

PUBLICATION

What to do with a Problematic Residential Tenant

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You worked too hard to buy an investment property to lease it to the wrong tenant and not know what to do when faced with a bad tenancy situation.

Landlords are always hopeful to find that perfect tenant who will pay their rent on time and cause no trouble whatsoever, but this is not always the case. In Alberta, the Residential Tenancies Act (S.A. 2004, c. R-17.1) applies to most people who rent the place where they live. Please note that this act does not apply to mobile homes.

Landlords have the responsibility to avoid problems regarding the unit rented. The landlord must ensure the rental unit complies with the rules and regulations for health, safety, housing and maintenance, municipal property standards and zoning bylaws, fire safety regulations and building codes. If the unit fails to meet these standards, the landlord must make the necessary repairs at any point during the tenancy.

Repairs may either be emergency repairs or regular repairs. An emergency repair is required when something in the rental unit has broken and the health or safety of the tenant is in danger or the building or property is at risk until repairs are made. By law, the landlord should handle and pay for emergency repairs. A regular or minor repair is an inconvenience and tenants should not become involved in fixing minor repairs unless they have either agreed to do so, or they, or their guests, have damaged the premises. Common tenant problems may include:

- Non-payment of rent;
- Disruptive conduct such as excessive noise and use of profane language, especially late at night;
- Unreasonably dirty premises;
- Having an over populated living space;
- Unauthorized occupants; and
- Other violations of the lease agreement.

If the tenant fails to keep the premises reasonably clean, leaves it in an exceptionally dirty condition, or if the tenant has violated local bylaws, the landlord may call the police. The Police may issue a warning or fine to convince the offending tenants to cease breaking noise, parking or garbage bylaws.

In the event of non-payment of rent, the landlord has the option of following the eviction process as a result of a

substantial breach of their tenancy agreement. It is important to act quickly and either:

1. Apply to the Residential Tenancy Dispute Resolution Service (RTDRS) office or the Provincial Court, Civil Division to end the tenancy; or
2. Give the tenant a 14-day notice to end the tenancy.

The 14-day notice must:

- Be in writing;
- Signed by the landlord or agent;
- State the reason(s) for eviction;
- State the date and time the tenancy ends;
- State the amount of rent due as of the date of the notice and any additional rent that may become due during the notice period; and
- Include a statement that the tenancy will not be terminated if, on or before the termination date in the notice, the tenant pays the rent and any additional rent due as of the date of payment.

Civil enforcement agencies are available to carry out a Distress for Rent. The process of distress allows a landlord to hire a civil enforcement agency to seize the tenant's property from the rented premises in order to recover the money owed as rent.

If a tenant objects to the reasons for termination, or if the tenant does not leave at the end of a 14- day notice period, the landlord can apply before the RTDRS or Provincial Court for a court order to terminate the tenancy and get possession of the rental premises.

The landlord can formalize his complaint before the RTDRS office or before the Provincial Court. Proof and witnesses, such as the tenant's neighbours, are needed to demonstrate blame and establish compensation, if in order. Various documents including affidavits, notices and certificates are also required. The parties will be required to serve documents upon each other and attend personally for a formal hearing.

Procedures and paperwork are extremely important in cases of tenant eviction. If the landlord has a valid reason to terminate a tenancy but makes a minor mistake in the paperwork, the RTDRS or Provincial Court may not uphold the action. It is highly recommended to obtain legal advice and guidance throughout the process.

For further information, please contact any member of our Real Estate Litigation group.