

LANDLORD'S RIGHT OF ENTRY



STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

- 1(1)(f) Landlord Definition
- 1(1)(l) Residential premises Definition
- 1(1)(t) Tenant Definition
- 1(2) Reference to Tenant
- 16 Landlord's Covenants
- 23 Entry of Premises
- 24 Locks and Security Devices
- 37 Tenant's Remedies

There are no sections in the Regulations relating directly to the landlord's right of entry.

GUIDELINES

A tenant is entitled to the possession and peaceful enjoyment of the residential premises they are renting. Both the landlord and the tenant have to abide by the residential tenancy agreement and the obligations in the RTA.

The residential premises is the landlord's property and it is also the tenant's home.

The tenant should **not** be disturbed or inconvenienced by the landlord or anyone working for the landlord without a valid reason unless the tenant gives consent or is served with the required notice at least 24 hours before the time of entry.

ENTRY WITH CONSENT

Consent is a voluntary agreement by a person to do something proposed by another person. Consent under the influence of fear or terror does **not** amount to real consent.

A landlord may enter the residential premises with the tenant's consent. If the landlord obtains the consent of the tenant, a notice of entry is **not** required. The time for entry would be arranged at a time convenient to both the landlord and the tenant. Landlords can phone or meet with tenants to obtain consent to enter the residential premises. Consent can be given verbally or in writing.

If the tenant has made the landlord aware of needed repairs, the landlord may want to obtain the tenant's consent at that time to enter the residential premises to complete the repairs. Otherwise, the landlord will be required to give proper notice of entry. Putting any type of consent agreement in writing is a good idea.

ENTRY WITH NOTICE

A landlord may enter the tenant's residential premises without consent if the landlord serves the tenant with a written notice of entry at least 24 hours before the time of entry. Landlord's can enter this way for the following reasons, to:

- Inspect the state of repair of the residential premises including excessive moisture and humidity;
- Make repairs to the premises;
- Control pests as required;
- Show the premises to prospective purchasers or mortgagees;
- Show the premises to prospective tenants after the landlord or tenant has served notice to end a periodic tenancy or in the final month of a fixed term tenancy.

The written notice of entry **must** state the reason for the entry.

If a landlord needs to enter all or several residential premises in a complex, the landlord **must** give each tenant notice of the entry. For example: A landlord needs to enter all units to check the furnaces. A landlord **cannot** just post a notice of entry in the common areas of the building.

A tenant does **not** have to be present when a landlord enters the residential premises. The landlord has the right to enter as long as the landlord gives proper notice.

FORM OF NOTICE

A notice to enter the residential premises **must**:

- Be served on the tenant at least 24 hours before the time of entry,
- Be in writing,
- Be signed by the landlord or the agent,
- State the reason that the landlord is entering the residential premises, and
- State the date and time of entry that complies with the restrictions on holidays and hours of entry.

TIME OF ENTRY

The notice has to state the time, or a period of time, for when the landlord is going to enter. Landlords may only enter with notice between the hours of 8 a.m. and 8 p.m. The timeframe given in the notice is supposed to be of reasonable duration.

The landlord **cannot** enter on a holiday or a Sunday without consent. If the tenant has a different day of religious worship, the tenant **must** give the landlord written notice of that day. A landlord can then enter on a Sunday, but **not** the day that is the tenant's day of religious worship.

The date and time of entry may be expressed as a period of time of reasonable duration, which **must** begin and end at a specified time.

Landlords have the right to maintain their properties through inspections. Landlords should take into consideration the needs of tenants.

Most landlords are flexible and considerate in entering rental premises and work with their tenants to make mutually satisfactory arrangements. Likewise, most tenants are understanding when it comes to entry by the landlord. If notices give numerous times of entry, the inconvenience could rise to such a level that the notices would be unreasonable. Notices that cover multiple days are **not** allowed. Each entry requires its own written notice.

Determining a reasonable duration involves balancing the tenant's right to privacy and the landlord's rights. While it may be convenient for a landlord to serve notices to enter residential premises over many hours or days, convenience is **not** the same thing as reasonableness. Reasonable duration is determined on the specifics of the situation. Laws have been moving in the direction of increased privacy protection.

When a tenant gives a notice to vacate, there needs to be some flexibility allowed to ensure that the landlord can show the property. While the tenant has a right to privacy, it's important to recognize the landlord's right to fill the vacancy.

