

2009 Bill 208

---

Second Session, 27th Legislature, 58 Elizabeth II

---

THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 208**

## **LIFE LEASES ACT**

---

---

MR. MITZEL

---

---

First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

---

---

## BILL 208

2009

### LIFE LEASES ACT

(Assented to \_\_\_\_\_, 2009)

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

#### Definitions

1(1) In this Act,

- (a) “development” means
  - (i) the purchase, construction, rehabilitation or purchase and rehabilitation of residential premises to form a residential complex, or
  - (ii) the conversion, or purchase and conversion, of non-residential premises into a residential complex, and includes the acquisition of land and all activities ancillary to the development of the complex, but does not include the construction or provision of a tenant's extra;
- (b) “Director” means the Director of Residential Tenancies appointed under the *Residential Tenancies Act*;
- (c) “entrance fee” means an amount, other than a security deposit, rent or maintenance fee payable on a periodic basis annually or more frequently, paid or payable in respect of a unit to the landlord or a trustee;
- (d) “initial tenant” means the first tenant to enter into a life lease in respect of a unit;

- (e) “landlord” means a landlord, as defined in the *Residential Tenancies Act*, of a residential complex and includes, in relation to a proposed residential complex, a person who
  - (i) will be the landlord of the complex, or
  - (ii) alone or together with others initiates or sponsors
    - (A) the organization, development or marketing of the complex, or
    - (B) the founding or constituting of the landlord;
- (f) “life lease” means a written tenancy agreement under or in respect of which
  - (i) an entrance fee has been paid or is payable in respect of a unit, and
  - (ii) the person first entitled to occupy the unit under the agreement is granted a right of occupancy for life or for a fixed term of not less than 50 years,and includes any separate agreement under which the entrance fee has been paid or is payable;
- (g) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (h) “occupancy date”, in relation to a residential complex, means the first day of the month after the month in which an occupancy permit for the complex is issued by an authority having jurisdiction to issue the occupancy permit, and for the purpose of determining the occupancy date, where the development of a residential complex occurs in stages, the complex is deemed to be the part that contains the tenant's unit;
- (i) “offer to lease” means an offer by a landlord or tenant to enter into a life lease in respect of a unit;
- (j) “possession date” means the date when a tenant is entitled to occupy a unit under a life lease;
- (k) “pre-lease payment” means an amount paid by a prospective tenant to a landlord as an expression of interest in entering into a life lease in respect of a unit in a residential complex under development or proposed to be developed;

- (l) “projected completion date” means the date disclosed to a tenant as the latest date when a unit is to be available for occupancy by the tenant;
- (m) “refund fund” means one or more funds established under section 20 to provide for the refund of entrance fees;
- (n) “tenant” means a tenant under a life lease or assignment of a life lease and includes a prospective tenant;
- (o) “tenant's extra” means an alteration or improvement that is agreed to by the landlord and the tenant before the unit is first occupied by the tenant under a life lease, and
  - (i) in the case of an initial tenant, means an alteration or improvement to the landlord's standard specifications respecting the tenant's unit, and
  - (ii) in the case of a tenant other than an initial tenant, means an alteration or improvement to the tenant's unit;
- (p) “trustee”, in relation to a residential complex, means a trustee appointed by the landlord of the complex to receive and administer entrance fees, and to hold and administer the refund fund.

(2) Any other term or expression used in this Act that is not defined in this Act has the same meaning as may be assigned to it in the *Residential Tenancies Act*.

(3) In this Act, where a life lease is in respect of a unit not yet in existence, “unit” means the proposed unit and “residential complex” means the residential complex or proposed residential complex in which the proposed unit is to be located.

### **General application**

**2(1)** Except as otherwise provided in this Act or the regulations, this Act applies to and in respect of every life lease, every tenant and landlord under a life lease, every unit that is the subject of a life lease and every residential complex that contains such a unit, where the life lease is entered into after this Act comes into force.

