



Ministerial Order

Overview & FAQ's

On March 30th the Honourable Mike Farnworth, Minister of Public Safety and Solicitor General signed Ministerial Order M089 under the authority of the Emergency Program Act. M089 is meant to be a temporary amendment to the Residential Tenancy Act which puts much of what Premier Horgan and Housing Minister, Selina Robinson announced on March 25th into law. The Ministerial Order will be in place for the duration of the Provincial State of Emergency.

As our current state of emergency is unprecedented, we cannot say how long this temporary order will be in place. What we can do is work to understand its implications and continue our work to advocate for the health of the broader rental housing ecosystem. The Ministerial Order covers a broad range of topics including:

- Notices of End of Tenancy and Evictions
- Rent Increases
- Restriction of the Use of Common Areas
- Landlords Right to Access Rental Unit
- Service Methods

While many of these amendments are simple changes to regular operations such as restricting access to common facilities like pools or gyms, we are concerned with the restriction of the use of normal end of tenancy procedures during this State of Emergency. While your right to end tenancy is currently halted it is important to note that this does not mean there are no consequences to tenants. Landlords can and should continue to document issues that arise during the course of their tenancies and provide caution notices to their tenants that may be breaching material terms of their tenancy, not paying rent or significantly disturbing the landlord or other occupants of the residential property.

As Dr. Bonnie Henry has said time and time again, these measures are for now not forever and while landlords are not able to end tenancies at this time it is important to communicate to tenants the significant consequences that non-payment of rent, breaching of material terms and poor behaviour will have once things return to a more normal state.

End of Tenancies

While this order is in effect landlords are prohibited to serve any end of tenancy notices. Additionally, if a landlord were to serve a Notice to End Tenancy while this order is in place an arbitrator must not issue an Order of Possession

If a Notice to End Tenancy was served prior to this order coming into effect (March 30, 2020) the landlord may still apply for and be awarded an Order of Possession from an arbitrator but the enforcement of any Order of Possession through obtaining a Writ of Possession and the enforcement of an existing writ is prohibited.

There are two exceptions to this. The first exception is that an arbitrator may issue an Order of Possession and the order of possession may be enforced if there is an emergency situation as outlined in sections 56 and 56.1 of the Residential Tenancy Act. Additionally, the Residential Tenancy Branch may issue an order of possession if rental unit must be vacated to comply with a Federal, Provincial, Regional or Municipal order and that it would be unreasonable to wait until this order is no longer in effect.

Q: I served a 2 Month Notice to End Tenancy last month, can I obtain an order of possession?

A: Yes, notices served prior to March 30, 2020 are still effective and the RTB is still able to issue an order of possession. The tenant should vacate based on the effective date of the end of tenancy or order of possession but if they do not the landlord would not be able to enforce the order of possession through a bailiff

Q: Can I serve a Notice to End Tenancy if rent is not paid on April 1st?

A: No while this Ministerial Order is in effect landlords are prohibited from serving any form of Notice to End Tenancy.

Q: Should I apply for an order of possession for a Notice to End Tenancy I served last month?

A: Landlords are allowed to apply for an order of possession for based on a Notice to End Tenancy served before March 30, 2020. It may be advisable for landlords that have reason to believe their tenant will not vacate the rental unit after our current State of Emergency is lifted to apply for an order of possession to be enforced once the ministerial order is lifted.

Q: Does this affect applications for a monetary order?

A: No, landlords are still able to apply for and enforce monetary orders.

Q: Can I apply for a monetary order through a Direct Request?

A: Yes and no. If you have already served a 10 Day Notice to End Tenancy for rent due in March or earlier then you would be able to apply for a monetary order through the Direct Request process. For rent that is due April and throughout this state of emergency landlords are still able to apply for a Monetary Order but this would be done through a normal participatory hearing.

Q: My tenant has assaulted another tenant, am I able to apply for an order of possession and would an order of possession be enforceable?

A: Yes, Landlords are able to apply for and enforce an order of possession in situations where the safety of the landlord or other tenant of the residential Property is at jeopardy.

