

# Residential Tenancies

# Who's in charge in NS?

The Director of  
Residential Tenancies

Service Nova Scotia



Access Nova Scotia –  
Residential Tenancies Officers



# What is a Residential Premises?

Any space that may be occupied as a residence or any part of such place.

## Examples:

- Apartments
- Houses
- Manufactured Home Park Lots
- Boarding houses
- Rooming Houses

## This Includes:

- A Co-op
- Metro Regional Housing
- A Condo being rented by the condo owner to a tenant

# What is not Residential Premises?

- Residences provided by an institution of learning  
(e.g. university residences, boarding schools, convents, etc.)
- Hospitals
- Corrections facilities (e.g. jails, prisons, penitentiaries, half-way houses)
- Hotels, B&Bs, inns, motels
- Nursing homes, residential care facilities
- Commercial or industrial spaces (commercial leases)

# Who is a tenant?

## A Person Who

- Has been given access to a residential premises by the landlord; and
- Has paid or has promised to pay for the use of the rental space; or
- Has signed a valid written lease agreement



+



OR



# Even without a written lease?

Yes.  
Even without a  
written lease.

# Who is a landlord?

## A Person Who

- Has the authority to give permission for the occupation of a residential premises; and,
- Accepts rent in consideration for the right to possess the residential premises; or,
- Has the authority to sign a lease

## This Includes

- The owner of the building
- The owner's staff (e.g. property manager, superintendent, etc.)
- The owner's heir (if they die)
- The owner's legal assignee (family or designated authority)

# Who is a landlord?

That means that a person can be a Landlord even if....

- They are also a tenant  
(i.e. if they are sub-letting their rental unit to someone else)
- They don't want to be and didn't intend to be  
(e.g. they bought a property that was being rented out by the previous owner)
- They live with the tenant (e.g. they rent a room in their home and sharing the common areas with the tenant)

# Can't opt out

- Tenants and landlords cannot make agreements that violate or contradict the RTA.
- Even if the landlord and the tenant agree to change the terms of the lease, the courts will not enforce an illegal contract.

# Leases

# Unwritten Leases

**If there is a tenant and a landlord, then there is a lease.**

- All the terms of a Standard Form month-to-month lease apply
- Most sections of the RTA and the Regulations apply
- If you rent, the law applies to you – even if you do not have a written lease

# Written Leases

## The “Standard Form Lease”

- Defined under the Regulations
- Copies at Access NS locations or online
- Both the landlord’s and the tenant’s copies must have identical terms in every section
- The landlord must provide a copy of the RTA with any written lease for it to be legally binding\*
- Both landlord and tenant must sign to be valid

# Written Leases

## Non-standard Form Lease – is it enforceable?

A landlord and tenant that sign a non-standard lease are still bound by the RTA and by all of the provisions that are in a Standard Form Lease.

- All the terms of a non-SFL written lease apply if
- The landlord's copy and the tenants' copy are the same
  - Both the landlord and the tenant have signed it
  - None of the terms violate or contradict the RTA or any other law

# The “Anniversary Date”

**All leases – written and unwritten – have an anniversary**

- “An anniversary date” is the date the lease was first entered into by the landlord and tenant, and that same month and day for every year following
- The anniversary date is once per year for all leases regardless of term – year-to-year, month-to-month or fixed-term

# Lease Terms

**Periodic Terms – these lease never “end”  
unless the tenant gives proper notice to quit**

- Month-to-month
- Year-to-year
- Week-to-week

**Fixed Term – these leases end on a set date**

- Fixed Term leases set a specific start date and a specific end date right in the written lease agreement

# Month-to-Month Leases

- Lease can be oral or written
- Lease automatically renews every month until tenant gives proper Notice to Quit
- Tenant can end tenancy with one full rental month's notice in writing
- Landlord cannot end the lease without just cause
  - the tenant has security of tenure

# Year-to-Year Leases

- Lease must be written
- Tenant can end tenancy with written notice three (3) full rental months' prior to anniversary date
  - Termination of tenancy effective day before anniversary date
- Tenant can switch to a month-to-month term with proper written notice three (3) full rental month's prior to the anniversary date
  - Month-to-month term becomes effective on the anniversary date
- Landlord cannot end the lease without just cause – the tenant has security of tenure

# Fixed Term Leases

- Lease must be written
- Neither tenant nor landlord can end tenancy early; tenancy ends on date specified in the lease at the time of signing
- Landlord cannot raise rent or withdraw a service unless specific dollar amounts was stated in the lease at the time of signing; even with that, rental increases can only occur maximum once a year
- Neither landlord nor tenant are obligated to sign a new lease after the present lease expires – tenant does not have security of tenure

# Landlord's Rules – part of a lease

Landlords can make rules for the tenants living in their buildings, but the law says the rules must be **reasonable**.

What does the law consider “reasonable”? One which...