A tenant has the right to peaceful enjoyment of rented premises. Ultimately, a court or RTDRS will balance the inconvenience to the tenant and landlord in determining what is reasonable. As landlords don't always rent and sellers don't always sell to the first person to come along, it may take several days and several showings before a property is rented or sold. The main point is that the sooner the place is rented or sold, the sooner the showings will cease.

ENTRY WITHOUT NOTICE

The landlord may enter the residential premises without permission and without giving the tenant any notice for two reasons:

- If the landlord believes there is an emergency;
- If the landlord believes the tenant has abandoned the residential premises.

ENTRY FOR EMERGENCIES

An emergency could be defined as an unforeseen combination of circumstances that calls for immediate action. Such things as smoke, unusual odors, flames, water damage, broken windows, heat or power failure, smoke detector alarm sounding and threat to life or property are considered emergencies.

A landlord may enter the residential premises without consent or notice when they believe an emergency exists. If an emergency happens when a tenant is **not** home, landlords should phone the tenant, ring the doorbell and knock on the entrance to the premises before using pass keys. Contact attempts should be documented.

If the tenant changed the lock and did **not** give the landlord a key, emergency personnel can remove the lock or the door. The tenant has committed a breach of the RTA by **not** providing the landlord with a new key. (see Security: Keys and Locks section).

PRACTICAL APPLICATIONS

ABANDONMENT

There are times when the tenant may be away for an extended period of time, but has **not** actually abandoned the residential premises.

A tenant may vacate the residential premises without giving notice to the landlord and while the tenancy is still in effect.

If there has been no communication from the tenant, the landlord **must** determine if the tenant has abandoned the residential premises. To be safe, the landlord should serve the 24 hour entry notice.

Examples of the kinds of things that might cause the landlord to believe that a tenant has abandoned the residential premises are:

- Rent has **not** been paid;
- Mail addressed to the tenant is still coming to the residential premises without being picked up, or alternatively is no longer coming;
- The utilities (if in the tenant's name) have been disconnected;
- Newspapers have accumulated.

Within reason, a landlord could talk to neighbours, friends, relatives, tenant's employer or references given by the tenant to see whether they can provide information.

If a tenant abandons the residential premises before the end of the tenancy, the landlord may still be entitled to the rent that is owed for the remainder of the tenancy agreed to in the residential tenancy agreement.

The landlord **must** take reasonable steps to re-rent the unit. If the landlord rents the premises to a new tenant, the old tenant is no longer responsible to pay the rent from the date the new tenant moved in until the date that their residential tenancy agreement was supposed to have ended.

If a tenant left some belongings in the residential premises and the landlord believes on reasonable grounds that the abandoned goods have a total market value of less than \$2,000, the landlord may dispose of the goods. If the goods have a value of more than \$2,000, the landlord **must** store the goods for a period of 30 days. After the 30 days, the landlord can sell the goods at a public auction, or with the approval of a court by private sale. There are record keeping requirements that the landlord **must** abide by when there are abandoned goods. Section 31 of the RTA speaks to abandonment.

FREQUENCY OF ENTRY TO INSPECT

The RTA requires inspection reports to be completed at the beginning and the end of the tenancy. However, good business practices suggest that an inspection should be conducted at least once a year in a long-term tenancy. Proper written notice of entry has to be provided by the landlord.

OBJECTING TO NOTICE TO ENTER

The tenant has the right (under common law) to object to the day or time the landlord wants to enter if it is inconvenient. However, the tenant should give the landlord another reasonable, alternate day or time to enter the premises. A tenant should have a valid reason for changing the time of entry. The fact that a tenant **cannot** be at home is **not** a valid reason for changing the time. If proper notice to enter is provided, the landlord does not have to accept the tenant's objection.

The common law principle requires a tenant who feels wrongly dealt with to bring their objection to the attention of the landlord as soon as possible.

If the tenant thinks the landlord is being unreasonable, the tenant can apply to the court or RTDRS for a remedy.

FORMS

Notice of entry forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Residential Rental Association and the Edmonton Apartment Association.

Since the RTA does **not** prescribe a particular form of notice of entry, landlords and tenants are free to prepare whatever form best suits their particular needs so long as that notice conforms to the requirements. Any agreement or notice **cannot** take away any of the rights, benefits or protections contained in the RTA.

