



## **Policy and Procedure**

# **Frustration**

This policy provides guidance to staff at the Employment Standards and Residential Tenancies Branch and the public in understanding our internal processes. This policy is not law. To the extent that this policy conflicts with any federal or territorial legislation, the legislation prevails. This policy may be amended or revised by the Director of Employment Standards and Residential Tenancies. If you have questions about the policy, please contact the Employment Standards and Residential Tenancies branch by phone at (867) 667-5944 or email at [eso@yukon.ca](mailto:eso@yukon.ca) or [rto@yukon.ca](mailto:rto@yukon.ca).

### **Purpose**

To describe when a tenancy agreement may become frustrated, and the implications of a frustrated tenancy agreement.

### **Background**

Per subsection 44(1)(e) of the *Residential Landlord and Tenant Act*, a tenancy ends if the tenancy agreement is frustrated. The *Frustrated Contracts Act* and doctrine of frustration of contract apply to tenancy agreements.

### **Policy and Procedure**

A tenancy agreement is frustrated if it becomes incapable of being performed because of an unforeseeable event that so radically changed the circumstances that fulfilment of the agreement as originally intended is now impossible.<sup>1</sup> Once a tenancy agreement is frustrated, the tenancy ends, and the parties are relieved from fulfilling future obligations under the agreement.

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<sup>1</sup> *Naylor Group Inc. v. Ellis-Don Construction Ltd.*, 2001 SCC 58, at paras. 53-54; *Perkins v. Sheikhtavi*, 2019 ONCA 925, at paras. 14-16; *Victoria Wood Development Corporation Inc. v. Ondrey et al.*, (1978) 22 O.R. (2d) 1.

The threshold for frustration is high. Frustration requires a change in circumstance so significant that performance of the tenancy agreement as intended is impossible. A tenancy agreement is not frustrated if something occurs that was foreseeable, avoidable or within the contemplation of the parties at the time that they entered into the agreement.<sup>2</sup> A party cannot rely on frustration if it was the result of their own act, omission or neglect.

The tenancy ends once the agreement becomes frustrated. Both parties remain entitled to the pay or benefits for their performance or part performance before the tenancy became frustrated. For example, the landlord can still collect rent for the time the tenant occupied the rental unit, and the tenant remains entitled to the rental unit, or compensation for its value, if they paid rent. Rent is usually pro-rated up to the point the agreement was frustrated, though other factors might affect the final amounts owed.

**Policy history**

| Date          | Version number | Description     |
|---------------|----------------|-----------------|
| June 18, 2024 | 1              | Policy approved |

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<sup>2</sup> *KBK No. 138 Ventures Ltd. v. Canada Safeway Limited*, 2000 BCCA 295, at paras. 13-14; *Perkins v. Sheikhtavi*, 2019 ONCA 925, at para. 16.