

7. Locks and Access

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

At common law, the tenant has a right to quiet enjoyment and peaceful occupation of the premises. At the same time, the landlord has the right to enter under certain conditions. The *Residential Tenancy Act* (the Act) addresses the rights and obligations of landlords and tenants with respect to entry into a rental unit.

The Act¹ allows the tenant to request that the locks be changed at the beginning of a new tenancy. The landlord is responsible for re-keying or otherwise changing the locks so that the keys issued to previous tenants do not give access to the rental unit. The landlord is required to pay for any costs associated with changing the locks in this circumstance. The landlord may refuse to change the locks if the landlord had already done so after the previous tenant vacated the rental unit.²

A landlord must not enter a rental unit in respect of which the tenant has a right to possession unless one of the following applies:³

- an emergency exists and the entry is necessary to protect life or property,
- the tenant gives permission at the time of entry, or
- the tenant gives permission not more than 30 days before the time of entry,
- the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms,
- the tenant has abandoned the rental unit, or
- the landlord has an arbitrator's order authorizing the entry.

Regarding written notices, the notice must state a reasonable purpose for the entry and must give the date and time intended for the entry. The time stated must be between 8:00 a.m. and 9:00 p.m.

The notice must be served in accordance⁴ with the *Residential Tenancy Act*.⁴ If the landlord leaves the notice in the mailbox or mail slot, or attaches it to the door or other conspicuous place on the rental unit, the notice is not deemed to be received until 3 days after posting or placing it in the mailbox or slot. If the notice is sent by mail, the notice is

1 *Residential Tenancy Act*, s. 25

2 RTA, s.25(2)

3 RTA, s.29

4 RTA, s.88

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not deemed received until 5 days after mailing. If the notice is sent by fax, the notice is not deemed received until 3 days after faxing it. This additional time must be taken into consideration by the landlord when advising of the date and time of entry.

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

Where a notice is given that meets the time constraints of the Act, but entry is not for a reasonable purpose, the tenant may deny the landlord access. A "reasonable purpose" may include:

- inspecting the premises for damage,
- carrying out repairs to the premises,
- showing the premises to prospective tenants, or
- showing the premises to prospective purchasers.

However, a "reasonable purpose" may lose its reasonableness if carried out too often. Note that under the *Act* a landlord may inspect a rental unit monthly.⁵

Where possible the parties should agree beforehand on reasonable times for entry. Where the parties cannot agree on what are reasonable times, and the tenant's quiet enjoyment of the rental unit is interrupted (for example where the house is listed for sale and there are numerous showings of the rental unit), the tenant may apply for arbitration to suspend the rights of the landlord, or an Order that the landlord's right of entry be exercised only on conditions.

The tenant may not prevent a landlord from entering to carry out repairs, where a valid notice of entry has been given, even if the tenant is capable, and willing to carry out the repairs.

Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The arbitrator can, at that time, determine if the reason for entry is a reasonable one. An arbitrator may find that the holding of an "Open House" by the landlord's realtor is not a reasonable purpose if the landlord cannot ensure the safety of the tenant's possessions.

The *Residential Tenancy Act* does not require that notice be given for entry onto **residential property**, however, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises.

Landlords of manufactured homes parks are subject to similar rules under the *Manufactured Home Park Tenancy Act*. They must not enter onto a manufactured home site except on the terms provided above for residential tenancies (but for housekeeping

⁵ RTA, s.29(2).

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services), with the added provision that the landlord of a manufactured home park may come onto a site to collect rent or to give or serve a document provided for by the *Manufactured Home Park Tenancy Act*. The landlord of a manufactured home park may not enter the manufactured home of a tenant, on notice or otherwise, without the tenant's permission.

Where a tenant can prove that the landlord has entered contrary to the *Residential Tenancy Act*, the tenant may apply to have the locks to the rental unit changed. The arbitrator will consider, among other things, whether an order to change the locks on a particular suite door could endanger the safety of other nearby tenants. An order for change of locks will only apply to areas where the tenant has exclusive possession.

In some circumstances, where there has been substantial interference with the tenant's use and enjoyment of the property, it may be appropriate for the tenant to be awarded damages for unlawful entry in addition to, or rather than, a change of locks.

Where a Strata Council changes the locks to the residential property and the Council does not provide a new key to the tenant, the landlord must obtain a key for the tenant. Failure to do so could result in a claim for damages being sustained.