

Landlords, Tenants, and Domestic Violence: Changing Locks and Barring Access

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This is the fifth in a series of blog posts examining some of the legal uncertainties facing landlords and property managers who seek to respond to domestic violence on their premises, as identified in the Centre for Public Legal Education Alberta (CPLA) report on [Domestic Violence: Roles of Landlords and Property Managers](#). For earlier posts see [here](#), [here](#), [here](#) and [here](#). Among other problems, the CPLA report identified the confusion landlords and tenants have about the implications of various protection orders for requests from a victim of domestic violence to have the locks changed (at 45). In addition, both landlords and tenants would like more power to change locks and bar access to perpetrators (at 45). This post will look at the issue of changing locks and barring access from the perspective of the *Residential Tenancies Act*, [SA 2004, c R-17.1 \(RTA\)](#). It relies on my earlier discussion in “[Who is a ‘Tenant’ under the Residential Tenancies Act?](#)” because the answer under the *RTA* to who has a right to keys and access to the residential premises is whoever has the status of “landlord” or “tenant”. However, the answer based on the *RTA* is affected by the various protection orders that victims of domestic violence may obtain. These orders are touched on in this post but were explained in more detail by Professor Jennifer Koshan in “[Landlords, Tenants, and Domestic Violence: Clarifying the Implications of Different Protection Orders](#)”. This post focuses on the poor fit between the *RTA* and the statutes authorizing protection orders.

To repeat, the basic *RTA* answer to the question of who can have access to residential premises and who can change or add to locks is an easy one: those with the status of “landlord” or “tenant” under the *RTA*. Section 16(b) sets out the landlord’s promise to allow every tenant possession of their residential premises:

16 The following covenants of the landlord form part of every residential tenancy agreement:

...

(b) that, subject to section 23 [about the landlord’s ability to enter the tenant’s premises], neither the landlord nor a person having a claim to the premises under the landlord will in any significant manner disturb the tenant’s possession or peaceful enjoyment of the premises; (emphasis added)

The governing provision for locks and other external security devices is section 24:

24(1) Neither a tenant nor a landlord shall add to or change locks on doors giving access to residential premises or to the property of which the residential premises form a part without the consent of the other party.

(2) Notwithstanding subsection (1), a landlord may add to or change locks on doors giving access to residential premises or to the property of which the residential premises form a part if a key is made available to the tenant as soon as the addition or change is made.

(3) Subsection (1) does not apply to the installation by a tenant of a security device that

(a) is capable of being put into effect only while a person is inside the residential premises, and

(b) can be installed and removed without damage to the premises or will remain affixed to the premises and become the property of the landlord when the tenancy is terminated.

(4) Where a tenant adds to or changes a lock in accordance with subsection (1) the tenant shall make a key available to the landlord as soon as the addition or change is made. (emphasis added)

Therefore, under the *RTA*, tenants need the consent of landlords to change or add to locks and thus physically bar access. Landlords can act unilaterally, but only if they immediately make a key available to the tenants — all of the tenants of the particular residential premises. There is a minor exception for security devices that can only be operated from inside the premises, such as chain door guards.

As a result of these provisions, neither the victim of domestic violence nor the landlord can change or add to the locks and thus bar physical access to the residential premises in order to ensure the victim's safety if the perpetrator is a tenant. If the perpetrator is not a tenant, the victim is able to change locks, if she gets the consent of the landlord, and able to insist on the exclusion of the perpetrator. However, regardless of whether the victim is also a tenant or not, the perpetrator who is a tenant is entitled to keys and to access unless the victim has a protection order with a condition for exclusive possession of the residential premises under the *Protection Against Family Violence Act*, [RSA 2000, c P-27](#) (*PAFVA*) or other legislation discussed by Professor Koshan.

Under the *PAFVA*, a court can grant the victim of domestic violence exclusive occupation of a residence for a specified period, “regardless of whether the residence is jointly owned or leased by the parties or solely owned or leased by one of the parties”: sections 2(3)(c) and 4(2)(c). Unfortunately, that is almost all the *PAFVA* says. It says nothing specific about rent (although a perpetrator can be ordered to pay a victim's “accommodation expenses” under section 4(2) of the *PAFVA*), security deposits or changing locks, all important practical matters in the domestic violence context.

Nevertheless, protection orders grant exclusive possession. Once the victim is granted exclusive possession under a protection or other court order for a specified period of time, then during that

period of time the perpetrator would almost certainly have no right to a key or access to the residential premises, regardless of what the *RTA* says.

