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## **Can an Alberta Landlord's Duty to Make Reasonable Efforts to Negotiate a Meaningful Payment Plan with Residential Tenants before Evicting Tenants be Enforced?**

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**Legislation Commented On:** [Ministerial Order No. SA: 005/2020 \[Service Alberta\]](#)

Since May 1, 2020, a landlord in Alberta has been able to evict a residential tenant for non-payment of rent and utilities even if the failure to pay is due to circumstances beyond the tenant's control caused by the COVID-19 pandemic. At least one politically prominent landlord has already starting eviction proceedings (see [here](#) and [here](#)). In place of the suspension of evictions that expired April 30, the government introduced a duty on landlords to make reasonable efforts to enter into meaningful payment plans with their tenants. According to the government description of this new duty (in [Rent Payment Plans COVID-19](#)), landlords will have to prove they made these efforts before landlords can issue a 14-day notice or apply to the courts or [Residential Tenancy Dispute Resolution Service](#) (RTDRS) to terminate a tenancy for non-payment of rent. Landlords may eventually have to prove that they made those efforts if tenants sue them or refuse to leave the rental premises, but there is a gap in the new law that makes it unnecessarily difficult for tenants – or anyone else – to enforce a landlord's new duty. The Minister for Service Alberta needs to amend section 29 of the *Residential Tenancies Act*, [SA 2004, c R-17.1 \(RTA\)](#) and section 32 of the *Mobile Home Sites Tenancies Act*, [RSA 2000, c M-20 \(MHSTA\)](#) to allow tenants who have failed to pay rent to object to a 14-day notice terminating a tenancy on the basis that the landlord has not complied with its new duty.

I have already discussed the various types of relief that the Alberta government has provided to residential tenants in an earlier post and explained some of the difficulties with the new duty – difficulties such as the meaning of “reasonable efforts” and “a meaningful payment plan.” See [Residential Tenancies in Alberta: Evictions for Non-Payment of Rent No Longer Suspended](#). Unlike that broad look at various issues, this post focuses exclusively on whether and how a tenant can enforce their landlord's new duty to make reasonable efforts to enter into a meaningful payment plan with their tenants before they can evict those tenants.

When a landlord wants to evict a tenant for failing to pay rent, a landlord has a choice as to how to proceed. A landlord can choose to apply to a court or the RTDRS for an order to terminate the tenancy under section 26(1) of the *RTA* and section 30 of the *MHSTA*. Alternatively, a landlord can choose to serve a tenant with a 14-day notice to terminate the tenancy under section 29(1) of the *RTA* and section 32(1) of the *MHSTA*.

## Applying to the RTDRS for an Order Terminating a Tenancy

The first option – an application to the courts or the RTDRS – is relatively straightforward, although the courts are currently unavailable for eviction hearings on a timely basis.

If a landlord chooses to apply for an order to terminate a tenancy, they will apply to the RTDRS (which is now available to mobile home sites with the recent passage of [Bill 3: Mobile Home Sites Tenancies Amendment Act, 2020](#)). A date and time for a telephone hearing will be set and the tenant will be served with notice of that hearing. At the hearing, the tenant will have an opportunity to present their case.

Thanks to the amendments to the *RTA* and the *MHSTA*, tenants have a new argument to make to oppose their eviction. Ministerial Order No. SA: 005/2020 added section 26(1)(c.1) to the *RTA* and section 30(f) to the *MHSTA*. Both of these added sections state that if a landlord wants an order to terminate a tenancy, an order requiring a tenant to pay rent in arrears, compensation for overholding, or an order requiring the tenant to deliver up possession,

the landlord must demonstrate that an agreed payment plan was in place to which the tenant failed to adhere or that the landlord made reasonable efforts to enter into a meaningful payment plan prior to making an application. (emphasis added)

If the facts are there, a tenant will be able to argue that their landlord did not make efforts that were reasonable to enter into a payment plan that was meaningful in the context of the COVID-19 pandemic, explaining why any efforts made fall short. A landlord may not terminate a tenancy without first making reasonable efforts to enter into a meaningful payment plan. Crucially, landlords have the burden of proving that their efforts were reasonable and that any payment plans they proposed were meaningful in the current context of uncertainty and high unemployment. If a landlord fails to prove those two preconditions to eviction, then the RTDRS Tenancy Dispute Officer cannot grant an order to terminate the tenancy.

