RTDRS can order a tenant to pay amounts owing for utilities. There is,

²⁰³ *Re 24000158*, 2024 ABRTDRS 7.

however, a general power that allows a landlord to seek damages.²⁰⁴ There are many examples of cases where RTDRS has ordered a tenant to pay damages to a landlord if the landlord paid for utilities that the tenant was responsible to pay.²⁰⁵

b. A tenant's non-payment of utilities to another tenant

[253] Splitting utilities can create some especially tricky conflicts.

[254] Non-payment can be an issue between tenants but they have fewer options to resolve it. In Example 5, above, imagine that Kris does not pay Dani. The *Residential Tenancies Act* requires a tenant to pay the rent when due but has no rules about if and when one tenant must pay another for utilities. RTDRS could not make an order requiring Kris to pay Dani.²⁰⁶ It is unclear whether the landlord has any responsibility or power to get involved or could take any action against Kris.²⁰⁷ Dani's only option may be to go to court.

c. A landlord's non-payment of utilities

[255] A landlord's non-payment can also affect a tenant. There were a couple of posts in the Reddit data where tenants said electricity in their home had been

²⁰⁴ *Residential Tenancies Act*, s 26(1). Compare section 26(1)(a), which says a landlord may apply for recovery of arrears of rent, and section 26(1)(d), which says a landlord may apply for recovery of damages.

²⁰⁵ See eg *Re 19004432*, 2019 ABRTDRS 26; *Re 21004801*, 2021 ABRTDRS 21; *Re 21008126*, 2021 ABRTDRS 37; *Re 22006708*, 2022 ABRTDRS 41. There is also at least one case where a tenancy dispute officer did not award any amount to a landlord for unpaid utilities, as the utility bills were in the tenant's name and the landlord had not paid them: *Re 22003946*, 2022 ABRTDRS 22.

²⁰⁶ See eg *Re 19004062*, 2019 ABRTDRS 25. The residential tenancy agreement said the tenants, who rented the main floor of a house, were responsible for 60% of utilities. The downstairs tenants were responsible for 40%. The landlord applied to RTDRS for an order requiring the main floor tenants to pay unpaid utilities. The main floor tenants argued the utilities were unreasonably high due to consumption by the downstairs tenant. The tenancy dispute officer ordered the main floor tenants to pay the landlord for utilities and pointed out that RTDRS cannot resolve disputes between different tenants:

The jurisdiction of the RTDRS is limited to deciding cases between Landlords and Tenants. There is no mechanism, as far as I am aware, under the *Residential Tenancies Act* or its regulations that would permit an RTDRS application to be filed by one tenant against another tenant, and therefore there would similarly be no mechanism to permit me to hold the basement tenants liable.

²⁰⁷ There is at least one RTDRS decision saying that it should not be a tenant's responsibility to manage utilities or collect payments. In *Re 21009379*, 2022 ABRTDRS 20, upstairs tenants were responsible for 60% of utilities. The downstairs tenant was responsible for 40%. The landlord said they explained before making the residential tenancy agreement that the upstairs tenants they must put the utilities in their name and collect the downstairs tenant's share. The upstairs tenants claimed they spent five hours a month "chasing the downstairs tenant for their portion of the utilities." The tenancy dispute officer wrote:

While it is most efficient to have tenants work together in the division of utilities, I have to consider that it should not be the Tenants' responsibility to manage utilities, chase after the downstairs tenant if there was no payment, and recalculate the breakdown of utilities at a per diem rate when a new downstairs tenant moves in mid-month. The collection of payments for utilities should fall upon the Landlord.

limited or cut off because the landlord, who was responsible for paying for the electricity provider, had not done so.

d. Conflicts about consumption of utilities

[256] There are also conflicts about consumption. One type of conflict tends to come up when utilities are included in rent or a tenant pays a fixed amount, but the landlord's actual cost is based on consumption. If the tenant's consumption is higher than expected, the landlord may lose money.²⁰⁸ In the Reddit data we saw some examples of landlords concerned about a tenant's consumption and sometimes trying to limit it. Landlords concerned about utility consumption might try to limit things that affect a tenant's life at home, like maximum settings for heat or hot water, the length of showers, or how often the tenant does laundry.

[257] Another type of conflict about consumption can come up if a tenant is responsible for paying utilities. A landlord's choices can affect a tenant's costs. For example, it costs more to heat a poorly insulated house or one with an inefficient furnace. A tenant cannot make major changes to a rental home to improve energy efficiency. If the tenant pays for utilities, the landlord has no incentive to make improvements that would bring costs down.²⁰⁹ Other situations that may seem unfair to a tenant include paying for utilities after they have moved out of a home or paying more for utilities when a landlord does maintenance or repairs in the home.²¹⁰

[258] There can also be conflicts about consumption between tenants if one tenant believes the other uses a disproportionate share of utilities.²¹¹

²⁰⁸ See eg *Re 22009688*, 2023 ABRTDRS 2. The landlords were responsible for paying utilities. They unsuccessfully sought damages, claiming the tenants' use was excessive.

²⁰⁹ See eg *Re 22003039*, 2022 ABRTDRS 19; *Re 24005842*, 2024 ABRTDRS 15. In *Re 22003039*, 2022 ABRTDRS 19, the tenants unsuccessfully claimed abatement of rent because of high heating costs, which they blamed on poor insulation and drafty windows. In *Re 24005842*, 2024 ABRTDRS 15, a tenant claimed her utility bills had increased due to windows that did not seal properly. An Alberta Health Services inspection confirmed that the windows did not comply with the *Minimum Housing and Health Standards*. The tenancy dispute officer found "it reasonable to conclude that, over the span of two years or more, the Tenant's utility bills would have increased due to various drafts and leaks in the rental premises" and awarded the tenant \$2,000 in damages. See also *Re 20002060*, 2020 ABRTDRS 19.

²¹⁰ See eg *Re 19006111*, 2019 ABRTDRS 29. After a flood, the landlord hired contractors who set up dehumidifiers. The tenants' utility bills increased approximately \$180 that month.

²¹¹ See eg *Re 19004062*, 2019 ABRTDRS 25; *Re 22000341*, 2022 ABRTDRS 7.

B. Could Guidance in Legislation Help?

[259] Some of these disputes might be avoided if legislation had some guidance about payment of utilities. A one-size-fits-all approach is probably impractical, as different arrangements are suited to different circumstances. It might be helpful, however, to have some default rules or limits.

[260] It would also be helpful to have a clear process for resolving disputes about utilities.

ISSUE 24

Should there be rules in legislation about utilities, agreements for utilities, or how utilities are to be paid?

CHAPTER 7

Fees and Penalties

A. What Fees Should a Tenant Pay to a Landlord?

[261] Some landlords charge various fees in addition to rent.²¹² Some common ones are application fees, pet fees, late payment fees, NSF fees for returned cheques or payments that cannot be completed due to insufficient funds, and lease break fees. We also heard about others including cleaning fees, fees for maintenance calls, fees for pest control, and vaguely named ones like administration fees.

[262] Some fees, like pet fees, are charges for extra amenities or privileges. Other fees are a consequence for breaking an obligation. Late payment fees are probably the most common example but a landlord might charge a fee for almost any kind of behaviour they want to discourage. Examples that came up in our consultation and research included fees for making excessive noise that disturbed the neighbours, for making unnecessary maintenance requests, and for not following instructions to prepare for pest treatment.²¹³

[263] The *Residential Tenancies Act* does not address fees in a satisfactory way. There is no definition of fees. The definition of rent implies that anything a tenant pays a landlord other than a security deposit is rent. Nonetheless, the *Residential Tenancies Act* mentions three kinds of fees: a fee required at the beginning of the tenancy in addition to a security deposit, which is implicitly permitted;²¹⁴ a fee to consent to an assignment or sublease, which is prohibited;²¹⁵ and late payment fees, which the Minister may limit in regulations.²¹⁶

²¹² It is not a new phenomenon. In 1990, the Ministerial Advisory Committee on Residential Tenancies mentioned hearing about various fees charged in addition to rent: *Achieving a Balance* at 148–150.

²¹³ There are also examples in RTDRS cases. In *Re 21003761*, 2021 ABRTDRS 16, there was evidence that the landlord charged \$160 to any tenant who did not prepare for pest treatment.

²¹⁴ *Residential Tenancies Act*, s 1(3)(a) [emphasis added]:

1(3) ... the tenant is considered to have taken possession of the residential premises when:
(a) The tenant has paid the required security deposit and fees, if any ...

²¹⁵ *Residential Tenancies Act*, s 22(6):

22(6) A landlord shall not charge a fee or other consideration for giving consent to an assignment or sublease.

²¹⁶ *Residential Tenancies Act*, ss 70(1)(j), (j.1), (j.2).

[264] Other jurisdictions have legislation that is much more specific about fees.²¹⁷ Some prohibit application fees.²¹⁸ Some prohibit late payment fees while others have limits on them.²¹⁹ Some have rules about other kinds of fees, like fees for guests, move-in or move-out fees, or fees for subletting or assigning a residential tenancy agreement.²²⁰

[265] It might be helpful to have clear rules in the legislation so landlords and tenants would have more guidance about fees.

ISSUE 25

How could legislation clarify if and when landlords may charge fees in addition to rent?

B. What Are Unenforceable Fees or Penalties?

[266] There are certain kinds of fees or penalties that courts or tribunals almost always find to be unenforceable: late payment fees, lease break fees, and clawbacks of rental incentives.

[267] There is a common law principle about contracts that include consequences for a breach of the contract. A court will usually enforce a consequence if it is a genuine pre-estimate of damages. If the consequence is disproportionate, however, the court may find it is a penalty and decline to enforce it.²²¹ Courts and RTDRS have often relied on this principle, declining to enforce late payment fees, lease break fees, or clawbacks of rental incentives. Nonetheless, these consequences appear in many residential tenancy agreements.

²¹⁷ See eg *Residential Tenancy Regulation*, BC Reg 477/2003, ss 5-7.

²¹⁸ See eg BC Act, note 66, s 15; *Residential Tenancies Act, 2006*, SS 2006, c R-22.0001, s 23; *The Residential Tenancies Act*, CCSM c R119, s 14(2).

²¹⁹ See Shaun Fluker et al, “Need for Law Reform: Residential Tenancies and Late Fees” (30 April 2025), online: ABLawg <ablawg.ca/2025/04/30/need-for-law-reform-residential-tenancies-and-late-fees/> [perma.cc/W84Q-33J5].

²²⁰ See eg *Residential Tenancy Regulation*, BC Reg 477/2003, ss 5-7; *The Residential Tenancies Regulations, 2007*, RRS c R-22.0001 Reg 1, s 8.

²²¹ See *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd*, [1914] AC 79 (HL (Eng)).

1. LATE PAYMENT FEES

[268] Many landlords charge late payment fees if a tenant pays rent late. Written leases often include terms about late payment fees. The amount of the fee and the method of calculating it varies.

[269] There is no legislated limit on late payment fees. Section 70 of the *Residential Tenancies Act* gives the Minister responsible for the Act powers to limit or prohibit late fees.²²² The Minister did so for a short time during the COVID-19 pandemic but has not exercised the power before or since.²²³ At the time of writing, there is no legislated limit on late fees.

[270] While there is no legislated limit, there is an abundance of case law. Courts and RTDRS often find that late fees are a penalty, rather than a genuine pre-estimate of damage. They are therefore unenforceable.²²⁴ In our research, we have not found any reported Alberta cases where a court or tribunal made an order requiring a tenant to pay a late payment fee to a landlord.

2. LEASE BREAK FEES

[271] Some landlords charge a lease break fee to a tenant who moves out before the end of a fixed term tenancy. In other words, the tenant repudiates the tenancy.

²²² *Residential Tenancies Act*, ss 70(1)(j), (j.1), (j.2):

70(1) The Minister may make regulations

...

(j) respecting the circumstances under which landlords may charge a fee or penalty for late payments of rent by tenants, and prescribing the maximum amounts of such fees or penalties or the manner in which they are calculated;

(j.1) respecting prohibitions against charging fees or penalties for late payments of rent or non-payment of rent;

(j.2) respecting the voiding of provisions in residential tenancy agreements in respect of the imposition or charging of late fees or penalties or the enforcement or collection of late fees or penalties.

²²³ *Late Payment Fees and Penalties Regulation*, Alta Reg 55/2020. The prohibition applied from 1 April 2020 to 30 June 2020.

²²⁴ See eg *Cracknell v Jeffrey*, 2001 ABPC 11; *City of Edmonton Non-Profit Housing Corporation v Smuda*, 2015 ABQB 285 at paras 49-52; *Re 19007636*, 2020 ABRTDRS 1; *Re 21004490*, 2022 ABRTDRS 6; *Re 21011957*, 2022 ABRTDRS 10. Several blog posts discuss other examples: Shaun Fluker et al, "Need for Law Reform: Residential Tenancies and Late Fees" (30 April 2025), online: ABLawg <ablawg.ca/2025/04/30/need-for-law-reform-residential-tenancies-and-late-fees/> [perma.cc/W84Q-33J5]; Jonnette Watson Hamilton, "Are Landlords' Late Payment Fees Enforceable?" (5 February 2020), online: ABLawg <ablawg.ca/2020/02/05/are-landlords-late-payment-fees-enforceable/> [perma.cc/R7VR-AURC]; Jonnette Watson Hamilton, "When are Late Payment of Rent Charges in Residential Tenancies Unenforceable?" (10 May 2017), online: ABLawg: <ablawg.ca/2017/05/10/when-are-late-payment-of-rent-charges-in-residential-tenancies-unenforceable/> [perma.cc/46K5-5U7L].

[272] The *Residential Tenancies Act* spells out the consequences for repudiating a tenancy, albeit not very clearly.²²⁵ A landlord has a choice to accept the repudiation or not. If they accept the repudiation, they can recover damages.²²⁶ Damages would usually be equal to the rent the tenant would have paid if they had continued the tenancy. If they do not accept the repudiation, the tenancy continues and the tenant remains responsible for the rent.²²⁷ In either case, the landlord must try to mitigate damages by renting the home to another tenant.²²⁸ If the tenancy is a fixed term tenancy the consequence is effectively the same whether the landlord accepts the repudiation or not: the tenant is responsible to pay rent to the end of the fixed term, less what a new tenant pays.