I say “almost certainly” for two reasons. First, the longer-term protection orders granted by the Court of Queen’s Bench under the *PAFVA* (QBPOs) can say something about keys. Those orders can grant either party “temporary possession of specified personal property, including . . . keys or other necessary personal effects”: section 4(2) (emphasis added). Unfortunately, by not including a similar provision for very short-term emergency protection orders (EPOs) — the orders in force in the critical first few days — the *PAFVA* creates unnecessary uncertainty about who can keep or obtain keys for external doors and windows during that initial period of time. However, an EPO that grants exclusive possession of residential premises to the victim grants the victim the ability to remain in the premises and bar access to the perpetrator, which logically includes the ability to change or add to locks and other security devices.

It is also open to courts to grant additional specific conditions in EPOs and QBPOs that deal with locks as well as keys. For example, section 2(3)(g) of the *PAFVA* provides that a judge can include in an EPO any other provision considered necessary to provide for the immediate protection of the claimant. That could include possession of keys or the authority to change locks, with or without the landlord’s consent.

Second, section 9(3) of the *PAFVA* provides:

(3) On the request of a claimant mentioned in subsection (2) [i.e., a victim of domestic violence who is not a party to the lease] the landlord must advise the claimant of the status of the lease and serve the claimant with notice of any claim against the respondent [the perpetrator] arising from the lease, and the claimant, at the claimant’s option, may assume the responsibilities of the respondent under the lease. (emphasis added)

“Assume” usually means to take over another person's rights and/or obligations, to step into their shoes, to be a substitute. The other person is replaced and no longer has those rights or responsibilities.

The choice is entirely the victim’s under section 9(3) *PAFVA*. Why would a victim take over the responsibilities of the perpetrator under a residential tenancy agreement? They should not do so if rent was owed, or if there was significant damage to the residential premises, or they do not have enough money for a new security deposit. They might do so if rent was up to date, there was no damage to the property, and they had the money for a new security deposit. The purpose of the section 9(3) requirement that a landlord advise the victim of the “status” of the lease and of claims against the perpetrator is to alert the victim to these outstanding obligations so an informed choice can be made.

There are three obvious problems with section 9(3). First, given how broad the definition of tenant is and how it does not require a person’s signature to be on a written lease, many victims who lived in the residential premises will have been co-tenants with the perpetrator of the violence. That means they will not have a choice about assuming the responsibilities of the perpetrator. Section 9(3) does not help them avoid the responsibility for any rent the perpetrator did not pay and for any damage the perpetrator did that the *RTA* imposes on them as tenants.

The second is that section 9(3) only says that a victim who is not a party to a lease has a choice to assume the perpetrator's responsibilities under the lease. It says nothing about assuming their rights, such as the right to change the locks with the landlord's consent, or the right to stay in the residential premises until they decide to leave or one of the conditions allowing a landlord to terminate the lease applies.

The third is that section 9(3) does not say what happens to the security deposit paid by the perpetrator. If the victim assumes the perpetrator's responsibilities, it seems logical that the victim takes over the obligation to provide a security deposit. If that is the case, then the landlord would have to return the existing security deposit to the perpetrator or account for deductions made from the security deposit for the costs of cleaning or damage or rent unpaid: section 46 *RTA*.

The relevant provisions of the *Family Law Act*, [SA 2003, c F-4.5](#) and the *Matrimonial Property Act*, [RSA 2000, c M-8](#), are much clearer than section 9(3) of the *PAVFA*. Section 72 of the *Family Law Act* states:

72 If a family home is leased by one or both of the spouses or adult interdependent partners under an oral or written lease and the court makes an order giving possession of the family home to one spouse or adult interdependent partner, that spouse or adult interdependent partner is deemed to be the tenant for the purposes of the lease. (emphasis added)

Section 24 of the *Matrimonial Property Act* says essentially the same thing for married persons granted exclusive possession orders under that Act:

24 If a matrimonial home is leased by one or both of the spouses under an oral or written lease and the Court makes an order giving possession of the matrimonial home to one spouse, that spouse is deemed to be the tenant for the purposes of the lease. (emphasis added)

Although clearer than the *PAVFA*, the *Family Law Act* and *Matrimonial Property Act* are less protective of victims because they do not give a victim any choice about assuming responsibilities under the residential tenancy. Their orders granting the victim exclusive possession automatically deem the victim to be a tenant, and so the victim becomes responsible for the rent, damages, security deposit and other responsibilities of a tenant after the date of the order.

