

Reviewing Alberta's Residential Tenancies Act: Before and During a Tenancy

ALBERTA LAW REFORM INSTITUTE





This publication is intended as a brief summary of our preliminary research into Alberta's Residential Tenancies Act. It outlines some of the issues people are having with the law before and during a tenancy.

The full detailed report can be accessed by scanning the QR code above or at bit.ly/issuespaper7

INTRODUCTION

The Residential Tenancies Act governs the relationship between landlord and tenant. More specifically, it governs the relationships between people renting a place as a home. The Residential Tenancies Act does not govern the relationships created when renting a commercial place, and it does not govern the relationships of people renting mobile home sites. The Residential Tenancies Act affects hundreds of thousands of people living in Alberta, more than one quarter of all households in the province are rented.

The Alberta Law Reform Institute [ALRI] decided to analyze the Residential Tenancies Act because of its importance to so many people. You can read ALRI's Issues Paper 6, or our Issue Paper 6 Visual Summary, to understand how ALRI has undertaken its work to date.

This document provides a brief review of our next publication on the Residential Tenancies Act, Issues Paper 7. Issues Paper 7, like the one before it, does not make any recommendations to change the law. It analyses and lists issues that are present before people rent a home, when people are entering into an agreement to rent a home, and during the time people are in a residential tenancy. This document provides a summary of some of the issues discussed in Issues Paper 7.