[273] Some landlords put an additional consequence in their residential tenancy agreements, in the form of a lease break fee. A typical example was reproduced in a 2020 RTDRS case:²²⁹

Breach and Termination: In the event that the Tenant vacates the premises before the end of the term, the Tenant will be charged a re-rental fee of \$2800 plus the cost of advertising, and will also be responsible for paying the rent until the end of the Residential Tenancy Agreement term, or until a suitable new tenant is found to occupy the premises.

[274] With a lease break fee, the consequence for ending a tenancy early may be more severe than the legislation contemplates. In some cases, it might cost less for a tenant to continue the tenancy until the end of the term.

[275] Courts and tribunals almost always find these fees are unenforceable.²³⁰ Nonetheless, they seem to be common. In the Reddit data, there were seven examples of tenants saying the landlord was demanding a lease break fee.

3. CLAWBACKS OF RENTAL INCENTIVES

[276] As discussed above, rental incentives are often conditional. Agreements with rental incentives often include terms saying that the incentive will be cancelled or forfeited if the tenant pays rent late, moves out before the end of a

²²⁵ Others have made this observation before: see *Achieving a Balance* at 95–96.

²²⁶ *Residential Tenancies Act*, s 27(3).

²²⁷ *Residential Tenancies Act*, s 27(7).

²²⁸ *Residential Tenancies Act*, s 27(4), (5).

²²⁹ *Re 20003763*, 2020 ABRTDRS 28.

²³⁰ See eg *Boardwalk Reit Properties Holdings (Alberta) Ltd. v Tuke*, 2007 ABPC 78; *City of Edmonton Non-Profit Housing Corporation v Smuda*, 2015 ABQB 285 at paras 49-52; *Re 20003763*, 2020 ABRTDRS 28; *Re 20003928*, 2020 ABRTDRS 29.

fixed term tenancy, or violates some other condition. Sometimes agreements say the tenant must pay the landlord the difference between the stated rent and the rent they actually paid.²³¹

[277] Courts and RTDRS have found that provisions to claw back rental incentives are unenforceable as they are penalties, not a genuine pre-estimate of damages.²³²

4. THE PROBLEM

[278] This rift between case law and residential tenancy agreements illustrates some of the problems with rules that are not in legislation.

[279] It is difficult for landlords or tenants to find rules that are only in case law or keep up with developments in case law. In our early consultation, landlords and tenants said that rules about late payment fees are difficult to find and understand. As we discussed in the first report in this series, few people get help from a lawyer or legal professional to deal with residential tenancy issues.²³³ It is helpful when they can find the rules themselves. People with legal training are used to looking for rules in case law but most people – including most landlords and tenants – are not. Even if a landlord or tenant finds relevant cases or public legal information summarizing case law, they will find vague descriptions of when fees are unenforceable, using words like “penalty,” “unreasonable,” or “unjustifiable.”²³⁴ They will not find an amount or formula that lets them calculate whether a fee will be allowed.

²³¹ See eg *Re 19003421*, 2019 ABRTDRS 4; *Re 1863512*, 2019 ABRTDRS 6.

²³² See eg *Dorland Property Management v Hood*, 2000 ABPC 165; *Boardwalk Reit Holdings (Alberta) Ltd. v Tuke*, 2007 ABPC 78; *Re 1863512*, 2019 ABRTDRS 6; *Re 20003928*, 2020 ABRTDRS 29.

²³³ *Residential Tenancies Act: General Issues* at paras 193-195, 224-227.

²³⁴ In a 2017 blog post, Jonnette Watson Hamilton reviewed information about late fees in several guides intended to help people understand Alberta’s residential tenancy laws. She found the information about late fees was generally unhelpful and sometimes misleading: Jonnette Watson Hamilton, “When are Late Payment of Rent Charges in Residential Tenancies Unenforceable?” (10 May 2017), online: ABLawg: <ablawg.ca/2017/05/10/when-are-late-payment-of-rent-charges-in-residential-tenancies-unenforceable/> [perma.cc/46K5-5U7L]. The guides she reviewed are no longer available but more recent guides have the same shortcomings. See eg Service Alberta and Red Tape Reduction, *RTA handbook for landlords and tenants: Residential Tenancies Act and Regulations* (2025) at 35, online: <open.alberta.ca/dataset/b20cb59c-1727-42e5-a1e6-bc253f2c904f/resource/3a353c8b-d656-49e7-aa11-4a3d9595002d/download/sartr-rt-handbook-2025-06.pdf> [perma.cc/5R8Z-8H6U]:

Some residential tenancy agreements allow for a late payment of rent fees. Based on precedent set by Alberta case law, this fee must reflect the actual loss suffered by the landlord otherwise the RTDRS or the courts may deem it to be a penalty and refuse to award it. For example, a bank might charge a landlord additional interest if a landlord is unable to make a mortgage payment because the tenant did not pay the rent on time. Therefore, a late payment fee charged to the tenant to cover the interest charged to the landlord by the bank could be a justifiable amount.

[280] One problem is that people may not know they should comply with rules in case law. Some landlords use residential tenancy agreements with terms that are unenforceable, suggesting they did not check whether the agreement follows rules in case law or did not update the agreement to reflect changes in case law.

[281] A court or tribunal might find a term in a residential tenancy agreement to be unenforceable but later cases show the same term still in use, sometimes in the exact same words. For example, in a 2007 Provincial Court case, a landlord claimed a lease break fee. The case reproduced the term in the residential tenancy agreement that the landlord relied upon. The Court found the fee was “unconscionable and oppressive” and did not allow the claim.²³⁵ More than ten years later, RTDRS considered another residential tenancy agreement that included the same term, word-for-word.²³⁶ In the RTDRS case the landlord eventually conceded the lease break fee was unenforceable, although the tenancy dispute officer noted that the landlord “began their negotiations with the Tenant by trying to enforce the \$1000 fee.”

[282] There are other examples in cases about late payment fees. There are many cases saying that late fees are unenforceable, including some cases considering exactly the same fee.²³⁷ Yet landlords continue to use residential tenancy agreements that include late payment fees.

[283] Another problem is that people who do not know the rules in case law will not know their rights or how to protect them. It can lead to unfair results. Some participants in our consultation who work with tenants said that tenants will often pay, or at least acknowledge that they are responsible to pay, any fees that are in a residential tenancy agreement. They assume that the agreement is binding and the landlord has the right to charge these fees. They do not know that they can dispute the fees or how to do so.

²³⁵ *Boardwalk Reit Holdings (Alberta) Ltd. v Tuke*, 2007 ABPC 78 at para 6.

²³⁶ *Re 20003928*, 2020 ABRTDRS 29. It is worth noting that reported RTDRS cases do not name the parties so we do not know whether it was the same landlord as in *Boardwalk Reit Holdings (Alberta) Ltd. v Tuke*, 2007 ABPC 78.

²³⁷ See eg *Re 19003148*, 2019 ABRTDRS 41; *Re 21004421*, 2021 ABRTDRS 24. In both cases, the residential tenancy agreement said there would be a fee of \$50 if the tenant did not pay rent on the first day of the month.

5. WOULD LEGISLATED RULES HELP?

[284] Legislated rules about fees or financial consequences for breaking an obligation might improve certainty for both landlords and tenants.²³⁸

[285] To take the example of late payment fees, legislated rules could put limits on late payment fees or prohibit them altogether. It would not be necessary to amend the *Residential Tenancies Act* to do either. The Minister responsible for the Act—currently the Minister of Service Alberta and Red Tape Reduction—could do so using the existing powers under sections 70.²³⁹

[286] When Alberta Government Services circulated a discussion paper in 2002, one of the questions asked “Do you think that there should be a limit to the amount landlords can charge for daily late penalties?” Approximately 69% of respondents agreed. Approximately 25% disagreed.²⁴⁰ There was also an open-ended question about what the limit should be but it did not show a clear consensus. Of the 454 people who answered this question, 53 said the limit should be 0. In other words, late fees should be prohibited. Other common answers were that the limit should be a percentage of rent (195 respondents), “Up to \$5 a day, with max” (32 respondents), “Up to \$10 a day” (28 respondents), and “\$25 flat” (22 respondents).

[287] There are arguments that late payment fees should be prohibited altogether. Some argue that prohibiting them would protect tenants. In our consultation, we heard that late payment fees are most likely to affect low-income tenants or those in financial difficulty. They are more likely to fall behind on their rent because they cannot pay. A late payment fee increases the amount they have to pay, sometimes causing them to fall farther behind.

[288] There are also arguments for limiting late payment fees, instead of prohibiting them. From the landlord perspective, we heard these fees help cover costs associated with late rent. Late rent often means extra administrative work for a landlord or their staff. There can also be direct financial losses. Some landlords depend on their tenants paying on time to cover their costs. For example, a homeowner renting a secondary suite may need rent from their

²³⁸ Shaun Fluker et al, “Need for Law Reform: Residential Tenancies and Late Fees” (30 April 2025), online: ABLawg <ablawg.ca/2025/04/30/need-for-law-reform-residential-tenancies-and-late-fees/> [perma.cc/W84Q-33J5].

²³⁹ *Residential Tenancies Act*, ss 70(1)(j), (j.1), (j.2).

²⁴⁰ 2002 *Discussion Paper Analysis*, note 24 at 9.

tenant to pay the mortgage, utilities, or other bills. If the tenant pays late, the landlord has to pay late fees or interest to their creditors.

[289] It is possible that limiting late payment fees, rather than prohibiting them, would help tenants stay in their homes. Late rent can harm a landlord so landlords need a way to discourage tenants from paying rent late. Late payment fees are one. The other is to give a tenant a notice to terminate the tenancy. Some landlords already give tenants notices to terminate the tenancy if rent is late, even by a few days.²⁴¹ If landlords could not charge late payment fees, they might instead give notices to terminate tenancies for late payment of rent.

[290] A limit on late payment fees would give landlords guidance to set a reasonable fee. In theory, case law recognizes that a late payment fee might be enforceable if it is a genuine pre-estimate of damages for late rent. Case law has not clarified how a landlord could make a genuine pre-estimate of damages or what kinds of damage could be included.²⁴² The actual loss may depend on the circumstances. It could be difficult to estimate in advance. Even if a landlord went through the effort to carefully predict their loss and set a late payment fee accordingly, there is still no guarantee a court or RTDRS would find it enforceable. Some cases seem to suggest that any late payment fee is a penalty and therefore unenforceable.²⁴³ We are not aware of any cases where an Alberta court or RTDRS has found a late payment fee to be enforceable.

²⁴¹ For example, in one study the executive director of an organization providing social and affordable housing in Edmonton told researchers “On the 4th of every month, everybody who hasn’t paid their rent gets an eviction letter”: Damian Collins et al, “‘When We Do Evict Them, It’s a Last Resort’: Eviction Prevention in Social and Affordable Housing” (2021) 32:3 Housing Policy Debate 473 at 482. See also *Re 21004801*, 2021 ABRTDRS 21 in which a tenant was often late paying her rent. The landlord responded by giving her a notice to terminate the tenancy “on the second or third day of each tenancy month.”

²⁴² In a blog post, Jonnette Watson Hamilton suggested a late payment fee might be enforceable if, for example, it was “based on what the landlord’s bank would charge the landlord if the rent payment was not in the landlord’s bank account on the first of the month” but we are not aware of any court decisions considering this specific scenario: Jonnette Watson Hamilton, “Are Landlords’ Late Payment Fees Enforceable?” (5 February 2020), online: ABLawg <ablawg.ca/2020/02/05/are-landlords-late-payment-fees-enforceable/> [perma.cc/R7VR-AURC].

²⁴³ See eg *Re 20001013*, 2020 ABRTDRS 40:

While not argued by either side, I pause to note that it has been the historical approach of the RTDRS to not permit the enforcement of late fees when requested to do so by landlords. This approach has been adopted out of deference to judicial decisions such as *Cracknell v. Jeffrey*, 2001 ABPC 11, which disallowed a landlord’s claim for a late fee after concluding that the late fee was an unenforceable penalty and not a genuine pre-estimate of damages.

[291] Legislated rules could also deal with related issues, like whether a court or RTDRS could order a landlord to refund a late payment fee that the tenant has already paid.²⁴⁴

ISSUE 26

Should legislation limit or prohibit late payment fees or other fees that are a penalty for breaking an obligation?

²⁴⁴ There is at least one RTDRS case suggesting that, even though a late payment fee is unenforceable, the RTDRS may not have the power to order a landlord to refund a late payment fee to the tenant. In *Re 20001013*, 2020 ABRTDRS 40, noted:

[C]ould the imposition of the late fee be reversed under Section 37(1)(a)? I would suggest not, given that, while a late fee may be unenforceable, it was a contractual provision in this case. Accordingly, its imposition is not a contractual breach. Nor is the collection of a late fee an expressly prohibited practice by the *Residential Tenancies Act* ...

CHAPTER 8

Behaviour and Rules

A. Introduction

[292] A residential tenancy agreement includes rules about how a tenant must behave or use the property. Some are an implied part of every residential tenancy agreement. Section 21 lists rules, or covenants, that every tenant must follow:²⁴⁵

21 The following covenants of the tenant form part of every residential tenancy agreement:

- (a) that the rent will be paid when due;
- (b) that the tenant will not in any significant manner interfere with the rights of either the landlord or other tenants in the premises, the common areas or the property of which they form a part;
- (c) that the tenant will not perform illegal acts or carry on an illegal trade, business or occupation in the premises, the common areas or the property of which they form a part;
- (d) that the tenant will not endanger persons or property in the premises, the common areas or the property of which they form a part;
- (e) that the tenant will not do or permit significant damage to the premises, the common areas or the property of which they form a part;
- (f) that the tenant will maintain the premises and any property rented with it in a reasonably clean condition;
- (g) that the tenant will vacate the premises at the expiration or termination of the tenancy.

