



Residential Tenancies

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Acknowledgement

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Leases

Legislative Framework

Residential Tenancies is governed by the *Residential Tenancies Act (RTA)*:
<http://nslegislature.ca/legc/statutes/residential%20tenancies.pdf>

There is also a set of regulations passed pursuant to the *RTA*:
<http://www.gov.ns.ca/just/regulations/regs/rtgenrl.htm>

Application of the *Residential Tenancies Act*

RTA sections 3(1) & 2(h)

The *RTA* applies when a landlord/tenant relationship exists in respect of residential premises.

'Residential premises' includes: apartments, homes, manufactured homes, boarding houses, co-ops, etc... But **does not** include: university residences, hospitals, jails, hotels, nursing homes, residential care facilities or maternity homes.

A landlord/tenant relationship is deemed to exist when a person possesses and occupies residential premises, and has paid or has agreed to pay rent.

A landlord **cannot** contract out of the *RTA*. The *RTA* will apply in full when a landlord/tenant relationship exists, or is deemed to exist.

The Lease Agreement

Lease Requirements

RTA sections 8(1) – 8(5)

A lease can be either oral or written. However, all landlords and tenants who do not use a standard form lease will be considered to have done so, and all of the clauses in the standard form lease will apply to the tenancy.

Provisions can be added to a standard form lease (i.e. landlord's rules) provided they are not in conflict with the *RTA*, **and** that they appear on both the landlord and tenant's copy of the lease.

A landlord **must** provide a tenant with a written copy (unless there is an oral agreement) of their lease **and** a copy of the *RTA*.

Types of Leases

RTA section 10(A)(1) – (4)

Leases can either be periodic or for a fixed period of time.

Periodic leases are either yearly, monthly or weekly. These types of leases automatically renew unless notice is given by the tenant.

A tenant on a yearly lease can make a request, in writing, to their landlord three months prior to their anniversary date requesting that their lease be changed to a monthly lease. A landlord must have a legitimate reason to withhold their consent when presented with such a request.

Fixed term leases run from a fixed start date until a fixed end date. A fixed term lease may continue upon new fixed terms as agreed to between the landlord and tenant, or will continue on a monthly basis at the end of the fixed term if the tenant is not asked to leave.

Security Deposits

RTA sections 6 & 12(1) – (4); RTA Regulation 5(d)

Landlords are allowed to ask for a security deposit from tenants. However, application fees are **not allowed** by the RTA.

A security deposit **cannot** be more than ½ of one month's rent.

Landlords must hold security deposits in a trust account, and interest will be credited at a rate determined by the *Regulations*. The current rate of interest is 0%.

Rental Increases

RTA sections 11(1) – 11(3)

Landlords **cannot** increase a tenant's rent during the first 12 months of the tenancy.

Following the first 12 months of a tenancy a landlord may only increase rent if they provide a tenant with written notice:

- i. For a yearly or monthly lease 4 months prior to the anniversary date;
- ii. For a weekly lease 8 weeks prior to the anniversary date; or
- iii. For a fixed term tenancy the lease will indicate the amounts and effective dates of any rental increases.

A landlord **cannot** increase rent more than once during any 12 month period.

There are **no** restrictions on the amount of a rental increase.

A deletion or withdrawal of service (i.e. heat or electricity no longer included in monthly rent) is deemed to constitute a rental increase in the amount of the value of the deleted or withdrawn service.

The same restrictions on frequency and notice requirements for rental increases do not apply to public housing tenants whose rent is based solely on increases and decreases in income.

Landlord & Tenant Obligations

Landlord's Obligations

RTA section 9(1) statutory condition 1

The *RTA* contains *Statutory Conditions* to which both landlords and tenants must adhere. Some of the landlord's *Statutory Conditions* that lead to landlord/tenant disputes are as follows:

Condition of Premises

A landlord has an obligation to keep residential premises in a good state of repair and fit for habitation.

This condition means that a tenant can make an Application to the Director of Residential Tenancies (as will be discussed later) requiring their landlord to make repairs to their rental unit or render it fit for habitation (i.e. exterminate bedbugs or other pests, eliminate mould, obtain necessary occupancy permits, etc...).

