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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 34

THE LANDLORD AND TENANT ACT, 1978

THE MINISTER OF CONSUMER
AND CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

THE LANDLORD AND TENANT ACT, 1978

TABLE OF CONTENTS

| | Section No. |
|----------------------|-------------|
| Definitions | 1 |
| Application of Act | 2 |
| Applies to the Crown | 3 |

PART 1

TERMINATION OF TENANCIES

| | |
|---|----|
| Notice of termination of tenancy | 4 |
| Notice to terminate a weekly tenancy | 5 |
| Notice to terminate a monthly tenancy | 6 |
| Notice to terminate a yearly tenancy | 7 |
| Form of notice | 8 |
| Term of implied residential tenancy | 9 |
| Compensation by overholding tenant | 10 |
| Application for an order for possession | 11 |
| Claim for arrears for rent and compensation | 12 |
| Order for possession | 13 |
| Terms of an order for possession | 14 |
| Writ of possession | 15 |
| Proceedings after tenant vacates | 16 |

PART 2

RESIDENTIAL TENANCY AGREEMENTS

Tenant to have a copy of the
residential tenancy agreement

| | |
|---|----|
| Implied covenants | 18 |
| Entry of premises by landlord | 19 |
| Locks and security devices | 20 |
| Tenant's remedies against landlord | 21 |
| Landlord's remedies for repudiation of residential tenancy agreements | 22 |
| Frustration of residential tenancy agreement | 23 |
| Substantial breach by tenant of a residential tenancy agreement | 24 |
| Remedies of tenant when unable to obtain possession of premises | 25 |
| Damages against an overholding tenant | 26 |
| Termination of tenancy by employees | 27 |

PART 3

SECURITY DEPOSITS AND ABANDONED PROPERTY

| | |
|--|----|
| Amount of security deposit | 28 |
| Custody of security deposit | 29 |
| Return of security deposit | 30 |
| New landlord responsible for security deposits | 31 |
| Abandoned property | 32 |

PART 4

THE PROVINCIAL COURT

| | |
|--|----|
| Jurisdiction of the Provincial Court | 33 |
| Commencement of an application | 34 |
| Issuance of a notice of the application | 35 |
| Dismissal of an application | 36 |
| Appeal from an order of the Provincial Court | 37 |

| | |
|----------------------|----|
| Entering of an order | 38 |
|----------------------|----|

PART 5

GENERAL

| | |
|--|----|
| Notice of increase in rent | 39 |
| Purchasers and assignees | 40 |
| Non-application of other law | 41 |
| Service of documents | 42 |
| Notice of termination for condominium conversion | 43 |
| Landlord and Tenant Advisory Boards | 44 |
| Offences | 45 |
| Regulations | 46 |
| Applications to the Supreme Court or the District Court | 47 |

PART 6

TRANSITIONAL AND CONSEQUENTIAL

| | |
|--------------------------------------|-----------------|
| Application of Act upon commencement | 48 |
| Consequential amendments | 49,50,51 and 52 |
| Repeal | 53 |
| Commencement | 54 |

SCHEDULE

| | |
|------------------------------------|------|
| | Form |
| Notice to a non-residential tenant | A |
| Notice to landlord | B |
| Notice to residential tenant | C |

BILL 34

1978

THE LANDLORD AND TENANT ACT, 1978

(Assented to , 1978)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1 In this Act,

- (a) “common areas” means areas controlled by a landlord and used for access to residential premises or for the service or enjoyment of a tenant;
- (b) “council” means
 - (i) a city, town, new town, village, summer village, municipal district or county, or
 - (ii) the Minister of Municipal Affairs in the case of an improvement district or special area;
- (c) “court” means
 - (i) the Provincial Court,
 - (ii) the District Court, or
 - (iii) the Supreme Court;
- (d) “District Court” means the District Court of Alberta;
- (e) “mobile home site” means land rented as a site for a mobile home used for residential purposes whether or not the landlord also rents that mobile home to the tenant;
- (f) “Provincial Court” means the Provincial Court of Alberta;
- (g) “residential premises” means

Explanatory Notes

GENERAL: This Bill will repeal and replace The Landlord and Tenant Act which was enacted in 1964. Most of the changes from the former Act involve residential tenancies and are based to a large extent on the recommendations of the Institute of Law Research and Reform in its Report No. 22 published in February, 1977.

1 Definitions.

(i) a self contained dwelling unit used for residential purposes, or

(ii) a mobile home site,

but does not include premises occupied for business purposes with living accommodation attached and rented under a single agreement;

(h) “residential tenancy agreement” means a written, oral or implied agreement to rent residential premises;

(i) “security deposit” means any money, property or right paid or given by a tenant of residential premises to a landlord or to anyone on his behalf to be held by or for the landlord as security for the performance of an obligation or the payment of a liability by the tenant or to be returned to the tenant upon the happening of a condition;

(j) “Supreme Court” means the Supreme Court of Alberta.

2(1) This Act does not apply to minerals held separately from the surface of land or to any dealings in minerals.

(2) This Act, except for Parts 1 and 6 and sections 1, 2, 3, 40, 41, 42, 44, 45(b) and 47, applies only to residential premises.