[293] Many residential tenancy agreements include additional rules. In theory, the rules could be negotiated between the landlord and tenant but in practice, the landlord usually makes the rules. If a landlord uses a written residential tenancy agreement, the rules are often part of the agreement or attached to it. Some residential tenancy agreements say that a landlord may make rules or change

²⁴⁵ *Residential Tenancies Act*, s 21.

them unilaterally.²⁴⁶ If a residential tenancy agreement has this kind of term, a tenant must follow the landlord's rules even if the tenant disagrees with the new rules.

[294] The *Residential Tenancies Act* says very little about rules but there are some general principles that limit the kinds of rules a landlord can make. A residential tenancy agreement or rules cannot take away rights a tenant would otherwise have under the *Residential Tenancies Act*.²⁴⁷ Further, the legislation includes landlord's covenants: in other words, rules that every landlord must follow. One of them is that "neither the landlord nor any person having a claim to the premises under the landlord will in any significant manner disturb the tenant's possession or peaceful enjoyment of the premises."²⁴⁸

[295] In some other jurisdictions, legislation is more specific about the types of rules landlords may make.²⁴⁹

ISSUE 27

Should legislation clarify or limit the kinds of rules that may be included in a residential tenancy agreement?

B. Rules to Prevent Interfering With the Rights of Other Tenants

[296] The general principles in section 21 do not seem to be controversial. We did not hear concerns that they are inappropriate or unfair. The difficulty seems to come with applying these very broad rules to specific situations.

[297] Often, rules in a residential tenancy agreement can be linked to one or more of the rules in section 21. Rather than adding entirely new obligations, many rules seem like a way to clarify the general principles. They give tenants guidance by spelling out exactly what they should do or not do.

[298] We can see this dynamic in rules about what tenants should do or not in their homes. When tenants live in close proximity, like in apartment buildings or any building with more than one home, different tenants can come into

²⁴⁶ See eg *Greater Edmonton Foundation v Hetland*, 2017 ABQB 430 at paras 11-16, 54-66; *Re 23013546*, 2023 ABRTDRS 31.

²⁴⁷ See *Residential Tenancies Act*, s 3(1).

²⁴⁸ *Residential Tenancies Act*, s 16(b).

²⁴⁹ See eg *Residential Tenancies Act*, 2006, SS 2006, c R-22.0001, s 22.1; *The Residential Tenancies Act*, CCSM c R119, s 11; *Residential Tenancies Act*, RSNS 1989, c 401, s 9A.

conflict.²⁵⁰ Conflicts about behaviour in multi-unit buildings are especially difficult to resolve because there are several important – but sometimes incompatible – interests to balance. The *Residential Tenancies Act* says very little about how tenants should behave in their homes or what landlords can require. Section 21(b) of the *Residential Tenancies Act* says that a tenant must not “in any significant manner interfere with the rights of ... other tenants in the premises.”²⁵¹ At the same time, each tenant is entitled to “possession and peaceful enjoyment of the premises.”²⁵² The legislation does not say what rights each tenant has or how landlords should balance the rights of different tenants.

[299] Tenants and people who live with them want their homes to be safe, comfortable, and meet their needs. Many people prefer a quiet environment at home, at least some of the time. Some may need quiet to sleep at unusual hours, like shift workers or babies and young children who nap. Many people are bothered by strong smells. People with disabilities or health conditions may have additional needs. For example, air quality is especially important to people with allergies, asthma, lung diseases or similar conditions.

[300] At the same time, tenants and people who live with them want to live in their homes as they see fit, making their own decisions. There are many things people might want to do at home: cook the food they like, exercise, listen to music, practice an instrument, let children play, host guests, have parties, smoke cigarettes or use cannabis, decorate their home, and have pets. Some things people do at home are closely connected to their identity or characteristics they cannot change. It is important to remember that renting a home can be a long-term situation. Some people live in rented homes their entire life.

[301] Landlords are usually motivated to avoid or resolve conflict between tenants. Tenants often bring concerns to the landlord. Landlords can find themselves in the middle of conflicts between tenants. If they cannot find a compromise, they are likely to lose tenants.

²⁵⁰ Similar conflicts can occur between other kinds of neighbours, like adjoining landowners. A person who believes a neighbor is unreasonably interfering with their use or enjoyment of property may make a claim based on the tort of nuisance. Other writers have pointed out that it can be difficult to resolve nuisance claims about noise or smells for many of the same reasons we heard about relating to residential tenancies. See eg Lewis N Klar, *Tort Law*, 5th ed (Toronto: Carswell, 2012) at 761 [footnote omitted]:

Since “it is certainly not every small, whiff of smoke, sound of machinery or music which will entitle the indignant plaintiff to recover” in nuisance, the courts must now decide whether to draw the line between the tolerable and intolerable neighbor.

²⁵¹ *Residential Tenancies Act*, s 21(b).

²⁵² *Residential Tenancies Act*, s 16(b).

[302] These conflicts can be even more complex when they involve issues about human rights or discrimination. The *Alberta Human Rights Act* forbids landlords from discriminating against tenants on several grounds, including race, religious beliefs, physical disability, mental disability, ancestry, place of origin, and others.²⁵³ Landlords have a duty to accommodate tenants.²⁵⁴ In other words, if a rule negatively affects a person because of a protected ground, the landlord may have to make an exception to the rule. The duty to accommodate depends on specific circumstances. It may require everyone to make some compromises. A landlord does not have to offer an accommodation that would cause undue hardship but it is a high standard. Accommodation often involves some inconvenience or cost.

[303] In our early consultation, we heard about some types of conflicts that come up frequently. These examples illustrate how difficult it can be to balance all the interests involved. We heard from landlords that these are some of the biggest challenges they face.

1. NOISE AND SMELLS

[304] Any time people live in close proximity, there can be conflicts about noise. In buildings without much soundproofing, neighbours may be able to hear all sorts of things from their neighbours' homes: music, radio, TV, or movies; alarms; dogs barking; children running or jumping; people exercising; and even conversations. One person's reasonable volume can be an intolerable racket to their neighbour. Sometimes noise or disturbances are part of a bigger problem, like family violence. There can be similar issues about smells. A smell that is pleasant to one person – like cooking their favourite food – can be unpleasant to another.

²⁵³ *Alberta Human Rights Act*, RSA 2000, c A-25.5, s 5(1):

5(1) No person shall

...

(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.

²⁵⁴ See generally *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3; *British Columbia (Superintendent of Motor Vehicles) v British Columbia (Council of Human Rights)*, [1999] 3 SCR 868. The Alberta Human Rights Commission has guides with practical information about the duty to accommodate: Alberta Human Rights Commission, "Duty to accommodate in housing", online: <albertahumanrights.ab.ca/issues-with-housing/duty-to-accommodate-in-housing/> [perma.cc/2C3V-2VJK]; Alberta Human Rights Commission, *Duty to Accommodate Human Rights Guide* (2021), online: <albertahumanrights.ab.ca/media/pgrdfmor/duty-to-accommodate-2021.pdf> [perma.cc/M4GZ-TBEH].

[305] Many landlords have rules about noise or smells. Nonetheless, if one tenant complains to the landlord about noise or smells from another tenant's home, it can be very difficult for the landlord to resolve. It is hard to say whether noise or smells are excessive or if the person complaining has unreasonable expectations.

[306] If noise is related to family violence, it can be even harder for a landlord to know what to do.²⁵⁵ If they terminate the tenancy because of noise complaints, it may harm the victim as well as the perpetrator.²⁵⁶ If they do not terminate the tenancy and the disturbances continue, other tenants may complain about the landlord's perceived inaction. Either way, landlords can face conflicting demands to reassure other tenants while protecting the privacy of individuals experiencing family violence.

2. SMOKING, VAPING, AND CANNABIS

[307] Some participants told us conflicts about smoking and cannabis are especially troublesome. There may be multiple intersecting issues: differences between tenants, damage, and concerns about discrimination.

[308] Many people are bothered by smoke or vapour. Secondhand smoke is harmful. It can be especially dangerous for people with certain health conditions, who may have immediate severe reactions when exposed to smoke or vapour. Landlords may have a duty to accommodate them. Smoke and vapour can also damage a home, leaving smells and stains that cannot be removed. Smoking can increase the risk of other damage, from burns on carpets to fires that could destroy a building.

[309] For all these reasons, many landlords have rules against smoking. Some allow tenants to smoke only in specific places, like on a balcony or patio. Some forbid smoking anywhere on the property. Many landlords also have rules against growing cannabis because of concerns about smells, power consumption, or damage from high moisture levels.

²⁵⁵ A 2017 study found property managers rarely had appropriate training or support to address domestic violence. Some "expressed concern about where to draw the line between being a property manager and an untrained social worker": Lois Gander, *Domestic Violence: Roles of Landlords and Property Managers*, Final Report (Edmonton: Centre for Public Legal Education Alberta, 2017) at 15-16, online: <cplea.ca/wp-content/uploads/2017/04/HTE-DV-Roles-LL-and-PM-FinalReportFEB2017.pdf> [perma.cc/QQF6-ZCHX].

²⁵⁶ See Lois Gander & Rochelle Johannson, *The Hidden Homeless: Residential Tenancies Issues of Victims of Domestic Violence* (Edmonton: Centre for Public Legal Education & University of Alberta, 2014) at 6, 25-28, 38-39, online: <cplea.ca/wp-content/uploads/2015/01/FINAL-Report-The-Hidden-Homeless.2014Jun05.pdf> [perma.cc/FMB4-UH8K].

[310] While banning smoking, vaping, and growing cannabis may seem like the easy solution, there are at least two problems with this approach.

[311] First, we heard it can be very difficult to enforce rules against smoking or vaping. Other tenants or the landlord may detect smoke or smells, but it can be hard to prove that a person is smoking or vaping behind closed doors. Tenants are entitled to privacy in their homes. Landlords cannot enter a tenant's home to inspect unless they give advance notice or have the tenant's consent.²⁵⁷ They are unlikely to catch a tenant in the act.

[312] Second, an absolute rule against smoking, vaping, or growing cannabis might discriminate against some people. For example, a landlord may have a duty to accommodate a person who uses cannabis for a medical reason. Some landlords treat smudging like smoking. If they have a rule against smoking, they may tell tenants they cannot smudge at home. This approach may discriminate against Indigenous people who smudge for religious, spiritual, or cultural reasons.

[313] Sometimes landlords are faced with conflicting needs for accommodation. For example, they may have a duty to accommodate a tenant who smokes cannabis for medical reasons. They may also have a duty to accommodate the tenant next door, who has asthma and cannot breathe when exposed to smoke. We heard landlords are unsure what to do in these situations.

3. PETS AND SUPPORT ANIMALS

[314] There can be similar conflicting needs for accommodation around pets and support animals. We heard a lot of concerns about pets and animals in our early consultation.

[315] People who have pets usually love them very much. They usually take their responsibilities to their pets very seriously. They may consider a pet a member of their family. Some participants in our consultation pointed out that safe, stable housing is important to the welfare of pets.

[316] At the same time, some animals can be noisy. Some have smells. Some people are allergic to certain kinds of animals. Some people do not like or are afraid of animals. Animals can cause damage to homes, like scratching surfaces or staining carpets.

²⁵⁷ *Residential Tenancies Act*, s 23.

[317] Some landlords do not allow tenants to have any pets or animals. Some will allow certain kinds of pets or have conditions about pets. For example, they might allow cats and fish but not dogs or reptiles. They might have a limit on the number of pets, like no more than two cats in a home. Some landlords will allow pets but only if the tenant pays additional fees or rent.

[318] These kinds of rules can make it very hard for a person with a pet to find a place to live. If they do find a place, they may have to pay more.

[319] Sometimes a landlord's duty to accommodate may require them to make exceptions to rules about pets and animals. The clearest example is about service dogs and guide dogs. A landlord who does not allow dogs or charges extra for dogs would have to make an exception for a service dog or a guide dog.²⁵⁸

[320] It is harder for landlords to know if they must make exceptions for support animals. Some people with disabilities benefit from having an animal but do not need a service dog or guide dog. For example, some people with anxiety or depression may find having a dog reduces their symptoms, even if the dog has no special training. A support animal does not have to meet the same requirements as a service dog or guide dog. Some support animals have special training or a certification but there are no legislated standards for support animals. Sometimes a medical professional recommends a support animal but a person does not need a diagnosis or prescription to get one.

[321] We heard that landlords are uncertain about their duty to accommodate a person with a support animal, especially if it could conflict with a duty to accommodate other tenants. If one tenant says they require a support dog and another tenant says they are allergic to dogs, the landlord may be unable to find a compromise that works for everyone.

[322] Some other Canadian jurisdictions have legislation that says what kinds of rules a landlord may make about pets. British Columbia's legislation specifically allows landlords to prohibit pets.²⁵⁹ In contrast, Ontario has the opposite rule in its legislation. A residential tenancy agreement in Ontario may not include a term prohibiting pets.²⁶⁰

²⁵⁸ See *Service Dogs Act*, SA 2007, c S-7.5, s 3(2); *Blind Persons' Rights Act*, RSA 2000, c B-3; *Fitzhenry v Schemenauer*, 2008 AHRC 8.

²⁵⁹ BC Act, note 66, s 18(1).

²⁶⁰ Ontario Act, note 91, s 14.

[323] Other reviews of residential tenancy legislation have considered whether there should be special rules about pets and animals. In this province, the Ministerial Advisory Committee on Residential Tenancies thought landlords should be able to prohibit pets. The committee said a landlord should be able to terminate a tenancy if the tenant had an unauthorized pet.²⁶¹ More recently, a task force of British Columbia MLAs reviewed that province's residential tenancy legislation. British Columbia's legislation says a residential tenancy agreement may prohibit pets, restrict "the size, kind or number of pets a tenant may keep", or include other obligations about pets.²⁶² They heard from some people who argued landlords should be required to allow pets. Other people had concerns about allergies, disturbances, and damage. The task force did not make any recommendations to change the legislation.²⁶³

4. WHAT IS A LANDLORD'S ROLE IN ISSUES BETWEEN NEIGHBOURS?

[324] Courts and tribunals have also expressed different views on a landlord's responsibility to intervene if one tenant disturbs another. In *Midwest Property Management v Moore*, the court said that a landlord is only responsible for their own actions.²⁶⁴ In recent years, some RTDRS decisions suggest that a landlord has a duty to do something about other tenants' behaviour.²⁶⁵ For example, one RTDRS decision was about smoking. A tenant complained to the landlord about other tenants smoking in a non-smoking building. The landlord did nothing. The tenancy dispute officer said the smoking was "significantly impacting the Tenant's peaceful enjoyment."²⁶⁶ In the tenancy dispute officer's view, the landlord should have spoken to tenants who were smoking, given them warnings, and if that did not resolve the problem, taken steps to terminate their tenancies.