(2) This Act binds the Crown.

(3) If there is a conflict between this Act and any other Act, this Act prevails.

(4) If there is a conflict between a provision of an agreement and a provision of this Act, the provision of this Act prevails.

### **Restriction or waiver of application void**

3 A provision of an agreement that restricts or waives or purports to restrict or waive the application of this Act, or a person's rights or obligations under this Act, is void.

### **Residential complex on leased land prohibited**

4 No landlord shall enter into a life lease in respect of a unit in a residential complex located on leased land.

## **Part 1 Payments and Disclosure**

### **Permitted payments**

5(1) A landlord may receive or permit a trustee to receive from a tenant a pre-lease payment or an entrance fee in respect of a life lease.

(2) After the coming into force of this Act, except as otherwise provided in Part 3, a landlord who receives or permits a trustee to receive a payment under subsection (1) shall comply with the requirements of sections 6 and 7.

### **Disclosure requirements**

6(1) Before receiving or permitting a trustee to receive a pre-lease payment, a landlord shall disclose to the tenant

- (a) the estimated entrance fee that will be payable in respect of each type of unit in the complex or each type in which the tenant has expressed an interest,
- (b) the projected completion date, and
- (c) any additional information prescribed in the regulations.

(2) A landlord shall not receive or permit a trustee to receive a pre-lease payment that exceeds an amount that is prescribed or determined in a prescribed manner.

- (3) A landlord may receive or permit a trustee to receive an entrance fee from a tenant if
- (a) the tenant has signed a life lease or an offer to lease and given it to the landlord;
  - (b) the landlord has disclosed to the tenant in accordance with the regulations
    - (i) the minimum amount of the entrance fee that will be contributed to the refund fund, and
    - (ii) any additional prescribed information;
  - (c) the landlord has given the tenant a written statement of the tenant's cancellation rights under section 9; and
  - (d) where the tenant is an initial tenant, the landlord has appointed a trustee under section 20 to receive and administer entrance fees and a refund fund.

**Pre-lease payment held in trust**

- 7(1)** A landlord who receives a pre-lease payment from a prospective tenant shall hold the amount in trust for the benefit of the tenant until it is paid out in accordance with this section or is otherwise refunded by the landlord.
- (2) Where a landlord and a tenant enter into a life lease in respect of which the tenant has paid a pre-lease payment, the landlord shall pay the pre-lease payment
- (a) to the trustee appointed under section 20, to be credited to the entrance fee payable by the tenant; or
  - (b) to the tenant, if the entrance fee has been paid in full.
- (3) The landlord shall refund a tenant's pre-lease payment, unless it has already been paid to the trustee under subsection (2), if it becomes reasonable to conclude that the development of the residential complex will not be completed by the projected completion date disclosed to the tenant.
- (4) If a tenant who paid a pre-lease payment in respect of a residential complex and the landlord have not entered into a life lease by the occupancy date of the complex, unless the pre-lease payment has already been refunded, the landlord shall pay the pre-lease payment

- (a) to the tenant, if by the occupancy date the landlord has not offered a life lease to the tenant on terms and conditions comparable to those contained in a life lease of a unit in the same complex comparable to the unit in which the tenant expressed an interest; and
- (b) in any other case, to the trustee appointed under section 20.

(5) Each amount payable under this section shall be paid within 14 days after it first becomes payable.

### **Entrance fee held in trust**

**8(1)** A landlord or a trustee who receives an entrance fee from a tenant shall hold it in trust for the benefit of the tenant until the period for cancellation under section 9(2) has expired.

**(2)** Except as otherwise provided in this Act or the regulations, entrance fees and any income or gains earned or realized by the landlord, directly or indirectly by means of a trust or any other means, from the investment of entrance fees may be used only for the purposes of the residential complex in respect of which they were received.

**(3)** If

- (a) the tenant withdraws the offer to lease before it is accepted by the landlord, or
- (b) the landlord rejects the tenant's offer to lease or fails to accept it within the time permitted for acceptance,

the landlord shall, within 14 days after that event, refund the full entrance fee or cause it to be refunded to the tenant.