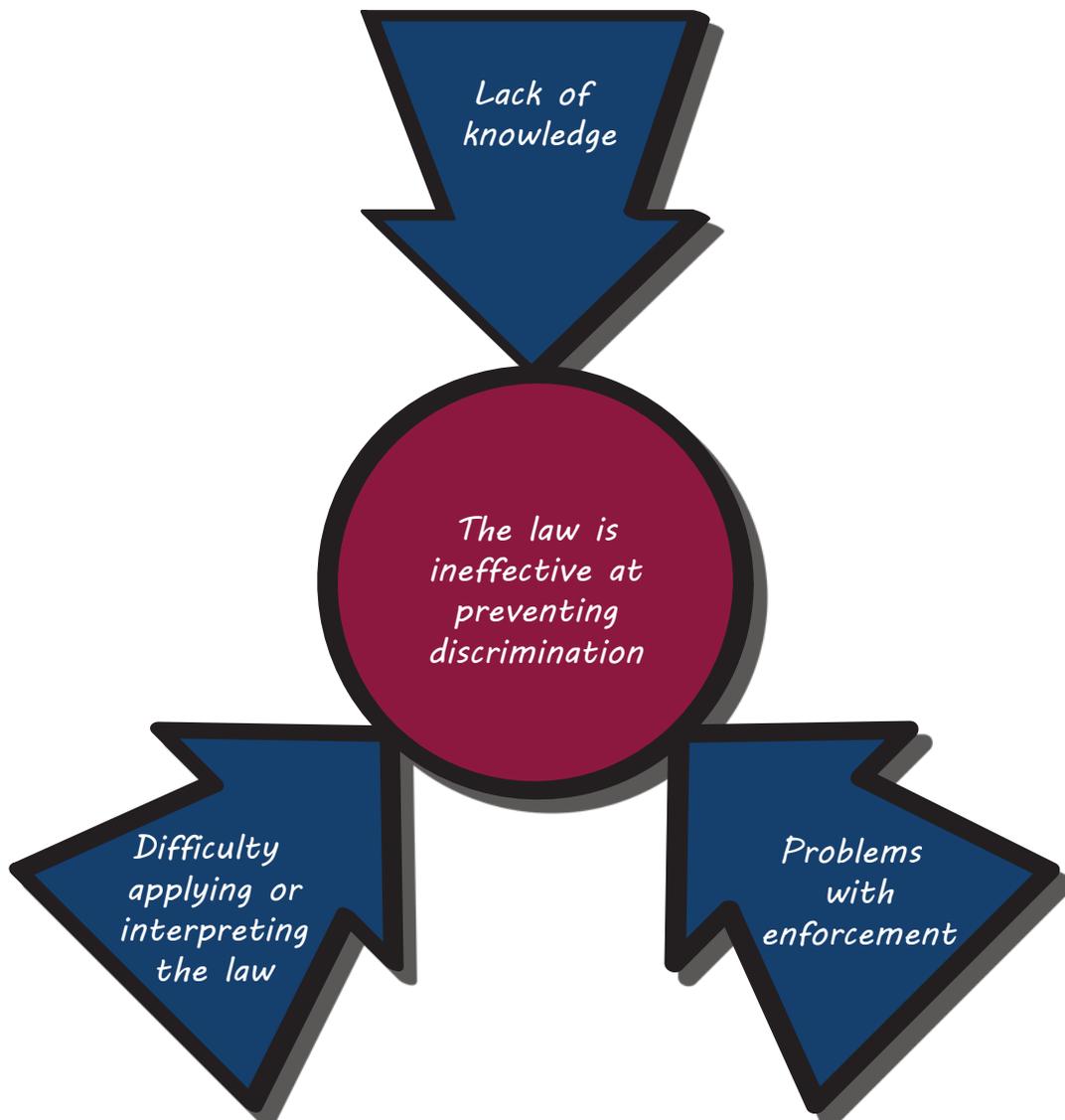
BEFORE A TENANCY

The Residential Tenancies Act says nothing about what happens before a tenancy begins. The law only applies when making a residential tenancy agreement, during a tenancy, and when ending a tenancy. Other laws apply before the creation of a residential tenancy agreement. Generally speaking, the Residential Tenancies Act does not have rules about tenants' applications to rent a home or how landlords select tenants.

Discrimination

The Alberta Human Rights Act prohibits discrimination against tenants or potential tenants. However, ALRI heard in consultation that the existing law is not effective for many reasons, including:

- lack of knowledge,
- difficulty interpreting or applying the law, and
- problems with enforcement.

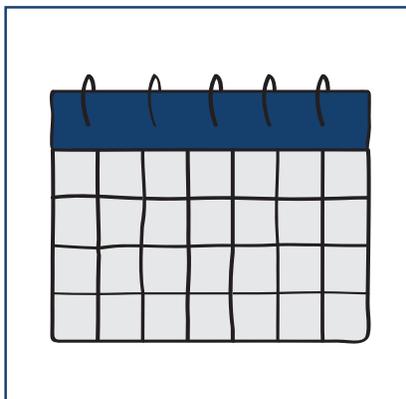


CREATING A TENANCY

The Residential Tenancies Act applies when people create a tenancy. There are, essentially, only three things that need to be agreed to create a residential tenancy:



What place will be rented as a home.



When the residential tenancy begins.



What amount the rent will be.

Residential Tenancy Agreements

Residential tenancy agreements can be written, oral, or implied. ALRI has found issues with all forms of residential tenancy agreements. Oral or implied residential tenancy agreements are vague. Landlords and tenants can have disagreements about very basic things like the amount of rent, when it is due, or when a tenancy ends.

Even written agreements can have problems. ALRI has found examples of written residential tenancy agreements that are contrary to the terms of the Residential Tenancies Act.

Security deposits

A landlord may require that a tenant pay a security deposit at the start of a tenancy. A security deposit cannot be more than one month's rent. ALRI has found that the rules concerning security deposits are clear, and in our consultation we did not hear many issues about them. However, security deposits are a frequent source of conflict for landlords and tenants. Some sources of this conflict include:

- what a security deposit is for,
- who owns the security deposit,
- what a landlord should do with a security deposit,
- how a security deposit is returned to a tenant, and
- what happens to an unclaimed security deposit.



DURING A TENANCY

The Residential Tenancies Act applies during a residential tenancy. However, ALRI has found that even simple concepts in the Residential Tenancies Act are made difficult in practice. The result is confusion and complexity for landlords and tenants.



Rent

The concept of rent is simple in the Residential Tenancies Act. Rent is what is paid by a tenant to a landlord under a residential tenancy agreement, excluding a security deposit. However, landlords and tenants may make a residential tenancy agreement about all the payments made by a tenant. Often, rent is used in a much narrower sense in these agreements than as it is used in the Residential Tenancies Act.

For example, some agreements list an amount that is payable monthly for “rent” and show charges a tenant must pay for specific amenities or privileges, like storage units or parking. The Residential Tenancies Act includes remedies for non-payment of rent.



