

RESIDENTIAL TENANCY AGREEMENTS ~ FEES & CHARGES



STATUTORY REFERENCES

Residential Tenancies Act (RTA) sections:

- 1(1)(f) landlord definition
- 1(1)(k) rent definition
- 1(1)(l) residential premises definition
- 1(1)(m) residential tenancy agreement definition
- 1(1)(n), 43(1), 43(2) security deposit
- 1(1)(t) tenant definition
- 22(6) assignment or sublease

There are no sections in the Regulations relating directly to “additional fees or charges”.

GUIDELINES

The RTA allows a landlord to collect a security deposit providing that it does **not** exceed the sum of the first month’s rent.

A security deposit is intended:

- To cover the landlord’s costs of repairing or replacing physical damage to premises.
- To cover the costs of cleaning because of extraordinary or abnormal use. This does **not** include cleaning associated with normal wear and tear.
- To cover any arrears of rental payments.
- To cover other costs agreed to by the tenant that are set out in the residential tenancy agreement, such as legal fees, utilities, late fees, etc.

The RTA does **not** prohibit the landlord and tenant from agreeing to fees and charges that are in addition to the security deposit and rent. However, a landlord **cannot** charge an additional “deposit” for a certain privilege, if the total amount of these exceeds the sum of the first month’s rent.

Any refundable fee or charge becomes part of the security deposit.

A non-refundable fee or charge that is agreed to in the residential tenancy agreement is **not** subject to the security deposit restrictions. Non-refundable fees **cannot** be deposited into the security deposit trust account.

A landlord should give a tenant a receipt for any payments that are received from the tenant.

A residential tenancy agreement is a contract between the landlord and tenant. (see Residential tenancy agreement section). Like all contracts, the residential tenancy agreement can specify the terms of any additional fees or charges and the circumstances that would give rise to them.

The tenant has the option of refusing to enter into a residential tenancy agreement that contains additional fees or charges. The tenant may negotiate changes to their specific tenancy agreement or may choose to rent elsewhere.

The law relating to contracts is clear that once both parties enter into an agreement, it **cannot** be amended without the agreement of both parties. So, if the tenancy agreement is written, and any additional fees or charges are clearly specified and agreed to by the tenant and are **not** contrary to the RTA, then the tenant is obligated to pay those fees or charges when the circumstances giving rise to them occur. If the tenancy agreement is **not** written, it becomes a matter for the courts or RTDRS to determine, based on the evidence presented to them, whether there was agreement on the additional fees or charges payable by the tenant.

Any fee or charge that a landlord imposes may be subject to review by the court or RTDRS. If a tenant feels the fee or charge is unreasonable they can apply to the court or RTDRS for a remedy.

PRACTICAL APPLICATIONS

Fees or additional charges should reasonably reflect the actual costs that the landlord is seeking to cover. If the fee or charge does **not** reflect an actual cost recovery, or is in excess of the cost recovery, it may well be held by a court to be unenforceable.

Tenancy agreements should state any additional fees or charges, the circumstances that will give rise to them, and whether they are refundable or non-refundable. All fees should be disclosed to tenants when an application and security deposit are taken.

APPLICATION FEES

A landlord may want to charge an application fee. An individual who does **not** want to pay such a fee does **not** have to apply to rent from that landlord.

KEY OR PET FEES

A landlord may want to charge key or pet fees. A landlord may refer to these deposits as additional fees or charges. While these are **not** against the law, if they are refundable to the tenant, they become part of the security deposit amount. The grand total of all of the charges **cannot** exceed the amount of the first month's rent.

REFUNDABLE FEES

Any refundable fee or charge becomes part of the security deposit.

NON-REFUNDABLE FEES

Any non-refundable fee or charge is a contractual agreement between the landlord and the tenant and is **not** subject to the security deposit restrictions. Non-refundable fees **cannot** be deposited into the security deposit trust account.

LATE PAYMENT OF RENT FEES

Some residential tenancy agreements allow for a late payment of rent fee. The charge is usually a daily amount for each day the rent remains unpaid. The courts or RTDRS do allow for an estimate of damages. For example, a bank may charge additional interest if a landlord is unable to make a mortgage payment because the tenant did **not** pay the rent on time. A late payment of rent fee that would cover the interest charged by the bank could be a valid estimate of liquidated damages, if they exist. If however, the late payment of rent fee is far more than the amount the landlord is being charged, then it may be found by a court to be a penalty – and penalties are illegal.

RE-RENTAL FEE

A landlord may charge a re-rental fee if it has been agreed to in the residential tenancy agreement. If the tenant wishes to terminate their tenancy prior to the termination date and, if the landlord is willing to allow it, the tenant will be required to pay the landlord the re-rental fee agreed to in the tenancy agreement.

PETS

Some landlords allow pets in residential premises and usually state the conditions in the residential tenancy agreement.

Other landlords include a “no pet” provision in a residential tenancy agreement because:

- Units in which pets have been kept often require more extensive cleaning, repainting, repair, and replacement of items, than do units where there have **not** been pets; and,
- Other tenants may have allergies to certain animals, or are sensitive to the noise or behaviour of some animals.

There is a difference between a goldfish and a large dog; between a canary and a cat; between a hamster and a python. There are many animals that are kept as pets that are important to their owner that do not, or are not, likely to cause any additional cost or expense to the landlord, or aggravation to other tenants.

Some residential tenancy agreements have clauses prohibiting pets in a unit unless the landlord specifically and in writing allows a particular pet.

If a tenant signs a residential tenancy agreement agreeing to a “no pet” policy, and the tenant brings in a pet later on without the landlord’s permission, the tenant is in violation of the contract. This violation could result in the landlord terminating the tenancy.

