
ASSISTED LIVING RESIDENCES EXEMPT FROM THE RTA

Operators of assisted living facilities have long understood that the *Residential Tenancy Act* (“RTA”) does not apply to assisted living. This previously relied on standing government practice and generally agreed-upon interpretation of a general provision in the *Residential Tenancy Regulation* (“RTR”). That regulation was recently amended¹ to explicitly provide that assisted living units are exempt from the RTA.

Operators of facilities with assisted living units should be mindful that any independent living units within the facility are still subject to the RTA.

What is Assisted Living?

Assisted living is semi-independent housing for individuals with physical or mental health challenges, where they are provided with certain supports to address those challenges. The RTR adopts and applies definitions from BC’s *Community Care and Assisted Living Act*.

As more specifically defined by the legislation, an assisted living residence² is a residence where:

- a) housing,
 - b) hospitality services, and
 - c) assisted living services
- are provided by or through the operator of the residence to three or more adults who:
- a) are not related by blood or marriage to that operator; and
 - b) do not require, on a regular basis, unscheduled professional health services.

The three classes of assisted living in BC are i) seniors and persons with disabilities, ii) mental health, and iii) supportive recovery.

Examples of assisted living services are assistance with eating, dressing, hygiene, or with managing property, money, medication, or behaviour.

Assisted living residences are legally required to register with the Assisted Living Registrar, so a simple first step in determining whether a particular residence is an assisted living residence is to search the registry at: <https://connect.health.gov.bc.ca/assisted-living-residence>.

¹ RTR s. 1.3

² Note that an assisted living residence is a separate classification from “community care facility”, which has its own exemption from the RTA.

However, whether or not a residence is registered is not determinative – the key question is whether the arrangement meets the above criteria for assisted living residence.

The *Community Care and Assisted Living Act* also clarifies that, in circumstances where someone lives with their spouse at an assisted living residence, both are residents of the assisted living residence, even if one spouse does not receive assisted living services.

Independent Living Not Exempt

Independent living is housing for seniors who manage most daily tasks with little or no assistance, even if hospitality services like meals and housekeeping are included. The RTA applies to the tenancies of those units.

Certain facilities have both assisted living and independent living units. The RTA applies to the latter but not the former. Residents of independent living units might also arrange to receive external services that meet the definition of “assisted living services”, but because the housing operator is not arranging or providing those services, the unit still does not fall under the assisted living exemption.

What Does it Mean to be Exempted from the RTA?

Operators and residents of an assisted living unit cannot rely on the RTA to govern their contractual relationship, such as annual rental rate increase limits, procedures for ending a tenancy, or dispute resolution at the Residential Tenancy Branch (“RTB”).

Instead, the standards and protections for assisted living units are established by the *Community Care and Assisted Living Act* and regulations. A review of those standards and protections is outside the scope of this article, but those standards broadly regulate facilities and services.

Takeaways

Operators of assisted living facilities, and particularly of mixed facilities, must understand which units fall within the definition of assisted living, and are therefore exempt from the RTA. If a resident brings a dispute to the RTB, the onus will be on the operator to show that the tenancy falls under an exemption. The RTB will look at things like the terms and nature of the agreement between the housing provider and resident when determining the type of unit and whether the RTA applies.

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