1. Is designed to promote
  - a. a fair distribution of services and facilities to all tenants
  - b. the safety, comfort or welfare of tenants or people working in the building; or
  - c. the protection of the landlord's property
2. Is reasonably related to the purpose for which it was imposed
3. Applies to all tenants fairly; and
4. Is clear enough so that a tenant knows what they must do to comply

# Landlord's Rules

## So what would be considered “unreasonable”?

Rules that are:

- Not designed to deal with the building, the use of a space or service in the building or with its business operations
- Designed to get around the law (e.g. “pet deposits”)
- Different for one tenant, or one set of tenants in the same building, and do not apply to other tenants
- Not clear
- Unreasonably difficult to comply with
- Illegal (e.g. violate human rights laws)

# Changes to a Lease

**Can the landlord change the terms of the lease agreement during the tenancy without the consent of the tenant?**

**YES** – but only to certain things

- Rental increases
- Withdraw of a service
  - Rule changes

**AND** – only with proper notice

# Security Deposits

# Security Deposits

Also known as “Damage Deposits”

- Landlords are allowed to ask for a security deposit from tenants at the beginning of the tenancy
- A security deposit **cannot** be more than ½ of one month’s rent
  - That applies to everyone – international students, first-time tenants, tenants in mobile home parks – everyone
- By law the Landlords is supposed to hold the security deposit in a trust account, separate and apart from their personal and business accounts
  - There is no penalty for Landlords who fail to meet this requirement

# Security Deposits

- Executive Council sets the rate of interest which will accrue during the tenancy
- Any actual interest that accrues above the set rate is the landlord's to keep
- The rate is currently set at ...

**ZERO**

# Security Deposit – after the tenancy

Landlords are only allowed to retain the security deposit for **repairs** or **unpaid rent**.

Legally landlords can apply to keep all of the security deposit or a portion of it depending on their actual out-of-pocket expenses.

Landlords are not allowed to keep the security deposit for

- Normal wear and tear
- Pre-existing conditions
- Damage caused by the landlord's own negligence

# Security Deposits – after the tenancy

- If there are no damages and no rental arrears, the landlord is supposed to return the security deposit to a former tenant within 10 calendar days of the termination of the tenancy
- **There is no penalty for landlords who fail to meet this deadline**
- Landlords who wish to retain all or a portion of the security deposit are supposed to file a Security Deposit Claim Form within that 10 day period
- **There is no penalty for landlords who fail to file the form**

# Security Deposit – getting it back

- If the landlord refuses to return the security deposit, tenant must file with Residential Tenancies to get it back
- Tenant has up to one year after the termination of the tenancy to file a claim for the return of the security deposit

# Security Deposits

Is the tenant 'safe' after the ten days are up?

**NO**

- **WARNING:** Tenants are NOT safe from claims for damage or unpaid rent just because the landlord has not filed a claim within 10 days of the termination of tenancy
- Because either party may file a claim up to one year from the termination of the tenancy, the tenant can still face damage claims long after the termination of tenancy

# Rental Increases

# Rental Increases – how often?

## Once a year

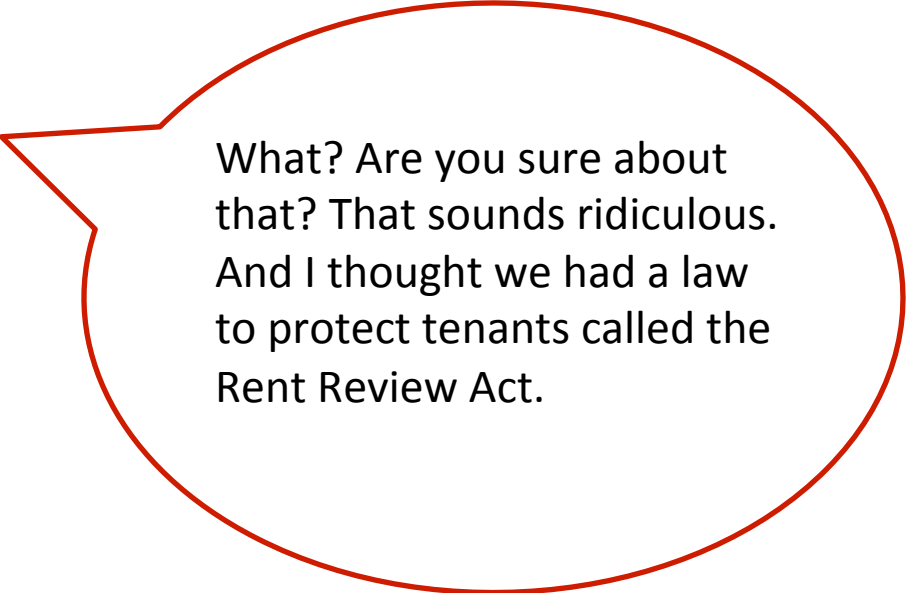
Landlords **cannot** increase a tenant's rent at all during the first 12 months of the tenancy in any circumstances

After the first 12 months of a tenancy, a landlord may only increase rent for periodic term leases and only if they provide proper notice

A landlord in a fixed term lease can only increase the rent once per year, and then only if they specifically indicated the amounts and effective dates of any rental increases in the lease at the time the lease was originally signed.

