

# TERMINATION OF A TENANCY

## STATUTORY REFERENCES

*Residential Tenancies Act* (RTA) sections:

|         |  |    |   |
|---------|--|----|---|
| 1(1)(e) | fixed term tenancy definition                  | 15 | notice to terminate <b>not</b> required (to end fixed term tenancies) |
| 1(1)(f) | landlord definition                            |    |   |
| 1(1)(h) | overholding tenant definition                  | 16 | landlord's covenants (obligations)                                    |
| 1(1)(i) | periodic tenancy definition                    | 20 | time of expiration or termination                                     |
| 1(1)(j) | prescribed definition                          | 21 | tenant's covenants (obligations)                                      |
| 1(1)(k) | rent definition                                | 22 | assignment and sublease   |
| 1(1)(l) | residential premises definition                | 26 | landlord's remedies   |
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| 1(1)(p) | substantial breach definition                  | 28 | termination for substantial breach by landlord                        |
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| 1(1)(s) | tenancy year definition                        | 32 | recovery of damages   |
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Form 1 Landlord's notice to tenant to terminate periodic tenancy

Form 2 Tenant's notice to landlord to terminate periodic tenancy

Form 3 Landlord's notice to tenant to terminate for substantial breach

Form 4 Landlord's notice to tenant 24-hour notice to terminate tenancy

Form 5 Landlord's notice to vacate to persons who are **not** tenants

Form 6 Tenant's notice to landlord to terminate for substantial breach

## GUIDELINES

Tenants and landlords may terminate a residential tenancy agreement for a variety of reasons. It may be because there has been a breach of the tenancy agreement, because the tenant has found another place to live or the landlord wants to end the tenancy for a prescribed reason. Regardless of the reason, proper notice is required to terminate a tenancy.

A landlord **cannot** terminate a residential tenancy agreement because the tenant made an application or filed a statement under the RTA, made a complaint, assisted in an investigation or inquiry, or gave evidence at a hearing under the RTA or the *Public Health Act*. A written complaint has to be made to Service Alberta before the department can take action against a landlord. (see "Filing a Consumer Complaint with Service Alberta" tipsheet).

If an order to vacate is issued under Alberta's health and safety laws, the tenancy may be terminated. These orders take precedence over the RTA.

The RTA does **not** restrict a landlord from terminating a tenancy during the winter months.

## PRACTICAL APPLICATIONS

The RTA balances the rights of landlords to remove tenants or non-tenants who have committed a substantial breach with the rights of tenants to remain in the premises.

Tenants **must** be served a written notice that states the reason for the termination and the date that the tenancy is to end. Tenants have the opportunity to object to the reason given for the termination for a substantial breach unless the notice is for unpaid rent. If the tenant objects to the reason, the landlord has to go to court or RTDRS for an order terminating the tenancy and to get possession of the premises. Both parties can present their side of things to the court or RTDRS.

It is important to remember that regardless of who has committed a substantial breach, a landlord and tenant can agree between them to end the tenancy by a certain date and save the expense of taking the matter to court or RTDRS.

Not surprisingly, the largest number of terminations of tenancies by landlords arises from the tenant's failure to pay the rent, in full, when it is due. This sometimes happens when tenants mistakenly think they can withhold the rent to force the landlord to do something such as make some repairs to the premises.

The law is very clear that the landlord is entitled to have the rent paid in full when it is due. If a tenant runs into a problem paying the rent and lets the landlord know beforehand what the problem is, a landlord may let the tenant stay and pay the rent later or over time. But, the landlord is under no obligation to do this.

Even if a landlord is sympathetic and allows a tenant additional time to come up with the rent, the landlord may charge a late payment fee (if such a fee has been agreed to in the residential tenancy agreement). If late payment of rent happens frequently, the landlord can go directly to court or RTDRS to seek termination of the tenancy or can serve the tenant with a 14 clear day notice to terminate the tenancy on the basis that the tenant has committed a series of breaches, the cumulative effect of which amounts to a substantial breach.

A landlord is **not** allowed to change the locks to force a tenant out of the residential premises or to otherwise deny access to the tenant while the tenant still lives in the residential premises.

A landlord is **not** allowed to discriminate against a tenant on the basis of the tenant's income.

## **MOVING OUT**

When a tenant wants to end a periodic tenancy, the tenant **must** give the landlord a notice saying they plan to move out.

