

After the Flood

For Landlords and Tenants in Alberta

Should the tenant keep paying the rent?

Yes, the tenant should keep paying rent, unless the tenancy has been frustrated (see “Can the tenant move out because of the flood?” question). If the tenant wants to move out, then it is important to know what kind of tenancy is in place.

- For a monthly periodic tenancy (which has no end date), the tenant must give written notice, one tenancy month in advance.
- For a fixed term tenancy (which has a set end date), the tenant must receive the landlord’s consent to end the tenancy early, or else the tenant risks paying damages for breaching the rental agreement.

What if the rental property has been damaged?

The tenant should talk to the landlord to find out what the landlord plans to do. If the tenant can’t live in the property while it’s being repaired, then the tenant could suggest rent abatement. Rent abatement means that the tenant would pay less rent, or no rent, while the tenant can’t live in the property. If the landlord won’t agree to that, then the tenant can make an application for abatement at the Residential Tenancy Dispute Resolution Service (RTDRS) or in Court. Alternatively, the landlord might have other properties that the tenant could rent during repairs.



What if the tenant thinks the property isn’t safe or healthy?

The tenant should talk to the landlord and try to come to an arrangement regarding the concerns. If they can’t agree, then the tenant can call their local Environmental Public Health office to talk to a health inspector. The tenant could also contact their local municipal office, if there is a concern that could be dealt with through the bylaw enforcement office.

Tips

- Be patient.
- Make sure you have current contact information for each other.
- Take pictures and videos.
- Get agreements in writing whenever possible.
- Know who to contact for more information about the law.

Can the tenant move out because of the flood?

Maybe. It depends on the amount of damage and what actions the landlord takes to repair the property. A rental agreement can be frustrated, which occurs when something happens that is out of the control of both parties, and makes continuing with the agreement impossible. There are many reasons why a tenancy can be frustrated including if the property is destroyed, if there is an order under the *Public Health Act* that says the property is unfit for human habitation, if the property is so damaged that a reasonable landlord would not fix the damage, or if it is so damaged that a reasonable tenant would not be willing to remain living there.

If the tenant chooses to treat the rental agreement as frustrated, this means that the tenant would stop paying the rent and move out. It is a good idea for the tenant to let the landlord know, in writing, that the tenant intends to treat the residential tenancy agreement as frustrated. The tenant should have as much proof of the condition of the property as they can, including photos and video. If there is a dispute, the tenant needs to be able to prove that the property was in such a bad condition that no reasonable tenant would have been willing to live there. If the landlord thinks that the tenant moved out without having proper reason to do so, then the landlord can make an application in RTDRS or in Court against the tenant, or keep some or all of the security deposit, or both.

The tenant could also contact their local Environmental Public Health office closest to them to talk to a health inspector about the condition of the property, and to ask for an inspection. If the inspector deems the property unfit for human habitation, then the rental agreement would be frustrated.

*You should **NOT** rely on this booklet for legal advice. It provides general information on **Alberta law only.***

Can the landlord use the security deposit?

A security deposit is not meant to cover the cost of repairs from a flood. It is meant to cover the cost of things that the tenant was responsible for paying (like unpaid rent, cleaning costs or fixing damage beyond normal wear and tear), when the tenant moves out. If a tenant stained the carpet, but then a flood damages the entire carpet, the landlord can't deduct a cleaning charge from the security deposit for the stain.

If the tenant treats the agreement as being frustrated, and moves out without providing proper notice or breaks a fixed term lease, then the landlord may be able to use the security deposit to cover the rent that wasn't paid during the notice period, or during some or all of the remainder of the fixed term. The tenant could make an application to get the security deposit back. If the tenant can prove that the property was so damaged that no reasonable tenant would agree to live there, then the tenant would get the security deposit back (unless there were rent arrears owing before the flood).

Who pays for stuff that is damaged?

In most cases, the landlord, or the landlord's insurance, will pay for repairs to the property and structure. Tenants are usually responsible for replacing any of their goods that were damaged or destroyed. Tenants who have insurance should read their insurance policies carefully to see if their insurance covers any of the damage to their personal property, and should contact their insurance right away. Many insurance policies will not cover damage caused by overland flooding, but some damage might be due to sewer backup or a different problem. Tenants will need to know what caused the property damage. The tenant should also contact the municipality or provincial government to see if there is any assistance available.



Where Can I Go for More Help?

Laws for Landlords and Tenants in Alberta

www.landlordandtenant.org

Service Alberta

www.servicealberta.ca

1-877-427-4088

Lawyer Referral Service

1-800-661-1095

Insurance Bureau of Canada

www.ibr.ca

1-844-2ask-IBC

Residential Tenancy Dispute Resolution Service

www.servicealberta.ca/rtdrs

List of Environmental Public Health Offices

<https://www.albertahealthservices.ca/findhealth/Service.aspx?id=1052203>

For a list of legal clinics, go to:

www.pbla.ca

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