# Rental Increases – how much?

- There are **no** restrictions on the amount of a rental increase
- If the landlord has provided proper notice of the rental increase then it is legal no matter how high they raise it



What? Are you sure about that? That sounds ridiculous. And I thought we had a law to protect tenants called the Rent Review Act.

# Rental Increases – the Rent Review Act

**We do. It's still a law on the books.**

So why doesn't the Rent Review Act protect tenants from astronomically high rental increases?

- Order in Council 93-740



# Rental Increases – getting less bang for your rental buck

- The withdrawal of service is deemed to be a rental increase
- Examples:
  - Parking spot included in the rent
  - Heat included in the rent
  - Power included in the rent
  - Use of an elevator
  - Use of fitness room
  - Snow shoveling
  - Use of coin operated laundry facilities

# Rental Increases

- Because a withdrawal of a service is equivalent to a rental increase, the landlord has to provide proper written notice to the tenant to do so legally
- The landlord can only raise the rent OR withdraw a service once per year – not both

# Rental Increases

- A landlord has to provide 4 months' written notice prior to the anniversary date if they want to withdraw a service
- They can only raise the rent OR withdraw a service once per year – not both

# Landlord's Statutory Obligations

# Condition of Premises

A landlord has an obligation to keep residential premises in a good state of repair and fit for habitation.

Roof

Ceilings

Light fixtures

Electrical wiring

Plumbing

Bathroom fixtures

Appliances (if provided)

Furnace

Oil tank

Baseboard heaters and radiators

Air vents

Pest and vermin infestations

Mould

Smoke detectors

Flooring installation

Stair railings

Door knobs, locks and hinges

The kitchen sink

# Landlord's Obligations – the Condition of Premises

What if the landlord doesn't fix things even when the tenant asks for repairs?

- Ask again – but document the request (who you spoke to, the date, time, how (in person, by phone, e-mail))
- Document – take photos, video, etc. and keep a list of dates when repairs were requested, problem got worse, etc.
- Then ask again – in writing, keep a copy
- Then see if the rental unit is eligible for an inspection by HRM
- Then file a claim against the landlord at Access NS

# Landlord's Obligations – the Condition of Premises

## What to claim for at Access NS?

Unit is totally unfit for habitation –

- Immediate termination of tenancy
- Prorated rent (portion of month tenant couldn't live there)

Unit is not very nice, but tenant can live in it –

- Rent abatement (% of rent back for loss of use or enjoyment)

Damaged personal property –

- Replacement costs

# Landlord Entering the Unit

The landlord may only legally enter a tenant's premises without the tenant's consent if:

- There is an emergency
- Notice to Quit has been given by either party and the unit is being shown to a prospective tenant
- For maintenance or repairs, and then only if **written** notice is provided to the tenant 24 hours in advance of the entry, and the entry is during daylight hours

# Landlord Entering the Unit

## Can the landlord let other people into the tenant's unit?

The landlord may grant access to the rental unit to certain people if they need to go in for a legal reason

- Repair and service providers  
(e.g. plumbers, electricians, painters, etc.)
- Prospective new tenants  
(if the present tenant is moving out)
- Emergency personnel (fire fighters, ambulance)  
(only in an emergency)
- Police (only in certain circumstances)

# The Police

## When can a landlord let the police into a tenant's rental unit?

- If the police have a valid search warrant
- If the police are responding to a 911 call originating from inside the rental premises
- If there is an emergency and the police tell the landlord they have reason to believe someone's life or personal safety is at risk
- If the police tell the landlord they have reason to believe that evidence of a crime is inside the unit and that evidence may be lost or destroyed before they can obtain a warrant
- If the police are in "hot pursuit" of a suspect in a crime

**Landlords cannot allow the police to enter the tenant's rental unit to conduct a search or an investigation without a warrant.**

# Changing the locks

**When is it legal for the landlord to have the locks changed on a rental unit and throw the tenant out?**

- A landlord can **never** legally change the locks on the doors of a tenant's unit **without the tenant's consent**
  - Even if the rent is late
  - Even if the landlord won at a hearing

**Only the Sheriff has the authority to allow locks to be changed.**

- If a landlord changes the locks on a tenant's unit without the Sheriff present, the tenant should call the police.  
(see *Criminal Code re: mischief*)

# Abandoned Property

**If tenant abandons the rental unit and leaves behind personal property, by law the landlord must:**

- Compile an inventory list of all the items left behind
- Submit the inventory list to Access NS
- Send a copy of the inventory list to the tenant or their contact
- Wait 30 days after filing the inventory with Access NS

Then and only then can a landlord legally dispose of a tenant's abandoned property.