The tenant's notice to the landlord **must**:

- Be in writing
- Give the address of the residential premises,
- Be signed by the tenant, and
- Set out the termination date.

A tenant has to move out by noon on the last day of the tenancy. The landlord and tenant can make an agreement to a different time. This does **not** apply if a landlord has served a tenant a 24-hour notice to terminate the tenancy for damage or assault. If the notice to terminate is for damage or assault, the tenant has to move out at the time stated in the notice.

## ***How much notice is required to terminate a tenancy?***

### **❖ SECTION 6 - TERMINATION OF PERIODIC TENANCY BY LANDLORD FOR PRESCRIBED REASONS**

If a landlord needs to do major renovations that require the premises to be empty, the landlord **must** give the tenant 365 days notice to terminate the periodic tenancy.

**Note:** Major renovations do **not** include painting, replacing of floor coverings, or routine maintenance.

No rental increases are allowed during that year.

If the landlord gives less than 365 days notice to terminate a tenancy so major renovations can be done or increases the rent after giving the notice, the landlord has committed an offence under the RTA. A written complaint can be made to Service Alberta before they can take action against the landlord. (see "Filing a Consumer Complaint with Service Alberta" tipsheet).

If the tenant has **not** committed a substantial breach, a landlord can only end a periodic tenancy for the following reasons:

- The landlord or a relative of the landlord intends to live in the residential premises.
- The landlord has sold the residential premises and the purchaser or a relative of the purchaser wants to move in.
- The landlord has sold a detached or semi-detached dwelling unit or condominium unit, and the purchaser has requested in writing that the tenancy be terminated.
- The landlord intends to demolish the building.
- The landlord intends to use the residential premises for a non-residential use, such as business purposes.
- The landlord is an educational institution and the tenant is no longer a student or will no longer be a student at the termination date specified in the notice of termination.

The landlord's notice to the tenant **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord,
4. State the reasons for the termination, and
5. Set out the termination date.

If the tenant moves out of the residential premises as required by the notice given for one of the prescribed reasons listed above, and the landlord does **not** use the premises for that reason, the landlord has committed an offence under the RTA. A written complaint can be made to Service Alberta (see “Filing a Complaint With Consumer Services” infosheet). A tenant may pursue a landlord for compensation through court or RTDRS.

If a tenant wants to move out of the residential premises before the termination date set out in the notice from the landlord, proper written notice to vacate **must** be served by the tenant to end the tenancy.

### ❖ **SECTION 7 - TERMINATION OF WEEKLY PERIODIC TENANCY**

The landlord and tenant **must** give each other one week’s written notice. Notice is to be served on or before the first day of the tenancy week, with the termination to be effective on the last day of the tenancy week.

### ❖ **SECTION 8 - TERMINATION OF MONTHLY PERIODIC TENANCY**

A landlord **must** give the tenant three months written notice. Notice is to be served on or before the first day of the three-month notice period.

An example: Joe has a month-to-month tenancy. It begins on the first day of the month and ends on the last day of the month. If Joe’s landlord wants Joe to move out by September 30, the landlord would have to give Joe notice on or before July 1.

A tenant **must** give the landlord one tenancy month’s written notice. Notice is to be served on or before the first day of the one-month notice period.

An example: Joe has a month-to-month tenancy. It begins on the first day of the month and ends on the last day of the month. Joe decides to move out by September 30. He **must** give the landlord notice on or before September 1.

### ❖ **SECTION 9 - TERMINATION OF YEARLY PERIODIC TENANCY**

A landlord **must** give the tenant 90 days written notice to be effective on the last day of the tenancy year.

A tenant **must** give the landlord 60 days written notice to be effective on the last day of the tenancy year.

### ❖ **SECTION 11 - TERMINATION OF EMPLOYEE TENANTS**

A landlord or tenant may end a periodic tenancy with notice if the employment of the tenant is terminated. The notice **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the party giving the notice,
4. State the reasons for the termination of the tenancy, and
5. Set out the date that the tenancy will terminate.

## ***How much notice has to be given to terminate the tenancy of an employee tenant?***

The amount of notice a landlord or tenant **must** give to terminate the tenancy has to be the longest of:

- The amount of notice that is required by law to terminate the tenant's employment,
- The amount of notice to terminate the employment that has been agreed to by the landlord and the tenant, or
- One week.