### **Cancellation cooling-off period**

**9(1)** A landlord shall include, in accordance with the regulations, a prescribed statement of cancellation rights in a life lease that is given to a tenant other than an assignee.

**(2)** Subject to subsection (3), a tenant other than an assignee, may, by written notice to the landlord before taking possession of the unit, cancel his or her life lease within 3 days after the day on which the life lease or offer to lease signed by the tenant is given to the landlord.

(3) If a statement of cancellation rights is not included in the life lease or is not in the prescribed form, the 3-day period under subsection (2) does not commence until the day on which the landlord gives the tenant the prescribed statement of cancellation rights.

(4) A life lease is cancelled under this section when notice is given to the landlord in accordance with subsection (2).

(5) If a tenant cancels a life lease under this section, the landlord shall within 14 days after notice is given under subsection (4) refund the full entrance fee or cause it to be refunded to the tenant.

### **Dispute resolution**

10 A landlord shall include, in accordance with the regulations, a dispute resolution process in a life lease to address disputes that may arise between the landlord and a tenant or between tenants.

### **Failure to give possession**

11(1) Subject to subsection (6), a tenant of a unit who has not been given vacant possession of the unit 30 days after the projected completion date may, by written notice to the landlord before being given vacant possession of the unit, cancel his or her life lease.

(2) A cancellation under subsection (1) is effective when notice of the cancellation is given to the landlord in accordance with section 9.

(3) A tenant may, during the 30-day period after the projected completion date, give the landlord early notice of cancellation, but the cancellation is effective only at the end of the 30-day period and only if by that time the landlord has not offered the tenant immediate and vacant possession of the unit.

(4) A tenant who cancels a life lease under this section is entitled to a refund of his or her full entrance fee.

(5) The landlord shall refund the entrance fee, or cause it to be refunded, to the tenant within 14 days after the cancellation becomes effective.

(6) If, on an application made by the landlord, a judge of the Court of Queen's Bench determines that the failure to give possession within the time period required by subsection (1) was due to unavoidable delay in completing the development of the unit and



was not the fault of the landlord, the judge may extend the time for completion.

#### **Notice of possession date**

**12(1)** A landlord shall give an initial tenant written notice of the possession date at least 60 days before that date.

**(2)** A tenant who receives notice under subsection (1) may agree to an earlier possession date.

#### **Change in landlord**

**13(1)** Subject to subsection (2), a person who acquires a landlord's interest in a residential complex or a unit is deemed to be the landlord under each subsisting life lease.

**(2)** Where the landlord's interest in a residential complex or a unit is acquired by a person on a mortgage sale, a tax sale or a foreclosure order, unless the person otherwise agrees, each subsisting life lease is terminated.

**(3)** Each tenant whose life lease is terminated under subsection (2) has a right

- (a) to remain in occupancy of his or her unit at least until the end of the month in which the life lease is terminated; and
- (b) at the end of that month, to continue in occupancy of his or her unit under a deemed tenancy agreement, and the provisions of the *Residential Tenancies Act* shall apply.

**(4)** Notwithstanding the termination of a life lease under this section, each tenant is entitled to a refund of the tenant's entrance fee in accordance with section 19.

## **Part 2 Reserve Funds, Insurance and Annual Reporting**

#### **Reserve fund**

**14(1)** A landlord shall, at all times after the occupancy date of the complex, maintain a reserve fund to pay for any unforeseen major repair to or replacement of assets of the complex, including, without limitation, roofs, exteriors, buildings, roads, sidewalks, sewers,

heating, electrical or plumbing systems, elevators and laundry, recreational and parking facilities.

(2) In addition to the purposes set out in subsection (1), funds set aside under that subsection may be used to cover any unforeseen cost of the residential complex or shortfall in the revenue of the complex.

