
**Application in
Provincial Court
of Alberta under
the Residential
Tenancies Act
and
Mobile Home Sites
Tenancies Act**

*Instructions for
Landlords and Tenants*

The booklet *Commencing a Claim in Provincial Court Civil and Getting and Enforcing Your Judgment in Alberta* contains additional information about proceedings and procedures in Provincial Court of Alberta. The booklet can be obtained from any Provincial Court office or online from:

http://www.albertacourts.ab.ca/pc/civil/publication/collecting_your_judgment_in_alberta.pdf

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What should I do first?

Look at the *Residential Tenancies Act (RTA)* or the *Mobile Home Sites Tenancies Act (MHSTA)*.*

The *RTA* and *MHSTA* set out

- (1) the types of remedies (solutions) that may be granted on an application
and
- (2) the facts you must prove to get a particular remedy. You can download unofficial versions of the *RTA* and *MHSTA* from the Queen's Printer website at <http://www.gov.ab.ca/qp>

*(Unless otherwise noted, references in this booklet to the *RTA* also apply to the *MHSTA*).

Right to Apply to Residential Tenancy Dispute Resolution Service

Where a landlord/tenant has a dispute with a tenant/landlord they have the right to apply to the Residential Tenancy Dispute Resolution Service for a remedy.

No application may be made to the Residential Tenancy Dispute Resolution Service if an application to a court has been filed with the clerk of that court by either party to the dispute.

For more information regarding the Residential Tenancy Dispute Resolution Service and to confirm availability in your location please call:

Phone number: 780-644-3000

Website: www.rtdrs.alberta.ca

Glossary

Abatement	Reduction in the amount of rent to make up for any benefits the tenant has lost as a result of the landlord not performing his obligations.
Breach	Breaking the lease or residential tenancy agreement in whole or in part. e.g. non payment of rent.
Compensation	Payment of money for a loss that has been experienced.
Overholding Tenant	A tenant who will not vacate the premises after the tenancy has expired or been terminated by a valid notice to vacate.

What are the remedies offered under the RTA?

Landlord's Remedies

- (1) *RTA section 26 (MHSTA section 30)* allows a landlord to apply for one or more of the following remedies:
- recovery of arrears of rent
 - recovery of damages resulting from a breach of the tenancy agreement by the tenant
 - recovery of compensation for the use and occupation of the premises by an overholding tenant*
 - recovery of possession of the premises from an overholding tenant
 - termination of the tenancy by reason of a substantial breach**

*See RTA section 1(1)(h), MHSTA section 1(1)(i) for definition of "overholding tenant."

**See RTA sections 1(1)(p), 21 and 16(c) (MHSTA sections 1(1)(p) and 25) for definition of "substantial breach."

Landlord's Remedies, continued

(2) *RTA sections 30, 33, and 36 (MHSTA section 33)** allow landlords to apply for an order

- confirming the termination of a tenancy where the landlord has given notice of termination in accordance with section 30(1) and the tenant has not vacated the premises by the time and date of termination as set out in the notice.
- terminating the tenancy of a tenant who abandoned the premises and for recovery of possession, where a person (other than the tenant) served with a notice to vacate under section 33 has not complied with the notice.
- directing a person who is not a tenant of the premises to vacate the premises, if the person has not complied with a notice to vacate served in accordance with section 36.

* *MHSTA* section 33 is the equivalent of *RTA* section 30. The *MHSTA* has no equivalent of *RTA* sections 33 and 36.

Tenant's Remedies

RTA section 37 (MHSTA section 39) allows a tenant to apply for one or more of the following remedies on a breach of the tenancy agreement or a contravention of the Act:

- recovery of damages resulting from a breach or contravention of the tenancy agreement by the landlord
- abatement of rent where a breach by the landlord deprives a tenant of the benefit of the tenancy agreement
- compensation for the cost of performing the landlord's obligations
- termination of the tenancy by reason of a breach if in the opinion of the court the breach is of such significance that the tenancy should be terminated.