If the landlord is terminating the tenancy because of significant damage, assault, or threats of assault, the landlord can apply to the court or RTDRS for an order terminating the tenancy or the landlord can serve the tenant with a notice to terminate at least 24 hours before the termination date and time.

### **❖ SECTION 12 - TERMINATION FOR CONDOMINIUM CONVERSIONS**

A landlord may end a periodic tenancy with notice if the landlord is converting the residential premises into a condominium.

## ***How much notice to terminate does a landlord have to give a tenant for condominium conversions?***

If the premises **must** be vacant because a landlord intends to convert the rental premises to a condominium unit, the landlord has to give at least 365 days written notice to the tenant before the day the tenancy is to end. The landlord's notice to the tenant **must**:

- Be in writing,
- Give the address of the residential premises,
- Be signed by the landlord,
- State the reason for the termination, and
- Set out the termination date.

No rental increases are allowed during that year.

If the landlord gives less than 365 days notice to terminate a tenancy when converting the premises into a condominium or increases the rent after giving the notice, the landlord has committed an offence under the RTA. A written complaint can be made to Service Alberta. (see "Filing a Complaint With Consumer Services" infosheet). A tenant may pursue a landlord for compensation through court or RTDRS.

### **❖ SECTION 15 - TERMINATION OF FIXED TERM TENANCIES**

A fixed term tenancy ends on the day specified in the residential tenancy agreement, unless both parties agree to an early termination. For example, if the fixed term is from January 1 to December 31, the tenancy automatically ends on December 31. Unless the tenant and landlord make other arrangements, the tenant has to move out by noon on December 31.

The RTA does **not** require any notice to be given by a landlord or tenant to end a fixed term tenancy. It is courteous if the tenant or the landlord provides a reminder before the end of the tenancy agreement.

A landlord is **not** obligated to accept a tenant's notice to terminate a fixed term tenancy before the end of the fixed term, but may agree to an early termination, or an assignment or sublease. A landlord **must** have reasonable grounds to refuse an assignment or sublease. The RTA prohibits a landlord from charging a fee for giving consent to an assignment or sublease of a residential tenancy agreement.

If a tenant ends a fixed term tenancy before the termination date, the landlord is entitled to be paid rent from the tenant until the residential tenancy agreement ends. However, 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 of the new tenancy.

At the end of the fixed term agreement, the landlord and tenant may both want to continue the tenancy. At this time they can negotiate a new residential tenancy agreement that could include a change in the rent amount, security deposit amount and the conditions of the tenancy. This agreement can be a new fixed term or be changed to a periodic tenancy.

If the parties do **not** notify each other of their intention to continue the tenancy or to end the tenancy, difficulties may arise. For example, the landlord may be expecting the tenant to leave at the end of the fixed term and may have plans for the premises.

The RTA says that if, at the end of the fixed term tenancy, the tenant doesn't move out and the landlord accepts the tenant staying on and continuing to pay rent, then, unless there are agreements or facts in the arrangement that indicate otherwise, the tenancy switches to a periodic tenancy.

The periodic tenancy becomes a monthly periodic tenancy if the fixed term tenancy was for a month or more.

If the fixed term tenancy was for a fixed term of less than one month, then the periodic tenancy becomes a weekly periodic tenancy.

Some fixed term tenancy agreements include a provision for renewal of the tenancy for an additional fixed term at the end. Such provisions usually include a requirement for the tenant and landlord to provide a period of written notice to each other about whether they wish to renew for a further fixed term.

### ❖ **SECTION 28 - TERMINATION OF TENANCY FOR SUBSTANTIAL BREACH BY LANDLORD**

Whether the tenancy is fixed term or periodic, the RTA states that a landlord commits a substantial breach when:

- The premises is **not** kept in the condition that meets the minimum housing standards under the public health act and regulations, and
- An executive officer issues an order under section 62 of the *Public Health Act*, and
- The landlord has **not** complied with the order.

## ***How much notice to terminate does a tenant have to give a landlord who commits a substantial breach?***

If the tenant believes on reasonable grounds that the landlord has committed the above substantial breach, a tenant can apply to court or RTDRS to end the tenancy or can serve the landlord with a notice to terminate at least 14 clear days before the stated termination date. The notice **must**:

1. Be in writing,
2. Give the address of the premises,
3. Be signed by the tenant,
4. State the reasons for the termination, and
5. Set out the termination date.

