

ASSISTED AND SUPPORTED LIVING TENANCIES

Update on Amendments to the *Residential Tenancy Act*

A. Overview

Amendments to the *Residential Tenancy Act* (RTA) were approved in the Legislature in May 2006. The amendments set out the rights and responsibilities of landlords and tenants in assisted and supported living tenancies and establish a process for resolving disputes between landlords and tenants.

This update summarizes how the RTA will apply to assisted and supported living tenancies when the amendments are brought into force. This will occur after regulations, policies and procedures are developed in consultation with groups representing assisted and supported living landlords and tenants. Landlords and tenants will be given a suitable notice period before the amendments are brought into force.

The Assisted Living Registrar continues to be responsible for health and safety in assisted living under the *Community Care and Assisted Living Act*.

B. Description of assisted and supported living tenancies

Many British Columbians live in rental accommodation where hospitality services and/or personal care services are provided by the landlord. This type of accommodation is known as assisted living, supportive housing, supportive living or independent living with supports. Tenants (or residents) have exclusive occupancy of their own private rental units under tenancy contracts with the landlords (or operators). For purposes of the RTA, these types of accommodation are called “assisted and supported living”.

The RTA will apply to rental units where one or more hospitality services and/or personal care services are provided by the landlord, or on behalf of the landlord.

Hospitality services are meal services, laundry services, social and recreational opportunities and a 24 hour emergency response system.

Personal care services¹ are:

- regular assistance with activities of daily living, including eating, mobility, dressing, grooming, bathing or personal hygiene
- central storage of medication, distribution of medication, administering medication or monitoring the taking of medication
- maintenance or management of the cash resources or other property of a tenant
- monitoring food intake or adherence to therapeutic diets
- structured behaviour management and intervention
- psychosocial rehabilitative therapy or intensive physical rehabilitative therapy.

Many tenancies that include hospitality services are already subject to the RTA. However, these tenancies will also need to comply with the new requirements, such as service agreements.

¹ These are the same as prescribed services under the *Community Care and Assisted Living Act*

It is important to note that the RTA does not apply to the following types of accommodation:

- community care facilities
- mental health facilities
- emergency shelters and transitional housing
- accommodation made available in the course of providing rehabilitative or therapeutic treatment or services.

C. Summary of requirements for assisted and supported living tenancies

1. Tenancy agreements and service agreements

Sample tenancy and service agreement forms will be posted on the Residential Tenancy Branch website. Landlords may use these forms or design their own forms, as long as the agreements meet the requirements of the RTA.

Tenancy agreements

Landlords and tenants will be required to have tenancy agreements that contain standard terms, as set out in the Residential Tenancy Regulation (Regulation). The tenancy agreement may also contain other terms the landlord and tenant agree on, as long as they are consistent with the law and are not oppressive or grossly unfair to one party.

The tenancy agreement must contain all of the following:

- a) Information about the rental unit and the landlord and tenant, such as address and legal names
- b) Standard terms which set out the rights and responsibilities of both parties to the agreement, such as:
 - security deposits
 - pets and pet damage deposits
 - inspection of the condition of the rental unit
 - repairs
 - payment of rent and conditions of rent increases
 - assigning or subletting
 - occupants and guests
 - locks and access
 - ending the tenancy
 - dispute resolution.
- c) Terms that the landlord and tenant agree on such as:
 - the start and end date (if applicable) of tenancy
 - the amount of rent and when it is due
 - the amount of security deposit or pet damage deposit.

Other terms could be included in tenancy agreements, such as house rules, standards required by the Assisted Living Registrar, care plans, subsidy eligibility conditions, etc.

Service agreements

Landlords and tenants will also be required to have service agreements containing the terms that the landlord and tenant agree on, including:

- hospitality services and personal care services provided to each occupant of the rental unit
- the amount payable for these services and when it is due
- landlord's entry into the rental unit to provide services
- if there is a requirement for other occupants and guests to pay for services that are not needed
- if there is a separate guest unit, terms for using the unit.

