

After the Fire

for landlords and tenants in Alberta

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Should the tenant keep paying rent?

Yes, the tenant should keep paying rent, unless the tenancy has been frustrated (see "Can the tenant move out because of the fire?" 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.

The same rules apply whether you have a written or verbal lease 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.

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 company right away. The tenant should also contact the municipality or provincial government to see if there is any assistance available.

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 Health Link at 811 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.

Can the landlord enter the property following a fire?

The landlord legally must provide at least 24 hour notice to enter a property to inspect it or make repairs. However, if the landlord wants to enter the property to inspect damage caused by fire, smoke, or water, the tenant should consider allowing the landlord to access the unit as soon as safely possible.

TIPS

- Be patient.
- Communicate with your landlord or tenant. Make sure you have current contact information for each other.
- Talk to your insurance company right away.
- Take pictures and videos when it is safe to return to the property. Gather any pictures or videos of the property taken prior to the fire.
- Get agreements in writing whenever possible.
- Know who to contact for more information about the law.
- Check with the government for information on financial assistance.
- Keep receipts of any expenses incurred while out of your home.

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Can the tenant move out because of the fire?

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
- If the property 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 stops paying rent and moves 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 feasible. 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 Health Link at 811 to talk to a health inspector about the condition of the property, and to ask for an inspection of the property. If the inspector deems the property unfit for human habitation, then the rental agreement would be frustrated.

Living with the Landlord

If a landlord and tenant were sharing living space, the *Residential Tenancies Act* does not apply. Rules under the RTA regarding ending a tenancy and frustration of a lease agreement will not apply.

In this situation, a landlord and tenant should talk to each other as soon as possible to decide on next steps. Put any agreement in writing to prevent problems in the future.

Can the landlord use the security deposit?

A security deposit is not meant to cover the cost of repairs from a fire. 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 damaged a wall but then smoke destroys the entire wall, the landlord can't deduct a charge to repair the wall from the security deposit.

If the tenant treats the lease 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 would have to make an application to get the security deposit back. If the tenant could prove that the property was so damaged that no reasonable tenant would agree to live there, then the tenant may get the security deposit back (unless there was rent owing before the fire).

Where to go for more help

- » **Laws for Landlords and Tenants in Alberta**
www.landlordandtenant.org
- » **Service Alberta**
www.servicealberta.ca
1-877-427-4088
- » **HealthLink**
811
- » **Lawyer Referral Service**
1-800-661-1095
- » **Insurance Bureau of Canada**
www.ibc.ca
1-844-2ask-IBC
- » **Alberta Emergencies Updates**
www.alberta.ca/emergency.cfm
- » **Residential Tenancy Dispute Resolution Service**
www.servicealberta.ca/rtdrs

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