

# **Update on Residential Tenancy Issues during COVID**

Danielle Sabelli and Holly Popenia  
Community Legal Assistance Society

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# Residential Tenancy (COVID-19) Order Ministerial Order No. M089

COVID-19 Order came into effect on March 30, 2020.

COVID-19 Order ends when the declaration of the state of emergency expires or is cancelled.

If there is an extension of the declaration of the state of emergency, the COVID-19 Order ends when the last extension expires or is cancelled.

Pursuant to section 9 (4) of the *Emergency Order Act*, a declaration of a state of emergency expires 14 days from the date it is made. The duration can be extended of no more than 14 days each.




# Notices to End Tenancy

Notices to end tenancy that were provided before the COVID-19 Order (prior to March 30, 2020) remain in effect and an order of possession may be granted.

However, most evictions are not allowed during the COVID-19 Order.

## **Landlords cannot give notice to end tenancy for:**

- Unpaid rent or utilities;
  - Cause;
  - Landlord or purchaser use;
  - End of employment as a caretaker;
  - End of employment if the rental unit is being rented as a condition of employment;
  - Demolition, renovation, and conversion of a rental unit (or closure of a manufactured home park); and
  - Failure to qualify for a rental unit in subsidized housing.
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# Orders of Possession


**During the COVID-19 Order, landlords can still be granted an order of possession in situations where:**

- Notices to end tenancy that were provided to tenants prior to the COVID-19 order (s 3(2) of the COVID Order);
- A notice to end has been given by the tenant (s 55 (2)(a) of the *RTA*);
- The tenancy is a fixed term and requires the tenant to vacate at the end of the term under the circumstances prescribed by the *Residential Tenancy Branch Regulation* (s 55(2)(c) of the *RTA*);
- The tenancy agreement is a sublease (s 55 (2)(c.1) of the *RTA*);
- The landlord and tenant have mutually agreed the tenancy has ended (s 55 (2)(d) of the *RTA*);
- The rental unit is uninhabitable (s 56.1 (a)(i) of the *RTA*); and
- The tenancy is frustrated (s 56.1 (a)(ii) of the *RTA*).



# Orders of Possession

Landlords can also apply for an order of possession if it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for the COVID-19 Order to end and the tenant or a person permitted on the residential property by the tenant has (s 56 of the *RTA*):

- Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
  - Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
  - Put the landlord's property at significant risk;
  - Caused extraordinary damage to the residential property;
  - Engaged in illegal activity that has;
    - Caused or is likely to cause damage to the landlord's property;
    - Adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;
    - Jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and
  - The rental unit must be vacated to comply with an order of the federal, provincial, regional or municipal government authority, including orders made by the Provincial Health Officer or under the *Emergency Program Act* (s 4(1) of the COVID Order).
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# Writs of Possession

Landlords and tenants can only obtain writs of possession from the Court in the following circumstances:

- When the COVID-19 Order expires or is cancelled;
- Under the exceptional circumstances provision (s 56 of the *RTA*);
- The tenancy is uninhabitable (s 56.1 of the *RTA*); or
- The tenancy agreement is frustrated (s 56.1 of the *RTA*)

The order of possession **must** clearly state whether it was granted under sections 56 or 56.1 of the *RTA*. This will tell the Court whether the order is enforceable.



# Enforcing Writs of Possession

If a landlord or tenant has already filed their order of possession before March 30, 2020 and the Court has not issued a writ of possession, the Court may return the order of possession to the landlord or tenant.

If a writ of possession was granted on or before March 30, 2020, unless the writ of possession was obtained under sections 56 or 56.1 of the *RTA*, the term “promptly” is to be read as “at the time when this [COVID-19 Order] no longer applies.”

A landlord or tenant who obtained a writ of possession for reasons not outlined under sections 56 or 56.1 of the *RTA* must not enforce it, otherwise they could be subject to fines or jail time.



# Rent Increases

A landlord can give a notice for rent increase during the COVID-19 Order.

The rent increase will not come into effect until the COVID-19 Order expires or is cancelled, unless:

- The rent increase is for one or more additional occupants; and
- Is authorized under the tenancy agreement.

Certain non-profit housing providers are exempt from the rent increase provisions of the *RTA* if the rent is related to the tenant's income (s 2 of the *Residential Tenancy Regulation*). These housing providers may be able to increase the rent during the COVID-19 Order.

If a landlord has already given a notice for rent increase prior to the COVID-19 Order, the increase will not come into effect until after the COVID-19 Order expires or is cancelled.

If a landlord does collect the increase amount during the COVID-19 Order, the tenant can deduct the additional amount from future rent payments.