The *RTA* does not contain any provisions for forcing landlords to make repairs, or verifying that necessary repairs are carried out. This means that Residential Tenancy Officers are often reluctant to make orders requiring repairs. One option to compel landlords to make repairs is to request that rent be paid in trust to Residential Tenancies, and only be paid to the landlord once the repairs are completed – this is done via an order of the Director of Residential Tenancies (how to obtain an Order will be discussed later in the presentation).

Another, often times, more effective method of forcing a landlord to make repairs is through Municipal or town By-laws. Some municipalities and towns have by-laws which set out minimum standards for residential occupancy.

Should there be an applicable by-law a successful by-law complaint may result in a landlord being fined if they do not fix the problem that lead to the bylaw violation in a timely fashion.

Entry of Premises

A landlord may only enter a tenant's premises without consent if:

- i. There is an emergency;
- ii. Notice of termination of lease has been given and the unit is being shown to a prospective renter at a reasonable hour; and
- iii. If **written** notice is provided 24 hours in advance of the entry, and the entry is during daylight hours.

Entry Doors

RTA section 9(1) statutory condition 8

A landlord **cannot** unilaterally change the locks on the doors of a tenant's unit, **for any reason** (i.e. due to late rent, if a landlord wants to evict a tenant, etc...) during the course of the tenancy.

If a landlord changes the locks on a tenant's unit the police should be contacted.

If a landlord threatens to change the locks on a tenant's unit a Residential Tenancy Officer should be notified so that they may contact the landlord, and advise them of their obligations pursuant to the RTA.

Subletting

RTA section 9(1) statutory conditions 5; RTA Regulation 2

A landlord cannot unreasonably or arbitrarily refuse a tenant's request to sublet their rental unit (i.e. the landlord must have a legitimate reason to refuse a proposed subletter).

A landlord may only charge a tenant for expenses actually incurred as a result of allowing the unit to be sublet. The current maximum fee for subletting that landlords can charge is \$75.00.

Abandonment & Termination

RTA section 9(1) statutory condition 6 & RTA section 6(3)

Prior to disposing of any property abandoned by a tenant a landlord must follow the procedure set out in the *Regulations*.

Should a tenancy end without proper notice a landlord is also under an obligation to limit their financial damages as much as possible – i.e. by making an honest effort to re-rent the rental premises as quickly as possible.

Good Behavior

RTA section 9(1) statutory condition 3 & RTA section 9(A)

A landlord must not act in a way that interferes with a tenant's possession or occupancy of their rental premises.

Landlord's Rules

While not a statutory condition, a landlord also has obligations with respect to making rules for tenants.

A copy of rules must be provided to tenants prior to signing their lease, and 4 months notice is required to change or repeal a rule.

Landlord's rules must also be 'reasonable'. In order to be considered reasonable a rule **must** meet the following criteria:

- i. It is intended to:

- a) Promote a fair distribution of services and facilities to all tenants;
 - b) Promote the safety, comfort or welfare of tenants or people working in the building; **or**
 - c) Protect the landlord's property.
- ii. It is reasonably related to the purpose for which it was imposed;
 - iii. It applies to all tenants fairly; **and**
 - iv. It is clearly enough written so that a tenant knows what they must do to comply with it.

Tenant's Obligations

Rent

A tenant's most important obligation is to pay their rent in full and on time.

It is impermissible to withhold rent under any circumstances, and rent should not be withheld as it exposes the tenant to the risk of eviction for non payment of rent.

As will be explained later tenants can be compensated in the form of rent abatement should their landlord fail to meet their obligations pursuant to the *RTA*.

Statutory Conditions

RTA section 9(1) statutory conditions 3 & 4

Like landlords tenants are also subject to some of the *Statutory Conditions* contained in the *RTA*:

Good Behaviour

Tenants must also be of good behaviour so as not to interfere with the landlord or other tenant's possession or occupancy.

Cleanliness & Damage

Tenants are responsible for keeping their premises clean, and for any damage done by themselves or their guests.

Tenants are not responsible for ordinary wear and tear of their rental unit. 'Ordinary wear and tear' means the usual degree of depreciation or deterioration caused by living in a residential premises relative to the length of the tenancy – faded paint, worn carpets in high traffic areas, etc... are examples of 'ordinary wear and tear'.

Tenant Insurance

While not a statutory obligation many leases require tenants to have tenant insurance. Provided it meets the criteria for landlords' rules this can be contained in a lease. However if the lease says, for example, 'tenants are *responsible* for tenant insurance' this doesn't mean they **must** have it, only that it is their responsibility to pay for it and that a landlord's insurance policy will not apply to the tenant.