Annoyingly, section 72 of the *Family Law Act* and section 24 of the *Matrimonial Property Act* use different terminology than the *RTA*, talking about “leases” instead of “residential tenancy agreements” and referring to “oral or written leases” when the *RTA* includes “written, oral or implied agreements”. Thus, the coverage of the *Family Law Act* and *Matrimonial Property Act* is broader than that of the *RTA* because they do not exclude the types of leases excluded by section 2(2) of the *RTA*. They are also narrower because they do exclude implied agreements to lease, and implied agreements are a common way that victims of domestic violence who are not parties to a written agreement attain the status of tenant — see “[Who is a “Tenant” under the Residential Tenancies Act?](#)”.

There are other open questions about how the *RTA* is affected by the different protection orders, particularly when the perpetrator was a tenant or co-tenant of the residential premises at the time a protection order was made that granted the victim exclusive possession of those premises.

Those questions include:

- Does the victim of domestic violence need the consent of the landlord to change the locks?
- Is the perpetrator still a “tenant” under the *RTA*?
- Is the perpetrator still responsible for the rent?
- Does the landlord have to return the security deposit to the perpetrator?

None of these issues are dealt with in any of the legislation. Nonetheless, if a court order such as an EPO or QBPO addresses any of those issues, the court order’s handling of them should prevail. In any event, a landlord should have a good faith defence based on the court order against any claims or complaints by a perpetrator.

In her e-book “[Responding to Domestic Violence in Family Law, Civil Protection & Child Protection Cases](#)”, 2017 CanLIIDocs 2, Linda Neilson recommends that judges consider including the following in protection orders:

prohibitions on financial harassment and intimidation — for example, prohibitions on cancelling essential services (electricity, phone, heating) to the home occupied by the targeted person, provisions requiring payment of rent or mortgage, prohibitions on conduct designed to destroy the targeted person’s credit rating, prohibitions on use of credit cards and on increasing or defaulting on loans. (section 9.2.2.9, emphasis added)

This type of condition could be included in EPOs and QBPOS pursuant to the general provisions allowing judges to make other appropriate conditions. With respect to EPOs, however, there may be a question of whether a condition regarding payment of rent would be “necessary to provide for the immediate protection of the claimant”. This is especially so because financial abuse is not included in the definition of family violence under the *PAFVA*.

However, what happens if the court order is silent about things like who is a tenant, consent of the landlord to changing the locks, who is responsible to pay the rent, and what happens to the security deposit?

Does the victim of domestic violence with a protection order granting exclusive possession need the consent of the landlord to change the locks? Unless the court order itself says something about changing the locks, it would seem that section 24(1) of the *RTA* would prevail. The landlord’s consent would be required. There is nothing in the *PAFVA* or any of the other statutes that overlaps with or contradicts the rule in section 24(1) of the *RTA*.

It should be recalled that exclusive possession orders under the *Family Law Act* and the *Matrimonial Property Act* may be made in a wide variety of circumstances related to the breakdown of a spousal or marriage relationship, not only in situations where there has been domestic violence, so the aim of these statutes is not to protect victims of domestic violence by,

for example, facilitating the change of locks (although that may be a consequence of the deeming provisions).

Is the perpetrator who was a tenant or co-tenant at the time a protection order granting exclusive possession to the victim was made, still a “tenant” under the *RTA*? Being granted exclusive possession is not the same thing as becoming the sole tenant, whether by taking the place of the perpetrator on the residential tenancy agreement, if the perpetrator was the sole tenant, or, if the parties are co-tenants, by having the perpetrator’s tenancy terminated. That is why section 72 of the *Family Law Act* and section 24 of the *Matrimonial Property Act* separately “deemed” someone granted exclusive possession to be a tenant. That is also why section 9(3) of the *PAFVA* gives victims granted exclusive possession the option to step into the shoes of the tenant; it does not happen automatically with a grant of exclusive possession.

With an EPO or QBPO, it would seem that the perpetrator remains a tenant if the *PAFVA* and the *RTA* are read together — unless the victim with the protection order granting exclusive possession of the residential premises is not a tenant and chooses to assume the responsibilities of the tenant under section 9(3) of the *PAFVA*.

Being deemed a tenant under the *Family Law Act* or the *Matrimonial Property Act* would not have the same effect because deeming someone a tenant is not the same as having them assume the tenant’s responsibilities. The victim and the perpetrator might be co-tenants who are jointly responsible under the *RTA*, if the perpetrator was a tenant before the victim was deemed to be a tenant. Both the *Family Law Act* and the *Matrimonial Property Act* are silent about the status of a perpetrator who was a tenant or co-tenant at the time an order granting exclusive possession to the victim was made, so it is likely the perpetrator will continue to be a tenant. The perpetrator’s right to possess the premises is altered by the exclusive possession order, but unless the order itself says otherwise, nothing in those statutes alters the perpetrator’s responsibilities as a tenant to pay rent, provide a security deposit, etc.