(3) Except as otherwise provided, this Act applies notwithstanding any agreement to the contrary and any waiver or release of the rights, benefits or protections provided under this Act is void.

3 The Crown in right of Alberta is bound by this Act.

2 Application of Act.

3 Applies to the Crown.

PART 1

TERMINATION OF TENANCIES

4(1) A weekly, monthly or yearly tenancy may be terminated by either the landlord or the tenant upon notice to the other and the notice

(a) shall be given in sufficient time to give the period of notice required by section 5, 6 or 7, as the case may be,

(b) shall meet the requirements of section 8, and

(c) shall be given in the manner prescribed by section 42.

(2) A tenancy not referred to in subsection (1) that is terminable on notice shall, unless otherwise agreed upon, be terminated as provided by sections 8 and 42.

(3) If a periodic tenancy of residential premises is for a period of more than one week but less than one year, that tenancy is for the purposes of terminating the tenancy deemed to be a monthly tenancy.

5(1) A notice to terminate a weekly tenancy must be given before the commencement of the tenancy week to be effective on the last day of that tenancy week.

(2) In this section and section 8(4)(a), “tenancy week” means the weekly period on which the tenancy is based whether or not it is a calendar week and, unless otherwise specifically agreed upon, the week shall be deemed to begin on the day on which rent is payable.

6(1) A notice to terminate a monthly tenancy must be given

(a) by a tenant to his landlord or by a landlord of premises that are not residential premises to his tenant, prior to the commencement of the tenancy month to be effective on the last day of that tenancy month, or

(b) by a landlord of residential premises to his tenant, not less than 90 days prior to the day on which it is specified to be effective, to be effective on the day so specified.

(2) In this section and section 8(4)(b), “tenancy month” means the monthly period on which the tenancy is based whether or not it is a calendar month and, unless otherwise specifically agreed upon, the month shall be deemed to begin on the day on which rent is payable.

4 Notice of termination of tenancy.

5 Notice to terminate a weekly tenancy.

6 Notice to terminate a monthly tenancy.

7(1) A notice to terminate a yearly tenancy must be given

(a) by a tenant to his landlord or by a landlord of premises that are not residential premises to his tenant, on or before the 60th day before the last day of any tenancy year, or

(b) by a landlord of residential premises to his tenant, on or before the 90th day before the last day of any tenancy year,

to be effective on the last day of the tenancy year.

(2) In this section, “tenancy year” means the yearly period on which the tenancy is based whether or not it is a calendar year and, unless otherwise agreed upon, the year shall be deemed to begin on the day, or the anniversary of the day, on which the tenant first became entitled to possession.

8(1) A landlord or a tenant may give notice either orally or in writing, but a notice by a landlord to a tenant is not enforceable under sections 11 to 16 unless it is in writing.

(2) A notice in writing

(a) shall be signed by the person giving the notice or his agent,

(b) shall identify the premises in respect of which the notice is given, and

(c) shall state the date on which the tenancy is to terminate.

(3) A notice need not be in any particular form, but a notice

(a) by a landlord of premises that are not residential premises to his tenant may be in Form A of the Schedule,

(b) by a tenant to his landlord may be in Form B of the Schedule, and

(c) by a landlord of residential premises to his tenant may be in Form C of the Schedule.

(4) If a notice to terminate a weekly, monthly or yearly tenancy is not served in sufficient time to give the period of notice required by section 5, 6 or 7, as the case may be, the notice is still effective to terminate, as the case may be,

(a) the weekly tenancy on the last day of the first complete tenancy week following the date on which the notice is served,

7 Notice to terminate a yearly tenancy.

8 Form of notice.

(b) the monthly tenancy

(i) if the notice is given by a tenant to his landlord or by a landlord of premises that are not residential premises to his tenant, on the last day of the first complete tenancy month following the date on which the notice is served, or

(ii) if the notice is given by a landlord of residential premises to his tenant, 90 days from the date on which the notice is served,

or

(c) the yearly tenancy

(i) if the notice is given by a tenant to his landlord or by a landlord of premises that are not residential premises to his tenant, 60 days from the date on which the notice is served, or

(ii) if the notice is given by a landlord of residential premises to his tenant, 90 days from the date on which the notice is served.

9 If a periodic tenancy is implied by operation of law after the expiration or termination of a prior residential tenancy agreement for a fixed term, the implied tenancy, in the absence of facts showing a contrary intention, is

(a) if the prior tenancy was for a fixed term of one month or more, a tenancy from month to month, or

(b) if the prior tenancy was for a fixed term of less than one month, a tenancy from week to week.

10(1) A landlord is entitled to compensation resulting from the use and occupation of premises by an overholding tenant after the tenancy has expired or been terminated.

(2) The acceptance by a landlord of arrears of rent or compensation after the expiration of a tenancy or after notice of termination of a tenancy has been given does not operate as a waiver of the notice, a reinstatement of the tenancy or the creation of a new tenancy unless the parties so agree.

(3) A landlord's claim for arrears of rent or compensation for the use and occupation by an overholding tenant after the expiration or termination of the tenancy may be enforced under this Act.