²⁶¹ *Achieving a Balance* at 117-118.

²⁶² BC Act, note 66, s 18(1).

²⁶³ British Columbia Rental Housing Task Force, *Rental Housing Review: Recommendations and Findings* (Kamloops: Government of British Columbia, 2018) at 22, online: <engage.gov.bc.ca/app/uploads/sites/121/2018/12/RHTF-Recommendations-and-WWH-Report_Dec2018_FINAL.pdf> [perma.cc/J3V6-CNXC]:

[A]t this time, the Task Force was not persuaded that requiring all rental housing providers to allow pets would be fair for landlords or for renters who want or need to live in pet-free buildings.

²⁶⁴ *Midwest Property Management v Moore*, 2003 ABQB 581 at para 21:

A landlord is not responsible for the actions of its other tenants unless the landlord has caused the tenants to interfere with another tenant's peaceful enjoyment ...

²⁶⁵ See eg *Re 20003025*, 2020 ABRTDRS 26; *Re 22007223*, 2022 ABRTDRS 25; *Re 23006938*, 2023 ABRTDRS 18; *Re 23014467*, 2024 ABRTDRS 8.

²⁶⁶ *Re 22007223*, 2022 ABRTDRS 25.

[325] We heard from landlords that they have few good options to deal with difficult behaviour. They can try reminders or warnings, but if they aren't effective there's nothing in between a warning and terminating a tenancy. If they have to go to a hearing, it is very difficult to prove that the tenant broke a rule because they cannot directly observe a tenant's behaviour behind closed doors. At best, they might be able to give evidence that they heard noise or smelled smoke. Tenancy dispute officers may be reluctant to make an order terminating a tenancy with limited evidence.

[326] We heard that dealing with problems takes a long time and is onerous. Some participants told us that they feel RTDRS requires landlords to give multiple warnings before they can start the process of terminating a tenancy. By the time they have given multiple warnings, made an application, and waited for a hearing, the problem has been going on for a long time. In some cases, the amount of time means that the tenant causes damage or problems get worse. Other tenants may choose to leave instead of waiting for a problem to be resolved, making it hard for the landlord to retain good tenants.

[327] It would be helpful if the legislation were more precise about what a landlord may do or not do. It may be reasonable to require a landlord to do something if one tenant's behaviour disturbs another. After all, a landlord is the only person with the authority to address the issue.²⁶⁷ If that is the intention, however, the legislation should say so clearly.

[328] Other than termination, there is very little a landlord can do about a breach of a residential tenancy agreement. A few participants suggested it would be helpful if they could impose other consequences, like fines, for breaking rules.

ISSUE 28

How could legislation clarify how landlords can deal with tenant behaviour or conflicts between tenants? Should there be consequences other than terminating a tenancy?

²⁶⁷ In its 1990 report, the Ministerial Advisory Committee on Residential Tenancies considered whether a tenant should be able to seek the eviction of another tenant but did not recommend it: *Achieving a Balance* at 83-84.

C. Rules to Promote Compliance with Laws and Protect People or Property

[329] Section 21(c) of the *Residential Tenancies Act* says that a tenant must not “perform illegal acts or carry on an illegal trade, business or occupation” in a rented home. Section 21(d) says that a tenant must not “endanger persons or property” in the home. Some landlords use rules to clarify exactly what tenants should or should not do.

[330] Some residential tenancy agreements have rules to promote compliance with specific laws. An agreement may go farther than saying a tenant must not do anything illegal. For example, many municipalities have bylaws about snow clearing or yard maintenance. If a residential tenancy agreement makes a tenant responsible for snow clearing or yard maintenance, it may also say that the tenant must comply with those bylaws or say exactly what the tenant should do. Imagine that a municipal bylaw says a property owner or occupant must clear snow from sidewalks in front of their home within 24 hours. A landlord might include a rule in the residential tenancy agreement saying that the tenant must clear snow from the sidewalks in front of the home within 24 hours.

[331] Some rules in residential tenancy agreements are about safety. For example, a landlord who rents a home with a balcony in a high-rise building may have rules about how a tenant may use the balcony or what items they may keep on the balcony, to prevent harm from falling items.

[332] A landlord might also include rules in a residential tenancy agreement based on other requirements, like condominium rules or insurance policies.

D. Visitors, Guests, and Occupants

[333] Another set of issues that came up often in early consultation was about visitors, guests, and occupants.

[334] A few participants told us that some of the most challenging issues for landlords are about tenants’ guests or visitors. Many landlords have rules about guests. The rules may include limits on how long guests can stay or rules that new occupants can only move in with the permission of the landlord. Some posts

in the Reddit data mentioned rules setting limits on guests, like allowing guests to stay only one night or prohibiting overnight guests altogether.²⁶⁸

[335] Some landlords require that any adult who stays at the home a certain amount of time be listed as a tenant in a written residential tenancy agreement. They may require every potential tenant to go through an approval process, even if they are moving in with an existing tenant. If the potential tenant does not pass the approval process, the landlord will not agree to list them as a tenant or give permission for them to move in.²⁶⁹

[336] In our research and consultation we learned about many reasons landlords might have rules requiring approval for new occupants and limiting guests or visitors. They might want to ensure tenants do not sublet without consent. They might be concerned that more people in a home will mean more comings and goings or more noise, possibly disturbing the neighbours. They may be concerned about higher utility costs or more wear and tear. Some participants told us there is a widespread misconception that landlords must comply with the National Occupancy Standard. The National Occupancy Standard is a measure of whether housing is suitable for a household.²⁷⁰ It is a tool to help policymakers understand housing needs, not a rule that landlords or households must follow. Nonetheless, some landlords seem to believe that they have to monitor the number of people staying in a home and ensure it does not exceed the National Occupancy Standard.

[337] One might ask whether rules about visitors and guests are compatible with a landlord's covenant not to "disturb the tenant's possession or peaceful enjoyment". If a tenant has possession of the home, should they not be able to decide who they will invite to their home, when, and for how long?

²⁶⁸ See also *Re Veterans Villa Housing Project*, 2024 CanLII 58481 (AB OIPC). A landlord required tenants to tell the landlord about any overnight guests. The adjudicator found the rule required tenants to reveal "information about the tenant that is of a private or intimate nature" (at para 87). The adjudicator found it was unreasonable for the landlord to collect this information and therefore it was not permitted under the *Personal Information Protection Act*, SA 2003, c P-6.5.

²⁶⁹ It can be unclear whether a person is a tenant, a permitted occupant, or a non-permitted occupant, especially if the landlord's permission is oral or implied. The first report in this series discusses this problem in more detail: *Residential Tenancies Act: General Issues* at paras 390-403.

²⁷⁰ 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]. 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.

[338] We heard that some tenants face a dilemma when other obligations conflict with rules about occupants or guests. Their moral, cultural, and family obligations may call them to share their home, even if it is against the rules.

[339] One scenario that came up in early consultation was family visits. Imagine a person who moved to Alberta from a far-away country. Their family is all in their home country. After years of saving, they can finally afford to bring their parents for a visit. It is a once-in-a-lifetime trip so their parents want to stay a long time. The parents want and expect to stay with their child. In any case, neither the parents nor the child can afford a long stay in a hotel or short-term rental. If the residential tenancy agreement says guests can only stay a week, the person may feel they cannot follow the rules.

[340] We also heard about tenants who feel a moral obligation to help others. When a family member wants to leave an abusive relationship, a tenant might feel they have to offer them a place to stay, even if it is against the rules.²⁷¹ We heard that some people who get stable housing after being homeless feel they should share their home with friends who are still homeless.

ISSUE 29

Should legislation clarify or limit rules about occupants, guests, or visitors?

E. Other Rules

1. INSURANCE

[341] Many landlords have rules requiring tenants to have tenant's insurance.²⁷² Tenant's insurance typically includes coverage for a tenant's belongings and liability coverage.

²⁷¹ See Lois Gander & Rochelle Johannson, *The Hidden Homeless: Residential Tenancies Issues of Victims of Domestic Violence* (Edmonton: Centre for Public Education & University of Alberta, 2014) at 6, 8, 37, online: <cplea.ca/wp-content/uploads/2015/01/FINAL-Report-The-Hidden-Homeless.2014Jun05.pdf> [perma.cc/FMB4-UH8K].

²⁷² In at least one RTDRS case, a residential tenancy agreement required a tenant to obtain insurance to benefit the landlord. Among other things, it said the tenant was "responsible for insuring the Landlord's contents and furnishings in or about the Property for either damage or loss for the benefit of the Landlord" and that the tenant was responsible for "insuring the Property for damage or loss to the structure, mechanical or improvements to the building of the Property ...". A tenancy dispute officer found that this part of the agreement was not enforceable as it would have made the tenant responsible for the landlord's obligations: *Re 21002671*, 2021 ABRTDRS 41.

[342] We heard that landlords have difficulty enforcing rules about insurance. Even if they require tenants to provide proof of insurance coverage, there is nothing to prevent a tenant from later cancelling the policy or letting it lapse. If the tenant does not have insurance or does not give the landlord proof of insurance, it is unclear what consequence a landlord could impose. There are a few RTDRS cases where landlords tried to terminate a tenancy because a tenant did not provide proof of insurance.²⁷³ Our research has not turned up any cases where a tenancy was actually terminated only for that reason.

[343] Beyond the difficulty of enforcing it, there is a question about whether a landlord should require tenants to have insurance. Tenancy dispute officers have expressed doubt about whether a tenant's failure to obtain insurance for their own belongings makes any difference to the landlord.²⁷⁴ Tenant's insurance is mainly for the benefit of the tenant. While it is a certainly a good idea for tenants to have insurance, it is not clear whether landlords can or should require it.

2. USE OF THE PREMISES

[344] We did not hear much about problems with home-based businesses or working at home but it occasionally came up. Many people now work at home, at least part of the time. We occasionally heard about conflicts between landlords and tenants about home based businesses or working at home.²⁷⁵

[345] As far back as 1990, the *Achieving a Balance* committee recommended that a tenant should be able to use their home for work or business:²⁷⁶

If the business is not illegal, and if it does not inconvenience other tenants, the tenants should be able to carry on that activity in the rented premises.

[346] The recommendation was not implemented. To this day, the *Residential Tenancies Act* does not say whether tenants may operate a business or work from a rental home or say whether landlords may restrict them from doing so. It might be helpful to have clear guidance in the legislation.

²⁷³ See eg *Re 20005321*, 2020 ABRTDRS 20; *Re 20001688*, 2022 ABRTDRS 4; *Re 23010532*, 2024 ABRTDRS 9.

²⁷⁴ See eg *Re 20005321*, 2020 ABRTDRS 20; *Re 23013993*, 2024 ABRTDRS 1.

²⁷⁵ There were examples in the Reddit data. See also *Re 22006800*, 2023 ABRTDRS 28. The relationship between a landlord and tenant broke down after making an agreement but before the tenant moved in. The tenant operated a consulting business from home. The landlord expressed concern that the tenant's business would change the use of the property from residential to commercial, possibly violate municipal bylaws, and increase the landlord's insurance premiums.

²⁷⁶ *Achieving a Balance* at 85–86.

ISSUE 30

Should legislation clarify or limit rules about working from home or using a rental home for a home-based business?

CHAPTER 9

Maintenance, Repairs, and Damage

A. Housing Standards and Maintenance

[347] Maintenance, repairs, and damage are consistently top concerns about residential tenancies. Other reviews of residential tenancy legislation have found that the most common problems facing tenants are about the condition of their homes.²⁷⁷ Similarly, other reviews found that damage was a major concern for landlords.²⁷⁸

[348] Maintenance, repairs, and damage came up often our consultation. They were also top concerns in the Reddit data. Of the approximately 425 posts about residential tenancy issues, more than 50 mentioned maintenance issues and a similar number mentioned damage.

[349] Maintenance issues can have a big impact on tenants or those who live with them. Problems with a home can affect a person's or a family's health, safety, finances, convenience, and comfort. Pests or mould can affect a person's health or property. A broken door or lock can affect their safety. A tenant may experience financial losses because of issues with the home. For example, if a refrigerator breaks they may have to throw out perishable food and pay to replace it. They may lose personal belongings because of bedbugs. Broken windows or inadequate insulation can increase the cost to heat the home and make the people living there uncomfortable.

²⁷⁷ A 1989 survey commissioned by the Ministerial Advisory Committee on Residential Tenancies found that maintenance and repairs were the most common problem raised by tenants. Approximately a third of those surveyed (33.8 per cent) said they had problems with a landlord's failure to repair the premises. More than a quarter (27.6 per cent) said they had problems with a landlord failing to maintain the premises: *Achieving a Balance* at 32, 57, 137. A 2012 report on barriers to finding or keeping housing among precariously housed or homeless people in Edmonton found that quality of housing was a major concern: see John Kolkman & Joseph Ahorro, *Understanding Tenancy Failures And Successes* (Edmonton Social Planning Council & Edmonton Coalition on Housing and Homelessness, 2012) at 18, 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]]. A 2018 review in British Columbia found that "inadequate maintenance and building conditions' was the top challenge faced by renters throughout the province": British Columbia Rental Housing Task Force, *Rental Housing Review: Recommendations and Findings* (Kamloops: Government of British Columbia, 2018) at 17, online: <engage.gov.bc.ca/app/uploads/sites/121/2018/12/RHTF-Recommendations-and-WWH-Report_Dec2018_FINAL.pdf> [perma.cc/J3V6-CNXC].

²⁷⁸ See *Achieving a Balance* at 103.