Remember that tenant insurance covers not only a tenant's belongings, but also liability for damages caused by a tenant, their child or a guest (i.e. if a tenant's child starts a fire that damages multiple units the tenant will be liable).

Ending a Tenancy - Landlords

Reasons for Ending a Tenancy

RTA sections 10(6) & 10(7)

Landlords may only end a tenancy for the **following reasons**:

- i. Rental arrears;
- ii. Threat to safety or security;
- iii. Violation of certain statutory conditions; and
- iv. In certain circumstances contained in the *RTA*.

Rental Arrears

A landlord may issue a **15 day** Notice to Quit to a tenant in a yearly, monthly, or fixed term tenancy if there are **rental arrears of 15 days**.

A landlord may issue a **7 day** Notice to Quit to a tenant in a weekly tenancy if there are **rental arrears of 7 days**.

Notice to Quit

A Notice to Quit for rental arrears in a monthly, yearly or fixed term tenancy **must** be on the form provided by the regulations:

<http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-D-landlord-notice-to-quit.pdf>

The Notice to Quit **must** be signed, contain a description of the premises (i.e. the address) and the date on which the tenancy terminates.

It is important to understand that a Notice to Quit from a landlord **does not** require a tenant to vacate their rental unit as of the date contained in the Notice.

Upon receipt of a Notice to Quit a tenant has the following options:

- i. Pay the outstanding rent within 15 days of receiving the Notice to Quit (in the case of a monthly yearly or fixed term tenancy), or in 7 days in the case of a weekly tenancy; **OR**
- ii. Make an Application to the Director of Residential Tenancies disputing the Notice to Quit **within** 15 or 7 days depending on the type of lease.

If a tenant doesn't pay the rent owing, or file an Application disputing the Notice to Quit they are deemed to have accepted it. In that circumstance a landlord can obtain an Order from the Director of Residential Tenancies requiring that the tenant move out, pay any outstanding rent owed and any rent due in the current month and allowing the landlord to apply the security deposit to any outstanding rent owed.

The Order can be obtained **without a hearing** if the tenant does not make an Application disputing the Notice to Quit.

Safety & Security

RTA section 10(7)(A)

A landlord may issue a 5 Day Notice to Quit to a tenant who they consider a risk to the safety and security of the landlord or other tenants in the same building.

Upon receipt of a 5 Day Notice a tenant is **not** required to vacate their rental unit on the date specified in the Notice.

In order to evict a tenant for reasons related to safety and security a Landlord **must** obtain an Order for vacant possession which can only be obtained if the landlord is successful at a hearing. A hearing is only held once a landlord has filed an Application and served it on the tenant.

The case law has established a two part test in order to evict a tenant on this basis:

- i. First, there must be a contravention or breach of an enactment by the tenant (including any part of the *RTA*); **and**
- ii. That the contravention poses a 'genuine' risk to the safety and security of other tenants in the same building **or** the landlord.

Violation of Statutory Conditions

RTA section 10(7)(B)

Landlords can issue a 15 day Notice to Quit if a tenant violates the following Statutory Conditions:

- i. Good behaviour;
- ii. Ordinary cleanliness of their unit; and
- iii. Subletting premises.

If a tenant receives a 15 day Notice to Quit for violation of statutory conditions they are **not** required to vacate their rental premises. They are only required to vacate their premises if their landlord is successful in obtaining an Order for vacant possession following a hearing. A hearing is only held once a landlord has filed an Application and served it on the tenant.

Other Circumstances

RTA section 10(8)

There are other circumstances pursuant to which a landlord can give a tenant Notice to Quit. They include:

- i. The residential premises have been made uninhabitable by fire, flood, etc...;

- ii. The residential premises were rented to an employee by their employer during the term of their employment, and the employment has terminated;
- iii. The landlord in good faith requires the premises to live in for themselves or a member of their immediate family; **or**
- iv. The landlord in good faith requires vacant possession of the premises in order to conduct repairs or renovations requiring a building permit.

A tenant **does not** have to vacate their unit upon receipt of a Notice to Quit in the circumstances listed on the previous slide. A tenant is only required to vacate their premises if their landlord is successful in obtaining an Order for vacant possession following a hearing. A hearing is only held once a landlord has filed an Application and served it on the tenant.

