

OPEN Doors



A publication of the Residential Tenancies Branch

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Payment Plans: What landlords and tenants need to know



When RTB staff work with landlords and tenants, the officers usually set up a mediated agreement which states:

- when the tenant will pay the back rent
- how much the tenant will pay towards the back rent, if there's more than one payment
- the tenant understands that if the money is not paid on time, or is not in the amount agreed to in the plan, he or she must move out

In RTB-mediated agreements, if the tenant does not pay the agreed upon amount for back rent or pays late, the landlord can ask the RTB for an order of possession.

Options available for landlords

When a tenant misses a rent payment, the landlord has a right to give the tenant notice to move for non-payment. If the tenant doesn't move, the landlord may apply to the Residential Tenancies Branch (RTB) for an order of possession. This is a document landlords can use to enforce a notice of termination.

However, some landlords may be willing to accept payment plans that allow tenants to stay, and pay off the rent owed, over a period of time. While landlords do not have to accept payment plans, many will consider this option rather than end a tenancy abruptly.

How payment plans work

A landlord and tenant can agree on a repayment plan for back rent, or either one can ask the Residential Tenancies Branch (RTB) for help. The branch's client services officers and mediation officers can help tenants and landlords arrange reasonable payment plans. This can be done at the branch office or over the phone.

A tenant who wants to set up a payment plan must be able to pay off the back rent within a reasonable time. If a tenant already owes several months' rent, it's unlikely he or she would be able to pay the current rent as well as the back rent in a reasonably short time. A tenant can't expect a landlord to wait indefinitely for back rent and still allow the tenant to stay in the unit.

Tenants who choose payment plans should only agree to:

- pay amounts they can afford
- pay on dates that they can make the payments

Missed a rent payment?

Tips for tenants needing repayment plans

Before asking your landlord to consider a repayment plan, think about why you got behind in the rent. Was this a one-time event or is it likely to happen again? Also, you must decide how you can pay off the back rent and still continue paying the current rent. How will you make this work? Is it possible?

If you find you simply can't afford to pay the rent regularly (keeping in mind your other necessary expenses), you may want to start looking for housing that is less expensive. Some tenants may be eligible for the Manitoba Shelter Benefit. The Manitoba Shelter Benefit (MSB) is a monthly benefit to help low income seniors, families, persons with disabilities and some people receiving income assistance pay their rent.

For more information on the Manitoba Shelter Benefit, contact Provincial Services at 945-2197 in Winnipeg; toll free 1-877-587-6224; or go to ServiceLink at (www.manitoba.ca/servicelink). This is an interactive online tool showing you what programs are available and if you are eligible for them.

To subscribe to Open Doors, order bulk copies, give us your comments, or get more information, call 945-2476 in Winnipeg, toll free 1-800-782-8403 or visit manitoba.ca/rtb

Damage to Rental Units

What is reasonable wear and tear?

Under *The Residential Tenancies Act*, tenants must take reasonable care of their rental units and residential complexes. If tenants cause damage, they must repair it in an acceptable manner or pay the landlord for the repairs.

The act also says tenants are **not** responsible for reasonable wear and tear. Examples include:

- the natural deterioration caused by aging and other natural forces, if the tenant has used the rental unit in a reasonable manner
- the deterioration caused by the use for which the rental unit is intended, without negligence, carelessness, accident or abuse by the tenant (or the tenant's family members or guests)

While these definitions give general guidelines, deciding what is reasonable wear and tear is often difficult.

Following are some helpful examples:

Reasonable Wear and Tear

Tenants cannot be charged for:

- peeling or cracked paint
- worn enamel in old bathtubs
- worn linoleum from people walking on it
- worn carpet from people walking on it
- fire damage due to faulty wiring
- slow sink drainage due to old pipes
- loose wallpaper due to old glue
- sliding closet doors that stick
- faded paint on kitchen walls
- slightly rusted shower rods
- loose bathroom grouting
- faded window shades/blinds

Damage

Tenants can be charged for:

- drawing or marks on walls
- chipped/broken enamel in bathtubs due to negligence
- damaged tile floors due to negligence
- damaged carpets from oil or rust
- fire damage due to tenant's negligence (ex: use of candles, incense, cooking, smoking)
- backed-up plumbing from flushing foreign or bulky objects down toilets
- wallpaper missing or torn off walls
- closet doors that stick because the tracks were bent by tenant
- stains on kitchen walls caused by burning pots on stoves
- missing or unusable shower rods
- missing or cracked tiles
- torn, broken or stained window shades/blinds



Dealing with damage in rental units

When landlords must replace items damaged by tenants, landlords **may not** be entitled to the full replacement cost. If the Residential Tenancies Branch decides a tenant is responsible for the damage, the tenant must pay the landlord for the cost of the loss of value, rather than the cost of replacement.

To decide the amount of the loss of value, the branch considers:

- the age of the item
- the condition of the item when the tenant moved in (If an item was in poor condition to start with, the cost to the tenant may be reduced.)
- the useful life of the item
- the replacement cost of the item

For example:

A tenant puts several cigarette burns in a living room carpet and the landlord says it will cost \$1,000 to replace it. The landlord provides evidence to show the carpet is 10 years old, and that it was in good condition when the tenant moved in. The landlord also provides evidence to show that the useful life of the carpet is 14 years. The tenant agrees with the landlord's information.

The landlord is awarded **\$285.72** for the carpet:

$\$1,000$ (replacement cost) \div 14 (years of useful life) = **\$71.43** (value per year) \times 4 (remaining years of useful life) = **\$285.72** (loss of value)

Claiming replacement costs

When a landlord claims the cost of replacing an item, the branch also considers whether the replacement is comparable to the original item.