[350] Damage can have a big financial impact on a landlord. In our consultation, we heard from some landlords who had paid tens of thousands of dollars to repair a home because of damage a tenant caused. It can be especially difficult for a landlord who rents only one or a few homes. They may be unable to bear the cost of large, unexpected repairs. Damage to a secondary suite in the landlord's home have a different impact than damage to an investment property. Damage can also cause a great deal of stress, especially if the landlord has an emotional attachment to the rental home.

B. Obligations of Landlords and Tenants

[351] Under the *Residential Tenancies Act*, landlords and tenants both have responsibilities for keeping a home in good condition.

[352] A landlord must ensure that the home meets minimum standards for rental accommodation. This obligation is found in section 16 of the *Residential Tenancies Act*, which lists the covenants of the landlord:²⁷⁹

16 The following covenants of the landlord form part of every residential tenancy agreement:

...

(c) that the premises will meet at least the minimum standards prescribed for housing premises under the *Public Health Act* and regulations.

[353] The minimum standards are in the *Housing Regulation* and the *Minimum Housing and Health Standards*.²⁸⁰ There are detailed requirements. Among other things, the home must be structurally sound, with windows and doors that close properly and protect against weather. The home must have electricity, hot and cold running water, a connection to a sewage system, and heat. It must have a washroom with a toilet, sink, and bathtub or shower. It must have a kitchen with a sink, stove, and refrigerator.

[354] A tenant must not damage the home and must keep it reasonably clean. These obligations are in section 21 of the *Residential Tenancies Act*:²⁸¹

²⁷⁹ *Residential Tenancies Act*, s 16(c).

²⁸⁰ *Housing Regulation*, Alta Reg 173/1999, s 3; *Minimum Housing and Health Standards*, note 199.

²⁸¹ *Residential Tenancies Act*, s 21(e), (f).

21 The following covenants of the tenant form part of every residential tenancy agreement:

...

(e) that the tenant will not do or permit significant damage to the premises, the common areas or the property of which they form a part;

(f) that the tenant will maintain the premises and any property rented with it in a reasonably clean condition;

[355] While legislation offers general principles, it can be hard to apply them to specific situations. Courts and RTDRS can resolve issues on a case-by-case basis but it is unreasonable to expect landlords and tenants to take every dispute to court or RTDRS. Case law can fill some gaps but it is hard to find rules in case law. Further, case law does not address every kind of dispute that could arise and decisions are sometimes inconsistent.

[356] Three common kinds of disputes illustrate the difficulty.

1. WEAR AND TEAR

[357] A tenant must not damage a home. If they do, a landlord can terminate the tenancy, require a tenant to pay the cost of repairing the damage, or both.²⁸² However, a tenant is not responsible for “normal wear and tear”, which is defined as:²⁸³

46(1)(b) “normal wear and tear” in respect of residential premises means the deterioration that occurs over time with the use of the premises even though the premises receive reasonable care and maintenance;

[358] Most people seem to agree that this rule is fair in principle. The difficulty is applying it.

[359] We heard that landlords and tenants often disagree about whether specific conditions are damage or wear and tear.²⁸⁴ Without clear guidance, it is difficult for landlords and tenants to resolve these disputes on their own. It pushes people towards litigation, as they need an independent decision maker to resolve disputes on a case-by-case basis.

²⁸² *Residential Tenancies Act*, ss 26(1), 29(1), 30(1).

²⁸³ *Residential Tenancies Act*, ss 46(1)(b), 46(5).

²⁸⁴ See eg *Re 23001921*, 2023 ABRTDRS 5; *Re 22012953*, 2023 ABRTDRS 9; *Re 24010529*, 2025 ABRTDRS 7.

[360] The problem has been around for decades.²⁸⁵ Courts and others have occasionally proposed more specific definitions of wear and tear.²⁸⁶ Ultimately, the Ministerial Committee on Residential Tenancies was probably correct when it said it would be “impossible to prepare an exhaustive list of what would or would not be considered ‘an ordinary rate of deterioration’ or ‘normal wear and tear’.”²⁸⁷

2. PESTS

[361] The *Minimum Housing and Health Standards* require a landlord to ensure that a rental home is “free of insect and rodent infestations.”²⁸⁸ They also say that a tenant “shall allow access for repairs or pest control treatments.”²⁸⁹

[362] While it is clear that a landlord must deal with an infestation, financial responsibility is more complicated. If a landlord believes that a tenant caused an infestation, the landlord may seek damages from the tenant to recover the costs of dealing with the infestation. It is hard to find a clear pattern in case law about when a tenant will be responsible, perhaps because each case turns on its own facts.²⁹⁰ It can be difficult to allocate fault for pest infestations as there may be a

²⁸⁵ In its 1990 report, the the Ministerial Advisory Committee on Residential Tenancies listed some common problems. One was “Landlords and tenants disagree over what is ‘normal wear-and-tear’”: *Achieving a Balance* at 60.

²⁸⁶ See eg *Barry v Navratil*, 2019 ABPC 229 at para 41 (quoting *Kamoo v Brampton Caledon Housing Corp.*, [2005] OJ No 3911 (SC)) [emphasis added]:

Reasonable wear and tear is generally defined as unavoidable deterioration in the dwelling and its fixtures *resulting from normal use*. For example, carpet wear due to normal traffic is wear and tear, while a cigarette burn is avoidable and constitutes damages. Wear and tear can be defined to different degrees according to the state of residence. There tends to be a great deal of ambiguity and subjectivity in this area. “Normal” for one individual, can and will be vastly different from another individual’s perception of what is “normal.”

See also *Achieving a Balance* at 89:

“Normal wear and tear” should not include the removal of stains, dirt and debris accumulated by the tenant through the tenant’s style of living.

This would be further accomplished by a change in the wording of the tenants’ covenants as follows:

“The tenant shall be responsible for ordinary cleanliness and maintenance reasonably required under the circumstances and for damage caused by wilful or negligent conduct of the tenant or the tenant’s invitees.”

²⁸⁷ *Achieving a Balance* at 89.

²⁸⁸ *Minimum Housing and Health Standards*, note 198, s 16(a)

²⁸⁹ *Minimum Housing and Health Standards*, note 198, s 17.

²⁹⁰ Compare *Shearer v Shields*, 2017 ABPC 108; *Hometime Property Services Ltd. v Girummesh*, 2022 ABPC 172. In *Shearer v Shields*, 2017 ABPC 108, the judge said that there was no evidence of bedbugs before the tenancy began and they appeared during the tenancy, suggesting they must have been introduced by the tenant. Further, the judge said “once bedbugs were discovered, it was [the tenant’s] responsibility to take steps to eliminate them as soon as possible” (at para 20). The tenant had to pay damages to the landlord. In *Hometime Property Services Ltd. v Girummesh*, 2022 ABPC 172, there was evidence of “a long-term mouse infestation”, which the landlord discovered shortly after the tenant moved out. The judge said it was not enough for the

Continued

variety of factors that contribute. For example, mice might be able to enter a home because of cracks or holes in the building envelope but they might stay because the tenant does not clean up food scraps, making it easy for mice to find food. Maintaining the building envelope is the landlord's responsibility. Cleaning is the tenant's responsibility. It can be hard to attribute fault.²⁹¹

[363] Some cases try to explain general rules about when a tenant will be responsible but they depend on how the infestation began.²⁹² If a landlord and tenant disagree about the facts, they may still need an independent decision maker to decide what happened and who is responsible.

3. HOARDING

[364] While less common than disputes about wear and tear or pests, we heard that hoarding can cause problems between landlords and tenants. Hoarding is a behaviour that may be caused by or linked to a mental health condition. A person collects and keeps a large number of items, feeling that they cannot get rid of them. The person's home often becomes cluttered, making it difficult to clean or maintain the home. The state of the home may attract pests and make

landlord to show that the infestation occurred during the tenancy. The landlord would also have to prove that the tenant caused the infestation or deliberately did not report the infestation to the landlord. The judge also said "If an infestation occurs during the course of the tenancy, it is the ultimate obligation of the Landlord to remediate that condition and return that premises to a clean and sanitary condition" (at para 31). See also *Re 19005306*, 2019 ABRTDRS 30; *Re 21002885*, 2021 ABRTDRS 17; *Re 21011777*, 2022 ABRTDRS 26.

²⁹¹ Similar problems about attributing fault come up when there is mould in a home. A 2023 news story provides a good illustration. After a tenant found mould in her home, she said she experienced health issues and had to dispose of belongings. She applied to the RTDRS for damages. At the hearing, there was evidence that there were issues with ventilation in the home and the tenant had set a humidifier higher than recommended. Either issue could contribute to mould growth. The RTDRS found the tenant responsible and ordered her to pay the cost of remediation: Colleen Underwood, "Renter sought compensation for mould but tenancy dispute board stuck her with the bill", *CBC News*, (13 November 2023), online: <[cbc.ca/news/canada/calgary/calgary-renter-mould-tenancy-dispute-1.7025910](https://www.cbc.ca/news/canada/calgary/calgary-renter-mould-tenancy-dispute-1.7025910)> [perma.cc/Z882-N9HA].

²⁹² See eg *Hometime Property Services Ltd. v Girumnes*, 2022 ABPC 172 at paras 31-32:

If the infestation is caused by the wilful act of the Tenant, or the Tenant wilfully allows another person to cause the infestation which results in damages to the premises, i.e., by initiating the infestation, the landlord may be entitled to compensation for all or part of the costs of remediating that premises from that damaged condition.

The Tenant could be liable if he is shown on balance to have initiated the infestation to the premises, or having wilfully not notified the Landlord of the same if an infestation occurs during the currency of the tenancy, even if the Tenant is not responsible for the initial infestation. ...

See also *Re 19005306*, 2019 ABRTDRS 30:

It is possible that a tenant's breach of any one of these covenants [in *Residential Tenancies Act*, ss 21(b), (d), (e), (f)] could result in their liability for pest infestations. For example, a tenant could deny the landlord access to his or her unit for the purposes of pest treatments, interfering with the landlord's right of access for that purpose. Alternatively, a tenant could bring in obviously infested mattresses or property into their unit, without regard for the consequences. Or perhaps a tenant could leave their property so unclean that it attracts vermin or pests. These would all be circumstances where it could be appropriate to allow damages to a landlord under the *Residential Tenancies Act*.

pest treatments more difficult and less effective. It can contribute to other kinds of damage. For example, a leak may go undetected behind clutter for a long time, causing extensive water damage. Smells, pests, or damage may affect neighbours.

[365] We heard that landlords find it very challenging when a tenant demonstrates hoarding behaviour. If the landlord tries to end the tenancy, they may end up in a dispute about whether the home is “reasonably clean” or the tenant has caused “significant damage”. It may take an independent decision maker to resolve either question.

[366] There may also be an issue about discrimination and a landlord’s duty to accommodate.²⁹³ The *Alberta Human Rights Act* protects tenants or potential tenants from discrimination based on mental disability. If a tenant’s hoarding is linked to a mental health condition, a landlord would have a duty to accommodate up to the point of undue hardship. It can be very challenging to decide how far a landlord must go to accommodate and when an accommodation would cause undue hardship. RTDRS does not have jurisdiction to resolve disputes about human rights.²⁹⁴ The dispute might have to go to court or the Alberta Human Rights Commission, depending on whether it was a landlord’s application to terminate a tenancy or a tenant’s complaint about discrimination.

[367] These issues are especially difficult for landlords who provide social or affordable housing or non-profits who provide housing to vulnerable people. They may have a mission to provide support to tenants and prevent homelessness. If a tenant in social or affordable housing loses their home, it is unlikely they would be able to find or afford a suitable home on the private market. A landlord may be reluctant to terminate a tenancy knowing the tenant may become homeless, yet there is little else a landlord can do to address the behaviour.²⁹⁵

²⁹³ Emily Paradis, *Access to Justice: The Case for Ontario Tenants: Final Report of the Tenant Duty Counsel Review* (Ontario: Advocacy Centre for Tenants Ontario, 2016) at 59, online: <acto.ca/assets/files/TDCP_FinalReport_-Nov7.pdf> [perma.cc/26FR-ELEX].

²⁹⁴ *Residential Tenancy Dispute Resolution Service Regulation*, Alta Reg 98/2006, s 17(1)(a).

²⁹⁵ See Damian Collins et al, “‘When We Do Evict Them, It’s a Last Resort’: Eviction Prevention in Social and Affordable Housing” (2021) 32:3 *Housing Policy Debate* 473 at 482. See also *Re 22003074*, 2022 ABRTDRS 21. The tenant and his sixteen-year-old daughter lived in subsidized housing. The tenant paid rent based on income. The landlord sought to terminate the tenancy for several reasons, including failure to keep the home reasonably clean and failure to prepare for pest treatments. The tenancy dispute officer found the tenant had breached his obligations under the *Residential Tenancies Act* and the residential tenancy

C. Damage

[368] Damage is a major concern for landlords. Although the following description of the problem is from 1990, it could have been written today:²⁹⁶

Landlords are concerned that tenants who cause substantial damage to premises can be very costly to the landlord. When landlords brought these issues to our attention, they told of damages to the premises which were always substantial and that they were not able to recover from the tenant. To complicate the problem, the security deposit was usually not sufficient to cover the damages, the tenant may have left arrears of rent in addition to the damage; and tenant often simply did not [have] sufficient assets to justify the landlord in pursuing a judgment.

[369] Unfortunately, it is doubtful that law reform can solve the problem. Legislation already includes a clear rule that a tenant must not damage a rental home.²⁹⁷ The legislation also includes remedies.

1. WHAT CAN A LANDLORD DO?

[370] If a tenant damages a home, the landlord can terminate the tenancy, seek damages, or both.²⁹⁸ A landlord can terminate the tenancy on short notice if a tenant causes significant damage, making the tenant leave within 24 hours.²⁹⁹

[371] It seems like the biggest problem is a practical issue, rather than a gap in the law. As the quotation above says, landlords are often not able to recover the cost of repairing damage. A security deposit helps but often the cost of repairs is more than the security deposit. Some participants in our consultation said it is rarely worthwhile to pursue a tenant for more. There are several steps. Each takes time and involves hassles. First, they must apply to court or RTDRS for an order requiring the tenant to pay damages. If the order is granted, there are other steps to enforce the order. Among others, a landlord may have to file and register a writ, search for any assets or bank accounts belonging to the tenant, prepare and serve documents to garnishee bank accounts, or instruct a civil enforcement

agreement. The tenancy dispute officer gave the tenant some additional time to clean up the home but the tenant did not. Ultimately, RTDRS terminated the tenancy.