# Abandoned Property

## WARNINGS

1. If the landlord has to store a former tenant's personal property, they can charge the tenant for the cost of storage
2. If the tenant never comes back for their things, the landlord can sell the items and keep the money to use towards storage costs, unpaid rent or damages

# Abandoned Property

## Exceptions to the Rules for Abandonment

The landlord does not have to compile an inventory list if the items left behind are

- Unsafe
- Unsanitary
- Worth less than \$500 in total

The landlord can dispose of unsafe or unsanitary items immediately; the 30-day holding period does not apply.

# Abandoned Tenancy

**If tenant terminates tenancy without proper notice, the landlord is obligated to mitigate their damages by trying to re-rent the unit.**

What might be considered a failure to meet that obligation?

- Not advertising it for rent
- Seeking a higher rent than what they charged before
- Doing a lot of repairs and renovations that take many weeks

# The Landlord's Behaviour

A landlord must not act in a way that interferes with a tenant's possession or occupancy of their rental premises.

Examples of bad behaviour by a landlord:

- Bullying or intimidation
- Providing intermittent services (e.g. turning heat on and off)
- Refusing to deal with other tenants' poor behavior
- Making noise (e.g. landlord who lives in unit above tenant)
- Misuse of common areas (e.g. storing excessive amounts of personal property in communal laundry room or hallway)

# Subletting & Reassigning

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## Subletting

- Ideal when the tenant intends to return to the rental unit
- The sub-tenant often pays their rent to the “master-tenant” and the master-tenant pays the rent to the landlord
- The sub-tenant often pays a security deposit to the master-tenant and the landlord keeps the master-tenant’s security deposit until the tenancy ends
- The tenant is still responsible to ensure the rent is paid to the landlord
- The tenant is still liable for damages to the landlord’s property – even if they are caused by the sub-tenant

# Subletting & Reassigning

## Reassigning

- Ideal when the tenant does not intend to return to the unit
- The new tenant signs a new lease with the landlord and pays the rent directly to the landlord
- The previous tenancy agreement is thereby cancelled
- The new tenant pays a security deposit directly to the landlord and the former tenant is entitled to get their security deposit back
- The former tenant is not responsible for ensuring the rent is paid and not liable for damages caused by the new tenant
- The former tenant has no right to return to reoccupy the unit

# Subletting & Reassigning

## Who decides?

At present, the courts in Nova Scotia have determined that the landlord can refuse to allow subletting OR reassigning the lease, but not both. Tenants are allowed to sublet or reassign.

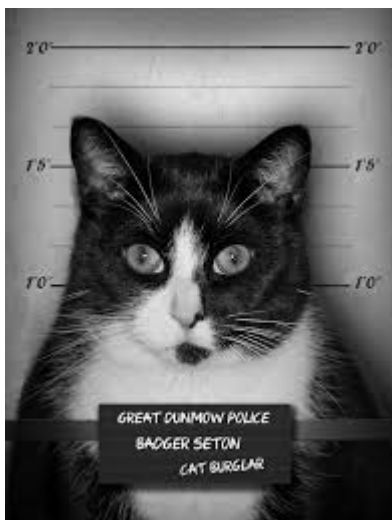
Landlords can refuse to allow a specific person to sublet or take over the lease, but not without reasonable grounds.

# Landlord's Permission

**What would be reasonable grounds for a landlord to refuse permission to a specific potential sub-tenant or new tenant?**

If the prospective new tenant has

- a poor credit history
- no evidence of income adequate to pay the rent
- poor references from previous landlords
- demonstrated that they are a risk to the safety of the tenants in the same building or a risk to the safety of the landlord



# Subletting Fees

- The landlord can charge a fee to the tenant once they give the tenant permission to sublet
- Legally, a landlord may only charge a tenant for expenses actually incurred as a result of allowing the unit to be sublet
- The current maximum fee for subletting that landlords can charge is \$75.00

# Tenant's Statutory Obligations

# Tenant's Obligation to Pay the Rent

- A tenant's most important obligation is to pay the rent, the whole rent, in full and on time.
- A tenant cannot withhold rent under any circumstances. Tenants who withhold rent – even for a good reason – risk eviction for non payment of rent.

# The Tenant's Behaviour

Tenants' behaviour cannot interfere with the other tenants or the landlord's normal enjoyment of their rental space.

What are some examples of bad behaviour by a tenant?

- Noise
- Unruly pets
- Setting off the smoke detectors frequently
- Harassment or bullying other tenants, the landlord or the landlord's employees
- Consistent refusal to follow rules in the lease

# Tenant's Cleanliness

Tenants are responsible for keeping their premises in an ordinary state of cleanliness.

Examples?

- Hoarding
- Excessive numbers of pets
- Foul odours (if continuous or frequent)
- Refusal to follow exterminator's instructions (e.g. for bed bug spray preparation)

# Tenant's Liability for Damage

Tenants are responsible for damage to the rental unit if the damage is caused by themselves, their pets, the other occupants of their rental unit, their invited guests or anyone else they freely allow into their rental unit

Tenants are not responsible for ordinary wear and tear of their rental unit.