For example:

A tenant damages a stove and the stove can't be repaired. The landlord decides to upgrade the stove to one with a self-cleaning oven. The branch uses the replacement cost of a stove (without a self-cleaning oven) to determine the amount of loss to be paid to the landlord.

For more information about how the branch deals with other claims (ex: loss of rent, cleaning costs), go to www.manitoba.ca/rtb and click on *Policies and Procedures Guidebook*.

Dispute Resolution

Preparing for a Residential Tenancies Branch Hearing

When landlords and tenants are unable to resolve a dispute, even with the help of the Residential Tenancies Branch, the dispute may require a hearing. The person who applies for the hearing is legally responsible for proving his or her claim. During the hearing, evidence is presented by both the landlord and the tenant. When making a decision, a hearing officer will consider things like credibility, relevance and whether or not the evidence helps prove the case.

The key to a successful hearing is preparation. Whether you are a landlord or a tenant, to present your case most effectively, you need to have evidence that is well-organized, relevant and convincing.

Gather effective evidence

Success at a hearing depends on the evidence and the law – **not** on allegations or hearsay. Keep these things in mind when presenting evidence:

- Keep evidence relevant to the issue in dispute.
- Evidence can be in many formats – photos, written statements, oral testimony, receipts or affidavits.
- While sworn affidavits are not required, they may carry more weight than simple, written statements. However, there is often a cost involved to get a sworn affidavit. Whenever possible, have your witnesses come to the hearing with you.
- If claiming costs, both landlords and tenants must have all receipts, documents and financial information ready to present at the hearing.
- Evidence should be as simple as possible and be directly related to the dispute. Remember that a long oral history of the tenancy isn't usually helpful.
- The hearing officer (not the landlord or tenant) will decide if documents qualify as evidence, and whether they are relevant to the claim.

Plan your presentation

Make a list of the issues related to the dispute.

Write down what the issues are in as simple a form as possible.

For example:

Tenants – The building's security door has been broken for several months and the landlord refuses to fix it.

Landlords – The carpet had to be replaced after the tenant moved out.

Organize your evidence.

While there's no maximum time set for a hearing, most hearings last less than an hour. Being organized will help you present your case more effectively. Put your documents and evidence in the order you expect to present them. Number the pages.

Be prepared to present your evidence.

When you get to the hearing, present your evidence in a way that tells your story. Make notes about what you will say, and the order in which you'll present your evidence.

For example:

Tenants – The security door was damaged on March 5. I gave the landlord three notes asking him to fix it. I have witnesses to confirm the door is damaged and has not been fixed. I also have photographs of the damage.

Landlords – The tenant had loud parties January 10, 17, 18 and 23. I gave written warnings on January 11, 18 and 19. On January 21, I gave an eviction notice. I have copies of the documents and witnesses to describe the disruptive parties.

When gathering evidence, remember to include:

Important documents

These may include the tenancy agreement and any notices or letters about the dispute sent to the landlord or the tenant (ex: a letter to the landlord to repair a security door, a warning letter to the tenant about late rent).



Receipts and estimates

Receipts are virtually always needed to support claims for costs (ex: a bill for a plumber who did repairs, an estimate for the cost of replacing a carpet). They must be dated, clear and readable.

Photographs

Photographs (or clear reproductions such as reprints or laser print colour copies) may be used. Write a number on the back of each photograph, as well as a brief explanation of what is being shown (ex: carpet stain; broken door frame).

Physical evidence

Other physical evidence (ex: a piece of carpet) may be used to demonstrate your claim.

Written statements

Written statements from witnesses must be clear and readable and provide relevant facts and details – not just opinions. Make sure you number the pages and have the witness who wrote the statement, sign it. Notarized statements are best because they represent sworn testimony, but the notary can charge for them.

Preparing Witnesses

Witnesses must have first-hand information about the dispute, not just opinions.

- Talk to your witnesses about the points they will make when giving evidence (ex: a tenant who can talk about the dates and times of loud and disruptive parties; someone who lives in the building and has similar concerns about unsafe conditions).
- Have your witnesses available in person to testify at the hearing. When you bring a witness, you must explain what evidence the witness will provide and how the evidence/testimony relates to the dispute. If witnesses aren't available for the hearing, they can provide written statements.

Note: Hearing officers have the authority to decide what testimony will be allowed at the hearing. They can refuse to hear witnesses if their testimony is irrelevant or unnecessary.

For more information on hearings, contact the Residential Tenancies Branch at 204-945-2476 in Winnipeg; toll free 1-800-782-8403; or go to www.manitoba.ca/rtb and click on *Policies and Procedures Guidebook*.

What's new at www.manitoba.ca/rtb ...

Easy access forms

Forms for official hearings on claims for compensation, along with applications for Order of Possession, will soon be available for the public to fill in and download from the Residential Tenancies Branch website: www.manitoba.ca/rtb.

You will be able to fill in and print off these forms, save a copy on your own computer and send a copy to your local RTB office. When RTB staff receives your form and the filing fee, we'll schedule your hearing. RTB will send you a Notice of Hearing, showing the date and time of your hearing. You can then give the tenant or landlord a copy of the Notice of Hearing along with your claim or application.

Paper copies of the new hearing forms will be available at your local RTB branch office.

Need information?

Online
[manitoba.ca/rtb](http://www.manitoba.ca/rtb)

Offline
in person or by phone

Visit your branch office Monday to Friday
from 8:30 a.m. to 4:30 p.m.

Winnipeg at 302-254 Edmonton Street
or call 945-2476

Brandon at 157-340 9th Street
or call 726-6230

Thompson at 113-59 Elizabeth Drive
or call 677-6496

Toll free 1-800-782-8403

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