²⁹⁶ *Achieving a Balance* at 103.

²⁹⁷ *Residential Tenancies Act*, s 21(e).

²⁹⁸ *Residential Tenancies Act*, ss 26(1)(c), (d), 29(1).

²⁹⁹ *Residential Tenancies Act*, s 30(1).

agency to seize property. Often it turns out the tenant has no assets and is unable to pay, so the landlord receives nothing.

2. HOW CAN PARTIES AND DECISION MAKERS DETERMINE IF CLAIMS ARE REASONABLE?

[372] If a landlord seeks damages, they must prove that the tenant damaged the home. They must also prove their losses.

[373] It often requires a great deal of evidence to determine how much a tenant should have to pay. A landlord may provide receipts, records of time spent, pictures of the damage, evidence about the age of damaged items, and other details. Judges or tenancy dispute officers often have to go through claims in detail, making decisions about small amounts of money.

[374] In our consultation, some participants said that it is often hard for a tenant to know if the amount of a landlord's claim is reasonable. For example, a landlord might say that they had to replace carpet at a cost of \$10 per square foot. If the tenant has no experience with buying carpet, they will not know if \$10 a square foot is inexpensive, expensive, or excessive. The reasonableness also depends on other factors, like the type of home. An expensive carpet might be reasonable in an upscale home but unreasonable in a basic one.

[375] Courts and RTDRS may not require a tenant to pay the full cost to replace a damaged item. They will adjust the amount to avoid betterment. As one tenancy dispute officer put it, a landlord is "entitled to a fair value of what they lost, but not entitled to be put in a better position."³⁰⁰ If a tenant damaged an old, worn out carpet, they should not have to pay the full cost for a new, nicer one.

[376] RTDRS has developed a policy that helps tenancy dispute officers make these adjustments.³⁰¹ It lists the expected useful life of various items. For example, it says the expected useful life of a freezer is 20 years. If a tenant damages a freezer that is 20 years old or more, the landlord may not be able to recover any damages because the tenancy dispute officer will assume the landlord would have had to replace it in any case. If an item has not reached the end of its expected useful life, a tenancy dispute officer can apply a formula to

³⁰⁰ *Re 19000703*, 2019 ABRTDRS 33.

³⁰¹ Residential Tenancy Dispute Resolution Service (Alberta), *RTDRS Depreciation Tip Sheet*, online: <open.alberta.ca/dataset/aa8fab22-48d6-44f0-a580-3c993195ffac/resource/347afedc-29af-41d4-9a79-47ccd68a4c4a/download/sartr-rtdrs-depreciation-tip-sheet-2025-02.pdf> [perma.cc/VK8R-376T].

calculate the depreciated value. A tenancy dispute officer will usually require a tenant to pay the depreciated value, rather than the full replacement cost.

[377] There are benefits to formulas like this one. It promotes consistency in decision making. It could also help landlords and tenants know what to expect. Are there other issues that would lend themselves to formulas? Should formulas or guidelines be in legislation?

ISSUE 31

Should legislation include more guidance about how decision makers should calculate damages?

D. Maintenance and Repairs

[378] From the tenant perspective, a common concern is that a landlord does not maintain a home or does not make necessary repairs.

1. WHAT CAN A TENANT DO?

[379] If a tenant believes a landlord is not fulfilling their responsibilities, the tenant has several options. They may rely on the *Public Health Act*, the *Residential Tenancies Act*, or both. While the legislation is thorough, we heard many tenants have trouble navigating the system or find it to be ineffective.

a. Inform the landlord

[380] When a tenant notices a problem, their first step is usually to inform the landlord. In many cases, the landlord responds quickly and addresses the problem.

[381] On occasion, however, a landlord may take a long time to address a problem or fail to address it at all. In our consultation, many participants told us about landlords who did not respond to requests for maintenance, did not make necessary repairs, or only took actions that proved to be ineffective.³⁰²

³⁰² There are also examples in case law. See eg *Perpelitz v Manor Management Ltd.*, 2014 ABPC 63; *Re 23002689*, 2023 ABRTDRS 13. In *Perpelitz v Manor Management Ltd.*, 2014 ABPC 63, the tenant notified the landlord of a leak six times over two months. The leak eventually caused a flooded basement and then black mould. It was almost four months after the tenant first notified the landlord about the leak until someone showed up to fix the problems. In *Re 23002689*, 2023 ABRTDRS 13, the tenants contacted the landlord eight times over five months about a mouse infestation. The landlord provided traps and repellent but the

b. Public health inspections and orders

[382] If a tenant suspects a home does not meet the *Minimum Housing and Health Standards* they can engage the public health process. Alberta Health Services Environmental Public Health is responsible for public health inspections and enforcement of standards for rental housing, including the *Minimum Housing and Health Standards*. If a tenant makes a complaint, a public health inspector may inspect a rental home. On occasion, another agency will report an issue or a public health inspector may inspect a rental home on their own initiative.

[383] We heard that inspectors may try to help landlords comply with the legislation without formal enforcement action. If they find violations, they may educate a landlord about the requirements and suggest how to meet them.

[384] If the landlord does not address problems or there are serious violations, an inspector may make an order. An order might require a landlord to complete certain work or make repairs by a deadline. An order is the only way to make a landlord perform repairs.³⁰³ Even so, they are not always effective.³⁰⁴

[385] If the violations pose a serious risk to health or safety, an inspector may make an order closing a home for accommodation or declaring a home unfit for human habitation. These orders require tenants or other occupants to move out, meaning a tenant can lose their home. We heard that inspectors are mindful of the impact on tenants. They may check that tenants have a place to go before making an order or give some time for the tenants to leave before the order takes effect. Nonetheless, losing a home on short notice can cause hardship for tenants, their families, and others who live with them.

[386] We heard in our consultation that tenants are sometimes hesitant to make complaints for fear of losing their home.³⁰⁵ Ironically, we heard that tenants

problem persisted. When the tenants applied to RTDRS for compensation, a tenancy dispute officer found the landlord should have done more, like hiring a professional exterminator.

³⁰³ As discussed below, the remedies in the *Residential Tenancies Act* do not include orders requiring a landlord to make repairs. In some other jurisdictions, residential tenancy legislation allows courts or tribunals to make orders compelling a landlord or tenant to take a specific action, like making a repair: see eg BC Act, note 66, ss 32, 62(2).

³⁰⁴ See eg *C.V. Benefits Inc. v Angus*, 2017 ABPC 118. A public health inspector inspected a home in January 2016 and directed the landlord to address various issues. Many were still unresolved when the tenancy ended in September 2016.

³⁰⁵ The Ministerial Advisory Committee on Residential Tenancies mentioned this problem in its 1990 report: *Achieving a Balance* at 63:

For tenants whose accommodation has deteriorated to an alarming extent, the public health and building code authorities can be summoned by the tenant. However, that form of remedy, in most cases, is not satisfactory and landlords who are unwilling to make the repairs cannot be compelled to do so. The end

Continued

living in the worst conditions may be the most reluctant to complain. The worse the condition of the home, the greater the risk that an inspector will make an order closing the home or declaring it unfit for human habitation, causing the people living there to lose their home on short notice.

c. Remedies under the Residential Tenancies Act

[387] A tenant may also have remedies under the *Residential Tenancies Act* if a landlord's failure to address an issue is a breach of a residential tenancy agreement.

[388] A problem with a home is not necessarily a breach of a residential tenancy agreement. Section 16(c) of the *Residential Tenancies Act* only requires a landlord to ensure a home meets "at least the minimum standards prescribed for housing premises under the *Public Health Act* and regulations."³⁰⁶ There is nothing in the *Public Health Act*, the *Housing Regulation*, or the *Minimum Housing and Health Standards* that requires a rental home to have an elevator, washing machine, or dishwasher, for example, although these amenities may be very important to a tenant.³⁰⁷ If the home included these amenities at the start of the tenancy, however, a court or RTDRS may find that the residential tenancy agreement requires the landlord to maintain them in working order.³⁰⁸

[389] Section 37(1) lists the remedies a court or RTDRS may grant:

37(1) If a landlord commits a breach of a residential tenancy agreement or contravenes this Act, the tenant may apply to a court for one or more of the following remedies:

- (a) recovery of damages resulting from the breach or contravention;
- (b) abatement of rent to the extent that the breach or contravention deprives the tenant of the benefit of the residential tenancy agreement;
- (c) compensation for the cost of performing the landlord's obligations;

result is that the premises are condemned by the building or health inspector and the tenant is effectively evicted. Tenants can be reluctant to complain to the health or building authorities for fear that they will either be evicted by their landlord for lodging such complaints or the building or health inspector will condemn the building.

³⁰⁶ *Residential Tenancies Act*, s 16(c).

³⁰⁷ An elevator may be essential to a tenant who uses a wheelchair or a walker. If the elevator stops working, they may be trapped at home until it is fixed.

³⁰⁸ See eg *Re 19005916*, 2019 ABRTDRS 21; *Re 21007992*, 2021 ABRTDRS 40.

(d) termination of the tenancy by reason of the breach or contravention if in the opinion of the court the breach or contravention is of such significance that the tenancy should be terminated.

[390] None of these remedies directly require a landlord to make repairs or address a problem with a home. Damages, abatement of rent, and compensation for performing the landlord's obligations are all financial remedies.

[391] Damages or abatement of rent may encourage a landlord to do repairs or address an issue. Abatement of rent means the tenant pays a reduced rent. A court or RTDRS might reduce the rent until a landlord fixes a problem, giving the landlord an incentive to fix it quickly.

[392] Sometimes a tenant can fix the problem themselves. If they do, they could apply for compensation for the cost of performing the landlord's obligations. It does not work in all situations. It is not always feasible or practical for a tenant to perform the landlord's obligations. It is doubtful, for example, that an elevator repair company would repair an elevator in a large high-rise building on the request of one tenant, even if the tenant paid.

[393] If the tenant wants to terminate the tenancy because of a problem with the condition of a home, there are two ways to do it under the *Residential Tenancies Act*.

[394] The first is a multi-step process with very specific conditions. Section 28 allows a tenant to terminate a tenancy if a landlord fails to comply with an order under the *Public Health Act*.³⁰⁹ It can take a long time to terminate a tenancy this way. First, a tenant must make a complaint and wait for a public health inspector to inspect. If the inspector makes an order, they will usually give the landlord some time to fix the issue. If the landlord does not fix the issue by the deadline, the tenant can give the landlord a notice to terminate the tenancy. The tenant

³⁰⁹ *Residential Tenancies Act*, s 28:

28(1) A tenant may apply to a court to terminate the tenancy or may terminate the tenancy by serving the landlord with a notice at least 14 days before the day that the tenancy is to terminate where

(a) the landlord commits a substantial breach of the residential tenancy agreement, and
 (b) an executive officer has issued an order under section 62 of the *Public Health Act* in respect of the circumstances that constitute the substantial breach, and the tenant believes on reasonable grounds that the landlord has failed to comply with the order.

...

(3) A notice to terminate under this section is ineffective if

(a) within 7 days from the date the landlord receives the notice, the landlord serves the tenant with a notice in writing objecting to the termination on the grounds that the landlord has complied with the order under the *Public Health Act* or has been granted a stay of the order, and
 (b) at the time of serving the notice of objection the landlord has complied with the order or has been granted a stay of the order.

must give the landlord 14 days notice. The termination is not effective if the landlord remedies the problem within seven days after the notice. The whole process could take weeks or months. Some participants in our consultation said they had never seen a tenant successfully terminate a tenancy using this process.

[395] The second is to apply to a court or RTDRS to terminate the tenancy. Section 37(1)(d) allows a court or RTDRS to terminate a tenancy if a landlord commits a breach of a residential tenancy agreement. The breach does not have to be a violation of the *Minimum Housing and Health Standards*. A tenant could apply whether or not a public health inspector has made an order. There are examples of tenants succeeding in these kinds of applications.³¹⁰

2. SPECIFIC ISSUES

[396] There are some specific issues about maintenance and repairs.

a. Should there be guidance about time to fix problems?

[397] The legislation does not have any guidance about how long a landlord can take to perform repairs or address issues.³¹¹ A tenant may be frustrated if they feel a landlord is taking too long to address an issue but uncertain about when it is reasonable to make a complaint.

b. What are a tenant's obligations?

[398] In practice, it often takes some cooperation between a landlord and tenant to address maintenance issues. Legislation says very little about a tenant's responsibilities to cooperate.³¹²

[399] One question is whether a tenant has an obligation to inform the landlord of problems. A landlord may not know that there is a problem without a tenant's cooperation. Some landlords perform regular inspections to find any maintenance issues but even if they do, some issues can come up suddenly between inspections. If a tenant does not inform the landlord in a timely way, the problem can get worse. There is nothing in legislation to say whether a tenant

³¹⁰ See eg *Re 23002689*, 2023 ABRTDRS 13.

³¹¹ If a public health inspector makes an order, it may state a deadline to do the work or complete repairs. By the time an inspector makes an order, however, the problem has usually been ongoing for some time.

³¹² One of the few statements is in *Minimum Housing and Health Standards*, note 198, s 17:

17 Every tenant shall allow access for repairs or pest control treatment as per the requirements of the *Residential Tenancies Act*.

must inform a landlord of a problem or when they must do so.³¹³ In some cases, tenants been held responsible for not informing a landlord of a problem.³¹⁴ We heard that tenants are sometimes reluctant to report issues to a landlord if they are at fault or fear the landlord will claim they are at fault. They may be worried that they will have to pay for repairs or that the landlord will try to terminate the tenancy.

[400] Another question is about what a tenant may be required to do to assist with addressing issues. For example, bedbug treatment often involves a lot of preparation. Furniture must be moved away from walls, items must be put away, and clothing and linens must be washed. Landlords often ask tenants to do this preparation. It can be very challenging for some, like older adults or people with physical disabilities.³¹⁵

c. What happens if a landlord cannot pay for repairs or maintenance?