# Tenant's Right of Access Restricted

Pursuant to s 30 of the *RTA*, a landlord must not unreasonably restrict access to the residential property by the tenant or guest(s) of the tenant. The COVID-19 Order states that the following restrictions to the common areas would not be unreasonable if:

- The restriction was necessary to protect the health, safety and welfare of the landlord, tenant, occupant or a guest of the Residential Property due to the COVID-19 pandemic;
- To comply with an order of a federal, provincial, regional or municipal government authority, including orders made by the Provincial Health Officer or under the *Emergency Program Act*; or
- To follow the guidelines of the British Columbia Centre for Disease Control or the Public Health Agency of Canada.

Despite this restriction, a landlord **must** not prevent or interfere with the access of a tenant, another occupant or the guest of a tenant to the tenant's rental unit.

Case law confirms building-wide guest bans are not permitted, and we think that continues to be the case during the COVID-19 Order.

# Landlord's Right of Access Restricted

Landlords must not enter a rental unit even if the landlord gave proper notice in accordance with the *RTA*.

Despite any section of the *RTA*, *Residential Tenancy Regulation* or term of the tenancy agreement that limits entry, a landlord may enter the rental unit if:

- An emergency in relation to COVID-19 exists; and
- The entry is necessary to protect the health, safety, or welfare of the landlord, a tenant, an occupant, a guest or the public.

A landlord must receive consent from the tenant before entering the unit for the following reasons:

- Making regular repairs;
- Showing the unit to prospective tenants; and
- Hosting an open house

If a service or facility is restricted in response to an Order of a public health official during the COVID-19 pandemic, landlords are not expected to reduce a tenant's rent.

# Applying for Dispute Resolution & Service of Documents

## Extensions of time

The RTB recognizes that parties may not be able to meet time limits due to the impacts of COVID-19:

- Where there is authority to extend time limits, arbitrators are directed to consider the COVID-19 pandemic as an exceptional circumstance;
- A party will need to provide a reasonable explanation why they or someone on their behalf was unable to file an application within the legislated timelines. If a party does so, arbitrators should exercise their discretion to ensure a party affected by COVID-19 is not prejudiced; and
- Arbitrators will also consider circumstances, set out in the practice directive, when deciding whether to accept evidence that has been filed outside of the time-frames of the Rules of Procedure.



# Applying for Dispute Resolution & Service of Documents

## Serving Documents

Serving documents in-person is suspended.

Documents described in section 88 or 89 of the *RTA* will be sufficiently served if the document is given in the following ways:

- the document is emailed and that person confirms receipt of the document by way of return email. The document is deemed to have been received on the date the person confirms receipt;
- the document is emailed and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document. The document is deemed to have been received on the date the person responds; or
- the document is emailed to the email address that the person routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed.

# Applying for Dispute Resolution & Service of Documents

## Adjournments

Parties can consent to rescheduling a hearing if they file written consent with the RTB not less than three days prior to the hearing.

If parties cannot consent to rescheduling the matter, arbitrators may adjourn a hearing to another date.

Where parties have consented to reschedule a hearing, but consent is received less than 3 days before the hearing, both parties must phone in to the hearing.

If a party is unable to phone into the hearing themselves, they may have someone call into the teleconference hearing on their behalf to request the adjournment.

Arbitrators are directed to consider the COVID-19 pandemic as a factor that is beyond the party's control when determining if an adjournment is appropriate.

# Temporary Rental Supplement

The program gives \$300 per month for eligible households with no dependents, and \$500 per month for eligible households with dependents.

## Eligibility

Households need to meet each of the following criteria to qualify for the BC Temporary Rental Supplement:

1. **Have a 2019 gross household income of less than:**
  - \$74,150 for singles and couples without dependents
  - \$113,040 for households with dependents
2. **As a result of COVID-19:**
  - Be receiving or eligible for Employment Insurance; or
  - Be receiving or eligible for the Canada Emergency Response Benefit offered by the federal government; or
  - Have experienced, and be able to provide evidence of, a drop of 25% or more in monthly household employment income
- Be paying more than 30% of current household income towards rent

# Temporary Rental Supplement

- Tenants must be renting a primary residence in British Columbia and the unit must be covered under the *RTA*, the *MHPTA*, or the *Cooperative Association Act*.
- Tenants are not eligible if their rent is subsidized by any other government program. Other government programs include: subsidized housing; rent supplements such as Shelter Aid For Elderly Renters (SAFER) or the Rental Assistance Program (RAP); Income Assistance; and Disability Assistance.
- Members of housing co-ops can get the benefit if they meet all other eligibility criteria. These criteria include paying the maximum unassisted housing charge, and the co-op cannot be getting any ongoing operating funding from BC Housing.



**QUESTIONS?**