An Order for vacant possession issued due to a landlord requiring a rental unit for their own use, or for renovations must contain a date for vacant possession no later than 1 year from the date of the Order.

Ending a Tenancy - Tenants

Ways a Tenancy can be Ended

Unilateral Termination

A tenant may terminate their lease at any time by simply moving out of their rented unit, and ceasing to pay rent. This is known as unilateral termination as it is done absent an Order terminating the lease or the landlord's consent.

Should a tenant decide to unilaterally terminate their lease they are responsible for the rent owing for the term of their lease subject to their landlord's duty to attempt recover any financial loss they suffer, i.e. by re-renting the unit. It is also highly likely that the landlord will retain the tenant's security deposit regardless of whether they suffer a financial loss or not.

Given the financial risks of unilateral termination it should only be considered if it would be unsafe for a tenant to remain in their rental unit pending a hearing seeking an Order terminating their lease.

Notice to Quit

RTA section 10(1), 10(4) & 15(1)

A tenant can provide Notice to Quit provided they meet the following notice periods:

- i. In the case of a yearly tenancy Notice to Quit must be provided **3 months** prior to the anniversary date;
- ii. In the case of a monthly tenancy Notice to Quit must be provided **1 month** prior to the expiry of that month; and
- iii. In the case of a weekly tenancy Notice to Quit must be provided **1 week** prior to the expiry of that week.

A Notice to Quit **must** be in the form prescribed by regulation:

<http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-C-tenants-notice-to-quit.pdf>

The completed Notice to Quit form **must** be served on the landlord either personally or via registered mail.

Early Termination upon Income Reduction or for Health Reasons

RTA sections 10(B) & 10(C)

A tenant in a yearly or fixed term tenancy may provide one month's Notice to Quit if:

- i. They have a significant deterioration in their health; **and**
- ii. It results in a decrease in their income such that they cannot afford their rent and other reasonable expenses (or portions thereof if they are shared); **or**

- iii. It results in the tenant, in the opinion of a medical practitioner, being unable to continue the tenancy, **or** the unit is rendered inaccessible to the tenant.
- iv. If the preceding conditions are met a tenant may serve their landlord (either personally or by registered mail) with a completed Notice to Quit and Physician's Certificate as prescribed by the regulations:
<http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-G-H-tenants-notice-to-quit-early.pdf>

The Notice to Quit must also be served on all other tenants in the same rental unit.

If a tenancy is terminated due to income reduction, or for health reasons it is terminated for **all** the tenants in the same rental unit. However, if there are any remaining tenants they can sign a new lease with the consent of the landlord. A landlord can only withhold their consent if they have a legitimate reason.

Early Termination upon Acceptance into a Home

RTA section 10(D)

A tenant in a yearly or fixed term tenancy may provide one month's Notice to Quit upon permanent acceptance into a nursing home or home for special care.

The Notice to Quit form is the same as the form for early termination for reduction in income or health reasons. The only difference being that the physician's certificate does not need to be completed.

As indicated on the form a tenant also requires a letter from the nursing home or home for special care confirming acceptance of the tenant.

Early Termination upon Death of a Tenant

RTA section 10(E)

If a tenant in a yearly or fixed term tenancy dies, and there are no other tenants in the same residential premises, a personal representative of the deceased tenant may give one month's Notice to Quit.

The Notice to Quit must be in the form prescribed by the *Regulations*:

<http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-I-tenants-notice-to-quit-personal.pdf>

Early Termination due to Domestic Violence

RTA section 10(F) – 10(H)

A tenant in a yearly or fixed term tenancy may provide one month's Notice to Quit if they are a victim of domestic violence.

A tenant wishing to rely on this provision must contact Victim Services at **1-888-470-0773**. Victim Services will assist the tenant in obtaining a Domestic Violence Certificate, as well as serving the Certificate along with the appropriate Notice to Quit on their landlord.

The Certificate issued by the Director of Victim Services **must** be served on the landlord no later than **60 days** after it is issued, and a landlord **must** keep the information contained in the certificate confidential.

If a tenancy is terminated pursuant to this provision it is terminated for all tenants in the same residential premises. However, any remaining tenants may enter into a new lease with the landlord.