### **Insurance required**

**15(1)** The landlord of a residential complex shall, at all times during and after the development of the complex, maintain one or more insurance policies in accordance with the regulations.

(2) The landlord shall give at least 30 days' prior written notice of any cancellation, lapsing or reduction of the insurance required under subsection (1) to all tenants of the residential complex.

### **Annual meeting**

**16(1)** The landlord of a residential complex shall call a meeting of the tenants not later than 16 months after the occupancy date of the complex and thereafter not later than 6 months after the end of each fiscal year of the landlord

- (a) to present the financial statements referred to in subsection (3); and
- (b) to hear any representations by tenants respecting
  - (i) the financial statements referred to in subsection (3),
  - (ii) the audited financial statements, if any, provided under section 18, or
  - (iii) the operation of the complex.

(2) The landlord shall give each tenant of the residential complex at least 30 days' written notice of the time and place of the meeting.

(3) The landlord shall include in or with the notice given under subsection (2) the following information set out in accordance with the regulations:

- (a) a statement setting out in respect of a refund fund,
  - (i) the amounts contributed to, and the amounts paid out of, the fund during the preceding fiscal year, showing

separately the amounts paid out to tenants and the amounts paid out to the landlord,

- (ii) the balance in the fund at the end of that year, and
  - (iii) the amounts, if any, owing to former tenants of the residential complex;
- (b) a statement setting out in respect of a reserve fund,
- (i) the amounts contributed to, and the amounts paid out of, the reserve fund during the preceding fiscal year,
  - (ii) the balance in the reserve fund at the end of that year, and
  - (iii) an estimate of the amounts to be contributed to, and the amounts to be paid out of, the reserve fund during the current fiscal year;
- (c) if any fees charged by the landlord under the life leases are, for any tenant, a share of the costs of the residential complex as specified in the lease, including a contribution to any reserve fund or refund fund, for that tenant,
- (i) a statement of the revenues and expenditures of the residential complex for the preceding fiscal year, and
  - (ii) a detailed budget for the current fiscal year;
- (d) any additional prescribed information.

**(4)** The statement referred to in subsection (3)(a) shall be prepared by a trustee appointed under section 20.

**(5)** At least

- (a) one director of the board of the owner of a residential complex that is owned by a corporation, or
- (b) one authorized representative of owners holding a majority interest in a residential complex that is not owned by a corporation,

shall attend the annual meeting and report to the board or to the owners on any concerns or issues raised by tenants.

### **Tenant representation at board meetings**

**17(1)** The tenants may select one tenant, or a greater number if provided for in their lease or the landlord's by-laws, and alternates, to represent them at meetings of the landlord's board of directors.

**(2)** The landlord shall give each tenant representative selected under subsection (1)

- (a) a copy of the landlord's by-laws, and
- (b) notice of the time and place of each board meeting, with the agenda for the meeting, at the same time and by the same method that notices and agendas are given to the directors.

**(3)** A tenant representative, or his or her alternate, is entitled to place matters on the agenda for a board meeting and to attend and speak at the meeting, but this section does not give a tenant representative the right to vote.

**(4)** A landlord may restrict the rights of a tenant representative under subsection (3) to matters that do not involve personal information pertaining to individual tenants or to personnel of the landlord.

**(5)** After each board meeting, the landlord shall give each tenant representative a copy of the minutes of the meeting.

**(6)** A tenant representative may give other tenants access to the minutes of a meeting.

### **Audited financial statements**

**18(1)** For the purposes of this section, "majority of tenants" means a majority of the tenants in occupied units in a residential complex, and in calculating the majority,

- (a) multiple tenants of one unit count as one tenant; and
- (b) a tenant who has given or has been given notice of termination of the tenancy is not counted.