A 14 clear day notice means that the day the notice is served on the landlord and the termination date do **not** count as part of the 14 days.

The notice to terminate is **not** binding if, within seven days from the date a landlord receives the notice to terminate from a tenant, the landlord serves the tenant with a written notice of objection. The only reasons the landlord can object are:

- The landlord has actually complied with the order, or
- The landlord has been granted a stay of the order.

### **A NOTICE OF OBJECTION MUST BE PROPERLY SERVED FOR IT TO BE EFFECTIVE.**

#### **❖ SECTION 29 - TERMINATION OF TENANCY FOR SUBSTANTIAL BREACH BY TENANT**

Whether the tenancy is fixed term or periodic, the tenant **must**:

- Pay the rent in full when it is due.
- Not to interfere with the landlord or the landlord's employees, or interfere with or disturb other tenants in the residential premises or in the common areas, e.g. playing loud music well into the night or being noisy.
- Not perform illegal acts or carry on any illegal business or occupation in the residential premises or in the common areas.
- Not to do anything, or fail to do anything, that could endanger anyone in the building or in the common areas.
- Not cause significant damage to the residential premises or the common property.
- Maintain the residential premises and all property included in the residential tenancy agreement and keep it reasonably clean.
- Vacate the residential premises when the tenancy is ended.

If a tenant does **not** live up to the responsibilities in the residential tenancy agreement or under the RTA, they have committed a "substantial breach" and the landlord has grounds to terminate the tenancy.

## HOW MUCH NOTICE TO TERMINATE DOES A LANDLORD HAVE TO GIVE A TENANT WHO COMMITS A SUBSTANTIAL BREACH?

If a tenant commits a substantial breach, the landlord can apply to court or RTDRS for an order terminating the tenancy, or can serve the tenant with a notice to terminate at least 14 clear days before the termination date stated in the notice. The landlord's notice to the tenant **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord or agent,
4. Separately set out the rent that is due and any more rent that may become due during the notice period,
5. State the reason for the termination, and
6. Set out the termination date.

The landlord's notice to terminate is **not** binding if the tenant serves the landlord with a written notice setting out the reasons why the tenant objects to the termination notice.

- The tenant's notice of objection has to be served before the termination date set out in the notice to terminate.
- A tenant **cannot** object to a termination notice that is for non-payment of rent.
- A tenant's notice of objection **must** be properly served for it to be effective.
- A termination notice has to give the tenant 14 clear days before the tenant has to leave the residential premises. The day the notice is served on the tenant and the day the tenant moves out do **not** count as part of the 14 days.

If the landlord's notice to terminate the tenancy is for non-payment of rent, the notice to terminate has to state that the tenancy will **not** be terminated if the tenant pays the outstanding rent owing on or before the termination date set out in the notice.

The notice to terminate is **not** binding and is no longer effective if the tenant pays the rent before the 14 days are up.

If a landlord gives notice and the tenant does **not** move out, the landlord has to apply for a court or RTDRS order to terminate the tenancy and get possession of the residential premises. If the tenant still does **not** move, the landlord should approach the Court of Queen's Bench to recover of the possession. Further information on this procedure is available from the Court of Queen's Bench.

A civil enforcement agency has the authority to evict an occupant from the residential premises. No one other than a civil enforcement bailiff is allowed to remove the tenant or their belongings. The landlord will be required to produce a copy of the Order of Possession, as well as the affidavit of service to the civil enforcement agency.

### ❖ **SECTION 30 - TERMINATION OF TENANCY FOR DAMAGE OR ASSAULT (24-HOUR NOTICE)**

A tenant **must not** do, or permit significant damage to be done to the property, or physically assault, or threaten to physically assault, the landlord (or the landlord's employee or agent) or another tenant.

#### **HOW MUCH NOTICE TO TERMINATE DOES A LANDLORD HAVE TO GIVE A TENANT FOR DAMAGE OR ASSAULT?**

The landlord can apply to the court or RTDRS for an order terminating the tenancy or the landlord can serve the tenant with a notice to terminate at least 24 hours before the termination date stated in the notice. The landlord's notice to the tenant **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord,
4. State the reason for the termination, and
5. Set out the termination date and time.