Are these same remedies available if a tenant pays their “rent” to the landlord but does not pay their parking or storage fees?

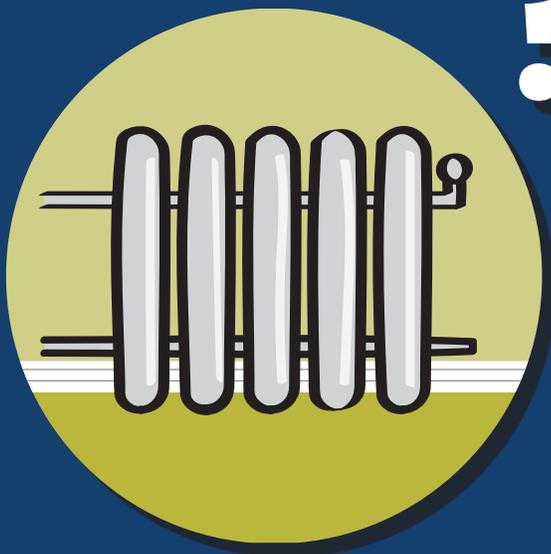
Utilities



The Residential Tenancies Act is silent when it comes to utilities. Utilities are often a source of conflict between landlords and tenants, and between tenants themselves. Most issues arise because of disputes over the cost of utilities or how utilities are paid. Without clear rules in the Residential Tenancies Act, it is hard for landlords and tenants to decide what is fair. It is also difficult to resolve conflicts about utilities.



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FEES AND PENALTIES

The Residential Tenancies Act does not address fees in a helpful way. There is no definition of fees, and the definition of rent is broad enough to include any fee that a landlord charges to a tenant. Other jurisdictions in Canada have much more specific legislation when it comes to fees. Some places prohibit application fees, or late payment fees. Other jurisdictions only limit late payment fees. Yet other places have rules for various other types of fees like:

- fees for guests,
- move-in or move-out fees, or
- fees for sub-letting or assigning a residential tenancy agreement.

Other fees are not mentioned in the Residential Tenancies Act but courts and tribunals in Alberta almost always find them unenforceable, including:

- late payment fees,
- lease break fees, or
- clawbacks of rental incentives.

However, these types of fees are often included in residential tenancy agreements. If a person does not know how courts or tribunals have decided an issue, they might pay a fee they otherwise would not have to pay.





BEHAVIOURS AND RULES

People's behaviour, and the rules to govern them, are surprisingly complex. Both landlords and tenants tend to agree that rules managing behaviour are important to any tenancy. However, in practice it can be very difficult to manage behaviour effectively. Sometimes landlords have to balance very important interests that may be incompatible. To make the issues more difficult, different people may have different standards for appropriate behaviour. For example, some tenants may have different opinions about what constitutes excessive noise, or whether smoking within one's rented home is acceptable.