Rent Increases

As was announced on March 25th by Premier John Horgan and Housing Minister, Selina Robinson Rent Increases are not effective during the period that this Ministerial Order is in place. Our position remains that in this uncertain time landlords should refrain from serving a rent increase now and for duration of this public health crisis. Any rent increase served, along with those that were served with an effective date of April 1st will not be considered effective until this emergency has ended.

Q: I served a Notice of Rent Increase in December to be effective for April 1st, is this notice still effective?

A: No, rent increases served to be effective April 1st onwards will not be considered effective until after the state of emergency is lifted.

Q: My rent increase was effective March 1st, is it still in place?

A: Yes, rent increases that became effective before this Ministerial Order came into effect are still in place.

Q: My tenant moved in another occupant to the rental unit and my agreement states that the rent will increase by a specific amount for each additional occupant; is this still valid?

A: Yes, depending on your agreement rent may vary depending on the number of occupants residing in your rental unit and during this state of emergency this clause is still effect. We encourage landlords and tenants to discuss these situations to ensure both parties understand the implications of such an increase.

Tenant's Right of Access Restricted

Practicing proper social distancing requires people that do not live together to keep a minimum distance of 2 metres from each other. As this along with the level of cleaning that would be required is not attainable for the regular use of common facilities such as pools, gyms or games rooms landlords are encouraged and empowered to restrict access to these facilities during this emergency.

Q: How should I inform my tenants of these facility closures?

A: Landlords should post signage in common areas.

Q: Do I have to reduce the rent if I have restricted access to common facilities?

A: No, landlords are not required to reduce rent for temporary closures of common facilities during this emergency.

Q: Do I have to reduce the rent if I permanently close some or all common facilities?

A: Yes, the measures taken in response are meant to be temporary and access reinstated once the emergency order is lifted. Landlords that choose to permanently restrict access to these facilities will need to follow the standard process as outlined in the Residential Tenancy Act which includes serving the Notice of Terminating or Restricting a Service or Facility form and reducing the rent by the value of this service or facility.

Landlord's Right to Enter Rental Unit

Landlords are currently prohibited to enter a tenant's rental unit without the consent of the tenant unless there is an exceptional situation that warrants entry to protect the health or safety of the tenant or other occupants of the residential property. We have previously communicated to our members to avoid entering a tenant's rental unit to show the unit or perform routine maintenance and this recommendation still stands.

Email or text message may be used to request consent from a tenant to enter their unit and email or text from the tenant providing consent is also sufficient. As in any situation we recommend landlords keep a record of their communication with their tenants. Again, we encourage all landlords, for the

safety of themselves, their family and their tenants, to put off any regular maintenance and only conduct suite showing on vacant units.

Q: I am conducting my annual inspection next month, am I allowed to enter my tenant's unit?

A: While landlords may enter with the consent of the tenant it is advised that landlords not conduct their regular inspections or maintenance. Landlords should limit their entry to rental units to situations where it is necessary, such as an emergency repair.

Q: I have a tenant moving out next month and I would like to show the rental unit, am I allowed?

A: Showing a tenanted suite at this time is not recommended even with the consent of a tenant. Landlords should stick to showing only vacant suites and, in such cases, stick to strict social distancing practices.

Methods of service

During this health crisis we must adhere to social distancing and must limit our contact with people outside our household. To help facilitate this, email will become an approved method of service and both landlords and tenants should not serve anything in person. ***As in any situation landlords should ensure they keep copies of their communications with tenants.***

Landlords must also consider their duty to protect a tenant's personal information. When using email landlords should ensure they have a secure password and are using a trusted email service provider. Consider setting up an email address specifically to be used to manage your properties, communicating with tenants, and serving notice to limit the chance of information being accidentally shared or accessed.

Q: Is text message an approved method of service?

A: No, landlords and tenants may now use email as an approved method of service, but text message should only be used for communications where service of a specific document is not required.

Q: Can I knock on my tenant's door to provide them with a document?

A: No, landlords should stick to other methods of service such as email.