9 Term of implied tenancy.

10 Compensation by overholding tenant.

11(1) If a tenant after his tenancy has expired or terminated does not vacate the premises held by him, the landlord may apply to a court for an order for possession.

(2) The notice of the application shall be served at least 3 days, exclusive of holidays and Saturdays, before the day named in the notice for hearing the application.

(3) The application of the landlord shall be supported by an affidavit

- (a) setting forth the terms of the tenancy,
- (b) proving the expiration or termination of the tenancy,
- (c) stating the failure of the tenant to vacate the premises and the reasons given for the failure, if any were given, and
- (d) stating any other relevant facts.

12(1) The notice of the application for an order for possession may also include a claim for arrears of rent and compensation for the use and occupation of the premises by the tenant after the expiration or termination of the tenancy.

(2) When a claim is made under subsection (1), the affidavit in support of the application shall also show

- (a) if a claim is made for arrears of rent, the amount of rent in arrears and the time during which it has been in arrears, and
- (b) if a claim is made for compensation, particulars so far as they are known of the use and occupation made of the premises after the expiration or termination of the tenancy.

13(1) Upon hearing the application or, where it is opposed, upon hearing and considering, in a summary way, any oral and affidavit evidence of the parties and their witnesses, a court may

- (a) if it is satisfied that the tenancy has expired, give an order for possession;
- (b) in the case of residential premises, if it is satisfied that the tenancy was terminated by the landlord, other than for the reason that the tenant has
 - (i) made an application or filed a statement under this Act, *The Temporary Rent Regulation Measures Act* or *The Rent Decontrol Act*,

11 Application for order for possession.

12 Claim for arrears of rent and compensation for use.

13 Order for possession.

(ii) made a complaint, assisted in an investigation or inquiry or given any evidence at a hearing under this Act, *The Temporary Rent Regulation Measures Act* or *The Rent Decontrol Act*, or

(iii) refused to pay a rental rate increase that is not in accordance with *The Temporary Rent Regulation Measures Act* or *The Rent Decontrol Act*,

or by the tenant, give an order for possession;

(c) if it is satisfied that the tenancy was terminated by a court under this Act, give an order for possession;

(d) if a claim for arrears of rent is made, give judgment for the amount of rent proven to be in arrears;

(e) if a claim for compensation is made, give judgment in such amount as it determines to compensate for the use and occupation of the premises after the expiration or termination of the tenancy, having regard to the nature of the use and occupation and the rent payable during the tenancy.

(2) If, in the case of residential premises, it appears to the court that a landlord has terminated a tenancy on account of the tenant

(a) making an application or filing a statement under this Act, *The Temporary Rent Regulation Measures Act* or *The Rent Decontrol Act*,

(b) making any complaint, assisting in any investigation or inquiry or giving any evidence at a hearing under this Act, *The Temporary Rent Regulation Measures Act* or *The Rent Decontrol Act*, or

(c) refusing to pay a rental rate increase which is not in accordance with *The Temporary Rent Regulation Measures Act* or *The Rent Decontrol Act*,

the court shall make an order declaring the notice of termination void.

(3) A court may grant or dismiss the application in whole or in part and may direct the trial of an issue to determine any matter in dispute.

14 An order for possession given under section 13 or 24

(a) shall direct the tenant to deliver up possession of the premises to the landlord by a specified date or within a specified time after service of the order on the tenant,

14 Terms of order for possession.

(b) shall state that if the order is not obeyed by the specified date or within the specified time, a writ of possession will issue without any further order, and

(c) may be served in the manner prescribed by section 42 or in any other manner that the court directs.

15 If an order for possession is not obeyed by the specified date or within the specified time, the landlord is entitled, without any further order, to a writ of possession on filing an affidavit showing that the order has been served and has not been obeyed.

16 Proceedings in respect of a claim for arrears of rent or for compensation may be continued notwithstanding that the tenant vacates the premises.

15 Writ of possession.

16 Proceedings after tenant vacates.

PART 2

RESIDENTIAL TENANCY AGREEMENTS

17(1) If a residential tenancy agreement is in writing and the tenant has signed and returned the residential tenancy agreement to the landlord, the landlord shall, within 21 days of the residential tenancy agreement being returned to him, serve a copy of the residential tenancy agreement on the tenant.

(2) A tenant may withhold payment of rent until he is served with a copy of the residential tenancy agreement under subsection (1).

18 The following covenants form part of every residential tenancy agreement:

(a) that the residential premises will be available for occupation by the tenant at the beginning of the tenancy and that they will be habitable;

(b) that, subject to this Act, neither the landlord nor a person having a claim to the residential premises under the landlord will in any significant manner disturb the tenant's possession or peaceful enjoyment of the premises;

(c) that the tenant will maintain the residential premises and any property rented with it in a reasonably clean condition.

19(1) Except as otherwise permitted in this section, a landlord is not entitled to enter residential premises rented by him without the consent of the tenant or of an adult person lawfully in the premises.

(2) A landlord is entitled to enter residential premises rented by him without consent or notice if he has reasonable grounds to believe that

(a) an emergency requires him to enter the premises, or

(b) the tenant has abandoned the premises.

