

Selling a Tenanted Residential Property in British Columbia

The *Residential Tenancy Act* (RTA) contains provisions that affect both the showing of a rental property and ending a tenancy for landlord use of property. In light of the new RTA that took effect January 1, 2004, the Residential Tenancy Branch has requested that the following information be disseminated to licensees.

Showing the Property

The period of written notice a landlord may give for access to the property changed January 1, 2004. The landlord can now provide written notice at least 24 hours and not more than 30 days before the entry, including the following information:

- the purpose for entering, which must be reasonable, and
- the date(s) and time(s) of entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

A landlord can give notice setting out a reasonable schedule of viewing times for an upcoming period. However, the RTA also sets out a tenant's rights to reasonable privacy and freedom from unreasonable disturbance. It is clearly not reasonable to give notice that permits a property to be shown daily from 8 a.m. to 9 p.m. for a three-week period. The use of lockboxes for tenanted properties is also contrary to the Act. It is preferable if the landlord and tenant can agree to a schedule of viewing times. If not, the tenant's rights must be taken into consideration in establishing a reasonable schedule.

Ending a Tenancy for Landlord Use of Property

A purchaser may wish to end an existing tenancy in order to move into the property, or put it to some other use. The RTA requires that two months' notice be given, by the

landlord, on or before the end of a rental payment period to take effect at 1 p.m. on the last day of a subsequent rental payment period. For example, if rent is paid on the 1st of the month, a notice received on February 28th takes effect on April 30th. When the notice can be given, and who can give the notice, depends on the purpose to which the purchaser intends to put the property.

If a purchaser, or a close family member, intends to occupy the property, and all conditions on which the sale depends have been satisfied, the purchaser can ask the seller, in writing, to give a two-month notice. A close family member is defined as the purchaser's father, mother, spouse or child, or the father, mother or child of the purchaser's spouse. Purchasers should not require that such a notice be given as a condition of sale, as the seller cannot issue the notice until all conditions have been removed. Such a notice may take effect before or after the date the property transfers.

If the purchaser wishes to end the tenancy to put the property to some other use, the purchaser must wait until title has been transferred, and the purchaser has obtained all the necessary permits and approvals required by law, before the two-month notice is issued.

The purchaser may end the tenancy if he or she intends, in good faith, to:

- demolish the rental unit;
- renovate or repair the rental unit in a manner that requires the unit to be vacant;
- convert the property to strata lots under the *Strata Property Act*, or into a non-profit housing cooperative under the *Cooperative Association Act*;
- convert the rental unit for use by a resident manager or caretaker; or,
- convert the property to a non-residential use.

Tenant's Rights on Receiving Notice for Landlord Use of Property

A landlord who gives a tenant notice ending the tenancy for landlord use must pay the tenant, on or before the effective date of the notice, the equivalent of one month's rent as compensation. The landlord may choose to offer the tenant one month rent free, rather than collecting the rent and returning it to the tenant as compensation. As it will always be the seller who issues the notice, the seller is responsible for paying compensation to the tenant, even if title has transferred to the purchaser before the date on which the notice takes effect (i.e., the date the tenant must vacate).

This is an issue that the parties may wish to address in the contract of sale, and/or deal with in the settlement at closing.

If the purchaser does not occupy the property as a residence, or put the property to the designated use, for at least 6 months beginning within a reasonable period after the effective date of the notice, the tenant is entitled to an additional two months' rent as compensation. A good faith intent to put the property to the planned use is not a defense — the action must be taken. It is the purchaser who is responsible for paying the tenant the additional two months' rent if the notice was given at the purchaser's written request, even if the tenancy ended before title was transferred.

A tenant who receives a notice for landlord use of the property may, at any point during the period of notice, end the tenancy early by giving the landlord at least 10 days' written notice and paying the landlord, on the date the tenant's written notice is given, the proportion of the rent due to the effective date of the tenant's notice. If the tenant has already paid rent beyond that date, the landlord must