# Tenants' Obligations – Ordinary Wear & Tear

What is “Ordinary Wear & Tear”?

The reasonably anticipated amount of deterioration of an item during its life expectancy if used for its intended purpose.

What is “Damage”?

Deterioration or loss of an item caused by negligence or a willful act which prevents the item from reaching its normal life expectancy.

# Tenant Insurance

Does the tenant have to have tenant insurance by law?

**NO**

What if it says in the lease that the tenant “is responsible” for having tenant insurance?

**Still no.** It is not illegal for the tenant not to have tenant insurance. It is not a violation of the lease. It is not grounds for eviction.

But... it does mean that the tenant is responsible for all damages and losses that would normally be covered by insurance.

# Tenant Insurance

Tenant insurance normally covers the tenant for:

- Losses to their personal property
  - Theft
  - Fire
  - Flood
- Liability for damage to other tenants or to the building
  - Frozen pipes that burst
  - Flooding from leaving taps on by accident
  - Fire caused by tenant by accident
- Liability for personal injury
  - E.g. Slip and fall by guest requiring expensive medical treatment

# Time for a break

# Eviction

# Evictions – Just Cause

Except in fixed-term leases, Landlords may only end a tenancy if they have ‘just cause’ – a legal good reason.

- Rental arrears
- Threat to safety or security
- Violation of obligations
  - » Cleanliness
  - » Good behaviour
  - » Subletting without permission
- Landlord is selling the property (tenancy ends on “closing day” of the sale)
- Landlord needs the unit for personal use or for their immediate family
- Landlord wants to make major renovations or repairs
- The mortgage holder has foreclosed on the property

Landlords cannot end a tenancy agreement just because they want to or just because they don't like the tenant anymore.

# Eviction for Rental Arrears

**RED FLAG!!**

**The Notice to Quit for Rental Arrears (Form D)**



**A Notice to Quit for Rental Arrears (Form D) is different than all other kinds of Notices to Quit.**

If your client receives a Notice to Quit for Rental Arrears (Form D), you and/or the client **MUST TAKE IMMEDIATE ACTION.**

If neither you nor your client responds to the Notice to Quit for Rental Arrears (Form D), your client can be **EVICTED WITHOUT ANY FURTHER NOTICE.**

# Eviction for Rental Arrears

## The Tenant's Only Options to Avoid Eviction



The landlord can issue the Form D if the rent is at least 15 days late.

Upon receipt of the **Form D**, the tenant has limited options.

The tenant must take action within 15 days of receiving the Notice to Quit **Form D**.

1. Pay the outstanding rent within 15 days
2. Go to Access NS within 15 days of receiving the and apply to the Director of Residential Tenancies for a hearing to dispute the Notice to Quit

# Eviction for Rental Arrears

## If the Tenant Doesn't Act

If the tenant doesn't pay the rent owing or doesn't file for a hearing at Access NS, they are deemed to have accepted the notice.



In other words, the law says that the tenant has agreed to move out.

When the 15 days are up, the landlord can get a Court Order for eviction and for payment of any outstanding rent **without a hearing and without any notice**.

Then the landlord can hire the Sheriff to force the tenant out.

# Ending a Tenancy – Landlords

## For All Other Reasons (not rental arrears)

If the landlord serves the tenant with a Notice to Quit for any reason other than rental arrears, there is less urgency.

- **Form E** – behavioral problems, lack of cleanliness, subletting without permission, safety and security risk, etc.
- **Form F** – landlord needs the unit for personal use, renovations, etc.

# Eviction for All Other Reasons (not rental arrears)

A tenant **does not** have to vacate their unit upon receipt of a Notice to Quit.

If the Notice to Quit is not for rental arrears, then the tenant doesn't have to take any action if they don't want to.

# Eviction for All Other Reasons (not rental arrears)

A tenant who receives a **Form E** or **Form F** Notice to Quit and wishes to contest it has a couple of options:

# Ending a Tenancy – A Tenant Choosing to Move Out

# Ending a Tenancy – A Tenant Choosing to Move Out

Tenants do not need a reason to end the tenancy.

Tenants can terminate their tenancy agreement so long as they give the landlord proper notice.

Be careful: Tenants cannot get out of their lease without proper notice unless they have a very good reason.

# Proper Notice

## Proper Notice to Quit by the Tenant Must Be

1. **In writing** - using the correct Form for your situation
  - a. You just want to move
  - b. A medical condition prevents you from staying in that apartment
  - c. You are fleeing a domestic violence situation
  - d. You are moving into a nursing home
  - e. You just died
2. **On time** – within the time limits set by the RTA
3. **In person** – physically given to the landlord in person

## In Writing

Tenants should use the proper Notice to Quit Form as provided by Access NS.