(3) A landlord is entitled to enter residential premises rented by him without consent but after notice to the tenant

(a) to inspect the state of repair of the premises,

(b) to make repairs to the premises, or

(c) to show the premises to prospective purchasers or mortgagees of the premises.

17 Tenant to have copy of the residential tenancy agreement.

18 Implied covenants of tenancy agreements.

19 Entry of premises by landlord.

(4) A notice under subsection (3) must

(a) be in writing,

(b) be served on the tenant in accordance with section 42 at least 24 hours before the time of entry, and

(c) name a reasonable time of entry.

(5) After a landlord or a tenant of residential premises has given notice of termination of a periodic tenancy or during the last month of a tenancy for a fixed term, the landlord is entitled to enter the premises at reasonable hours without consent but with notice to the tenant to show the premises to prospective tenants.

20(1) Neither a tenant nor a landlord shall add to or change locks on doors giving access to residential premises or to the property of which the residential premises form a part without the consent of the other party.

(2) Notwithstanding subsection (1), a landlord may add to or change locks on doors giving access to residential premises or to the property of which the residential premises form a part, if a key is made available to the tenant as soon as the addition or change is made.

(3) Subsection (1) does not apply to the installation by a tenant of a security device that

(a) is capable of being put into effect only while a person is inside the residential premises, and

(b) can be installed and removed without damage to the premises or will remain affixed to the premises and become the property of the landlord when the tenancy is terminated.

21(1) If a landlord breaches a residential tenancy agreement or contravenes this Act, the tenant may apply to a court for one or more of the following remedies:

(a) damages suffered by reason of the breach or contravention;

(b) abatement of rent to the extent that the breach or contravention deprives the tenant of the benefit of the residential tenancy agreement;

(c) compensation for the cost of making good the landlord's default;

(d) termination of the tenancy.

20 Locks and security devices.

21 Tenant's remedies against landlord.

(2) Upon an application being made under subsection (1), the court may do any one or more of the following:

(a) make an order giving the tenant the remedy applied for under subsection (1);

(b) direct that the tenant pay into the court, pending and after disposition of the application, those amounts, if any, of future rent as they become due that the court considers appropriate;

(c) direct that any amount of rent paid into the court be disbursed, as appropriate,

(i) to the tenant as damages, or

(ii) to the landlord, the tenant or a third party, for costs reasonably incurred in making good the landlord's default,

and that any remaining amount be paid to the landlord.

22(1) If a tenant by abandonment of the residential premises or otherwise gives the landlord reasonable grounds to believe that the tenant has repudiated the residential tenancy agreement, the landlord may either

(a) accept the repudiation as a termination of the tenancy, or

(b) refuse to accept the repudiation and continue the tenancy.

(2) A landlord who accepts the repudiation as a termination of the tenancy shall take reasonable steps to mitigate his damages and may apply to a court to recover

(a) rent accrued and damages suffered by reason of the breach of the residential tenancy agreement by the tenant up to the date of the repudiation, and

(b) damages for the loss of the benefit of the residential tenancy agreement

(i) in the case of a fixed term tenancy, over the unexpired period of the residential tenancy agreement, or

(ii) in the case of a periodic tenancy, until the earliest date the tenant could have terminated the tenancy under this Act and for that purpose his acts of repudiation constitute a proper notice of termination.

22 Repudiation of the tenancy agreement by tenant.

(3) A landlord who refuses to accept the repudiation may apply to the Supreme Court or the District Court for enforcement of the residential tenancy agreement, but shall take reasonable steps to mitigate his damages.

(4) If a landlord who makes an application under subsection (3) rents the residential premises to a new tenant in order to mitigate his damages, he is deemed to have accepted the repudiation of his previous tenant as terminating that tenancy at the time the new tenancy commences.

23(1) A residential tenancy agreement is frustrated if

(a) the residential premises that are the subject of the agreement are destroyed, or

(b) the residential premises, the common areas or the property of which they form a part, are damaged to such an extent that

(i) a reasonable landlord would not repair the damage, or

(ii) a reasonable tenant would not be willing to remain as a tenant.

(2) The law pertaining to contract applies with respect to a residential tenancy agreement that is frustrated.

24(1) In this section, “substantial breach” means

(a) a failure to pay rent,

(b) doing or permitting substantial damage to the residential premises, the common areas or the property of which they form a part,

(c) performing illegal acts or carrying on an illegal trade, business or occupation in the residential premises, the common areas or the property of which they form a part,

(d) causing a danger to persons or property,

(e) causing undue interference with the rights of the landlord or other tenants, or

(f) a series of breaches of the residential tenancy agreement the cumulative effect of which is substantial.

(2) If a tenant commits a substantial breach other than a failure to pay rent the landlord may

23 Frustration of residential tenancy agreement.

24 Substantial breach by tenant of a residential tenancy agreement.

(a) terminate the tenancy by serving the tenant with at least 14 days' notice in writing containing details of the tenant's substantial breach, or

(b) upon at least 3 days' notice, exclusive of holidays and Saturdays, or such shorter notice as a court may approve, apply to a court for an order declaring that the residential tenancy agreement is terminated.

(3) If a tenant commits a substantial breach by failing to pay rent, the landlord may terminate the tenancy by serving the tenant with at least 14 days' notice in writing containing details of the failure to pay rent.