How do I start my application?

To make an application under the RTA, you must

- (1) complete *Landlord / Tenant Notice of Application* (notice of application),
- (2) complete *Certificate* (Sec. 54.4 RTA)
- (3) swear/affirm an *Affidavit in Support of an Application by Landlord / Tenant* (supporting affidavit), and
- (4) file all three documents at the Provincial Court office nearest to the premises.

You can get these forms from the court office or you can print the forms from the Alberta Courts website: www.albertacourts.ab.ca. When you file the notice of application and supporting affidavit, you must also pay the prescribed filing fee.

The certificate, under section 54.4 RTA, must be filed with the court to confirm there is no application before the Residential Tenancy Dispute Resolution Service regarding the same matter.

When you fill out the notice of application, leave the space for the date and time of the hearing blank. The clerk will fill it in when you file the notice of application and supporting affidavit. The hearing date inserted by the clerk will be the next available date for hearing applications at the particular Provincial Court location.

The supporting affidavit must set out all the facts on which you are going to rely in support of your application. Any relevant documentation (e.g. a copy of the lease, a copy of a notice to terminate, and any other documents) must be attached as an exhibit to the supporting affidavit. The supporting affidavit must be sworn/affirmed before a commissioner for oaths. A clerk is a commissioner for oaths.

The affidavit in support should be sworn/affirmed by the person who has the most knowledge of the evidence. If no one person has knowledge of all the necessary information, then an affidavit in support should be obtained from each person who has knowledge. If a person is swearing/affirming to information received from another person, then the person swearing/affirming the affidavit in support must identify the source of the information, i.e., the name of the person who informed the maker of the affidavit, and that the maker believes the information to be true.

It is a serious criminal offence to swear/affirm a false affidavit.

Action No. _____

Provincial Court of Alberta
(Civil)

Landlord/Tenant

and

Landlord/Tenant

Notice of Application under the Residential Tenancies Act

To: _____
Name and address of other party

An application will be made by _____
in respect of premises at _____, Address of tenancy premises
before a Judge of the Provincial Court at

on _____ 20 _____ at _____ time for an Order for:

(Indicate by checkmark the remedy applied for below)

Landlord's Remedies under section 26

- 1. Arrears of rent
- 2. Damages for breach of tenancy agreement
- 3. Compensation for overholding tenant
- 4. Recovery of possession of premises
- 5. Termination of tenancy for substantial breach

Tenant's Remedies under section 37

- 1. Damages for breach of residential tenancy agreement/contravention of this Act.
- 2. Abatement of rent for breach of residential tenancy agreement/contravention of this Act.
- 3. Compensation for performing landlord's obligations
- 4. Termination of tenancy

If you do not appear, an Order may be made in your absence. If you appear, bring your evidence.

The Affidavit of _____, attached, will be read at the application.
Print Name

Address of Landlord/Tenant/Agent _____

_____, City, Province, Postal Code, Daytime Telephone No.

Dated _____

at _____, Alberta.

Signature of Landlord / Tenant / Agent

Print Name

Issued by the Provincial Court of Alberta

on _____ 20 _____

Clerk of the Provincial Court

Important notice to the Applicant: This Notice of Application, the Affidavit in support and all Exhibits attached to the Affidavit in support must be served on the other party not less than three (3) business days before the date your application is scheduled to be heard. The three (3) days do not include the day the documents are served, the date the application is to be heard, Saturdays, Sundays or statutory holidays.

Action Number

Court of Queen's Bench of Alberta

Provincial Court of Alberta, Civil

Landlord/Tenant

and

Landlord/Tenant

Certificate
under Section 54.4 of the *Residential Tenancy Act*

I, _____, (Applicant/Agent for the Applicant)

hereby certify that I or the Applicant:

- (a) have not filed a notice of application for hearing with the Dispute Resolution Service pertaining to the same matter,
- (b) have not been served with, and am not aware of any filing of, a notice of application for hearing with the Dispute Resolution Service, and
- (c) will immediately notify the clerk in writing if I or the Applicant is served with or become aware of any filing of, a notice of application for hearing pertaining to the same matter.