Violation of Statutory Conditions

A tenant may seek to end their tenancy if their landlord fails to live up to their Statutory Obligations as contained in the *RTA* – i.e. the rental unit is not kept in a state of good repair and fit for habitation.

There is no specific Notice to Quit prescribed by the *Regulations* for this circumstance. Normally a tenant would simply file an Application seeking the termination of their tenancy as a result of the landlord's failure to live up to their obligations.

Security Deposits

RTA sections 12(5) – 12(7)

If at the end of a tenancy a landlord wishes to retain all or any portion of a security deposit to cover outstanding rent or any other expenses incurred, and the tenant does not consent in writing, the landlord **must** file an Application within **10 days** of the end of the tenancy.

If a tenant does not consent in writing, or the landlord does not file an Application the landlord **must** return the security deposit in full (with interest) to the tenant within **10 days** of the end of the tenancy.

Manufactured Homes

Statutory Conditions

RTA section 9(2)

The *RTA* contains some specific rules regarding manufactured homes (i.e. mobile homes or trailers) and land lease communities (i.e. mobile home or trailer park) .

In addition to the Statutory conditions applicable to all landlords and tenants manufactured homes and land lease communities are subject to the following additional conditions:

- i. A landlord cannot interfere with a tenant's ability to sell, lease or otherwise dispose of their manufactured home;
- ii. If a tenant wishes to sell or lease their manufactured home they must obtain consent from their landlord. A tenant must apply, in writing, for their landlord's consent. A landlord cannot arbitrarily or unreasonably refuse to provide consent. After receiving an application a landlord has **10 days** to either (in writing) provide consent or provide the tenant with reasons why consent is being withheld. If a landlord does not respond within 10 days they are deemed to have given consent. A landlord cannot charge a fee for providing their consent, although they can charge a tenant reasonable expenses for granting consent;
- iii. A landlord cannot charge commission for acting as a tenant's agent in the sale or lease of their manufactured home, unless a separate written agency agreement was entered into between the tenant and landlord. In order to be valid the agency agreement must have been entered into after the lease was signed and at the time the tenant wishes to sell or lease their manufactured home;
- iv. A landlord cannot restrict a tenant from purchasing goods and services from the person of the tenant's choice;
- v. A landlord can set reasonable standards for manufactured home equipment;
- vi. A landlord must comply with all municipal by-laws pertaining to the common areas of the land lease community, and with respect to services provided; and
- vii. Tenants must comply with all municipal by-laws with respect to their manufactured home and manufactured home space.

Rental Increases

RTA section 11(1) & 11(2)(d)

Like other residential premises a landlord cannot increase rent for a manufactured home space during the first 12 months of the lease, nor can they increase rent more than once during 12 months.

In order to increase rent for a manufactured home space a landlord **must** give tenants written notice **7 months** prior to the anniversary date in the form prescribed by the *Regulations*:

<http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-M-notice-of-rent-increase-for-manufactured-home-space.pdf>

Unlike for other tenants Service Nova Scotia sets a maximum amount that a landlord can increase the rent for manufactured home space. This amount is calculated pursuant to a formula contained in the *Regulations*, and for 2013 it is set at 3%. It is set at 2.9% for 2014.

Application Process

If a landlord wishes to increase the rent by more than the allowable amount they **must** make an Application to the Director of Residential Tenancies. It is important to note that this Application **does not** result in a hearing.

A landlord must serve a tenant with their Application **7 months** prior to their anniversary date.

A tenant may review the supporting material filed by the landlord along with their Application by contacting their local Access Nova Scotia office.

A tenant may also put their concerns in writing regarding the requested rental increase. Any written submissions must be made **within 14 days** of the 7 month deadline for service of the Application upon the tenant. Any submissions made by a tenant will be provided to the landlord.

A landlord may respond in writing to a tenant's submissions within 14 days.

The Director will make a written decision based on all of the materials submitted. The Director can either grant or refuse the rental increase requested by the landlord **or** increase the rent by another amount not exceeding the amount requested.

Resolving Disputes

Applications

RTA section 13

Should a landlord and tenant come into conflict either party can make an Application to the Director of Residential Tenancies to resolve the issue – provided it is one covered by the RTA. An Application **must** be filed within **1 year** of the termination of the tenancy.

