



## Landlord-Tenant Law

This info sheet provides some legal information to tenants residing in British Columbia (who have a tenancy agreement that falls under either the *BC Residential Tenancy Act* (RTA) or the *BC Manufactured Home Park Tenancy Act* (MHPTA)) about the potential impacts of wildfires on their living arrangements. It is meant for general information purposes only, and is not intended as a substitute for legal advice from a lawyer.

### PAYING RENT DURING THE EMERGENCY

#### Should I keep paying rent during or after an evacuation?

Yes, unless the tenancy ends because it has been frustrated. A tenancy agreement is frustrated when an unexpected event beyond anyone's reasonable control makes it impossible for the parties to meet their obligations. Generally, the tenancy is considered frustrated when the property is uninhabitable (e.g. the property is completely destroyed after a flood or a fire). The Residential Tenancy Branch has taken the position that you remain liable to pay rent during an evacuation. If you normally pay rent in cash, you should look into other forms of payments such as an interac e-transfer. If you were evacuated, you should also contact the Red Cross to receive assistance (up to \$1,200 per household or up to \$2,000 if you were evacuated from the Lytton region). If you are unable to pay your rent and the cost of alternative accommodations, you should seek legal advice.

### DAMAGE TO THE RENTAL UNIT

#### Who pays for damaged property?

Generally, each party is responsible for what they own. You (and your landlord) should consult your insurance policy to see what is covered.

#### What if I think the property isn't safe or healthy?

You should write to your landlord to request any necessary repairs. If the municipality where you reside has Standards of Maintenance bylaws (which can be found on the municipality's website or by contacting the municipality's bylaw department), you could reference these bylaws in the letter to

your landlord. If your landlord refuses to make the requested repairs, you can apply to the Residential Tenancy Branch for an order for repairs.

If emergency repairs are needed and you cannot reach your landlord, you can make these repairs and request reimbursement from your landlord provided that all the following steps are taken:

- 1) You attempted to contact your landlord.
- 2) You checked to see if the contemplated repairs qualify as "emergency repairs" under the RTA or MHPTA. Emergency repairs are repairs that are urgent; necessary for the health or safety of anyone or for the preservation of the property; and made for the purpose of repairing any of the following: major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixture, the primary heating system (under the RTA only), the electric systems, and in limited circumstances, to repair the rental unit, residential property, manufactured home site, or manufactured home park.
- 3) You made at least 2 attempts to telephone, at the number provided, the person identified by your landlord as the person to contact for emergency repairs (that number should be on the tenancy agreement or in a visible place in the unit—this person might be your landlord or the property manager).
- 4) Following those attempts, you gave your landlord reasonable time to make the repairs.

If your landlord fails to make the emergency repairs within a reasonable time, you can make the repairs, and request reimbursement from your landlord. The amounts claimed must be reasonable, and you should provide an account (including all the receipts) to your landlord. If your landlord

disputes the amount, you or your landlord can apply for a hearing before the Residential Tenancy Branch.

#### Can I move out because of property damage?

You can move out if the tenancy is frustrated (see "Should I keep paying rent during or after an evacuation?", above). An evacuation order in itself is not sufficient to prove that the tenancy has been frustrated. If, upon return, you think that the tenancy is frustrated, you should write to your landlord and explain that you are moving out because you consider the tenancy frustrated. You should consult the Residential Tenancy Branch Policy Guideline on Frustration (available on the Residential Tenancy Branch's website) and seek legal advice before you move out and stop paying rent.

### ENDING THE TENANCY

#### How can I end the tenancy?

You and your landlord can always agree to end the tenancy in writing on any date you both choose, whether the tenancy is frustrated or not, and regardless of the type of the tenancy. There is a "Mutual Agreement to End Tenancy" form available on the Residential Tenancy Branch's website (see "Resources", below). If you and your landlord do not agree to end the tenancy, you can still end the tenancy in the usual way:

- > For a month-to-month tenancy (no end date), you may end the tenancy by giving one-month's notice to your landlord of your intention to move out, in writing, before rent is due.

- > For a fixed term tenancy (with a set end date), you may look for another tenant, and assign the lease to someone else (i.e. you would permanently move out, and another tenant would move in). Your landlord must consent in writing to assign the lease, but cannot unreasonably withhold consent.

## PERMISSIBLE AND IMPERMISSIBLE ACTIONS BY THE LANDLORD

### Can my landlord enter the property following a fire?

If there are safety concerns, you should consider granting your landlord access to the property as soon as possible, because your landlord is responsible for ensuring the property complies with health, safety, and housing standards, and may need to verify whether the premises are inhabitable following a fire. Your landlord can enter the unit if you agree to it, or if your landlord has reasonable grounds to believe that there is an emergency or that you have abandoned the unit. Otherwise, your landlord has to provide you with 24 hours' notice in writing.