Dated _____

at _____, Alberta.

Signature of Applicant / Agent

Print Name

Landlord's Supporting Affidavit

(1) *If you, the landlord, are making an application under RTA section 26 (MHSTA section 44), your supporting affidavit must contain the following information.*

- If a claim is made for the recovery of arrears of rent, include the amount of rent in arrears and the time during which it has been in arrears.
- If a claim is made for the recovery of damages resulting from a breach of the tenancy agreement or a contravention of the Act, include the details of the breach or contravention, the calculation and the amount of damages claimed.
- If a claim is made for the recovery of compensation for the use and occupation of premises by an overholding tenant, include
 - the date of the expiration of the tenancy or, if the tenancy was terminated, the method of termination and the effective date of the termination,
 - the reasons for the tenant's failure to vacate the premises, to the extent known,
 - the nature of the use and occupation by the overholding tenant, to the extent known,
 - the rent payable under the tenancy agreement, and
 - the amount of compensation claimed.

-
- If a claim is made for recovery of possession of the premises from an overholding tenant, include
 - the date of the expiration of the tenancy or, if the tenancy was terminated, the method of termination and the effective date of the termination,
 - the reasons for the tenant's failure to vacate the premises, to the extent known, and
 - If a claim is made for the termination of the tenancy by reason of a substantial breach of the tenancy agreement, include the details of the breach and the requested termination date.

(2) *If you, the landlord, are making an application under RTA section 30, 33, or 36 (MHSTA section 33), the landlord's supporting affidavit must contain the information set out in RTA sections 30(4), 33(5), or 36(5) (MHSTA section 45).*

(3) *If you, the landlord, are making a claim for arrears of rent or for damages, and the tenant has already vacated or abandoned the premises, proceed by civil claim.*

Provincial Court of Alberta
(Civil)

Action No. _____

Landlord

and

Tenant

**Affidavit in Support of Landlord's Application
under Section 26 of the Residential Tenancies Act**

I, _____,
of _____, Alberta.

make oath and say/solemnly affirm:

I am the (agent of the) Landlord.

Attached as Exhibit "A" is a copy of the residential tenancy agreement or there is no written tenancy agreement.

Cross off and
initial all non-
applicable
sections

Complete the
same section
numbers you
have
completed on
the Notice of
Application

1. **Arrears of Rent**

Rent in the sum of \$ _____ is in arrears for the period _____ to _____.

Attached as Exhibit "_____" is a statement truly setting out all charges and all payments or other credits under the tenancy agreement since the tenancy agreement went into default.

2. **Damages for breach of the tenancy agreement**

Details of the breach(es) are as follows: _____

The amount of the claim for damages is \$ _____.

3. **Compensation from overholding tenant**

The effective date of termination/expiration was: _____.

Attached as Exhibit "_____" is a copy of the Notice of Termination of Tenancy served by

at _____ a.m./p.m. on _____, 20 ____.

The reasons for the tenant's failure to vacate are (if known): _____

The nature of the use and occupation is (if known): _____.

The rent payable under the residential tenancy agreement was: _____ per month.

The amount of compensation claimed is: \$ _____ per day.

4. **Recovery of possession of the premises from overholding tenant**

The date of termination/expiration was: _____.

Attached as Exhibit "_____" is a copy of the Notice of Termination of Tenancy served by

at _____ a.m./p.m. on _____, 20 ____.

The requested possession date is: _____, 20 ____.

5. **Termination of the tenancy for substantial breach**

Details of the breach(es) are as follows: _____

The termination date requested is: _____, 20 ____.

Sworn / Affirmed before me

on _____, 20 ____

at _____, Alberta.

Signature

Tenant's Supporting Affidavit

Your (the tenant's) supporting affidavit must include the following information, as set out in *RTA section 37(2)* (*MHSTA section 46*).