If the property is used for purposes, the service agreement must set out the other uses of the property.

2. Security deposits

A landlord will be permitted to charge a security deposit equal to one half of one months rent. At the end of the tenancy, the tenant must leave the rental unit in a reasonably clean and undamaged condition and the landlord must return the security deposit, with any applicable interest. The landlord may retain an amount to cover repair of damages.

3. Pets and pet damage deposits

A landlord will be permitted to decide whether or not to accept pets or restrict the size, kind or number of pets, subject to the *Guide Animal Act*. A landlord may charge a pet damage deposit, equal to one half of one months rent, but may not charge a deposit for guide animals. The landlord must return the pet damage deposit, with any applicable interest, when the tenancy ends, but may retain an amount to cover repair of damages caused by pets.

4. Condition inspections

The landlord and tenant will be required to inspect the condition of the rental unit when the tenant moves in, when the tenant starts keeping a new pet, and when the tenancy ends. The landlord must give a copy of the inspection report to the tenant. The landlord may inspect the rental unit monthly with notice.

5. Repairs

The landlord will be required to maintain the property so that it complies with health, housing and safety requirements, and makes it suitable for occupation. The landlord must make emergency repairs, such as repairs that are necessary for health and safety, damaged or blocked water or sewer pipes or plumbing fixtures, heating and electrical systems.

The tenant will be required to maintain reasonable health, cleanliness and sanitary conditions. The tenant must repair damage caused by actions or neglect by the tenant or the tenant's guests. The tenant will not be responsible for reasonable wear and tear. When assessing reasonable wear and tear, the landlord must consider the tenant's hospitality and personal care needs. For example, it would be reasonable to expect some wear and tear to walls and carpets if the tenant uses a wheelchair, walker or electric medi-chair.

6. Rent and fees for hospitality and personal care services

Currently, some landlords charge one lump sum amount for accommodation, hospitality services and personal care services. Others set out the amount for accommodation and the amount for hospitality services and personal care services separately.

Under the RTA, landlords will be required to set out the amount for rent and the amount for hospitality services and personal care services separately. This is to ensure that landlords comply with provisions of the RTA which limit rent increases and establish a special notice period for increases to amounts payable for hospitality services and personal care services.

Rent

Rent is a payment for exclusive use of the rental unit and for any services or facilities that the landlord may include in rent, such as utilities, storage facilities, common areas, etc.

A landlord will be permitted to increase the rent once per year with three months' notice by an amount specified in the Regulation². The landlord may apply to the Residential Tenancy Branch for a higher rent increase under certain conditions, such as significant repairs or financial loss due to operating expenses.

Some rental units where rent is based on the tenant's income will be exempt from rent increase and notice provisions (e.g., British Columbia Housing Management Commission, health authorities, etc.).

Amount payable for hospitality and personal care services

A tenant's need for services can change suddenly or over a period of time. Landlords and tenants may agree to a change the type of services, how the services are delivered or the frequency of services.

A landlord will be permitted to increase the amount payable for these services if the tenant agrees. If the tenant does not agree, the landlord will be required to give the tenant three months' notice of an increase. For example, if there is an increase in the landlord's costs for purchasing and preparing food, the landlord may need to increase the amount payable for meals. Some rental units where fees for hospitality services and personal care services are based on the tenant's income will be exempt from notice provisions.

7. Terminating or restricting services

A landlord will not be allowed to withdraw or restrict a service or facility if it is essential to the tenant's use of the rental unit as accommodation, or is a material term of the tenancy agreement. For example, if a tenant is in a wheelchair and requires an elevator to access the rental unit, the landlord may not take the elevator out of service, except for repairs.

Similarly, a landlord will not be allowed to withdraw or restrict a hospitality or personal care service if the service is essential to the tenant's use of the rental unit as accommodation or is a material term of the tenancy agreement. For example, if the tenant lives in the accommodation because meal services are included, the landlord may not withdraw meal services.