While the courts have determined that e-mail notices and other non-standard written notices are valid, people who do not use the proper form sometimes neglect to include all of the required information. This can allow the notice to be deemed invalid.

**Best practice: use the right form.**

Tenants should keep a copy of their Notice to Quit Form for their records.

## On Time



### Month-to-month lease

**1 full rental month notice;**

lease will end on the  
last day of the next month

### Year-to-year lease

**3 full rental months prior  
to the anniversary date;**

lease will end the day  
before the anniversary date

## In Person – “the Burden of Service”

“Personal Service” is a legal term that specifically means the notice was handed to the other person in a live transaction.

Tenants are not required by law to serve the landlord personally, but the burden of service rests with the tenant. To ensure that the landlord actually receives the Notice to Quit, **Megan recommends personal service.**

- Not e-mail
- Not Canada Post (regular mail)
- Not slipped under the door
- Not left with a neighbour



## In Person

Personal Service can be made  
by the tenant themselves or by

- A reliable friend
- A bailiff or process server
- An advocate
- Canada Post Registered Mail  
(if the respondent signs for it themselves)

## In Person

Anyone who is deemed by the RTA to be the landlord can be served.

- The owner of the building
- The owner's staff  
(e.g. property manager, superintendent, etc.)
- The owner's heir (if they die)
- The owner's legal assignee  
(family or designated authority)

# Choosing to Move Out Early

## What if a tenant wants to move out early – before they can give proper notice?

Sometimes a tenant wants to leave the rental unit early as a personal choice. These are times when the tenant...

- Has found a nicer place
- Wants to start co-habituating with their partner
- Got a job in a community far away

In these cases, the tenant has two options under the law

- Subletting
- Re-assigning

# Ending a Tenancy – A Tenant Needs to Move Out

# Having to Move Out Early

**What if a tenant needs to move out early for personal reasons and will not be coming back to the rental unit?**

**What if proper notice isn't going to let a tenant out of his lease soon enough?**

Sometimes a tenant needs to leave a rental situation early. In Nova Scotia the tenant can legally do that, but only in specific circumstances and only if they provide proper written notice.

**Personal reasons – when the law allows tenants to end their lease agreement prematurely in Nova Scotia:**

- The unit has become unsuitable because of the tenant's medical condition
- The tenant is fleeing domestic violence
- The tenant's income has been reduced because of a new medical condition and they can no longer afford the rent
- The tenant has to move into a nursing home
- The tenant has died

# Ending a Tenancy – When the Tenant Needs to Move Out

## Month-to-month terms – No Help from the RTA

If the tenant has a month-to-month lease, they already have the right to end the lease with one full rental month's notice to quit.

There is no further accommodation made to allow a tenant in a month-to-month lease to end their lease any earlier than that.

# Ending a Tenancy – When the Tenant Needs to Move Out

## Year-to-year and Fixed Term Leases – Some Help

Tenants can end their year-to-year or fixed term leases early if they are facing one of the circumstances specified in the RTA.

The tenant must

- Use the correct Notice to Quit form for their circumstance
- Serve the landlord with the Notice to Quit Form

The tenant should keep a copy of the Notice to Quit Form

# Ending a Tenancy – When the Rental Unit is No Longer Fit for Habitation

- A tenant may be able to end their tenancy immediately if the landlord is not keeping the rental unit **in a state of good repair and fit for habitation**.
- If the Landlord disputes this, the tenant may have to plead their case at a hearing.
- Tenants who need to move out because the condition of the premises is unlivable should document the conditions carefully before leaving (many photos, reliable witnesses, inspection reports if possible, etc.)

# Responding to a Claim

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## Responding to claims (for disputes other than eviction for rental arrears)

Should a landlord and tenant come into conflict, either party can make an Application to the Director of Residential Tenancies to resolve the issue – provided it is one covered by the *RTA*.

- An application **must** be filed within **1 year** of the termination of the tenancy.
- The application must be filed in person at a local Access Nova Scotia office.

# Responding to a Claim

## **Tenants responding to any claim filed by the landlord**

If the landlord makes a claim against the tenant, the landlord must serve the tenant with a notice of hearing “Form J”.

**Tenants should not try to avoid being served. Evading service does not prevent a hearing from going forward.**

# Responding to a Claim

## What if the tenant cannot attend the hearing?

If the tenant cannot attend the hearing, the tenant or their advocate should contact the RTO as soon as possible.

- Ask for a new date; or,
- Inform the RTO that the tenant will send a representative

Be sure that the RTO responds to your e-mail or phone message.

Do not assume that everything is OK just because you left a message for the RTO.

# Filing a Claim Against the Landlord

# Filing Against the Landlord

All claims must be filed in person at an Access NS location which deals with tenancy matters.

Check first to make sure the location you chose deals with tenancy matters.

