

**KAHANE LAW OFFICE**  
Barristers & Solicitors

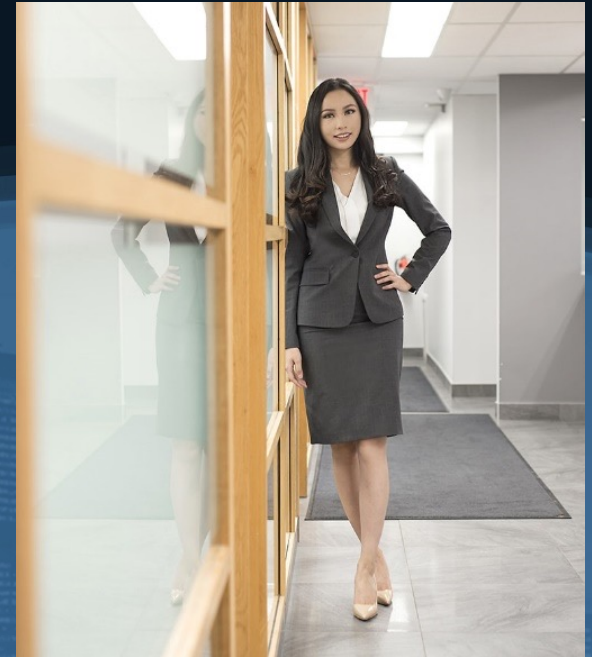
# **RESIDENTIAL TENANCY ACT**

## **SALE OF PROPERTY: LANDLORD'S PERSPECTIVE**

Presented by Kahane Law Office  
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## About Vanessa Tsai

- Vanessa speaks fluent Cantonese
- Vanessa practices primarily civil litigation and appears before the Alberta Provincial Court and Court of Queen's Bench on small claims, residential tenancy, debt collection, business dispute, estate dispute, contract breach, defamation, foreclosure and insolvency matters
- Further, Vanessa represents clients in residential and commercial real estate transactions
- Vanessa has a strong understanding of Real Property Law



## About Hodson Harding

- Hodson practices in all aspects of litigation and has a great understanding of residential tenancy issues
- Hodson has represented both Landlords and Tenants, giving him a unique understanding of all perspectives
- Hodson employs a results-oriented approach to legal problems in order to obtain the best possible outcome for his client. He assists on an array of files at Kahane Law Office



## About Kahane Law Office

Kahane Law Office is a full service law firm offering a variety of legal services.

Our experienced staff of lawyers provide legal assistance in the areas of:

- Real Estate Law;
- Civil and Commercial Litigation;
- Criminal Law;
- Wills and Estates;
- Powers of Attorney;
- Corporate Services;
- Family and Uncontested Divorce;
- Employment/Labour Law;
- Occupation Health and Safety Law; and
- Immigration Law



## **The Residential Tenancies Act from a prospective buyer's perspective**



## **1. Listing your property**

### **1.1 Things to consider**

#### **(a) Work With Your Tenant, Not Against Them**

Discuss with your tenant to see if they are interested in purchasing the home before putting it up on the open market.

Go in with the intention of working around their needs and limitations instead of taking a hostile attitude.

Avoid the need to litigate.

(b) Disclosure

- Be transparent with any realtors
- Take note of current tenants and any agreements with them
- Consider possible renovations which may need to be done prior to listing
- Consider possible purchase price

## **2. TENANT'S RIGHTS**

- Inform your tenants well in advance of intention to sell
- Pictures of the Property
- Respect their privacy but get their permission in writing
- Access to Your Rental Property for showing
  - After giving the 24-hour notice, a landlord can enter between 8 a.m. and 8 p.m., but is not allowed to enter on a holiday or on the tenant's day of religious worship



## **2.2 Renovations**

- For any renovations/repairs, the landlord must give notice to the tenant, except in the case of an emergency
- Consider the covenant of quiet enjoyment in favour of tenants

Courts analyze a landlord's interference with reference to at least five factors, including:

- ❖ effect on access to the premises;
- ❖ effect on visibility of the premises, including signage;
- ❖ duration of the interference;
- ❖ intrusion into the premises;
- ❖ effect on the tenant's use of the premises.