**(2)** If a landlord has not obtained audited financial statements for the residential complex for the preceding fiscal year, the landlord shall

- (a) obtain those audited financial statements as soon as practicable, if requested to do so in writing by a majority of tenants; and
  - (b) subject to subsection (3), continue to obtain audited financial statements for each succeeding fiscal year.
- (3) A request to obtain audited financial statements under subsection (2) may be withdrawn by a written notice given to the landlord that is signed by a majority of tenants.

### **Part 3 Trustees and Refundable Entrance Fees**

#### **Entrance fee refundable**

**19(1)** A minimum of 95% of the entrance fee payable in respect of a unit in a residential complex, other than the portion of the entrance fee payable in respect of a tenant's extras, shall be refundable upon the expiry or termination of the tenant's life lease.

(2) The amount payable under subsection (1) shall be refunded no later than 14 days following the termination or expiry of the life lease.

#### **Appointment of trustee; establishment of refund fund**

**20(1)** A landlord who enters into a life lease with an initial tenant shall appoint a trustee to receive and administer the tenant entrance fees in accordance with this Act and the regulations.

(2) The landlord shall establish, and shall appoint a trustee to administer, a fund to secure the landlord's obligations to refund entrance fees.

#### **Contributions to refund fund**

**21** The landlord shall, before the occupancy date of the complex, contribute to the refund fund an amount not less than the minimum amount stipulated in the landlord's disclosure to the tenants under section 6.

#### **Qualifications of trustee**

**22(1)** A trustee in respect of a residential complex shall be

- (a) a body corporate, incorporated under the laws of Canada or of a province or territory of Canada and authorized to carry on the business of a trust corporation or an extra-provincial trust corporation, that meets any prescribed requirements; or
  - (b) a person who meets prescribed requirements and qualifications for trustees under this Act.
- (2) The landlord or any tenant for whose benefit funds are administered by a trustee may apply to the Court of Queen's Bench for an order that the trustee be replaced on the ground that the trustee does not meet the requirements or the qualifications under subsection (1), and the Court may make an order on any terms it thinks appropriate.
- (3) Where a trustee ceases to be a trustee in respect of a residential complex and had, immediately before ceasing to be a trustee, any continuing or outstanding obligations to the landlord or the tenants of the complex, the landlord shall immediately appoint another trustee in its place to fulfil those obligations unless the court has done so under subsection (2).
- (4) Any matter arising in relation to a trust or a trustee under this Act that is provided for in the *Trustee Act* and is not specifically provided for in this Act or the *Residential Tenancies Act*, shall be determined under the *Trustee Act*.

### **Use of excess funds**

**23(1)** For the purposes of this section, a refund fund in respect of a residential complex is fully funded when, after the occupancy date of the complex, the amount in the fund is equal to or greater than

- (a) the total amount payable to the former tenants of the complex whose entrance fees have not been refunded; and
  - (b) the total amount that would be payable to the current tenants of the complex from the refund fund if all the life leases were terminated.
- (2) The landlord shall not use an entrance fee received after the occupancy date of the residential complex for any purpose other than to refund an entrance fee unless, immediately after it is used, the balance in the refund fund equals or exceeds the total referred to in subsection (1).

## **Part 4 General**

### **Administration of Act**

**24(1)** The Director of Residential Tenancies appointed under the *Residential Tenancies Act* shall be responsible for the administration of this Act.

**(2)** The powers of the Director of Residential Tenancies under the *Residential Tenancies Act* apply with all necessary modifications to the administration of this Act.

### **Court actions by the Director**

**25(1)** In addition to any other remedy under this Act, the Director may commence and maintain an action in the Court of Queen's Bench against a person if the Director is of the opinion that a person has contravened this Act or the regulations under this Act.

**(2)** In an action brought under subsection (1), the Court of Queen's Bench may

- (a) declare that this Act or the regulations have been contravened;
- (b) grant an order requiring the person to provide any redress the Court considers proper to those persons who suffered damage or loss arising from the contravention of this Act or the regulations;
- (c) grant an order in the nature of an injunction restraining the person from engaging in the practice that gave rise to the contravention of this Act or the regulations;
- (d) grant an order for the restitution of property or funds;
- (e) award punitive or exemplary damages;
- (f) grant any other relief the Court considers proper.