(4) A notice served by the landlord under subsection (3) is ineffective if, within the 14-day period of notice, the tenant pays all arrears of rent.

(5) If the landlord serves a notice on a tenant under subsection (2)(a) or (3), the tenant may, within the 14-day period referred to in subsection (2)(a) or (3), serve the landlord with a notice of objection in writing setting out the tenant's reasons for objecting to the notice by the landlord.

(6) If the tenant serves a notice of objection under subsection (5), the notice of termination under subsection (2)(a) or (3) is ineffective to terminate the tenancy, but the landlord may, upon at least 3 days' notice, exclusive of holidays and Saturdays, or such shorter notice as a court may approve, apply to the court for an order declaring that the residential tenancy agreement is terminated.

(7) Upon an application by a landlord under subsection (2)(b) or (6), a court may, if it is satisfied that the tenant has committed a substantial breach, declare that the residential tenancy agreement is terminated and

(a) award damages, if any, resulting from the substantial breach, or

(b) give an order for possession,

or both.

25 If a landlord breaches his covenant to give a tenant possession of the residential premises at the commencement of the term, the tenant may

(a) repudiate the residential tenancy agreement and upon application to a court recover general and special damages that could reasonably have been foreseen as a consequence of the breach, or

25 Remedies of tenant when unable to obtain possession of premises.

(b) by action in the Supreme Court or the District Court apply for specific performance of the covenant and general and special damages that could reasonably have been foreseen as a consequence of the breach.

26 A landlord may, in addition to any other claim he has against a tenant, bring an action against an overholding tenant after the residential tenancy agreement has expired or been terminated for damages suffered by the landlord as a consequence of the use and occupation of the residential premises by the overholding tenant including indemnification for general and special damages that the landlord is liable for to a new tenant, if the damages could reasonably have been foreseen as a consequence of his use and occupation of the premises.

27 If a periodic tenancy of residential premises has been entered into because of the tenant's employment by the landlord and that employment is terminated, either the landlord or the tenant may terminate the tenancy by giving notice in accordance with this Act

(a) equal to the notice of termination of employment required under any law in force in Alberta that is applicable to the tenant's employment,

(b) of one week's duration, or

(c) of a duration agreed to by the landlord and tenant,

whichever period is longer.

26 Damages against an overholding tenant.

27 Termination of tenancy of employees.

PART 3

SECURITY DEPOSITS AND ABANDONED PROPERTY

28(1) A landlord shall not require a tenant to provide a security deposit that is greater than one month's rent or the rent that would be payable for one month under the residential tenancy agreement.

(2) If before the coming into force of this section a tenant has provided a security deposit that is greater than one month's rent or the rent that would be payable for one month under the residential tenancy agreement, the landlord shall return the excess to the tenant within 90 days of the coming into force of this section.

29(1) Subject to this Act, the residential tenancy agreement and any other agreement pertaining to the security deposit, a landlord holds each security deposit paid or given to him or to anyone on his behalf as trustee for the tenant.

(2) If a security deposit consists of money, the landlord may invest the money in investments authorized by *The Trustee Act* for the investment of trust funds.

(3) Subject to subsection (4), a landlord shall pay annually to the tenant interest on a security deposit consisting of money held by him or anyone on his behalf at the rate of 6% per year.

(4) If a security deposit consists of money, a tenant may notify his landlord in writing that he elects not to have the interest on the security deposit paid annually as provided in subsection (3) and in that case the interest is payable on the termination or expiration of the tenancy, unless otherwise agreed between the landlord and the tenant.

(5) A landlord is entitled to retain any interest and profit resulting from the investment of a security deposit in excess of the amount of interest payable under subsection (3).

(6) If a landlord and tenant agree that interest shall be payable under this section at a rate higher than 6% per year, subsections (3) and (5) shall be deemed to refer to the higher rate.

30(1) A landlord who holds a security deposit shall within 10 days of the day that the tenant gave up possession of the premises

(a) deliver the security deposit to the tenant,

(b) if all or part of the security deposit has been deducted in accordance with the conditions agreed to by the tenant,

28 Amount of security deposit.

29 Custody of security deposit.

30 Return of security deposit.

deliver to the tenant the balance of the deposit, if any, and a statement of account showing the amount of the deposit used, or

(c) if he is entitled to make a deduction from the security deposit for repairs to the premises but is unable to determine the correct amount that is needed for the repairs, deliver to the tenant the balance of the deposit, if any, that he does not intend to use for the repairs and an estimated statement of account of the amount needed for the repairs and within 30 days after the day that the tenant gave up possession of the premises deliver to the tenant the remaining balance of the deposit, if any, and a final statement of account.

(2) If a landlord fails to return all or part of a security deposit to a tenant in accordance with subsection (1), then, whether or not a statement of account was delivered to the tenant, the tenant may commence an action in a court to recover the whole of the deposit or that part of the deposit to which the tenant claims to be entitled.

(3) In proceedings taken under subsection (2), the court

(a) shall determine the amounts, if any, that the landlord is entitled to deduct from the security deposit in accordance with the conditions agreed to by the tenant, and

(b) if the deductions so determined are less than the amount of the deposit, shall give judgment in favour of the tenant for the balance.