Does the tenant have to leave during showings?

**No. The tenant cannot be forced to leave**

Messy Tenants?

**Again, work with the tenants. Encourage cleaning. Suggest a cleaner premise means a smoother sale and less intrusion.**

Notice?

**Provide notice for everything you do. Document all actions in writing when possible.**

**3. Required Documents to Tenants**

- **3.1** Failing to comply with Residential Tenancies Act of Alberta can result in great complications or even not being able to complete the sale.
- Landlord must be mindful of properly terminating any lease as of the sale closing date, or earlier.
- Failure to do so may breach the Seller's obligation to provide the Buyer vacant possession under the contract.

**3.2** If the Lease is a 'month to month' lease then section 8 (1) (b) of the Act requires the landlord (the Seller) to give the tenant notice on or before "the first day of the notice period." The notice period is defined as being 3 consecutive 'Tenancy months'. By way of example, if the sale is to close on July 1st, then the month to month tenant must be given proper notice to vacate by no later than April 1st.



### **3.3**

If the Lease is a yearly tenancy, then section 9 of the Act requires that a landlord give notice to the tenant “on or before the 90th day before the last day of the tenancy year”, to be effective at the end of the lease year.

Section 10 (c) does allow a notice to terminate a yearly tenancy that is late to be effective 90 days later so long as it is served before the end of the tenancy year.

E.g. If the lease year ends June 30, a notice would need to be served on the Tenant on or before April 2nd to be effective June 30th. If however it was served on June 1st, it would be effective 90 days later.

If the landlord (the Seller) did not serve the tenant until July 1st, into a new tenancy year, the notice would not terminate the tenancy until June 30th the following year- obviously a problem if the real estate deal close date is only one month later.

Section 10 of the Act states that the notice to terminate must:

- (a) Be in writing;
- (b) Be signed by the person giving notice (landlord) or the landlord's agent;
- (c) Set out the reasons for terminating the tenancy (sale of property);
- (d) Specify the property for which notice is being provided; and
- (e) State the date on which the tenancy is to terminate

**Does the client need to be served?**

Yes! Service of the notice can be effected under Section 57 of the Act by personal service, registered mail, or certified mail. If the landlord cannot serve because the tenant is absent from the premises, it can be left with an adult or posted to the premises door.

## **4. What a Seller Should Do If a Buyer Wants to Continue Lease**

- If a buyer wants to continue the tenancy, the seller should:
  - Inform the tenant that the buyer will be the new landlord, provide the buyer's contact information to the tenant, and direct all rental payments to the buyer on or after the closing date;
  - Assign the lease to the buyer as of the closing date, and provide a copy of the lease and assignment of lease to the buyer;
  - Provide the move in inspection; and
  - Properly adjust for rent paid and security deposit on closing (usually completed by the seller's or buyer's lawyers).



#### **4. What a Seller Should Do If a Buyer Wants to Continue Lease**

- Seller should provide a copy of the lease to the buyer so that the buyer could review the lease and understand what they are responsible for once lease is assumed
- Special clauses the buyer should pay attention to include:
  - If the buyer or the tenant is responsible for paying utilities
  - If the buyer or the tenant is responsible for maintaining the property, such as lawn care and snow removal
  - If the buyer or the tenant is responsible for obtaining renter's insurance

## 4. What a Seller Should Do If a Buyer Wants to Continue Lease

- Ensure that the purchase contract does not state that the seller will provide the buyer vacant possession.
- As of September of 2016, pursuant to the AREA purchase contract, the default is that the onus is on the seller to provide vacant possession to the buyer.
- The AREA contract addresses vacant possession in two clauses:
- 2.3 This contract will be completed, the Purchase Price fully paid and **vacant possession** given to the buyer at 12 noon on  
20\_\_\_\_\_ (Completion Day).
- 10.7 The seller will pay the costs to prepare the closing documents, including an RPR where required, costs to end an existing tenancy of the Property and provide **vacant possession** to the buyer, and costs to prepare, register and discharge any seller's caveat based on this contract.