- If a claim is made for the recovery of damages resulting from a breach of the residential tenancy agreement or a contravention of the *RTA*, include the details of the breach or contravention, the calculation and the amount of damages claimed.
- If a claim is made for abatement of rent for reason of a breach of a residential tenancy agreement or a contravention of the *RTA*, include
 - the rent payable under the tenancy agreement,
 - the details of the breach or contravention,
 - the benefit of the tenancy agreement that the tenant was deprived of, and
 - the reason for and the amount of rent abatement claimed.
- If a claim is made for compensation for the cost of performing the landlord's obligations, include
 - the rent payable under the tenancy agreement
 - the details of the breach of the residential tenancy agreement or of the contravention of the *RTA*
 - the obligations performed on the landlord's behalf
 - the amount of compensation claimed.
- If a claim is made for termination of the tenancy by reason of a breach of the residential tenancy agreement or a contravention of the *RTA*, include the details of the breach or contravention and the requested termination date.

Provincial Court of Alberta
(Civil)

Action No.

Tenant

and

Landlord

**Affidavit in Support of Tenant's Application
under Section 37 of the Residential Tenancies Act**

I, _____,
of _____, Alberta.

make oath and say/solemnly affirm:

I am the (agent of the) Tenant.

Attached as Exhibit "A" is a copy of the residential tenancy agreement or there is no written tenancy agreement.

Cross off and
initial all non-
applicable
sections

1. Damages for breach(es) of the tenancy agreement/contravention(s) of this Act

Details of the breach(es) or contravention(s) are as follows: _____

The amount of the claim for damages is \$ _____.

2. Abatement of rent for breach(es) of the tenancy agreement/contravention(s) of this Act.

Details of the breach(es) or contravention(s) are as follows: _____

The rent payable under the residential tenancy agreement is: \$ _____ per month.

The amount of abatement claimed is: \$ _____ per month for a total of: \$ _____.

The benefits of the tenancy agreement of which the tenant has been deprived are as follows:

3. Compensation for performing the landlord's obligations

Details of the rent payable under the residential tenancy is: \$ _____ per month.

The details of the breach(es) of the residential tenancy agreement/contravention(s) of this Act are as follows:

The details of the obligations performed on the landlord's behalf are as follows:

The amount of compensation claimed is \$ _____.

4. Termination of the tenancy

Details of the breach(es) of the residential tenancy agreement or the contravention(s) of this Act are as follows:

The requested termination date is: _____, 20 ____.

Sworn / Affirmed before me

on _____, 20 ____

at _____, Alberta.

} _____
Signature

Commissioner for Oaths for Alberta

How do I file and serve the notice of application and the supporting affidavit?

Filing

First, you must file the Certificate, notice of application and supporting affidavit in the court office and pay the prescribed fee.

Serving

After the documents are filed at the court, you must serve the notice of application and supporting affidavit on the other person. You can serve the documents by handing them to the other person, or you can send them by registered mail (which requires the recipient to sign that he or she has received the documents). Keep your postal receipt and also contact the post office to get either

- (1) an acknowledgement of receipt
or
- (2) a certificate of delivery confirmation.

Section 57 of the *RTA* (s.60 *MHSTA*) sets out the details of how you may effect service.

Time limits for serving documents

You must ensure that the documents are served **at least 3 business days** before the application is to be heard. The 3 days do not include the date the documents are served, the date of the hearing, or any Saturday, Sunday or statutory holiday. For example, if the application is to be heard on a Monday, the documents must be served no later than the preceding Tuesday.

If you are serving documents by registered mail, keep in mind that the 3-day period is measured from when the other party receives the documents, not from when the documents are put in the mail.

Swearing/Affirming the affidavit of service

The person who served the notice of application and supporting affidavit must swear/affirm the affidavit of service of the notice of application provided by the court office.