In the metro Halifax area there are two locations (open 8:30am – 4:30pm)

1. Horseshoe Drive, Bayer's Lake Industrial Park, Halifax
2. Baker Drive, Dartmouth

# Filing a Claim Against the Landlord

## The Application Fee

There is a fee of \$31.<sup>15</sup> for filing a claim at Access NS.

Low income applicants can apply for a waiver of fees. They must provide an original copy of their most recent pay statement from

- Income Assistance (IA)
- Guaranteed Income Supplement (GIS as part of CPP)

Low income applicants who do not receive IA or GIS can apply for a Ministerial Waiver. They must provide some documentation of their income.

# Filing a Claim Against the Landlord

## What can a tenant ask for in the claim Form J?

1. Termination of tenancy
  - Unit is unfit for habitation
  - Landlord's bad behaviour
2. Return of security deposit
3. Repairs
4. Setting aside a Notice to Quit from the landlord
5. Payment of Money
  - Rent abatement for less than fit conditions
  - Pro-rated rent for inability to use rental unit
  - Compensation for damages caused by landlord's negligence
6. Awarding of the application fee (\$30.25) if paid

# Groups of tenants working together

## Can a group of tenants file a class action against the landlord together?

**NO**

The law in Nova Scotia does not allow for class actions in tenancy cases.

Where more than one tenant has the same problem with the same landlord, each tenant has to file separately.

# The Legal Process

# The Telephone Hearing

# The Telephone Hearing

- All Residential Tenancy hearings are conducted over the telephone
- You can phone into your hearing from anywhere you like
  - Choose a quiet place where you will not be disturbed
- You must provide any evidence you have at least two (2) days before the hearing
- This means you should receive a copy of the other side's evidence at least two (2) days before the hearing, and they should receive yours

# Submitting Evidence for the Hearing

## Things you might want to include

- Photographs
- Video
- Inspection reports (e.g. HRM By-law enforcement)
- Bills, receipts and invoices
- In-inspection memos completed by landlord
- Witness testimony (eye witnesses to events)
- Expert witness testimony (professional analysis and opinion)

# Submitting Evidence for the Hearing

- You must provide a copy of your evidence no later than two (2) days prior to the hearing
- You must provide a copy of the evidence to the Tenancy Officer AND to the other party (e.g. your landlord or your tenant)
  - Email
  - In person at Access Nova Scotia
  - By Fax to Access Nova Scotia

# Preparing for the Hearing

**Interpreters** If the landlord, tenant or one of their witnesses does not speak English, Access NS will only provide an interpreter for French.

Either party may use an interpreter for other languages, but if there is a charge for the interpreter's services, the party who brings the interpreter is responsible for the costs.

## **Accessibility for the Deaf**

If either party requires a sign language interpreter, Access NS will pay for this service, but only if advanced notice is provided to the RTO.

# The Hearing – Access NS

## Who is allowed to come into the hearing room?

The landlord(s)

The landlord's representative or advocate

The tenant(s)

The tenant's representative or advocate

An interpreter, if required

## Who is not allowed to come into the room?

Witnesses will all be asked to wait in the waiting room until they are called in to testify.

# Access NS – What will happen at the hearing?

## Mediated Settlement Agreements

When you begin the telephone hearing, the RTO will first ask if there is any possibility of the two sides coming to a settlement.

This is an opportunity to work out terms and come to a resolution without using the formal hearing procedures.

- No documents are submitted
- No witnesses testify

# Mediated Settlement Agreements

If both sides can agree, you can set terms regarding any part of the matter:

- How much money one party will pay the other
- Which repairs will be done and by what date
- If and when the tenant will move out
- If either party will take certain actions and by what date

Once the two sides agree on terms, the RTO will put it in writing. The RTO will send a written settlement agreement to the parties (usually by email).

# Mediated Settlement Agreements – The Law

Written Mediated Settlement Agreements are

- Legally binding
- Cannot be appealed\*

Both parties must follow the terms of the agreement. If the terms are not met, the agreement will state what the consequences are for non-compliance.

If either party fails to meet the terms of the agreement, they can contact the RTO and ask for a Director's Order.

# If Mediation Fails...

If mediation is unsuccessful the RTO will begin the formal hearing immediately.

- Everyone stays on the phone
- The same RTO conducts the hearing
- The RTO will begin by asking the landlord(s) and the tenant(s) to affirm that they will tell the truth.

*“Do you promise to tell the truth,  
the whole truth and nothing but the truth?”*

# Testifying at the Hearing

Both sides should be given an opportunity to explain their side of the story.

Both sides should be given an opportunity to ask questions of the other side.

Both sides should be allowed to give the RTO their evidence (documents, photos, etc.) and to have their witnesses testify.

Neither side should be allowed to interrupt, bully, intimidate or threaten the other.

# At the End of the Hearing

- Make sure the RTO has your correct mailing address
  - The RTO will either email or mail (Canada Post) the decision to each party unless otherwise specified
- If you do not wish to have your copy of the decision mailed, you can ask for the RTO to leave your copy at the Access NS front desk for you to pick up in person

# After The Hearing

After the hearing the RTO will issue a written decision within **14 calendar days**.