Indeed, under the first option, the RTDRS must be satisfied that a landlord has fulfilled its new duty whether or not their tenant is present, because reasonable efforts to enter into a meaningful payment plan must be proven by the landlord before the landlord can get an eviction order. The RTDRS acknowledges this (albeit while downplaying the need for a “meaningful” payment plan), stating on its [website](#) that “RTDRS will not hear applications that could lead to eviction due to non-payment, unless landlords can demonstrate reasonable attempts to work out a payment plan, or that the tenant failed to comply with an established payment plan.”

## Serving a 14-day Notice to Terminate a Tenancy

A landlord’s second option – the 14-day notice to terminate the tenancy for failing to pay rent issued under section 29(1) of the *RTA* or section 32 of the *MHSTA* – is where things get complicated due to what appears to be an oversight that created a gap in the law.

Ministerial Order No. SA: 005/2020 added section 29(1.1) to the *RTA* and section 32(1.1) to the *MHSTA*. Both of these added sections state that if a landlord wants to terminate a tenancy for a

substantial breach (e.g. a failure to pay rent when due) by serving the tenant with a notice at least 14 days before the day the tenancy is to terminate,

the landlord may not terminate a tenancy without first making reasonable efforts to enter into a meaningful payment plan or entering into a payment plan and having the tenant fail to adhere to such a plan. (emphasis added)

Under section 29 of the *RTA* and section 32 of the *MHSTA*, a landlord simply serves a notice on a tenant. There is no need to go to court if the tenant vacates at the end of the notice period.

Can a tenant object to the 14-day notice to terminate if they failed to pay rent and want to stop their eviction? Section 29(4) of the *RTA* and 32(3) of the *MHSTA* answer this question. Taken at face value, the answer seems to be “No.” A 14-day notice becomes ineffective only if one of two things happen:

29(4) A notice to terminate under this section is ineffective if, before the termination date given in the notice, the tenant  
(a) pays all rent due as of the date of payment, if the alleged breach is a failure to pay rent, or  
(b) serves the landlord with a notice in writing objecting to the termination that sets out the tenant’s reasons for objecting, if the alleged breach is other than a failure to pay rent. (emphasis added)

Look at the difference between 29(4)(a) and (b). What section 29(4) of the *RTA* (and section 32(3) of the *MHSTA*) says very clearly is that the only way to stop an eviction for non-payment of rent is to pay the rent. It also says, equally clearly, that a tenant cannot file an objection that will make the 14-day notice ineffective if the eviction is for failing to pay rent.

As a result, there seems to be no room for a tenant to file an objection based on a landlord’s failure to make reasonable efforts to reach a meaningful payment plan and stop the eviction. This seems to be the case even though a landlord cannot terminate a tenancy using a 14-day notice “without first making reasonable efforts to enter into a meaningful payment plan.”

Logically, if a landlord must fulfill its new duty before it can serve a 14-day notice to terminate a tenancy, a tenant should be able to object if the landlord does not fulfill its duty. Landlords have a duty; tenants have a correlative right they need to be able to enforce. They need to be able to object in order to have the question of whether a landlord fulfilled its duty heard by the RTDRS. Without a tenant’s objection, the RTDRS is not involved in this process.

This gap in the new law will make the 14-day notice a much more attractive option to some landlords, particularly those who have not made any efforts to reach a meaningful payment plan. It looks to be their opportunity to evict a tenant without needing to follow the new law. In particular this may work with those tenants who read their 14-day notice, give up, and move.

A tenant behind in their rent may serve a written objection on their landlord, objecting to the 14-day notice. A landlord may respond that the objection is not allowed because the eviction is for

failing to pay rent, and insist that the objection does not stop the eviction. Some tenants may give up at this point.

Without an objection, the RTDRS does not have the opportunity to become involved and there will be no enforcement of the landlord's new duty.