- (1) Take the affidavit of service to be sworn/affirmed to a commissioner for oaths. You can do this at any court office.
- (2) *If you served the documents on an individual by registered mail*, give the commissioner the postal receipt and the acknowledgment of receipt certificate or delivery confirmation. The commissioner will attach and mark the receipts and documents as exhibits.
- (3) *If you served the documents on a corporation by registered mail*, give the commissioner for oaths the postal receipt to attach to the affidavit of service.

Note: Because you do not need a signature when registered mail is delivered to a corporation, the documents are considered served

- 7 days from the date of mailing to an address in Alberta, and
- 14 days if mailed to an address in Canada, outside of Alberta.

What can I do if I have been served with a notice of application?

If you want to contest the application,

- (1) file an affidavit in reply stating the facts on which you will rely in contesting the application.
- (2) provide a copy of the affidavit in reply to the landlord before the hearing
- (3) attend the hearing.

What happens at the hearing?

The Process

A Provincial Court judge will hear the application on the date set out in the notice of application. Arrive at the courthouse fifteen minutes before the time set for the hearing and go to the assigned courtroom as indicated on your documents. When your case is called, you (and the other person, if present) will have a chance to make brief statements to the judge. However, evidence in this type of hearing is generally given by affidavit, rather than by oral testimony, which is why it is important to set out all the relevant facts in your affidavit.

The Decision

The judge will usually make a decision based on the submissions and affidavit evidence presented at the hearing. However, the judge might decide to direct a "trial of an issue" because the facts are too complicated or contentious to be decided on the basis of affidavit evidence in the brief time available at the hearing. If the judge directs the trial of an issue, you will be informed of the date of the trial.

What happens after the decision?

The order

If you are the applicant and the judge decides in your favour, the decision will be made into a written order. If you have a lawyer or an agent, he or she will have prepared an order for the judge to sign. If you do not have a lawyer or an agent, the court office will prepare the written order for you after the hearing.

Filing the order

You must file your Provincial Court order in Court of Queen's Bench before it takes effect. The procedure for filing the order in Court of Queen's Bench vary from court to court. Court staff will tell you about the right procedure when they give you the written order.

Serving the order

Once you have filed the order in Court of Queen's Bench, you must serve it on the other person in the manner provided in *RTA section 57 (MHSTA section 60)* or in the manner directed by the court in the order.

Enforcing the order

Money

This kind of judgment requires the other person to pay money to you, and the order may be enforced in the same manner as any judgment for money. Please see Part II of *Commencing a Claim in Provincial Court Civil and Getting and Enforcing Your Judgment in Alberta* for information on enforcing money judgments.

Possession

This kind of judgment requires the tenant to give you possession of the premises by a certain date or within a certain number of days after the order was served. In most cases, the tenant will comply with the order.

Writ of Possession

If the tenant does not comply with the order, you will need to obtain a writ of possession form from the Court of Queen's Bench. The form must be completed and filed at the Court of Queen's Bench before it can be enforced. The writ of possession directs a civil enforcement agency to make sure you have possession of the premises.

You must make arrangements with and pay a civil enforcement agency to enforce a writ of possession.

Appeals

You can appeal the judge's decision in the Court of Queen's Bench. The fee for beginning an appeal under the *RTA* is much higher than the fee for beginning an application in Provincial Court.

How can I begin (commence) an appeal?

RTA section 53(1) (MHSTA section 58) sets out the steps for appealing a Provincial Court order.

- (1) You must commence the appeal within 30 days after the order is served on you.
- (2) You commence the appeal by filing an originating notice in Court of Queen's Bench and pay the prescribed fee.
- (3) You must also file in Court of Queen's Bench copies of the order being appealed and all notices, affidavits, and any other documents that were filed in Provincial Court.
- (4) You must serve all these documents (originating notice, order, notices, affidavits, and any other filed documents) on the other person at least three business days before the hearing date that is set out in the originating notice.

Note: Commencing an appeal does not stop the order from taking effect, except when directed by Court of Queen's Bench.