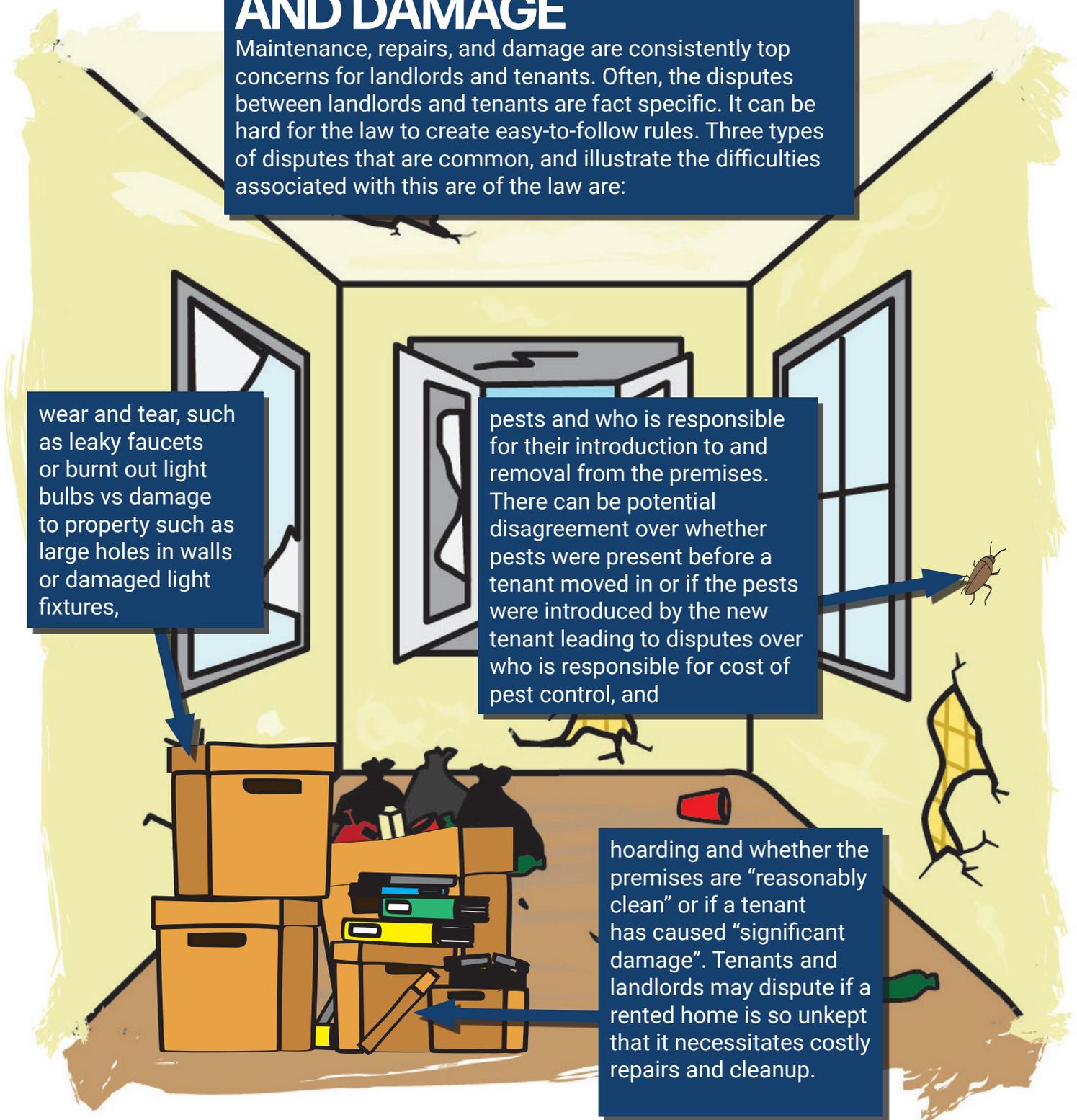
MAINTENANCE, REPAIRS, AND DAMAGE

Maintenance, repairs, and damage are consistently top concerns for landlords and tenants. Often, the disputes between landlords and tenants are fact specific. It can be hard for the law to create easy-to-follow rules. Three types of disputes that are common, and illustrate the difficulties associated with this area of the law are:

wear and tear, such as leaky faucets or burnt out light bulbs vs damage to property such as large holes in walls or damaged light fixtures,

pests and who is responsible for their introduction to and removal from the premises. There can be potential disagreement over whether pests were present before a tenant moved in or if the pests were introduced by the new tenant leading to disputes over who is responsible for cost of pest control, and

hoarding and whether the premises are "reasonably clean" or if a tenant has caused "significant damage". Tenants and landlords may dispute if a rented home is so unkept that it necessitates costly repairs and cleanup.



FORMS AND NOTICES

The Residential Tenancies Act often has requirements that must be included in a document. However, there are no required forms in the legislation.

The Residential Tenancies Act also requires landlords or tenants to deliver a notice to the other party in certain situations. ALRI heard in early consultation that people regularly make mistakes when delivering notices. The Residential Tenancies Act is completely silent about when delivery is effective. Even when someone does follow the rules in the legislation, they may not know when they have successfully sent a notice to the other party.

Similarly, in some instances, a person might suffer drastic consequences after a notice is deemed delivered. For example, a landlord can end a tenancy on 24 hours notice in some circumstances. ALRI has asked if there should be additional safeguards in place to ensure that the delivery of the notice results in actual receipt of the notice in situations like this.



ALRI'S NEXT STEPS

ALRI plans to publish additional reports cataloging 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.