

A LEGAL GUIDE TO LIVING ON YOUR OWN

For many students, university will be the first time they've lived on their own. Combine being away from mom's cooking with having to pay rent and deal with landlords (be they surly or benevolent) and things can get a bit complex. With that in mind, the Gateway sat down with Jennifer Sykes, civil law coordinator for Student Legal Services of Edmonton, to talk about the good, the bad and the ugly of renting a suite—be it a penthouse on Saskatchewan Drive, or a shithole basement suite with a leaky faucet, squeaky doors and strange odours.

BY MATT FREHNER

The Facts about Tenancy

A landlord must give three months notice of a change in rent, and is only entitled to raise the rent once every six months. There's no rule for how much a landlord may raise the rent, however.

A landlord may enter a rented suite unannounced only in case of emergency. Otherwise, 24 hours notice is required, whether for repairs, pest control or to show the suite.

A tenant can't withhold rent because they believe the landlord isn't meeting their obligations; similarly, a landlord can't evict a tenant without cause and proper notice.

A landlord can't charge a fee for giving consent to a subleter.

If the tenancy is month-to-month, a full month's notice is required to end the tenancy.

Hot links:

At governmentservices.gov.ab.ca/, click on "landlord and tenants," on the right: this accesses the Residential Tenancy Dispute Resolution Service, as well as general information on tenancy law.

Student Legal services: www.slsedmonton.com

Minimum Housing Standards:
www.health.gov.ab.ca/resources/publications/housing99.pdf

Residential Tenancies Act:
www.qp.gov.ab.ca/documents/Acts/R17P1.cfm

The most important thing to remember is to keep all of your correspondence with your landlord in writing. What may seem like a good will agreement at the time can become a sticking point ten months down the line, when your landlord doesn't recall agreeing to having the basement painted taupe with yellow polka dots.

According to Sykes, contracts can stop things from getting unpleasant in the future. "It really helps to have something in writing—some kind of lease that you have with your landlord," Sykes says. "And, if you make any changes to that lease, it's a good idea to make changes on that contract, rather than just agreeing orally, because then you can prove later on that you've agreed to something that's not in your lease contract."

Many landlords manage a large number of properties and may have trouble keeping things straight, so it's imperative to keep written records of any changes in the lease or any agreements between tenants. Finally, if disputes arise, don't hesitate to tape your conversations. This may seem extreme, but it will give you the power to recall exactly what both parties said. And in Canada, as long as one of you knows about the recording, it's completely legal.

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"When you're moving into your suite, it's a good idea to do the walk through with your landlord, where you look at all the problems that might be with the suite, holes in the walls, problems with floors, cracks on the ceiling, or whatever else there is," Sykes notes. "You don't want to be in a position where you're arguing over whether the damage was there before you moved in."

Along with that first month's rent cheque, it's likely that your landlord will ask for a security deposit, which is held against any damage done to the suite. According to Sykes, the damage deposit can be up to one month's rent in value.

"Your damage deposit has to be [held] in a trust account, and your landlord has to keep records of that trust account for a couple of years after you've moved out. That trust account will actually be getting interest, but right now interest rates are so low that tenants aren't getting any interest from it." Sykes also notes that, because the security deposit is kept in a separate trust account, it cannot be withheld except with specific cause.

The circumstances surrounding the retention of security deposits is one of the biggest areas of conflict that Student Legal Services deals with. As such, it's important to know what can and cannot be charged against your deposit once you move out.

"People need to understand that landlords are entitled to keep the security deposit if [the tenants] do damage to the suite," Sykes says. "But they're not entitled to keep the security deposit to make improvements to the suite, or to undo what one would consider reasonable wear and tear. If you're living in an apartment for two years, things are going to age by two years, that's normal, that's to be expected, and your landlord can't deduct for that."

Damage is *not*, then, regular wear and tear; it's a hole in the wall, a torn carpet or a broken cabinet.

Some landlords will request that you steam clean the carpets before you move out, and deduct the cost of doing so from your deposit if you don't—sometimes this is even stipulated in a lease. But, according to Sykes, this is not necessarily allowed for under the *Residential Tenancies Act*.

"The courts have actually said that your landlord cannot keep your security deposit for steam cleaning, unless you've done something unusual to the carpet. If there's just normal wear and tear on the carpet

of the courts. It also has a lower filing fee: \$75 versus \$100 for provincial court. Sykes makes the final point that, if you need to take the step to file, remember to include the filing fee with your statement of claim. Otherwise, even if you win the case, you will be assessed the fee.

Another big issue that student renters deal with is unsanitary living conditions. "We also get complaints about places that aren't meeting minimum housing standards," Sykes says. "Maybe there's mould in an apartment, or the windows don't work, or it's always cold, or something like that."

"The first step here would be to have Capital Health come and inspect the cleanliness of the space. If the inspector comes out and says that the place isn't habitable, you can then apply to the court to have your lease ended." It should be noted, though, that one can't just leave without terminating the lease, as it's a binding contract.

However, there are some specific instances that often lead to the termination of a lease. "From the landlord side, they can terminate the lease if you don't pay the

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your landlord actually can't make you pay for it," Sykes says. In other words, as long as there are no mysterious stains, a thorough vacuuming will suffice.

Finally, the act stipulates a time frame for the return of one's damage deposit: something that's often not known by renters.

"When you're moving out, you'll be doing an inspection with your landlord. They have to give you two opportunities to do an inspection; otherwise then they can do an inspection without you, and say what's wrong with the suite," Sykes explains. "After you move out, your landlord has to give you either your security deposit back, or an accounting of why you aren't getting it back—within ten days."

Though it may be wise to pick one's battles, and give a few extra days grace, there are procedures in place for assuring a tenant gets their deposit back in due course. "You can actually sue your landlord for your security deposit back," Sykes notes. "You're looking at a couple of options: either going to provincial court and filing a statement of claim there, or looking at going to the Residential Tenancies Dispute Resolution Service."

As a government of Alberta pilot project, the RTDRS is a tribunal that allows landlords and tenants to settle disputes outside

rent, or if you are bothering other tenants excessively, or if you assault the landlord, or if you damage to the premises," Sykes explains. "Tenants can apply to end their lease if the place isn't meeting minimum housing standards. Not being able to pay the rent anymore isn't good enough to terminate your tenancy."

"If you're given an eviction notice for not paying your rent you'll be given a 14-day eviction notice, and if you pay your rent in that time then that negates the notice. But if you are consistently late on your rent, that that in itself is a cause for eviction."

"If you are served with an eviction notice, and if you want to try to dispute an eviction, you should respond with something in writing denying the allegations, or saying why you shouldn't be evicted. And then they can't just go and get a writ of possession; you actually have to go to court."

If you've been evicted for not paying your rent, and a court date doesn't appeal to you, there are a couple of options: you could try to sublet your place to someone else, or transfer the lease entirely. In either case, be sure to get everything in writing. You don't want to be on the hook for a month's rent when your subleter ships off to Kuala Lumpur.