If a landlord is apprehensive that even more damage, or further assaults, are likely to occur in the 24-hour notice period, the landlord can go to court or RTDRS seeking an order for the immediate possession of the residential premises and removal of the tenant. The landlord should have evidence to present.

If a landlord serves a 24-hour notice, and the tenant does **not** vacate the residential premises within the notice period, the landlord **must**, within 10 days of the date of termination specified in the notice, apply to court or RTDRS for an order to end the tenancy and to get vacant possession of the residential premises. If the landlord does **not** make the court application within the 10 days following the date of termination, then the 24-hour notice is **not** binding. In other words, the landlord is considered to have never given a notice to terminate.

### ❖ **SECTION 33 - NOTICE TO VACATE TO NON-TENANT (48-HOUR NOTICE)**

If the tenant has abandoned the residential premises (repudiation of tenancy), a landlord can serve a notice to vacate to the person(s) **not** authorized to live there.

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, if

- The tenant abandons the residential premises before the end of the tenancy,
- The tenant does **not** give the proper notice to end a periodic tenancy,
- The tenant moves out before the end of the fixed term tenancy.

## **HOW MUCH NOTICE TO VACATE DOES A LANDLORD HAVE TO GIVE AN UNKNOWN PERSON IF A TENANT HAS ABANDONED THE PREMISES?**

The landlord can serve the unknown person with a 48-hour notice to vacate. The landlord's notice to the unknown person **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord or the landlord's agent, and
4. Set out the termination date and time.

If the unknown person does **not** vacate within the 48 hours, the landlord can apply to court or RTDRS for an order terminating the tenancy of the tenant who abandoned the residential premises and for recovery of possession from the unknown person who is living there. This does **not** prevent the landlord from applying to court or RTDRS to recover damages from the tenant.

### **❖ SECTION 36 - NOTICE TO VACATE TO NON-TENANT (14-DAY NOTICE)**

A landlord can serve a notice to vacate to an unauthorized person living in a residential premises occupied by a tenant.

## **HOW MUCH NOTICE TO VACATE DOES A LANDLORD HAVE TO GIVE AN UNAUTHORIZED PERSON IF THE RESIDENTIAL PREMISES ARE OCCUPIED BY A TENANT?**

The landlord can serve the non-tenant with a 14 clear day notice to vacate. The landlord's notice to the non-tenant **must**:

1. Be in writing,
2. Give the address of the residential premises,
3. Be signed by the landlord, and
4. Set out the termination date and time.

If the non-tenant does **not** vacate within the 14 days, the landlord can apply to court or RTDRS for an order for the non-tenant to vacate the residential premises.

The notice to vacate has to give the non-tenant 14 clear days before the non-tenant leaves the residential premises. The day the notice is served on the non-tenant and the day the non-tenant moves out do **not** count as part of the 14 days.

## ❖ **SECTION 38 - POSSESSION UNOBTAINABLE**

If a tenant has been unable to move in because the residential premises is **not** available from the landlord or because the premises do **not** meet the minimum standards under the Public Health Act and regulations, the tenant has the right to repudiate the residential tenancy agreement. The tenant may do one or more of the following:

- Repudiate the residential tenancy agreement or apply to the Court of Queen's Bench for specific performance of the covenant;
- Recover general damages resulting from the breach;
- Recover special damages resulting from the breach if the landlord could reasonably have foreseen that those damages would be a consequence of the breach.

In other words, the tenant can ask the judge for damages caused by the landlord for **not** providing the premises. If the landlord could reasonably have known that the tenant would suffer damages by **not** providing the premises, the tenant can ask the court for special damages.

The tenant should have compelling evidence and proof of damages to present to the court. It would be wise for the tenant to hire a lawyer to present the case.

## **FORMS**

Notice to terminate and notice to vacate forms are available at a nominal cost from a number of organizations including the Landlord and Tenant Advisory Boards, the Calgary Residential Rental Association or the Alberta Residential Landlord Association.

The notice (and objection to the notice) has to be in writing and contain everything that the RTA requires. The RTA lists the content for the notices in the Residential Tenancies Ministerial Regulation. Landlords and tenants are free to prepare a form of notice that best suits their particular needs as long as the form has the content from the Regulation. The notice **cannot** take away any of the rights, benefits or protections contained in the Act.