**IMPORTANT:** If you have not received a copy of the RTO's decision after 16 or 17 calendar days have passed, something is wrong.

Contact The RTO immediately and get a copy of the decision.

# Appealing a Decision – Small Claims Court

- An RTO's decision, called an "Order of the Director of Residential Tenancies," can be appealed by either party
- Either party can appeal the decision for any reason
- The appellant must file a Notice of Appeal at their local Small Claims Court
- The appeal must be filed at the court house within **ten (10) calendar days** from the date of the decision

## What is my client has missed the deadline to appeal?

Either party can  
file for **an extension to  
the deadline to appeal**

If your client wants to file a  
late appeal, **they need a good  
reason for missing the deadline**

Grounds for granting an extension are that the appellant

- Has a reasonable excuse for missing the deadline
- Actually intended to appeal
- Took steps to apply for the extension as soon as she was able to do so learning of the judgment against her

And that there is no prejudice to the respondent

# Appealing a Decision – Small Claims Court

The filing process is very similar to that of Access NS

- File in person at the court house
- Pay the fee or apply for the fee waiver
- Personally serve the other party
  - One difference: also personally serve the Director of Residential Tenancies at Access NS
- Return to the court house and sign an Affidavit of Service
- Wait and prepare for the Small Claims appeal hearing

# Small Claims Court

Small Claims Court hears cases in the evening at 6pm.

In the Halifax area, Small Claims Court hearings take place at the Spring Garden Road court house.



# Small Claims Court

# Small Claims Court – What Happens There?

- There may be several cases all scheduled to be heard at the same time
  - We will have to stay in the court room with our client and wait our turn
  - While we wait we will have to sit and listen to the other cases being heard before our case is heard
- The Small Claims Court hearing will be presided over by an Adjudicator who is a lawyer.
- The hearing will be much more ‘court-like’ than at Access NS
  - E.g. witnesses must sit in the witness stand to testify

# Appeals to NS Supreme Court

Either party can appeal the decision of the Small Claims Court to the Supreme Court of Nova Scotia. You should consult a lawyer before filing an appeal at this level.



# Enforcing Orders- when the hearings are all over

- If the parties signed a mediated settlement agreement; or,
- If the matter went to a formal hearing and neither side has appealed

The 'winner' can seek enforcement of the decision if the other party fails to meet with the terms

- Eviction
- Payment of money

# Enforcing Orders - How?

- The party that ‘won’ - i.e. the judgment was made in their favour - has to wait until the appeal period has passed
  - 10 calendar days after the RTO signed the Access NS decision; or,
  - 30 business days after the Adjudicator signed the Small Claims decision
- Once the appeal period has expired, the ‘winner’ can begin the process of hiring the Sheriff to enforce the court order

# Enforcing Eviction Orders

**Only the Sheriff** has the power to enforce an eviction – also called an Order of Vacant Possession

The Sheriff can only enforce an eviction if his office has been served **with an Execution Order** – a document obtained from the court house

**The landlord does not** have the legal authority to enforce an eviction – even if they have an Order

The Sheriff will normally arrive at the tenant's door between 4 days and 8 weeks after the appeal period has passed. The Sheriff will normally give the tenant one to two days notice that they have to leave.

# Enforcing Eviction – Can the Tenant Stop the Eviction?

After the Landlord has obtained the Execution Order for eviction, it is ***possible*** for the tenant to stop the Sheriff from hauling them out of their apartment. But it is not easy to do.

The tenant would need to get a Stay of Execution from the court. The court will only issue a stay if the tenant

- Files for an appeal and a Stay of Execution at the court house immediately (and pays the fee or applies for a fee waiver)
- Gets a hearing date before the time the Sheriff is due to return to the rental unit to execute the order
- Appears at the hearing
- Persuades the court that there is a good reason for allowing a late appeal

# Enforcing Orders – Payment of Money

If one party is awarded money, and the other side refuses to pay, the “winner” can hire the Sheriff to try to get the money they are owed.

The process involves several steps and there are fees.

Note: the Sheriff and his Deputies are not private investigators. They will not search for the owing party’s money. The “winner” has to tell the Sheriff where to find the owing party’s money.

# Enforcing Orders – Payment of Money

**Where might the “winner” find the owing party’s money?**

- Bank account – the actual branch
- Employer – where they work
- Their debtors – if someone owes them money (e.g. if the tenant is the “winner” the Sheriff can get the money the tenant is owed by taking it from the landlord’s other tenants)

# Enforcing Orders – Payment of Money

**What if the “winner” has no idea  
where to find the owing party’s  
money?**

Sadly, there may be nothing  
that the Sheriff (or anyone)  
can do to get the “winner’s”  
money for them if the  
“winner” cannot find the  
owing party’s money.

# Thanks

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Questions?

**LEGAL INFO**   
NOVA SCOTIA

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