The Application form can be found here:

<http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-J-application-to-director.pdf>

Once completed the Application must be filed in person at your local Access Nova Scotia office. A list of Access Nova Scotia offices can be found here: <http://www.gov.ns.ca/snsmr/offices.asp>

If you are filing an Application on behalf of a client you must have them complete a Notice of Representation form authorizing you to file the Application on their behalf.

Application Process

RTA section 27 & RTA regulation 33

There is a fee for filing an Application. The fee can be waived for those in receipt of the the Guaranteed Income Supplement and income assistance recipients. Be sure your client has proof of income when filing their Application if they are seeking to have the filing fee waived.

Upon filing the Application the Applicant will receive a hearing date, and a Residential Tenancy Officer will be assigned to the matter. The Residential Tenancy Officer (RTO) is an employee of Access Nova Scotia tasked with resolving disputes under the RTA. RTO's are granted the power to make decisions on behalf of the Director of Residential Tenancies.

Service

RTA section 15

After filing an Application it must be served upon the landlord. Service is done either personally **or** via registered mail.

An affidavit of service must be completed, and returned to the Access Nova Scotia office where the Application was filed. The Affidavit of Service proves that the opposing party received a copy of the Application.

The affidavit of service form can be found here:

<http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-L-affadavit-of-service.pdf>

If a tenant is having difficulty serving a landlord the RTO assigned to the file should be contacted immediately so that the RTO can decide on an alternative method of notifying the landlord of the Application.

Mediation

RTA section 16

RTO's are authorized to attempt to reach a mediated settlement between the parties provided that both parties consent to mediation.

A mediated settlement is an agreement reached between the parties without the need for a hearing.

Sometimes an RTO will attempt to reach a mediated settlement between the parties prior to the hearing date. However, the more common scenario is that the RTO will ask both parties if they are willing to attempt to reach a mediated settlement in person immediately prior to the commencement of the hearing.

Should the parties reach a mediated settlement the RTO will put it in writing, and it will be signed by both parties.

A mediated settlement will contain an itemized list of what each party has agreed to do. The contents of a mediated settlement **cannot** be appealed to Small Claims Court.

Should either party not do what they agreed to do in the mediated settlement an Order from the Director of Residential Tenancies can be issued against that party.

If an Order is issued as a result of a party not doing what they agreed to in the mediated settlement that Order **can** be appealed to Small Claims Court.

Hearings

If mediation is unsuccessful a hearing will begin immediately.

The hearing will be presided over by the designated RTO. The RTO is in charge of the procedure for the hearing. Hearings will proceed by having the Applicant present their case followed by the Respondent.

Both parties will be allowed to call witnesses, and present relevant evidence (i.e. documents, pictures, etc...)

In addition to presenting their case both parties should be given the opportunity to ask the opposing party questions; however this will be up to the RTO presiding over the hearing.

Remember that there is no transcript of these hearings so keeping good notes is important!

Decisions

RTA section 17(1)

After the hearing the RTO will issue a written decision within **14 days**.

As agreed upon at the hearing the decision will either be mailed to the parties or be available to be picked up at the Access Nova Scotia location where the hearing took place.

Remedies

RTA section 17A

Under the *RTA* there are various remedies that can be granted in an Order issued by an RTO. The Application form contains a full list of remedies available to both tenants and landlords.

For tenants one of the most important remedies that can be granted is financial compensation. Financial compensation can be ordered to compensate a tenant for actual expenses incurred or in the form of what is often called 'rent abatement' (note that on the Application form it is called 'relief from rent owing').

Rent abatement is a reduction in the amount of rent a tenant otherwise owes to their landlord. It can be ordered to compensate a tenant for a landlord's breach of the *RTA*. It is commonly ordered in instances where a landlord has failed to carry out repairs. In those circumstances a tenant can request that a portion of their rent paid during the time the repairs were not carried out be returned to them.

Appealing an Order

RTA section 17C

An Order of the Director of Residential Tenancies can be appealed to Small Claims Court within **10 calendar days** of the date it was issued.

To start an Appeal at Small Claims Court an Appellant must file a Notice of Appeal at their local Small Claims Court. (*insert hyperlink to Notice of Appeal*)

If your client misses the 10 day appeal period it **can** be extended. An Application to extend the time to appeal can be obtained from the Small Claims Court. (*insert hyperlink to Application to extend time*)

A list of Small Claims Court locations can be found here:

http://www.courts.ns.ca/smallclaims/cl_location.htm

There is a filing fee for filing a Notice of Appeal. If an Appellant's income is sufficiently low the fee can be waived by completing a waiver of fees form:

http://www.courts.ns.ca/general/fee_docs/fee_waiver_form_june02.pdf

After filing a Notice of Appeal with the Small Claims Court it must be served personally upon the Respondent **and** the Director of Residential Tenancies.

