

As we try to operate our business under the COVID-19 restrictions, plus plan for changes Dr. Bonnie Henry announces, I continue to get lots of questions that haven't been asked or answered before. Time to share some of my answers with you.

Q. This week I'm drafting up our plans for reopening our amenities based on the Province's plans for reopening after COVID. We're concerned about these plans as they pose potential troubles. For example, if a sick tenant were to be using the amenities alongside healthy tenants, that could be an issue.

We plan to put capacity limits on things like our gyms and our lounge areas. We'll also reconfigure the furniture layout to ensure proper social distancing. We'll also be rolling out permanent sanitization stations at key points around the amenities and we'll be obtaining proposals from our cleaning contractors regarding amenity cleaning.

What are your thoughts regarding landlords reopening amenities?

What capacities would be good as well as what timing?

Do we follow the Province's lead, or do we delay a little more?

How about a reduced capacity that increases as the situation improves?

Do we put more severe capacity limits on the amenities or try and maximize their use with safety in mind?

We're also concerned about the possibility of a stop/start scenario where we open, then close, then open again as the Province phases in and out of lockdown.

A. Like so much as we change our lives and how we run our business, common sense is the most important commodity. I think most residents will appreciate the "go slow but in the right direction" approach.

You are definitely on the right track. As Dr. Henry has consistently told us, physical distancing and washing/sanitizing hands are the two most important safeguards; your plan fits that. You can limit the number of people using any amenity at the same time; but how do you police it? I suggest in any notices you issue, you stress the limit is X people, and you expect users to ensure that maximum is adhered to in everyone's interest and it is the user's responsibility to ensure the rules are followed. "It's OK to tell someone they are too close, or they can't come in until someone leaves." would be good to include. Also, request users occupy the facility for a reasonable time so others can also use it. You can't have staff at every door every hour; nor do you want people complaining to management or demanding that someone tell Joe or Jane they have to leave.

You need to state from a liability perspective that everyone uses the amenity at their own risk; the company is not responsible for any infected person using the facility; however, anyone who is not feeling in 100% good health should avoid using the amenity to ensure others are protected. (Again, you can't police it; this is to protect you from a claim)

Q. We have some scofflaws who are able to pay their rent, but "We don't have to." When and if they finally pay, can we charge interest?

A. I want to say yes – at 20% per day! However, while the Residential Tenancy Act doesn't refer to interest, I think the correct answer is no for two reasons. Charging interest would likely be ruled as an illegal rent increase, and/or it could be ruled to be "unconscionable" as defined in the Regulation.

Q. I know we can't issue notices to end tenancy for unpaid rent. Is there anything we can do? What if this ban continues for several months?

A. The length of the ban is everyone's concern. The Emergency Order is explicit: no evictions (wrong word, but meaning clear). However, you can apply for a Monetary Order and for an Order to Comply with the Residential Tenancy Act and the Tenancy Agreement. Orders to Comply are frequently used in manufactured home communities where an end to the tenancy means the tenants lose their home.

You would request \$XXXX in your application being all unpaid rent to date plus the next month's. The hearing would likely be in +/- three months, so you could amend your application later to include all unpaid rent to the month in which the hearing is held. The Order to Comply would be to pay all future rent in full on time.

Q. Follow-up: A monetary order is fine; however, we don't want to imply the tenant doesn't need to pay rent at least until the dispute resolution decision is issued. What else can we do?

A. You should send the tenant a letter each month stating:

- Continued non-payment is against the law and your tenancy agreement.
- You are placing your tenancy at risk.
- You currently owe \$XXXX and this is a demand that you pay the full amount within 48 hours (e.g.)

This likely won't get the scofflaws to pay the rent; however, it ensures an arbitrator that you did everything legally possible to try to collect the rent. In other words, you were attempting to "mitigate your loss," one of the four part tests to prove a tenant should compensate you for what the tenant did – or didn't do in this case.

Q. We applied for an early order to end tenancy and got and served an Order of Possession. Now we find out the court won't issue a Writ of Possession. Can we do anything?

A. Not much unfortunately! What might work is to engage a Court Bailiff to contact the tenant and inform him of the consequences of not complying with the Order of Possession: as soon as a writ can be obtained, all the tenant's stuff will be removed and the tenant will be responsible for the several thousand dollars of the Bailiff's costs.

Q. The tenant isn't paying rent; can we add the \$25 late fee to what is owed? Can we add \$25 each month to each previous month's unpaid rent?

A. Assuming the \$25 late fee provision is in your tenancy agreement, it is a late fee. Unpaid rent isn't late; it is unpaid. So, the technical answer is no. However, to perhaps get the tenant's attention, the monthly letter you send can include the late fee and even add \$25 for each month, so your "invoice" is for \$25 for the current month, \$50 for the previous month, \$75 for the month before that, etc. When/If you file a claim, exclude the late fees.

A final note: If you obtain an order of possession for any reason, the tenant becomes an occupant the date of the Order. If the tenant offers to pay any rent, accept it, but remember to ALWAYS issue a receipt stating, "For use and occupancy only; does not reinstate the tenancy agreement." If you simply accept "rent," you have reinstated/created a tenancy agreement. Ensure any employees who can accept rent are aware of this.