[401] Sometimes a landlord puts off maintenance or does not make repairs because they cannot afford to do it. We saw some examples in our research and consultation. Any person with a home to rent can become a landlord. They do not have to meet any financial requirements or have money available for repairs.

[402] In some other contexts, property owners are required to prepare for the cost of major repairs. The *Condominium Property Act* requires a condominium corporation to have a reserve fund to cover the cost of major repairs.³¹⁶

d. Who should pay for alternate accommodation?

[403] Sometimes a tenant, their family, or others who live with them must leave their home while a landlord completes repairs or addresses an issue. For

³¹³ In its 1977 report, ALRI recommended the legislation should include a clear statement that a tenant must inform a landlord of a problem with the home. ALRI wrote: “[w]e believe that the tenant should be obliged to notify the landlord of conditions of disrepair known to the tenant as soon as reasonably possible”: *Residential Tenancies 1977* at 39. See also *Residential Tenancies 1977* at 41:

Recommendation 12

(1) That in every tenancy agreement there be implied the following covenants between the tenant and the landlord:

...

(c) that the tenant shall notify the landlord, insofar as reasonably possible, of any condition of disrepair in the rented premises known to the tenant.

³¹⁴ See eg *Re 19005306*, 2019 ABRTDRS 30; *Re 2006559*, 2020 ABRTDRS 33; *Re 21002885*, 2021 ABRTDRS 17.

³¹⁵ Emily Paradis, *Access to Justice: The Case for Ontario Tenants: Final Report of the Tenant Duty Counsel Review* (Ontario: Advocacy Centre for Tenants Ontario, 2016) at 70, online: <[acto.ca/assets/files/TDCP_FinalReport_-_Nov7.pdf](https://act.o.ca/assets/files/TDCP_FinalReport_-_Nov7.pdf)> [perma.cc/26FR-ELEX].

³¹⁶ *Condominium Property Act*, RSA 2000, c C-22, s 38.

example, a tenant may need to stay away overnight after a bedbug treatment.³¹⁷ If they need to stay in a hotel, who should pay? The *Residential Tenancies Act* does not say.

[404] If a tenant applies for damages or abatement of rent, a court or RTDRS might require the landlord to pay for accommodation or other costs.³¹⁸ One might ask whether it should be up to tenants to apply. Tenants who are most in need are often those who have the most difficulty seeking remedies. They may not know their rights or how to make an application. Legislation could clarify if and when a landlord must pay for alternate accommodation.

ISSUE 32

How could legislation clarify the obligations of landlords and tenants relating to maintenance or repairs?

E. Entry and Inspections

[405] The *Residential Tenancies Act* allows a landlord to enter a tenant's home only in specific circumstances. They fall into three categories. First, a landlord can enter a tenant's home if the tenant consents.³¹⁹ Second, a landlord can enter the home if there is an emergency or the tenant has abandoned the home.³²⁰ A landlord does not need a tenant's consent and does not need to provide notice before entering the home in these situations. Third, a landlord can enter a tenant's home for specific reasons: to inspect the home, to make repairs, to control pests, and to show the home to potential purchasers or tenants.³²¹ The landlord must provide notice and there are limits on when the landlord can enter.

[406] We did not hear many concerns about these rules. Most people seem to think they are clear and fair. Many problems seem to be about people not following the rules.

[407] There are a few small issues.

³¹⁷ People with certain health conditions, young children, or pets may be advised to stay out of a home after some kinds of bedbug treatments.

³¹⁸ See eg *Boardwalk Rental Communities v Ravine*, 2009 ABQB 534; *Re 23013993*, 2024 ABRTDRS 1.

³¹⁹ *Residential Tenancies Act*, s 23(1).

³²⁰ *Residential Tenancies Act*, s 23(2).

³²¹ *Residential Tenancies Act*, s 23(3).

[408] The *Residential Tenancies Act* does not have any details about how a landlord should request or obtain consent to enter. Does the landlord have to seek consent for each entry or can they rely on some kind of blanket permission? If a residential tenancy agreement says the landlord may enter at any time without notice, is it a valid consent or a void term?³²²

[409] We heard about a gap in the legislation. Section 23(2)(b) says that a landlord may enter a tenant's home to make repairs. It does not say whether anyone else can enter the home. Often landlords hire other people to make repairs. It would be helpful if the legislation clearly said whether other people, like a repair person hired by the landlord, may enter a tenant's home.

[410] It might be helpful if legislation provided more guidance about the time of entry and how often a landlord can enter a tenant's home. If a landlord enters for one of the reasons that requires notice, the notice must state the date and time of entry but it "may be expressed as a period of time of reasonable duration, which must begin and end at specified times."³²³ We found some examples of landlords giving very large windows so a tenant could not predict when the landlord would actually enter the home.³²⁴ We also found examples of landlords entering tenants' homes many times in a short period.

[411] Finally, one of the reasons a landlord may enter a home is to show it to potential tenants. In our consultation we heard that some landlords would prefer to have more time to show a home to potential tenants.

[412] The landlord can enter without consent if they provide notice, but only if the tenancy is near its end: "after a landlord or tenant has served notice of termination of a periodic tenancy or during the last month of a fixed term tenancy."³²⁵ Some participants in our consultation thought that a month did not give enough time to show a home and find a new tenant.

ISSUE 33

How could legislation clarify when a landlord or others may enter a tenant's home without the tenant's consent?

³²² See *Residential Tenancies Act*, s 3(1): "Any waiver or release by a tenant of the rights, benefits or protections under this Act is void."

³²³ *Residential Tenancies Act*, s 23(6).

³²⁴ In *Re 24005158*, 2024 ABRTDRS 14, a tenancy dispute officer found it was not reasonable for a landlord to give notice that the landlord might enter any time between 8am and 5pm in a 12-day period.

³²⁵ *Residential Tenancies Act*, s 23(3)(e).

CHAPTER 10

Forms and Notices

A. Forms

[413] Many sections of the *Residential Tenancies Act* require documents in writing. They include:

- a notice of landlord, stating the name and address of the landlord;³²⁶
- many kinds of notices, including notices to terminate a tenancy, a notice objecting to a termination, a notice of rent increase, and a landlord's notice to enter a tenant's home;³²⁷
- inspection reports;³²⁸
- a landlord's consent to a sublease or assignment or a refusal to consent;³²⁹
- statements of account for security deposits if the landlord makes any deductions at the end of a tenancy or if a new landlord replaces the original landlord;³³⁰
- an agreement to pay interest on a security deposit at the end of the tenancy.³³¹

[414] Often the legislation has requirements for details that must be included in a written document.³³² Some of the requirements are in the *Residential Tenancies Act*.³³³ Some of the requirements are in regulations.³³⁴ Sometimes the only requirement is that the document must be in writing.³³⁵

³²⁶ *Residential Tenancies Act*, s 18(1).

³²⁷ *Residential Tenancies Act*, ss 10, 14, 23, 28 - 30, 33, 36, 41, 47.3.

³²⁸ *Residential Tenancies Act*, s 19.

³²⁹ *Residential Tenancies Act*, s 22.

³³⁰ *Residential Tenancies Act*, ss 46(2), 47(2).

³³¹ *Residential Tenancies Act*, s 45(2).

³³² See eg *Residential Tenancies Act*, ss 10(1), 14(2), 23(5), 28(2), 29(2), 30(2), 33(3), 36(3), 47.3(3).

³³³ See eg *Residential Tenancies Act*, ss 10(1), 14(2), 23(5), 28(2), 29(2), 30(2), 33(3), 36(3), 47.3(3).

³³⁴ See eg *Ministerial Regulation*, note 138, s 4.

³³⁵ See eg *Residential Tenancies Act*, ss 22(1), (5) 29(4)(b), 46(2).

[415] There are no required forms. The *Residential Tenancies Act* allows the Minister to make forms “that may be used” but there is no power to prescribe forms that must be used.³³⁶ One of the regulations has template forms for terminating a tenancy.³³⁷ There are no examples or templates of other forms that might be useful, like notice of entry or a notice of default.³³⁸

[416] We heard in consultation that people have problems meeting the requirements for notices and other documents.³³⁹ For example, we heard about inspection reports that do not include the required statements.

[417] It might be easier to comply with the requirements if the legislation included template forms or required forms for all the written documents required under the legislation. A template form or required form would include all the required elements, making it easier for landlords and tenants to comply with the legislation.

ISSUE 34

Should there be template forms for all documents that must be in writing?

ISSUE 35

If so, should it be mandatory or optional to use the template forms?

B. Rules for Delivering Notices

[418] The *Residential Tenancies Act* requires landlords to give written notices to tenants or tenants to give written notices to landlords in many different circumstances.³⁴⁰ For example, written notice is required to end a tenancy or before a landlord enters a tenant’s home.

³³⁶ *Residential Tenancies Act*, s 70(1)(a).

³³⁷ *Ministerial Regulation*, note 138, Schedule.

³³⁸ See *Residential Tenancies Act*, ss 23, 35.

³³⁹ There are also examples in case law: see eg *Pena v Phipps*, 2014 ABPC 106 at paras 51-52.

³⁴⁰ *Residential Tenancies Act*, ss 5, 7-12, 14, 18, 19, 23, 28, 29, 30, 33, 35, 36, 41, 47, 47.3, 50, 51, 53. There are similar requirements for every kind of notice. Notices must:

- be in writing,
- be signed by the person sending it,
- provide a description of the issue, and
- state the date when the event will occur.

[419] There are rules for how those notices must be served – that is, delivered to the recipient.³⁴¹ The *Residential Tenancies Act* says notices should be served personally (meaning hand-delivered directly to the person) or sent by registered mail. If a landlord is sending a notice to a tenant and neither of those methods works, the landlord can try two other methods: giving it to an adult who lives with the tenant or posting it on the door or another “conspicuous place on some part of the premises”.³⁴²

[420] If all other methods fail, a landlord or tenant can serve a notice electronically if certain conditions are met.³⁴³ The legislature recently amended this part of the *Residential Tenancies Act* to bring it up to date.³⁴⁴ Before the amendment, section 57(5) only permitted use of an “electronic means that will result in the printed copy of the notice, order, or document being received by an electronic device that is situated in the residential premises or at the landlord’s address”, or in other words, a fax machine. The amendment allows landlords and tenants to use other types of electronic communication, including email or text message. One thing that did not change is that a landlord or tenant may only use electronic service as a last resort. The legislation only allows electronic service if the sender is “unable” to deliver the notice by any other method.³⁴⁵

[421] Other than personal service and electronic service, all the methods for serving a tenant require delivering the notice to the premises that the tenant rents from the landlord. If the tenant is not there, they will not receive the notice. RTDRS cases, as well as anecdotes we heard in early consultation, provide examples of tenants who missed notices while they had already moved out,³⁴⁶ were temporarily away for work,³⁴⁷ were on vacation,³⁴⁸ or were in the hospital.³⁴⁹ In all these cases the tenant did not actually receive the notice, yet service was still valid.

³⁴¹ *Residential Tenancies Act*, s 57.

³⁴² *Residential Tenancies Act*, s 57(3)(b).

³⁴³ *Residential Tenancies Act*, s 57(5). The sender must be “unable” to deliver the notice by any other method. They may send it electronically if the recipient “has provided an electronic address as an address for service to which information or data in respect of a notice, order or document may be transmitted.” The notice must be “in a format that this usable for subsequent reference.”

³⁴⁴ *Red Tape Reduction Statutes Amendment Act, 2025*, SA 2025, c 15, s 6(2).

³⁴⁵ *Residential Tenancies Act*, s 57(5).

³⁴⁶ See eg *Abougouche v Miller*, 2015 ABQB 724; *Re 21000325*, 2021 ABRTDRS 11; *Re 22003152*, 2022 ABRTDRS 18; *Re 23009644*, 2023 ABRTDRS 25.

³⁴⁷ *Hewitt v Barlow*, 2016 ABQB 81 at para 18.

³⁴⁸ See eg *Pena v Phipps*, 2014 ABPC 106.

³⁴⁹ See eg *Krause v Bonin*, 2011 ABPC 171; *Re 21001411*, 2021 ABRTDRS 12.

[422] In early consultation, we heard people regularly make mistakes or ignore the rules about service.³⁵⁰

1. TIME FOR DELIVERING NOTICE

[423] The rules about service leave out one important detail. They do not say when service is effective. For any method but personal service, there may be a delay between when the notice is delivered and when the intended recipient actually receives it.

[424] It is important to know when service is effective because notices are supposed to give the recipient advance warning of an event. Almost all the notices mentioned in the *Residential Tenancies Act* have to be served a minimum amount of time in advance. Some of the timelines are very short – as little as 24 hours. For example, before a landlord can enter a tenant’s home to inspect or make repairs, they must give the tenant notice “at least 24 hours before the time of entry.”³⁵¹ If the landlord posts a notice on the door exactly 24 hours before they plan to enter, the tenant may receive less than 24 hours of notice. If the tenant is away overnight, possibly on vacation or in the hospital, they might not receive the notice in time. They could arrive home to find a notice long after the landlord actually entered.

[425] There are rules about when service by mail is effective, although they are not in the *Residential Tenancies Act*. A landlord or tenant would have to know to look in the *Interpretation Act*. Section 23(1) of the *Interpretation Act* says:³⁵²

23(1) If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected

(a) 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta ...

³⁵⁰ See eg *Re 24005158*, 2024 ABRTDRS 14, which describes several different kinds of non-compliant service by a single landlord. Over approximately a year and a half, the landlord gave the tenant at least 24 notices of entry. There were at least six breaches of section 57: four times the landlord sent a notice by email without attempting any other method of service first, once the landlord posted a notice on the door without attempting personal service, and once the landlord slid a notice under the door without attempting personal service. Other notices were non-compliant for other reasons, like lack of a signature.

³⁵¹ *Residential Tenancies Act*, s 23(4)(a).

³⁵² *Interpretation Act*, RSA 2000, c I-8, s 23(1).