The Small Claims Court clerk will provide a service deadline on the Notice of Appeal form when it is filed.

The Director of Residential Tenancies is served by serving any employee of the Access Nova Scotia office where the hearing took place.

After serving both the Respondent and the Director the affidavits must be sworn, and returned to the Court. The affidavits can be sworn by a clerk of the Small Claims Court. Swearing an affidavit simply means that the person who prepared it swears that its contents are true before a Commissioner of Oaths who signs the affidavit.

Small Claims Court Hearing

The 'appeal' before Small Claims court is actually an entirely **new hearing** (sometimes referred to as a 'trial de novo'). This means that any evidence presented, arguments made, etc...before the RTO at the first hearing **must** be all done again at Small Claims Court.

New evidence not presented to the RTO can be introduced at the Small Claims Court hearing as long as it is relevant.

The Small Claims Court hearing will be presided over by an Adjudicator who is a lawyer.

The hearing will be much more like court, but still less formal than an actual court appearance.

The Appellant will present their case first followed by the Respondent. Each party may call witnesses and present relevant evidence, and will be given an opportunity to cross examine the opposing party and their witnesses.

Just like before the RTO there is no transcript of a Small Claims Court hearing so it is important to take good notes!

Following the hearing the Adjudicator has **14 days** to issue their decision.

Appeal to Supreme Court

RTA section 17(E)

A party to a decision from the Small Claims Court may appeal it to the Supreme Court of Nova Scotia within **30 days** of the date of the Adjudicator's decision.

There are only limited bases upon which an appeal to the Supreme Court can be made:

- i. Jurisdictional error;
- ii. Error of law; or
- iii. Failure to follow the requirements of natural justice.

Should your client wish to appeal a Small Claims Court decision you **must** consult a lawyer.

Enforcing Orders

RTA section 17(B)

After the 10 day appeal period has expired, a decision of the Director of Residential Tenancies can be made into an enforceable Small Claims Court Order.

To request that an Order of the Director be made into a Small Claims Court Order you must contact the RTO who held the hearing.

After making your request the Small Claims Court will send the requisite forms. At this point you have several options for enforcing the judgment against the landlord.

Alternatively if you are seeking to obtain an Order following a Small Claims Court hearing you must contact the Court where the hearing was held, explain what it is you wish to obtain and the Court will send the necessary forms.

Options

Basically there are three options for a party attempting to enforce a Small Claims Court Order:

- i. **Execution Order** – this allows the Sherriff to seize wages, money from bank accounts, property which can be sold, etc... This option requires information about the debtor, and there is a fee payable to the Sherriff which will be added to the amount recoverable. Before the Sherriff will accept an Execution Order it must be registered with the Personal Property Registry. The Personal Property Registry is an electronic registry which allows creditors to register their financial interest in personal property. Individuals may register a judgment at the self-serve kiosk at any Land Registration Office, or hire a service provider to register it for them for a fee. Further information on registering a judgment can be found here: <http://www.novascotia.ca/snsmr/access/land/personal-property-registry/registry-in-personal-property-registry.asp>
- ii. **Certificate of Judgment** – registering a Certificate of Judgment with the Land Registry Office limits the debtor’s ability to mortgage or sell property they currently own, or may own in the future, without first satisfying the Court Order. It creates what is known as a ‘lien’ against the debtor’s real property. There is a fee to register the Certificate of Judgment, and the lien on the debtor’s property will expire after 5 years. An interactive map with Land Registry Office locations can be found here: <http://www.novascotia.ca/snsmr/offices.asp>
- iii. **Recovery Order** – this allows the Sherriff to seize property that was ordered to be returned to a party. A party seeking to enforce a Recovery Order must provide the Sherriff with as much detail as possible about the property in question (i.e. a description, its location, etc...). There is also a fee payable to the Sherriff.

All of the preceding options are available to either Tenants or Landlords who obtain a Small Claims Court Order.