(4) No deduction may be made from a tenant's security deposit for normal wear and tear to the residential premises during the period of his tenancy.

(5) In this section, "security deposit" includes any amount owing to the tenant as interest under section 29 at the time of termination or expiration of the tenancy.

31 If residential premises that are the subject of a residential tenancy agreement are sold, the purchaser is subject to the obligations of the previous landlord with respect to any security deposits.

32(1) In this section, "abandoned goods" means goods left on residential premises by a tenant who has

(a) abandoned the premises, or

(b) vacated the premises upon the expiration or termination of the residential tenancy agreement.

31 New landlord assumes responsibility for security deposit.

32 Abandoned property.

(2) A landlord who believes on reasonable grounds that abandoned goods have a total market value of less than \$300 may dispose of the goods.

(3) Notwithstanding that abandoned goods have a value of \$300 or more, a landlord who on reasonable grounds believes

(a) that the storage of abandoned goods would be unsanitary or unsafe or would rapidly result in total or substantial depreciation in their market value, or

(b) that the cost of removing, storing and selling the goods would exceed the proceeds of their sale,

may sell the goods by a means and for a price that he believes is reasonable.

(4) If subsections (2) and (3) do not apply, the landlord

(a) shall store or arrange for storage of the goods on behalf of the tenant until the expiration of a period of 60 days after the date of their abandonment, and

(b) thereafter may dispose of the goods by public auction or, with the approval of a court, by private sale.

(5) If no bid is received for the abandoned goods at a public auction held under subsection (4)(b), the landlord may dispose of the goods.

(6) No liability attaches to a person

(a) making the sale of goods under subsection (3) or (4)(b), or

(b) disposing of goods under subsection (2) or (5).

(7) A landlord shall, upon payment of his proper costs of removing and storing the abandoned goods, give up possession of the goods to the tenant or to the person entitled to them.

(8) A landlord may apply the proceeds of any sale of abandoned goods

(a) to his proper costs of removing, storing and selling the goods, and

(b) to any judgment obtained by him against the tenant in respect of the tenancy,

and shall pay the surplus, if any, to the Provincial Treasurer.

(9) The Provincial Treasurer shall retain the surplus on behalf of the tenant for one year and thereafter, if the tenant has not claimed it, pay the surplus into the General Revenue Fund.

(10) Upon the payment of the surplus into the General Revenue Fund the claim of the tenant is extinguished.

(11) This section does not apply

(a) if the landlord and the tenant agree to the contrary, or

(b) to goods on premises against which a sheriff executes a writ of possession.

PART 4

THE PROVINCIAL COURT

33(1) The Provincial Court has the jurisdiction to grant any remedy or relief under this Act other than

(a) giving a judgment for debt or damages in excess of the amount prescribed under Part 4 of *The Provincial Court Act, 1978*,

(b) granting an equitable remedy, or

(c) granting a relief or remedy required by this Act to be granted in the Supreme Court or the District Court.

(2) The provisions of Part 4 of *The Provincial Court Act, 1978* in so far as they are applicable to the extent they are not changed by or provided for in this Act or the regulations apply to proceedings before the Provincial Court and to appeals from a decision of the Provincial Court.

(3) The Provincial Court may only give orders for possession under this Act with respect to residential premises where

(a) the rent is not more than \$500 per month, and

(b) the term under the tenancy is for not more than 3 years.

(4) Nothing in this Part prohibits a landlord from proceeding under this Act in the Supreme Court or the District Court.

34 A person wishing to commence an application in the Provincial Court

(a) under section 11 for an order for possession, shall file with a clerk of the Provincial Court the affidavit referred to in that section, or

(b) for an order, other than an order for possession referred to in section 11, shall file with a clerk of the Provincial Court an affidavit setting forth the grounds upon which the application is being made and the remedy being applied for.

35(1) Upon an affidavit being filed under section 34, a clerk of the Provincial Court shall issue a notice of the application stating

33 Jurisdiction of the Provincial Court.

34 Commencement of an application.

35 Issuance of a notice of application.

(a) the address of the residential premises in respect of which the notice is issued;

(b) the time and place at which the application will be heard;

(c) if the application is for an order for possession referred to in section 11,

(i) that upon the order being given the tenant will be required to give up possession of the residential premises in accordance with the order, and

(ii) the amount, if any, being claimed for arrears in rent and compensation for the use and occupation of the premises by the overholding tenant after the expiration or termination of the tenancy;

(d) if the application is for an order, other than an order for possession referred to in section 11, the remedy being applied for.

(2) A copy of the affidavit filed under section 34 shall be attached to and form a part of the notice issued by a clerk of the Provincial Court.

36 If the Provincial Court dismisses an application it shall make an order accordingly.

37(1) A party to an order made by the Provincial Court may, within 30 days of the order being entered and served under section 38, appeal the order to the Supreme Court by way of an originating notice.

(2) The party commencing an appeal under this section shall file with the Supreme Court copies of

(a) all notices, documents and affidavits filed in the Provincial Court in respect of the application made in the Provincial Court, and

(b) the order being appealed from.