² The allowable rent increase is the inflation rate plus 2%. The allowable rent increase for 2006 is 4%.

8. Assignment and subletting

The landlord will be permitted to decide whether or not to allow assignment or subletting of the rental unit. Tenants will be required to have written consent from the landlord to assign or sublet.

9. Occupants and Guests

A landlord will not be permitted to prevent a tenant from having guests in a rental unit or charge a guest fee. If there is a separate guest unit, the service agreement must set out the costs and other terms of use.

10. Locks and access

At the start of tenancy, the landlord will be required to re-key or alter the locks if requested by the tenant. The landlord will be required to provide the tenant with keys if the locks are changed during the tenancy. The tenant may not change the locks without the landlord's written consent.

The tenant has a right to quiet enjoyment, with reasonable privacy and freedom from unreasonable disturbance. The tenant has exclusive possession of the rental unit. The landlord, including staff, will be permitted to enter the rental unit only under certain conditions, such as:

- the tenant gives permission
- with notice for a reasonable purpose, such as repairs
- to provide hospitality or personal care services in accordance with the tenancy agreement
- in an emergency to protect health, life or property.

11. Ending the tenancy

Fixed term tenancies

If the tenancy is for a fixed term and the tenant is required to vacate on a certain date, the tenancy will end on that date. Where the tenant is not required to vacate on a certain date, the tenancies reverts to a month to month tenancy at the end of the term unless the landlord and tenant agree to another term.

Periodic tenancies

If the tenancy is for a periodic term, for example month to month, the tenant will be required to give one month notice to end the tenancy.

A landlord will be required to give ten days notice to end tenancy for non-payment of rent.

A landlord will be required to give one month notice to end tenancy for certain reasons, such as:

- non-payment of the amount due for hospitality services and personal care services
- repeated late payments for rent or for hospitality services or personal care services
- the tenant or guest has caused significant interference or risk to the health, safety or property of another occupant or the landlord.

The landlord will be required to give two months notice to end the tenancy for the following reasons:

- the landlord intends to use the property for another purpose, such as conversion to strata units
- the tenant ceases to qualify for a subsidized rental unit operated by a public body (such as BC Housing Management Commission or health authorities).

The landlord will be required to give three months notice to end tenancy for the following reasons:

- the tenant needs services that the landlord does not provide
- the tenant's behaviour jeopardizes the tenant's own health or safety.

In some circumstances, a landlord or tenant will be allowed to end the tenancy earlier than the above notice periods require. For example, a landlord will be able to apply to the Residential Tenancy Branch to end the tenancy early if a tenant's health or safety is seriously jeopardized, or if a tenant has seriously jeopardized the health, safety or property of another person.

It is important to note that the *Community Care and Assisted Living Act* prohibits an operator of an assisted living residence from housing residents who are not able to make decisions on their own behalf. In this situation, the notice provisions of the RTA will not apply.

Tenants who need a higher level of care may apply to a health authority for appropriate home and community care services.

12. Resolving disputes

The Residential Tenancy Branch can assist tenants and landlords with information about how the legislation applies to their situation. Publications describing requirements for assisted and supported tenancies will be developed and posted on the Residential Tenancy Branch website: <http://www.rto.gov.bc.ca>

If landlords and tenants are unable to resolve disputes on their own, they can ask the Residential Tenancy Branch to help them resolve disputes. The Branch may provide information, referrals, mediation or other services to assist. Health authorities, the Assisted Living Registrar and other organizations involved with the landlord or tenant may be involved in this process.

If the matter cannot be resolved, the landlord or tenant will be able to complete an application for dispute resolution. The matter will be referred to an arbitrator, who will make a decision based on the law, the merits of the case and the evidence. The Assisted Living Registrar or the Ministry of Health may be asked to provide clinical expertise if a matter involving a tenant's medical condition comes before an arbitrator.