### Can my landlord evict me because of property damage?

Maybe. Your landlord may give you an eviction notice (2 months under the RTA, 12 months under the MHPTA) if your landlord needs to conduct renovations or repairs whose nature and extent require the property to be vacant. This cannot be done while you live on the premises. If permits or other approvals are required (e.g. building or demolition permit), your landlord must first obtain these permits and approvals before serving the eviction notice. However, if the tenancy is frustrated and you refuse to move out, your landlord may apply to the Residential Tenancy Branch for an immediate order of possession.

### Can my landlord use my security deposit to cover the cost of repairs?

No, under the RTA, your landlord can only use your security deposit to cover your liability or obligations (e.g. damage you caused, unpaid rent). For example, if you are a month-to-month tenant and you choose to treat your tenancy as frustrated,

and move out of the rental unit without proper notice when the rental unit is actually only in need of small repairs, your landlord may keep the security deposit, and seek a monetary order against you for any remaining unpaid rent. In this scenario, your landlord would also have to mitigate their loss by looking for a new tenant as soon as they know that you moved out.

With respect to manufactured home site tenancies, the MHPTA provides that a landlord must not require or accept a security deposit. If a landlord of a manufactured home site takes a security deposit from you, you may deduct the amount of the security deposit from rent or otherwise recover the amount.

*This info sheet was produced by Access Pro Bono staff lawyers and law students.*

## Resources

**RED CROSS:** call 1-800-863-6582 to register with Red Cross and make sure you are accounted for during the Wildfires emergency. You may be able to receive up to \$1,200 per household (or up to \$2,000 if you were evacuated from the Lytton region) to assist with evacuation costs: [www.redcross.ca/how-we-help/current-emergency-responses/2021-british-columbia-fires](http://www.redcross.ca/how-we-help/current-emergency-responses/2021-british-columbia-fires).

**CANADA POST WEBSITE:** to register for the Mail Forwarding Service and check the status of mail delivery in your area, visit [www.canadapost-postescanada.ca/](http://www.canadapost-postescanada.ca/).

**ACCESS PRO BONO'S LAWYER REFERRAL SERVICE** can assist you in finding a lawyer. You can receive a free half-hour consultation:

- > Lower Mainland: (604) 687-3221
- > Toll free: 1-800-663-1919
- > Book online: [www.accessprobono.ca/our-programs/lawyer-referral-service](http://www.accessprobono.ca/our-programs/lawyer-referral-service)

**POVNET:** go to [www.povnet.org](http://www.povnet.org) to find an advocate

### FOR MORE INFORMATION ON RESIDENTIAL-TENANCY LAW:

**DIAL-A-LAW:**

- > (604)-687-4680
- > 1-800-565-5297 (toll-free)
- > [www.dialalaw.org](http://www.dialalaw.org)

**LSLAP:**

- > [www.lslap.bc.ca/manual.html](http://www.lslap.bc.ca/manual.html)

**RESIDENTIAL TENANCY BRANCH:**

- > Information line: (604) 660-1020 (Lower Mainland);
- > (250) 387-1602 (Victoria); or 1-800-665-8779
- > [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

### TENANT RESOURCE & ADVISORY CENTRE (TRAC):

- > Tenant info line: (604) 255-0546 or 1-800-665-1185
- > [www.tenants.bc.ca](http://www.tenants.bc.ca)

### FREE LEGAL CLINICS MAY BE ABLE TO ASSIST:

**ACCESS PRO BONO'S SUMMARY LEGAL ADVICE PROGRAM:**  
*30 minutes of free legal advice.*

- > 1-866-762-6664 to receive legal advice ASAP over the phone
- > (604) 878-7400 to set up an appointment

### ACCESS PRO BONO'S EMPLOYMENT STANDARDS PROGRAM:

free legal representation at the Employment Standards Branch.

- > (604) 482-3195 ext. 1500
- > Email [esp@accessprobono.ca](mailto:esp@accessprobono.ca).

### COMMUNITY LEGAL ASSISTANCE SOCIETY (CLAS):

- > (604) 685-3425
- > 1-888-685-6222 (toll-free)

### JUSTICE ACCESS CENTRE (JAC):

- > Nanaimo: (250) 741-5447; 1-800-578-8511
- > Vancouver: (604) 660-2084; 1-800-663-7867
- > Victoria: (250) 356-7012; 1-800-663-7867

**LAW CENTRE:** (250) 385-1221

### UBC LAW STUDENTS LEGAL ADVICE PROGRAM (LSLAP):

- > (604) 822-5791