(3) The originating notice and copies of the documents and affidavits filed with the Supreme Court under subsection (2) shall be served upon the other parties to the action at least 3 days, exclusive of holidays and Saturdays, before the day named in the originating notice for the hearing of the application.

(4) Upon hearing the matter the Supreme Court may make any order it could have made had the application for the order

36 Dismissal of an application.

37 Appeal from an order of the Provincial Court.

being appealed from been commenced in the Supreme Court instead of in the Provincial Court.

(5) The commencement of an appeal under this section does not stay the order being appealed except as directed by the Supreme Court.

38(1) An order made by the Provincial Court may be entered in the Supreme Court and upon being so entered it is enforceable in the same manner as an order of the Supreme Court.

(2) An order made by the Provincial Court does not take effect until it is entered under subsection (1) and served under section 42 or as directed by the Provincial Court upon the other parties to the application.

38 Entering of an order of the Provincial Court.

PART 5

GENERAL

39(1) A landlord may not increase the rent payable under a residential tenancy agreement or recover any additional rent resulting from the increase unless he gives to the tenant a written notice of the increase in rent at least 90 days before the date on which the increase is to be effective.

(2) Notwithstanding subsection (1), if the residential tenancy agreement provides for a period of notice longer than 90 days, the landlord must give at least that longer period of notice before increasing the rent payable or recovering any additional rent resulting from the increase.

(3) A tenant under a periodic tenancy who receives a notice under subsection (1) or (2) and who fails to give to the landlord notice of termination effective on or before the date of the rent increase is deemed to have accepted the increase of rent to the extent that the increase does not contravene *The Temporary Rent Regulation Measures Act* or *The Rent Decontrol Act*.

(4) A landlord who gives a notice of termination of a periodic tenancy is not, for a period of 90 days after the date the notice is given, entitled to demand or retain any rent for the premises in excess of that payable under the residential tenancy agreement at the time of the notice.

(5) A tenant who pays rent in excess of that permitted by subsections (1) and (4) may recover the excess rent from the landlord by commencing an action in a court.

40(1) Subject to *The Land Titles Act*,

(a) a person who purchases property that is subject to a residential tenancy agreement has all the rights and is subject to all the obligations of the landlord relating to the tenancy, and

(b) an assignee of the interest of a tenant has all rights and is subject to all the obligations of the tenant relating to the tenancy during the period of time that the assignee holds that interest.

(2) *The Grantees of Reversion Act*, 32 Hen. 8, c.34, does not apply to the rights of a landlord or of a tenant.

41(1) The doctrine of “interesse termini” is abolished.

39 Notice of increase in rent.

40 Purchasers and assignees.

41 Non-application of other law.

(2) *The Landlord and Tenant Act*, 4 Geo. 2, c.28, and section 18 of *The Distress for Rent Act*, 11 Geo. 2, c.19 do not apply to tenancies.

42(1) Subject to subsections (4), (5) and (6), a notice, order or document under this Act shall be served personally, by registered mail or certified mail.

(2) For the purpose of service by registered mail or certified mail

(a) a tenant's address is the address of the premises rented by him, and

(b) a landlord's address is the address at which rent is payable.

(3) A landlord or a tenant may from time to time change his address for service by written notice served upon the other party.

(4) If a landlord is unable to serve a tenant by reason of the tenant's absence from the premises or by reason of his evading service, service may be effected

(a) upon any adult person who apparently resides with the tenant, or

(b) by posting it in a conspicuous place upon some part of the premises.

(5) This section does not apply to service governed by the rules or practice of a court.

(6) Where the landlord or tenant is a corporation, a notice or document may be served in the manner permitted under section 289 of *The Companies Act*.

43(1) In this section, "condominium plan" and "condominium unit" mean respectively a condominium plan and unit as defined in *The Condominium Property Act*.

(2) Where after the commencement of a tenancy of residential premises

(a) a condominium plan is registered or is proposed to be registered in the Land Titles Office that includes or is proposed to include those residential premises, and

(b) a notice of termination of that tenancy is given to the tenant for the purpose of obtaining vacant possession of the residential premises in order that the residential premises or

42 Service of documents.

43 Notice of termination for condominium conversion.

any part of them may be sold as a condominium unit or as part of a condominium unit,

the notice of termination is void, unless it provides that the tenancy is to terminate as of a day not less than 180 days after the day on which the notice is given to the tenant.

(3) Notwithstanding subsection (2), if the residential tenancy agreement is terminated by the tenant before the day specified in the notice, the landlord may rent the premises to another tenant for the period remaining until the day specified in the notice, if he gives that tenant notice of the termination date before entering into the residential tenancy agreement.

44(1) A council may by by-law establish a Landlord and Tenant Advisory Board and provide for the remuneration of its members and any other matters pertaining to its procedures or incidental to the exercise of its functions.

(2) The functions of a Landlord and Tenant Advisory Board are as follows:

- (a) to advise landlords and tenants in tenancy matters;
- (b) to receive complaints and seek to mediate disputes between landlords and tenants;
- (c) to disseminate information for the purpose of educating and advising landlords and tenants concerning rental practices, rights and remedies;
- (d) to receive and investigate complaints of conduct in contravention of legislation governing tenancies.

