

After the Flood

For landlords and tenants in Alberta

Should the tenant keep paying the rent?

Yes, the tenant should keep paying rent, unless the tenancy has been frustrated (see “Can the tenant move out because of the flood?” question). Knowing what tenancy type is in place is essential if the tenant wants to move out.

- For a monthly periodic tenancy (with no end date), the tenant must give written notice one tenancy month in advance.
- For a fixed-term tenancy (with a set end date), the tenant must get the landlord’s consent to end the tenancy early, or else the tenant risks paying damages for breaching the rental agreement.

What if the rental property has been damaged?

The tenant should talk to the landlord to determine what the landlord plans to do. If the tenant can’t live in the property while it’s being repaired, the tenant could suggest rent abatement. Rent abatement means that the tenant would pay less or no rent, while the tenant can’t live in the property. If the landlord doesn’t agree to that, the tenant can apply 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.



Photo by Hans Braxmeier from Pixabay

What if the tenant thinks the property isn’t safe or healthy?

The tenant should discuss their concerns with the landlord. If the landlord doesn’t deal with the health and safety concerns, the tenant can call their local Environmental Public Health office to speak to a health inspector. The tenant could also contact their local municipal office if a concern could be dealt with through the bylaw enforcement office.

Pro tips

- Be patient.
- Make sure you have current contact information for each other.
- Take pictures and videos.
- Get agreements in writing whenever possible.
- Know who to contact for more information about the law.

Can the tenant move out because of the flood?

Maybe. It depends on the damage amount and the landlord's actions 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, for example:

- 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 or
- if the property is so damaged that a reasonable tenant would not be willing to be still living there.

If the tenant treats the rental agreement as frustrated, they will stop paying the rent and move out. The tenant should let the landlord know, in writing, that they treat the residential tenancy agreement as frustrated. The tenant should have proof of the property's condition, including photos and video. If there is a dispute, the tenant must 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 proper reason, then the landlord can apply for damages in RTDRS or in Court against the tenant, or keep some or all the security deposit, or both.

The tenant could also contact their local Environmental Public Health office to talk to a health inspector about the property's condition and to ask for an inspection. The rental agreement would be frustrated if the inspector deems the property unfit for human habitation.

Can the landlord use the security deposit?

A security deposit is not meant to cover the cost of repairs from a flood. It is intended to cover the costs of things that the tenant was responsible for paying, such as unpaid rent, cleaning costs, or fixing damage beyond normal wear and tear when the tenant moves out. If a tenant stains the carpet, but then a flood damages the entire carpet, the landlord can't deduct a cleaning charge from the security deposit for the stain.

Suppose the tenant treats the agreement as being frustrated and moves out without providing proper notice or breaks a fixed-term lease. In that situation, the landlord may use the security deposit to cover the rent that wasn't paid during the notice period or some or all of the remainder of the fixed term. The tenant could make an application to get the security deposit back. If the tenant can prove that the property was so damaged that no reasonable tenant would agree to live there, the tenant may get the security deposit back (unless they were owing rent before the flood).

Who pays for damaged stuff?

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 own damaged or destroyed goods. Tenants with insurance should read their insurance policies carefully to see if their insurance covers any of the damage to their personal property. They should also contact their insurance company right away. Many insurance policies will not cover damage caused by overland flooding, but some damage might be due to sewer backup or a different problem. Tenants will need to know what caused the property damage. The tenant should also contact the municipality or provincial government about any available assistance.



Where can I get more help?

For a list of where to get legal help, refer to CPLEA's **Get Legal Help in Alberta** at www.cplea.ca/legalhelp/

Laws for Landlords and Tenants in Alberta

CPLEA's plain language website with everything landlords and tenants need to know about renting law in Alberta.

www.landlordandtenant.org

Email: info@cplea.ca

Insurance Bureau of Canada Consumer Information Centre

Information to help you understand your insurance coverage and the claims process.

www.ibc.ca

Phone: 1-844-2ask-IBC

Alberta Health Services – Environmental Public Health

If you are having a problem with health or housing standards, public health inspectors may be able to investigate.

www.albertahealthservices.ca/eph/eph.aspx

Phone number: 1-833-476-4743

Residential Tenancy Dispute Resolution Service (RTDRS)

The RTDRS offers landlords and tenants an alternative means of resolving tenancy disputes outside of court.

www.servicealberta.ca/rtdrs/

Email: rtdrs@gov.ab.ca

Phone: 310-0000, then dial 780-644-3000

Law Society of Alberta Lawyer Directory

To find a lawyer, the Law Society's online Lawyer Directory is available. This database allows people to find a lawyer using certain search criteria. Individuals can find a lawyer by searching by name, location, practice areas, language(s) spoken, gender, and whether a lawyer offers limited scope retainers.

www.lawsociety.ab.ca/public/findalawyer/

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