Retaliation

RTA section 20

A decision maker under the *RTA* (an RTO or Small Claims Court Adjudicator) **may** refuse to make a decision in favour of a landlord (including setting aside a Notice to Quit) if they think the landlord is retaliating against a tenant attempting to enforce their rights under the *RTA*.

The onus of proving retaliation rests upon the tenant alleging it. In order to successfully claim a landlord is acting in retaliation a tenant must prove the following:

- i. That a right exists under the *RTA*;
- ii. That the tenant was attempting to exercise that right; **and**
- iii. That the landlord acted in retaliation for that attempt.

Helpful Tips

Pre-Application

Prior to filing an Application to the Director of Residential Tenancies it is extremely important that a tenant document as much as possible any problems they are having with their rental unit.

A copy of any correspondence between the tenant and landlord should be saved for possible use at a hearing.

Prior to filing an Application it is good practice for a tenant to offer a landlord a final chance to remedy the problem. This can be done by sending a demand letter to the landlord. This letter should indicate that the tenant will be filing an Application if the issue is not remedied by a certain date.

Hearings & Appeals

It is important to remember that your client **must** prove all the elements of their case in order to be successful.

Your client should ensure that they have all the evidence necessary for their case. Evidence may include photos, documents, receipts, witnesses, etc... You should ensure you have three copies of all documentary evidence – one for you, one for the other side and one for the decision maker (i.e. the RTO or Adjudicator).

If a witness cannot be present at a hearing you can submit a sworn statement from them. However their evidence will be given more weight if they are present in person.

As mentioned previously RTO's set their own procedure. Nonetheless your client should be given the opportunity to ask the landlord, and any of their witnesses questions. You should insist upon this right being afforded to your client.

Depending on the complexity of the legal issue you may want to explain how you think the law applies to the issue. Don't worry about the format you choose for written submissions. The content is more important than the format! One option is to write a letter to the decision maker explaining the applicable law, and how courts have interpreted it. If you make written submissions make sure that you provide them to the decision maker and the other party in advance of the hearing.

Remember you can introduce **new evidence** at Small Claims Court even if you did not introduce it during your initial hearing.

Witnesses can be subpoenaed to attend a Small Claims Court hearing. A subpoena is a court document that requires a person to give evidence at a court hearing. A subpoena may require a witness to provide oral testimony, bring certain documents to court or both. A subpoena may be necessary if a witness is unwilling to attend a court hearing. Subpoena forms can be obtained from the Small Claims Court. In your binder you will find a detailed guide on how to use subpoenas in Small Claims Court.

First Meeting

Ensure that a potential residential tenancy client brings the following with them to the first meeting:

- i. A copy of their lease;
- ii. A copy of any Applications filed by either themselves or their landlord;
- iii. A copy of any Orders issued;
- iv. A copy of any relevant correspondence sent to or received from their landlord;
- v. Any relevant evidence pertaining to the issue.

You should obtain the following from your client during the first meeting:

- i. If applicable, a Notice of Representation form;
- ii. If applicable, a waiver of fees form for Small Claims Court; and
- iii. If your client is a public housing tenant you may wish to file a FOIPOP request to view their housing file with the local Housing Authority.

Should your client have already filed or been served with an Application to the Director you should contact the RTO assigned to the file, and advise them that you will be representing your client at their hearing.

Additional Resources

Government

The Province maintains a residential tenancies website which contains downloadable forms, landlord and tenant guides, sample Orders of the Director, etc...:

<http://www.gov.ns.ca/snsmr/access/land/residential-tenancies.asp>

A guide on how to use subpoenas in Small Claims Court can be found here:

<http://www.gov.ns.ca/just/srl/guides/docs/UsingaSubpoenaSmallClCrt.pdf>

An excellent guide on enforcing Small Claims Court can be found here:

http://www.courts.ns.ca/self_rep/self_rep_docs/small_claims_guide_for_creditors_10.pdf

Dalhousie Legal Aid Service

There is a 'Tenants' Rights Guide' and an 'Annotated *Residential Tenancy Act*' both published by the Dalhousie Legal Aid Service.

Case Law

Small Claims Court and Supreme Court cases on residential tenancies are available via CANLI:

<http://www.canlii.org/en/ns/>

Nova Scotia Legal Aid

NSLA offices provide summary advice to clients regarding Residential Tenancies. Their contact information can be found here: <http://www.nslegalaid.ca/contact.php>