### **Service of notices**

**26** A notice or other document under this Act may be given to a person by

- (a) personal service, or

- (i) if the person is a landlord or trustee, giving it to an agent of that person, or
  - (ii) if the person is a tenant, giving it to an adult person who apparently resides with the tenant; or
- (b) registered mail to the address where the person resides or carries on business.

### **Offences and penalties**

**27(1)** A person who contravenes any provision of this Act or the regulations is guilty of an offence.

**(2)** A landlord, or a person who for consideration is engaged in the marketing or development of a residential complex, who makes a statement that is false or misleading with respect to any material fact or who omits to state any material fact the omission of which makes the statement false or misleading,

- (a) to a prospective tenant that may induce or induces the tenant to enter into a life lease; or
- (b) in a life lease, an offer to lease, an advertisement offering or soliciting interest in one or more life leases, or in any information required by this Act or the regulations to be disclosed to a tenant;

is guilty of an offence.

**(3)** Every director, officer or agent of a corporation who authorizes, acquiesces in or participates in an offence under subsection (1) or (2) is guilty of an offence under subsection (1) or (2), as the case may be.

**(4)** No person is guilty of an offence under this section if the person can prove on a balance of probabilities that he or she took reasonable steps to avoid the commission of the offence.

**(5)** A person guilty of an offence under this section is liable

- (a) in the case of an offence under subsection (1),
  - (i) by an individual, to a fine of not less than \$200 and not more than \$5000, and
  - (ii) by a corporation, to a fine of not less than \$1000 and not more than \$15 000; and



- (b) in the case of an offence under subsection (2),
  - (i) by an individual, to a fine of not less than \$500 and not more than \$10 000, and
  - (ii) by a corporation, to a fine of not less than \$5000 and not more than \$25 000;

and the Court convicting the person may, in addition to any other penalty, order the person to pay compensation or restitution in respect of the offence.

(6) A prosecution for an offence under this section may be commenced not later than one year after the day on which evidence sufficient to justify a prosecution for an offence under this section came to the knowledge of the Director.

### **Lieutenant Governor in Council regulations**

**28** The Lieutenant Governor in Council may make regulations

- (a) respecting the investments that a landlord or a trustee may make with funds received by a landlord or a trustee under or in respect of life leases and income earned on those funds;
- (b) exempting residential complexes, units, tenants or landlords under life leases, or a class of any of them, from this Act or the regulations or a specified provision of this Act or the regulations;
- (c) prescribing additional powers, duties and functions of the Director for the purpose of administering this Act;
- (d) respecting any other matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purposes of this Act.

### **Ministerial regulations**

**29** The Minister may make regulations

- (a) prescribing information to be provided to tenants for the purpose of section 6, and the form and manner in which it is to be provided;
- (b) prescribing the maximum amount of a pre-lease payment or the manner of determining the maximum amount for the purpose of section 6;

- (c) for the purpose of section 8, respecting the use of entrance fees and any income or gains earned or realized from the investment of the entrance fees, including terms and conditions to be met by landlords or a class of landlords before using such funds;
- (d) respecting the form and content of statements of cancellation rights referred to in section 9, and the manner in which they are to be provided to tenants;
- (e) respecting the dispute resolution process referred to in section 10;
- (f) respecting information to be included in or with a notice under section 11;
- (g) prescribing requirements and qualifications for trustees for the purpose of section 22;
- (h) respecting the purposes for which funds described in section 23 may be used;
- (i) respecting the purposes for which excess funds withdrawn from the refund fund under section 23 may be used;
- (j) prescribing the form of notice referred to in section 9;
- (k) defining any word or expression used in this Act but not specifically defined in this Act;
- (l) respecting any matter required or authorized by this Act to be prescribed.

**Coming into force**

**30** This Act comes into force on Proclamation.