If a victim with a protection order granting exclusive possession of the residential premises is not a tenant and does not choose to assume the responsibilities of the tenant under section 9(3) of the *PAFVA*, then the perpetrator will still have all of the responsibilities of a tenant, even though out of possession. This would include the responsibility to pay rent, to provide a security deposit, etc.

If a victim with a protection order granting exclusive possession of the residential premises is a tenant, the victim has no choice. The victim will continue to have the responsibilities of a tenant. If the victim is a co-tenant with the perpetrator, then both will be responsible for such things such as the rent and damages to the premises. The victim and perpetrator will likely be jointly and severally responsible, meaning the landlord can go after one or the other or both — “likely” because the *RTA* does not contemplate co-tenants and so says nothing about how liability is shared.

If the perpetrator who is excluded from the residential premises is still a tenant, is the perpetrator liable to pay the rent and perform other obligations under the residential tenancy agreement? The likely answer under the *RTA* is “yes.” The perpetrator is still a tenant and a tenant must pay rent: section 21(a) of the *RTA*. Unless the court order dealt with the payment of rent, there is no

conflict between the *RTA* and either the *PAFVA*, *Family Law Act* or *Matrimonial Property Act* because the latter three statutes are silent, so the *RTA* prevails.

It should not be so difficult to determine what the law's answer is to simple questions such as:

- Does the victim of domestic violence with a protection order need the consent of the landlord to change the locks?
- Is the perpetrator who was a tenant before the protection order still a “tenant” under the *RTA* if a protection order excludes him from possession of the residential premises?
- Is the perpetrator who was a tenant before the protection order still responsible for the rent under the *RTA* if a protection order excludes him from possession of the residential premises?
- Is the perpetrator who was a tenant before the protection order still responsible for the security deposit?

There do not appear to be any provisions in the residential tenancy statutes of other Canadian provinces or territories that answer any of the questions this post has raised. However, there are other jurisdictions (e.g., [Oregon](#) and [South Australia](#)) which have legislation that provides answers, answers such as:

- The victim of domestic violence who is granted exclusive possession of residential premises can change external door or window locks without the landlord's consent if they have a court order that excludes a tenant from the residential premises.
- The abusing tenant excluded from the residential premises is jointly responsible for the rent and any damages to the residential premises until their tenancy ends.
- The abusing tenant excluded from the residential premises is not entitled to the return of their security deposit before the tenancy ends.

In Alberta, it would be better to amend the *PAFVA* and the other legislation under which exclusive possession of residential premises can be granted rather than amend the *RTA*, because what is needed is a comprehensive list of matters to be considered by the parties and the courts in granting a protection order, or at least the QBPOs. The court, lawyers and parties are probably more likely to look at the domestic violence and family law statutes, rather than the *RTA*. If section 4 of the *PAFVA* was amended to list these sorts of practical matters as things to be addressed, then a victim of domestic violence would have a protection order to show the landlord and that protection order would say whether the landlord's consent was needed to change the locks, who was responsible for the rent, whether the security deposit had to be returned, and who should pay for damages. An amendment that offers landlords immunity from liability for acts such as failing to return a security deposit to a tenant who is a perpetrator or failing to deliver the keys to new locks to a tenant who is a perpetrator, if they act in good faith, should also be considered.

However, as Professor Koshan pointed out in “Landlords, Tenants, and Domestic Violence: Clarifying the Implications of Different Protection Orders”, there is currently a hodgepodge of different types of protection orders with differing implications for residential tenancies, so a lot of amendments would be required. That suggests it would be better to amend the *RTA*, to gather together all the implications of exclusive possession orders for residential tenancies in one place. Amending the *RTA* would provide the certainty that landlords are seeking. Nevertheless,

amendments to the *PAFVA* and the other legislation under which exclusive possession of residential premises can be granted seems to be the better way to go, as they should provide better access to the relevant law for victims of domestic violence and those assisting them. The *RTA* could be amended to provide that orders made under the *PAFVA* and the other statutes prevail when the terms of those orders or statutory provisions conflict with provisions of the *RTA*.

The 2016 amendments to the *RTA* that were made by the [Residential Tenancies \(Safer Spaces for Victims of Domestic Violence\) Amendment Act, 2015](#), made it easier for victims of domestic violence to leave rented residential premises by providing for early termination: see “[The Residential Tenancies Act and Domestic Violence: Facilitating Flight?](#)”. But the *RTA* and the *PAFVA* do not make it easy for a victim to stay, given their lack of clarity on the issues raised here. This is unfortunate, because staying may be the best practical option for the victim and family.

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