What should a tenant do if a landlord has failed to make reasonable efforts to reach a meaningful payment plan but has served a tenant with a 14-day notice of termination? The tenant needs to provoke a hearing before the RTDRS in order to get the landlord's duty enforced. There are two ways a tenant can do this. Both are risky.

A tenant in this situation could sue their landlord in the RTDRS. Not surprisingly, the RTDRS documents and regulations do not fit this situation very well. A tenant needs to seek an order to the effect that the landlord's 14-day notice to terminate is ineffective because the landlord has failed to prove it made reasonable efforts to reach a meaningful payment plan. However, a Tenancy Dispute Officer can only grant the remedies that a judge of the provincial court may grant under Parts 3 and 4 of the *RTA (Residential Tenancy Dispute Resolution Service Regulation, Alta Reg 98/2006, s 15(4))*. A provincial court judge, and therefore a Tenancy Dispute Officer, can grant a tenant an order for damages resulting from the landlord's contravention of the law, an abatement of the amount of rent paid, compensation for the costs of performing a landlord's obligations, and an order terminating the tenancy. None of those remedies really address this situation. The best remedy to request might be damages for the landlord's contravention of section 29(1.1) of the *RTA* or section 32(1.1) of the *MHSTA*. The prospect of an adverse award of damages may be enough to force a landlord into negotiations. The RTDRS is empowered to facilitate settlements.

The alternative is for a tenant to ignore their landlord's 14-day notice and refuse to move out. This is not a course of action that can be recommended, even if a landlord has made no efforts at all to reach a meaningful payment plan. The tenant will have committed an additional breach of the tenancy agreement and the *RTA* or *MHSDTA* for failing to give up possession of the rental premises (i.e. for overholding: section 26(b)(i) *RTA*; section 30(c) *MHSTA*). The tenant could be liable for additional costs.

But a tenant's refusal to leave would force the landlord to apply to the RTDRS for an order for recovery of possession under section 26(1)(b) of the *RTA* or section 30(d) of the *MHSTA*. The reason for a tenant's failure to leave is relevant when a landlord applies for an order for recovery of possession (section 26(2)(d)(i) *RTA*; section 44(d)(ii) *MHSTA*). This would allow a tenant to argue that the termination was ineffective. But in circumstances where a tenant has refused to move out and committed another breach, any argument that a landlord has contravened the law would need to be very clear and strong. And since we do not know what "reasonable efforts" or a "meaningful payment plan" mean, this will be difficult in most cases.

## **Conclusion**

It should be obvious that a landlord's ability to serve a 14-day notice terminating a tenancy – a self-help remedy – invites abuse when a landlord has failed to make reasonable efforts to reach a

meaningful payment plan with a tenant who is behind in their rent due to the COVID-19 pandemic. A tenant has little ability to insist on a landlord fulfilling this new duty. A tenant has little opportunity to get the matter heard by a third-party decision-maker who can enforce a landlord's duty to make reasonable efforts to reach a meaningful payment plan.

The government's explanation of the new duty insists that a landlord cannot evict a tenant without proving it complied with their new duty:

During the public health emergency, landlords cannot issue a termination notice or make an application to recover possession of a property for non-payment of rent and/or utilities, unless they can demonstrate an agreed payment plan was in place and the tenant failed to comply with the agreement. If there is no agreement in place, landlords must demonstrate they made reasonable efforts to enter into a meaningful payment plan and the tenant refused. ([Rent Payment Plans COVID-19](#), emphasis added).

But the ability to make landlords demonstrate compliance is lacking. Ministerial Order No. SA: 005/2020 appears to have created a new duty on a landlord, but no way for it to be effectively enforced when a landlord chooses to evict using a 14-day notice.

In order for the new duty on landlords to work as intended, the Minister for Service Alberta Minister must amend section 29 of the *RTA* and section 32 of the *MHSTA* to allow a tenant who has failed to pay all rent due to object to a 14-day notice terminating a tenancy on the basis that their landlord has not complied with its new duty to make reasonable efforts to reach a meaningful payment plan.

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