## 4. What a Seller Should Do If a Buyer Does Not Want to Continue Lease

- If you have a buyer who seeks vacant possession but proper notice has not been provided by the seller to the tenant, the seller and the tenant could mutually agree to a move out date. The seller could incentivize the tenant by:
  - Helping the tenant find a new place for the tenant to move to
  - Provide a good reference to the tenant's new landlord
  - Offer to pay for their first month's rent and moving expenses
- Once a move out date and/or settlement is agreed to, get it in writing

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## AGREEMENT TO VACATE

This agreement to vacate dated this \_\_\_\_ day of June, 2021 is between:

Landlord's Name

(the "Registered Owner")

- AND -

Tenant's Name

(the "Tenant")

(collectively, the "Parties")

### TERMS

1. Notwithstanding the residential lease agreement that was executed by the Parties on or about \_\_\_\_\_, 2021 (the "Lease"), the Tenant and its occupant(s) agrees to vacate the premises known as 123, Mainstreet, Calgary, AB (the "Property") on or before \_\_\_\_\_, 2021.

2. The Tenant shall pay rent for the month of \_\_\_\_\_ plus any outstanding utility bills incurred, and any amounts owed for damage to the Property beyond normal wear and tear, including any amounts owed under the Lease. The Registered Owner shall pay the Tenant \$1,500.00 to assist with moving costs and the security deposit to assist with the Tenant's relocation to the new premises.

3. Upon acceptance of this Agreement, the Tenant, its occupant(s), and their respective successors, agents and assigns, release and forever discharge the Registered Owner from any and all actions, causes of actions, claims, damages and demands for any payments, costs, invoices or other charges related to the Property and Lease.

4. In the event that the Tenant and/or its occupant(s) defaults on this Agreement by failing to vacate the Premises on or before \_\_\_\_\_, and/or failing to make payment of any amount due hereunder, or fails to perform any obligations hereunder or pursuant to the Lease, the Tenant agrees to reimburse the Registered Owner for all amounts owed to enforce this Agreement, plus costs on a solicitor-client full indemnity basis.

IN WITNESS WHEREOF, THE Parties have duly affixed their signatures on this \_\_\_\_ day of June, 2021

\_\_\_\_\_  
Landlord's Name

\_\_\_\_\_  
Tenant's Name



## **4. What a Seller Should Do If a Buyer Does Not Want to Continue Lease**

- Provide proper notice to the tenant in accordance with the Act
- Specify a closing date far enough into the future that allows for proper notice to be provided to the tenant
- If notice is given to sell the property, but the seller does not follow through with that within a reasonable time, section 8 of the Act provides that the the seller can be liable for a \$5,000.00 fine

## 4. What a Seller Should Do If a Buyer Does Not Want to Continue Lease

- What happens if the seller fails to provide vacant possession in breach of the purchase contract?  
Consequences include:
  - Return of buyer's deposit
  - Deal falls through
  - Seller (and real estate agent) attracts risk of being sued due to breach of contract

## **5. What Happens to the Damage Deposit?**

- Under the Act, the landlord can only deduct from the security deposit if a move in inspection and move out inspection was conducted, and a statement of account is delivered to the tenant within 10 days of moving out

## **5. What Happens to the Damage Deposit?**

- If the buyer does not want to continue tenancy, then the seller must also adhere to the same procedures for deducting the damage deposit, and return the funds, if any, less deductions, to the tenant prior to closing.



## 6. What Are Common Issues that Occur with Selling or Buying Tenant Occupied Premises?

- Improper termination of tenancy prior to closing date
  - Besides selling the property, other valid reasons to terminate tenancy include:
    - Failure to pay rent;
    - Failing to keep the property reasonable clean;
    - Interfering with the rights of the landlord or other tenants (i.e. constantly playing music too loud);
    - Engaging in illegal activities on the premises; and
    - Failing to move out when tenancy ends, despite agreeing to.
- Buyer wants to keep tenants but increase rent
- Tenants refusing to let real estate agents in for showings due to COVID-19 in light of Ministerial Order SA:009/2020



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