Legal/Related Information

(at the time of publication of this brochure)

- **Law Information Centres (LInC)**

Edmonton
2nd Floor South,
Law Society Library, Law Courts
1A Sir Winston Churchill Square
97 St. & 102A Ave
Edmonton, AB T5J 0R2
Phone: 780-644-8217

Grande Prairie
Court House
10260 - 99 St.
Grande Prairie, AB T8V 2H4
Phone: 780-833-4234

Red Deer
Court House
Main Floor, 4909 - 48 Ave
Red Deer, AB T4N 3T5
Phone: 403-755-1469

Website: www.albertacourts.ab.ca/linc

- **Lawyer Referral Service**, sponsored by the Law Society of Alberta, allows you to consult a lawyer for 30 minutes at no charge. Toll free number 1-800-661-1095.
- **Service Alberta** (landlord-tenant, consumer and registries).
Toll free number 1-877-427-4088
(Edmonton direct 780-427-4088)
Website: www.servicealberta.gov.ab.ca

- **Alberta Law Line**

Free service to individuals wishing to find legal information, referrals and legal advice. Toll free number 1-866-845-3425 (Edmonton direct 780-644-7777), Monday to Friday 9:00 am to 4:00 pm (Wednesdays 9:00 am to 2:30 pm).

Website: www.lawline.legalaid.ab.ca

- **Landlord and Tenant Advisory Boards**

Edmonton

Advice line during business hours

Phone: 780-496-5959 - select option 4

24-hr. automated information line

Phone: 780-496-5959 - select option 2

Website: www.servicealberta.gov.ab.ca

Fort McMurray (Wood Buffalo)

24-hour automated information line

Phone: 780-743-5000

Website: www.woodbuffalo.ab.ca/landlord

Medicine Hat

Phone: 403-527-4507

Toll Free: 1-877-427-4088

Website: www.servicealberta.gov.ab.ca

Red Deer

Phone: 403-346-4636

Website: www.cirsonline.ca

- **Student Legal Assistance, Edmonton:** phone 780-492-2226

- **Student Legal Assistance, Calgary:** phone 403-220-6637

Legal Services for low income may be available through:

- Calgary Legal Guidance: phone 403-234-9266
- Edmonton Community Legal Centre: phone 780-702-1725
Website: www.ecej.ca

Other public legal information on the Web:

- ACJNet: www.acjnet.org
- A-Link: [www.justice.gov.ab.ca/
public_education/ alink.aspx](http://www.justice.gov.ab.ca/public_education/alink.aspx)
- PLENA: www.plena.org
- Service Alberta: www.servicealberta.ca

Civil Offices Telephone Numbers

For information pertaining to Civil matters, call your local court office.

Calgary	403-297-7217 fax 403-297-7374
Camrose	780-679-1240 fax 780-679-1253
Drumheller	403-820-7300 fax 403-823-6073
Edmonton	780-427-1289 fax 780-427-4348
Fort McMurray	780-743-7195 fax 780-743-7395
Fort Saskatchewan	780-998-1200 fax 780-998-7222
Grande Prairie	780-538-5360 fax 780-538-5454

High Level	780-926-3715
	fax 780-926-4068
High Prairie	780-523-6600
	fax 780-523-6643
Hinton	780-865-8280
	fax 780-865-8253
Leduc	780-986-6911
	fax 780-986-0345
Lethbridge	403-381-5223
	fax 403-381-5763
Medicine Hat	403-529-8644
	fax 403-529-8606
Peace River	780-624-6256
	fax 780-624-7101
Red Deer	403-340-7945
	fax 403-340-7985
St. Albert	780-458-7300
	fax 780-460-2963
St. Paul	780-645-6324
	fax 780-645-6273
Sherwood Park	780-464-0114
	fax 780-449-1490
Stony Plain	780-963-6205
	fax 780-963-6402
Vermilion	780-853-8130
	fax 780-853-8200
Wetaskiwin	780-361-1204
	fax 780-361-1338