[426] A landlord who wanted to send a notice of entry by registered mail would have to send it at least eight days before they wanted to enter: seven days to allow the tenant to receive the notice, plus the 24 hours required by the *Residential Tenancies Act*.

[427] There are no legislated rules about when service is effective if a landlord gives a notice to another adult or posts it on a door.³⁵³ Section 57(5) does not say when electronic service is effective.³⁵⁴

[428] It would be helpful if the legislation included rules to determine when notice is effective. They should allow enough time that, in most cases, the intended recipient will actually receive at least the amount of notice they are entitled to under the legislation.

ISSUE 36

Should legislation include rules for determining when notice is received?

[429] There are a few parts of the *Residential Tenancies Act* that have very serious consequences on short notice. Section 30(1) allows a landlord to terminate a tenancy on 24 hours notice in specific circumstances.³⁵⁵ Section 33(2) allows a landlord to require a person who is not a tenant to leave within 48 hours.³⁵⁶

[430] A person should get some notice before losing their home. The legislation recognizes that even a person who has done something very wrong deserves some notice. They will need to find another place to stay and to remove their belongings from the home. While they may not be able to complete those things in 24 or 48 hours, they should have a little time to make emergency arrangements. They will lose even that little time if they do not receive the notice until the deadline has actually passed. It could cause significant hardship.

³⁵³ Compare *Court of Justice Civil Procedure Regulation*, Alta Reg 176/2018, ss 41, 46. A person may serve a commencement document “by leaving a copy for the individual at the individual’s most usual place of residence with someone residing at the residence who is apparently 16 years of age or older”: *Court of Justice Civil Procedure Regulation*, Alta Reg 176/2018, s 41(1)(b). Service is effective on the day the document is left with that person: *Court of Justice Civil Procedure Regulation*, Alta Reg 176/2018, s 41(2)(b).

³⁵⁴ Compare *Alberta Rules of Court*, Alta Reg 124/2010, r 11.21(2); *Court of Justice Civil Procedure Regulation*, Alta Reg 176/2018, s 46(2)(d). Electronic service under the *Alberta Rules of Court* requires a confirmation that the message has been received, like an email delivery receipt or read receipt. Service is effective when the confirmation is received.

³⁵⁵ *Residential Tenancies Act*, s 30(1).

³⁵⁶ *Residential Tenancies Act*, s 33(2).

[431] The Ministerial Advisory Committee on Residential Tenancies recommended that a 24-hour termination notice should be served personally.³⁵⁷ In other words, it would have to be hand-delivered directly to the tenant. Some other Canadian jurisdictions have similar rules.³⁵⁸ There may be drawbacks to personal service. A landlord might have concerns about safety or escalating conflict.

[432] Should there be some additional safeguards to ensure people actually receive these notices in time? Are there other circumstances where it is essential that a person actually receive a notice? If there should be additional safeguards, what should they be?

ISSUE 37

Should legislation include special rules about delivery of certain kinds of notices?

2. SIMPLIFYING OR STREAMLINING RULES ABOUT SERVICE OF NOTICES

[433] The rules about service are very detailed and technical. They are difficult to understand. Our consultation and research suggests many people are not following them correctly.

[434] Could the rules be simplified or streamlined? We have identified at least three possibilities.

a. Steps for service

[435] Is it necessary to require landlords or tenants to try methods of service in a particular order? The current rules require that a landlord try to deliver a notice by personal service or registered mail first. If those methods fail, next they must try giving the notice to an adult who lives with the tenant or posting on the door. Finally, if all the other methods fail, they can try sending the notice electronically.

[436] It can take time to try all these methods of service in order. In some cases, it may be a pointless waste of time. If the landlord suspects the tenant has already moved out, it is silly to make a landlord try multiple different ways of serving the tenant at the place they no longer live.

³⁵⁷ *Achieving a Balance* at 104.

³⁵⁸ See eg *The Residential Tenancies Act*, CCSM c R119, s 184(2).

[437] It can also cause delays. Imagine a landlord who needs to enter a tenant's home to do repairs. If personal service does not work, it could take days or weeks to try all the methods of service in order. They would need eight days just for registered mail. They would have to schedule the repairs weeks in advance to try all the methods of service and still ensure the tenant receives at least 24 hours notice. In the meantime, the repairs would remain incomplete.

[438] These rules seem to be out of step with most people's expectations. We heard that few people follow the rules exactly as written. Most people seem to assume that they can use any method of service that will actually reach the intended recipient. Even RTDRS tenancy dispute officers occasionally suggest it is not necessary to follow the rules precisely, as long as the notice actually reaches the intended recipient.³⁵⁹

[439] These rules are also out of step with other Canadian jurisdictions. Most other Canadian jurisdictions allow landlords or tenants to choose a method of service from a list of options.³⁶⁰ No other jurisdiction has such a strict hierarchy, requiring a landlord or tenant to try each option in order.

³⁵⁹ See eg *Re 21000871*, 2021 ABRTDRS 5; *Re 24005158*, 2024 ABRTDRS 14; *Re 24014716*, 2025 ABRTDRS 2. In *Re 21000871*, 2021 ABRTDRS 5, the landlord sent at least five notices of entry to the tenant electronically: four by email and one by text. There was no evidence that the landlord tried any other methods of service first. The tenant alleged that the landlord had entered without proper notice but the tenancy dispute office dismissed the claim:

Section 23(5) requires that a notice to enter must be in writing, must be signed by the landlord, must state the reasons for entry and name a date and time of the entry. Except for lack of a signature, the texts and emails sent by the Landlord all meet these requirements. I fail to see how the lack of a signature impacted the Tenant. Furthermore, she did not apparently ever object to this inconsequential deviation from the prescriptions of section 23(5).

In *Re 24005158*, 2024 ABRTDRS 14, the tenancy dispute officer noted that the landlord breached section 57 when they slid a notice under the tenant's door without attempting other methods of service first but said the breach was trivial:

The Tenant stated that this notice was invalid because it was slid under her door rather than posted. The Tenant is correct that Section 57 of the RTA does not contemplate documents being served by "sliding" them under a door. Section 57 instead requires personal service and registered mail as its preferred methods, with service an adult co-occupant or posting in a conspicuous manner as fallback options in the event of the Tenant's absence or evasion of service.

However, this complaint is trivial in the circumstances. The Tenant does not indicate that the method of service was ineffective at bringing the entry to her attention. For this reason, I decline to award any damages for this notice and entry.

In *Re 24014716*, 2025 ABRTDRS 2, the tenant gave notice of termination to the landlord by text message. The tenancy dispute officer said a text message did not meet the requirements in the legislation but noted the parties had a pattern of communicating by text. It would be unfair to insist on strict compliance in the circumstances.

³⁶⁰ See eg BC Act, note 66, s 88:

88 All records ... that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

Continued

b. Addresses for service

[440] The legislation assumes that a tenant is at the home they rent from the landlord and will receive notices there. If the landlord serves a tenant by registered mail or by posting a notice, the landlord must deliver the notice to that home.³⁶¹

[441] This rule can cause problems if the tenant is away. If personal service is not possible, the landlord must attempt serving the tenant at the rented home. The legislation does not provide alternatives if the landlord knows the tenant is away, even if the tenant has moved out. Sometimes it means a landlord must go through the motions, knowing the tenant will never get the notice. It would be helpful if the legislation had more flexibility about where or how to serve a tenant. The new rules about electronic notices may help. There may be other ways to improve the rules.³⁶²

[442] There is also a drafting issue that complicates the rules about a tenant serving a notice to a landlord. A landlord is required to give a tenant written notice of the landlord's name, "postal address and physical location."³⁶³ Section 57 says a landlord's address for service by registered mail is at the address in that notice or "the address at which rent is payable."³⁶⁴ It seems unnecessary to have

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- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
 - (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
 - (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
 - (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
 - (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
 - (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
 - (i) [Repealed 2023-47-97.]
 - (j) by any other means of service provided for in the regulations.

See also *Residential Landlord and Tenant Act*, SY 2012, c 20, s 99; *Residential Tenancies Act*, RSNWT 1988, c R-5, s 71; Ontario Act, note 91, s 191; *Residential Tenancies Act*, RSNS 1989, c 401, s 15; *Residential Tenancy Act*, RSPEI 1988, c R-13-11, s 100; *Residential Tenancies Act*, SNB 1975, c R-10.2, s 25; *Residential Tenancies Act, 2018*, SNL 2018, c R-14.2, ss 34–35. For a summary of rules about service in most Canadian jurisdictions, see Shaun Fluker et al, "Need for Law Reform: Residential Tenancies and Electronic Communication" (8 April 2024), online: ABLawg <ablawg.ca/2024/04/08/need-for-law-reform-residential-tenancies-and-electronic-communication/> [perma.cc/9W82-A748].

³⁶¹ *Residential Tenancies Act*, ss 57(2), (3)(b), (4)–(5).

³⁶² In 1977, ALRI recommended that tenants and landlords should be able to change their addresses for service: *Residential Tenancies 1977* at 126. The recommendation was never implemented.

³⁶³ *Residential Tenancies Act*, s 18(1).

³⁶⁴ *Residential Tenancies Act*, s 57(2)(b).

two options for serving the landlord. It could be confusing, especially because many people now pay rent by electronic payments. It may be impossible to say where rent is payable. If a landlord has already provided an address for service in the notice of landlord, adding a different option only makes the rules more complex.

ISSUE 38

How could rules for service of notices be simplified or streamlined?

c. Service of documents for RTDRS applications

[443] The rules for service in section 57 apply to “a notice, order or document under this Act.”³⁶⁵ They do not apply to “service governed by the rules or practice of a court.”³⁶⁶

[444] Courts have their own rules about service of documents. Once a landlord or tenant makes an application to court, they have to follow that court’s rules to serve documents for the application. If the application is in the Court of King’s Bench, they will have to follow the rules in the *Alberta Rules of Court*.³⁶⁷ If the application is in the Court of Justice, they will have to follow the rules in the *Court of Justice Civil Procedure Regulation*.³⁶⁸

[445] RTDRS is not a court. Generally speaking, the rules in section 57 apply to service of documents for an RTDRS application but there are some inconsistencies. The legislation allows RTDRS to establish rules of procedure³⁶⁹ and specifically allows the RTDRS administrator or tenancy dispute officers to permit other methods of service.³⁷⁰ The administrator has exercised this power to make a general rule allowing service of RTDRS application documents by email

³⁶⁵ *Residential Tenancies Act*, s 57(1).

³⁶⁶ *Residential Tenancies Act*, s 57(6).

³⁶⁷ *Alberta Rules of Court*, Alta Reg 124/2010, Part 11.

³⁶⁸ *Court of Justice Civil Procedure Regulation*, Alta Reg 176/2018, Part 12.

³⁶⁹ *Residential Tenancy Dispute Resolution Service Regulation*, Alta Reg 98/2006, s 5.

³⁷⁰ *Residential Tenancy Dispute Resolution Service Regulation*, Alta Reg 98/2006, s 31(1)(b):

31(1) Any notice or other document required to be served under this Regulation must be served

(a) for matters under the *Residential Tenancies Act*, in accordance with section 57, except subsection (5), of that Act,

..., or

(b) in any other manner as directed by the Administrator or a tenancy dispute officer.

if certain conditions are met.³⁷¹ The RTDRS Rules of Practice and Procedure also state that RTDRS may authorize substitutional service.³⁷² The special rules for RTDRS applications make sense and solve some practical issues.³⁷³ However, they may be difficult to find as it is not obvious from the *Residential Tenancies Act* that there are special rules about service of documents for RTDRS applications.

C. Next Steps

[446] ALRI plans to publish additional reports cataloguing problems with the *Residential Tenancies Act*. The next report in this series will be about ending a tenancy.

[447] As this project continues, ALRI will make recommendations to address some of the problems we have identified. The project will include additional consultation.

[448] ALRI welcomes comments on any issues in this report or any other issues that we should consider in this project.

³⁷¹ Residential Tenancy Dispute Resolution Service (Alberta), *Rules of practice and procedure*, s 3.2, online: <open.alberta.ca/dataset/65e3d06c-7a6e-40c9-8d30-e0aba219e4a1/resource/0bbc3d7d-5895-47fb-9ee3-81ae81b276a3/download/sartr-rtdrs-rules-of-practice-and-procedure-2025-08.pdf> [perma.cc/X6GR-YQU3]:

As per the Administrator's directive pursuant to section 31(b) of the RTDRS Regulation, parties to any RTDRS application are permitted to effect service by way of email, as long as the parties have previously communicated by email, or the parties previously agreed to communicate by email, and the party serving notice is able to demonstrate to the Tenancy Dispute Officer that the email was delivered, such as with a reply, a read receipt or verifying software.

³⁷² Residential Tenancy Dispute Resolution Service (Alberta), *Rules of practice and procedure*, s 3.3, online: <open.alberta.ca/dataset/65e3d06c-7a6e-40c9-8d30-e0aba219e4a1/resource/0bbc3d7d-5895-47fb-9ee3-81ae81b276a3/download/sartr-rtdrs-rules-of-practice-and-procedure-2025-08.pdf> [perma.cc/X6GR-YQU3]:

Where all attempts to locate and serve a respondent have failed or are otherwise impractical, the applicant may file a Declaration in Support of Substitutional Service with the RTDRS requesting substitutional service. Substitutional service is a method of service which is not prescribed in the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*.

Substitutional service may be accomplished by:

- Sending the documents via email,
 - Serving a relative (adult) of the respondent(s),
 - Sending the documents by regular mail (provided the applicant has proof of the respondent's address),
- or
- Other methods as directed by the Tenancy Dispute Officer.

³⁷³ In particular, substitutional service is often necessary for applications made after a tenancy is over, like a landlord's claim for damage to the home or a tenant's claim for return of a security deposit. If personal service on a tenant is impractical, section 57 requires a landlord to serve a tenant by sending the documents to or leaving them at the premises that the tenant used to rent from the landlord. It does not make sense to serve a tenant there after they have moved out.

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Phone: 780-492-5291

E-mail: lawreform@ualberta.ca

LinkedIn: www.linkedin.com/company/ablawreform

X: [@ablawreform](https://x.com/ablawreform)

www.alri.ualberta.ca