45 A person who contravenes or fails to comply with

- (a) section 20(1), 28(1) or (2) or 30(1), or
- (b) an order of a court made under this Act,

is guilty of an offence and liable on summary conviction to a fine of not more than \$1000.

46 The Lieutenant Governor in Council may make regulations governing the practice and procedures in matters before the Provincial Court under this Act.

47 An application made under this Act to the Supreme Court or the District Court shall be by originating notice.

44 Landlord and Tenant Advisory Boards.

45 Offences.

46 Regulations.

47 Application to the Supreme Court or the District Court.

PART 6

TRANSITIONAL AND CONSEQUENTIAL

48(1) This Act applies to

- (a) any tenancy entered into after the commencement of the Act,
- (b) a weekly or monthly tenancy entered into before the commencement of the Act, and
- (c) a yearly tenancy entered into before the commencement of the Act, from and after the first anniversary of the tenancy occurring after the Act's commencement.

(2) This Act does not apply to a tenancy entered into for a fixed term made before its commencement, but applies to a renewal of that tenancy entered into after the commencement of this Act.

(3) Notwithstanding that *The Landlord and Tenant Act* or any provision of it is repealed, that Act or provision, as the case may be, remains in force in respect of a tenancy to which this Act does not apply.

49 *The Land Titles Act* is amended in section 99 by adding “or where the lease is for residential premises as defined in *The Landlord and Tenant Act, 1978*” after “unless a different intention appears therein”.

50 *The Real Estate Agents' Licensing Act* is amended in section 20(2.2) by striking out “*The Landlord and Tenant Act*” and substituting “*The Landlord and Tenant Act, 1978*”.

51 *The Rent Decontrol Act* is amended

(a) in sections 7(1)(a)(i), 10(4), 11(3)(b) and 12(2) by striking out “section 21 of *The Landlord and Tenant Act*” and substituting “section 39 of *The Landlord and Tenant Act, 1978*”, and

(b) in sections 37(2) and 39 by striking out “*The Landlord and Tenant Act*” and substituting “*The Landlord and Tenant Act, 1978*”.

52 *The Temporary Rent Regulations Measures Act* is amended in sections 7(1)(a)(i), 10(4), 11(3)(b) and 12(2) by striking out “section 21 of *The Landlord and Tenant Act*” and substituting “section 39 of *The Landlord and Tenant Act, 1978*”.

48 Application of Act upon commencement.

49 Amends chapter 198 of the Revised Statutes of Alberta 1970.

50 Amends chapter 311 of the Revised Statutes of Alberta 1970.

51 Amends chapter 41 of the Statutes of Alberta, 1977.

52 Amends chapter 84 of the Statutes of Alberta, 1975.

53 *The Landlord and Tenant Act* is repealed on a date or dates to be fixed by Proclamation.

54 This Act comes into force on a date or dates to be fixed by Proclamation.

53 Repeals chapter 200 of the Revised Statutes of Alberta 1970.

SCHEDULE

FORM A

NOTICE TO A NON-RESIDENTIAL TENANT

TO (*Name of Tenant*)

I hereby give you notice to deliver up possession of the premises which you hold
(identify the premises)
of me as tenant, on the day of
next.

Dated this day of
19

.....
(Landlord)

If this notice is not served upon you in sufficient time to give the period of notice required by section 5, 6, or 7, as the case may be, of *The Landlord and Tenant Act, 1978*, you are required to give up possession of the above premises on the following date:

(a) in the case of a weekly tenancy, on the last day of the first complete tenancy week following the date on which the notice is served;

(b) in the case of a monthly tenancy, on the last day of the first complete tenancy month following the date on which the notice is served;

(c) in the case of a yearly tenancy, 60 days from the date on which this notice is served.

FORM B

NOTICE TO LANDLORD

TO (*Name of Landlord*)

I hereby give you notice that I am giving up possession of the premises which I hold
(identify the premises)
of you as tenant, on the day of
next.

Dated this day of
19

.....
(Tenant)

If this notice is not served upon you in sufficient time to give the period of notice required by section 5, 6 or 7, as the case may be, of *The Landlord and Tenant Act, 1978*, I will give up possession of the above premises on the following date:

- (a) in the case of a weekly tenancy, on the last day of the first complete tenancy week following the date on which the notice is served;
- (b) in the case of a monthly tenancy, on the last day of the first complete tenancy month following the date on which the notice is served;
- (c) in the case of a yearly tenancy, 60 days from the date on which this notice is served.

FORM C

NOTICE TO A RESIDENTIAL TENANT

TO *(Name of Tenant)*

I hereby give you notice to deliver up possession of the premises which you hold
(identify the premises)
of me as tenant, on the day of
next.

Dated this day of
19.....

.....
(Landlord)

If this notice is not served upon you in sufficient time to give the period of notice required by section 5, 6 or 7, as the case may be, of *The Landlord and Tenant Act, 1978*, you are required to give up possession of the above premises on the following date:

- (a) in the case of a weekly tenancy, on the last day of the first complete tenancy week following the date on which the notice is served;
- (b) in the case of a monthly tenancy or a yearly tenancy, 90 days from the date on which this notice is served.