

April 2, 2020

RTB Clarifies Landlord's ability to end tenancies.

Among other changes, the Ministerial Order banning tenant evictions states:

- “. . . a landlord must not give a tenant a notice to end the tenancy during the period this order is in effect.”
- “. . . the director [arbitrator] may grant an order . . . specifying an earlier date on which a tenancy ends . . . if . . . the rental unit must be vacated to comply with an order of a federal, British Columbia, regional, or municipal government . . .”

Early Order to End Tenancy

The Residential Tenancy Branch has clarified the Order. Ending a tenancy for cause, the unit is uninhabitable, or the tenancy agreement has been frustrated is still permitted. However, the process is to apply for an early order to end the tenancy. In such a situation, you would not issue a Notice to End Tenancy, but would apply directly for a dispute resolution hearing to obtain an Order of Possession. This application may or may not be for an expedited hearing, depending on the severity of the circumstances.

Needless to say, this is a critically important application of the Ministerial Order. To be clear:

You cannot end a tenancy by either a Notice to End or an application for an early order for:

- unpaid rent,
- repeated late rent payments,
- owner or purchaser occupancy,
- major renovations, demolition, or conversion.

You can apply for an early order to end a tenancy if

(a) it would be unreasonable or unfair to the building occupants or the landlord to wait for the state of emergency to end, AND

(b) a tenant, occupant, or tenant's guest has:

- 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;
- engaged in illegal activity that
 - has caused or is likely to cause damage to the landlord's property,
 - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- caused extraordinary damage to the residential property.

You can also apply for an early order if the unit is ordered shut down as above, the unit has become uninhabitable, or the tenancy agreement is frustrated.

Order of Possession – Application after March 30

If you apply for an Early Order to End Tenancy for one of the above reasons and the arbitrator issues an Order of Possession, the usual rules regarding service, application for review, etc. still apply.

You can apply to the Supreme Court for a Writ of Possession; make sure Court Services is aware of the reason (above) for issuing the Order of Possession. The arbitrator should note the applicable section of the *Residential Tenancy Act* on the Order of Possession.

Order of Possession – Application before March 30

If the application was other than an application for an early order to end the tenancy for one of the above reasons, AND

- you applied for an Order of Possession or the tenant applied to dispute a Notice to End Tenancy before March 30, and
- an Order of Possession was issued whether before or after March 30, and
- you served the Order of Possession on the Tenant whether before or after March 30,

you **cannot** apply for a Writ of Possession.

Writ of Possession – before March 30

If you applied for a Writ of Possession before March 30, the Court can return your application and not issue the Writ.

If you received a Writ of Possession from your application made before March 30, and it has not yet been executed, the wording on the Writ is automatically changed from execute “promptly” to execute “at the time when this [*Emergency Program Act*] order no longer applies.”

In short, any writ of possession obtained for other than the reasons above cannot be executed.

. . . . Al Kemp

