

---

***BCNPHA Webinar: Residential Tenancy Law during the  
COVID-19 Pandemic – Q&A Session***

---

**Question 1 – How does a landlord deal with an occupant who is verbally abusive, makes racist statements against staff, and engages in other disruptive behaviour such as spitting at others when in the shared areas of the facility? Staff have addressed these behaviors with the problematic occupant, but he does not pay heed to them. We have heard that evictions are discouraged at this time, but we risk losing our staff because of this person.**

The Ministerial Emergency Order enacted with respect to the *Residential Tenancy Act* (the “Order”) prohibits Landlords from ending tenancies at this time. However, the Order does permit Landlords to apply with the Residential Tenancy Board (the “RTB”) for a dispute hearing to end a tenancy under exceptional circumstances.

In this case, the behaviour the tenant is exhibiting could be argued as an exceptional circumstance that necessitate ending the tenancy while the Order is in effect. The Landlord could apply for a dispute resolution hearing with the RTB. Should the Landlord proceed with this option, the Landlord should have strong evidence of the tenant’s behaviour to date, which can include statements from witnesses, staff, formal written incident reports, and so on.

Should a hearing be held, an arbitrator may or may not issue the landlord with an order of possession to end the tenancy. Given the current state of emergency that is declared due to COVID-19, the bar is quite high for landlords to prove their case that they must be issued with an order of possession. Exceptional or emergency circumstances must be proven for this to occur.

If the tenant suffers from a mental or physical disability or an additions issue, the Landlord should contact a lawyer to fully canvas and consider any possible human rights issues.

Also to note, BC Housing has formed a Provincial Vulnerable Population Working Group that is working to identify stressors for marginalized and vulnerable tenants and their housing providers. A report by the working group should be released in due time and will be available on BC Housing’s website. This will help provide landlords that provide housing to vulnerable segments of the population with more guidance during this time.

**BRITISH COLUMBIA’S HOUSING LAWYERS™**

April 9, 2020

**Question 2 - Can you please comment on the requirement of landlords to report suspected COVID-19 cases of tenants to Public Health Agencies? How does this impact the privacy rights of the tenant?**

Landlords cannot end a tenancy if a tenant is suspected to or confirmed to be diagnosed with COVID-19. Doing so would be a violation of the *Human Rights Act*.

Nothing in the Order requires Landlords to report suspected cases of COVID-19 to the Ministry of Health or regional health authorities. Landlords may report suspected cases to both BC Housing and contact their regional health authority, such as Vancouver Coastal Health, if a tenant is exhibiting and reports symptoms. Both BC Housing and the Ministry of Health will then provide additional guidance and instructions to landlords in this regard.

Landlords can also ensure they are complying with the requirement under the *Residential Tenancy Act* to ensure premises are kept safe and secure for the use and enjoyment of all tenants through the following. The Order permits landlords to close common rooms, gyms, pools, and other common areas and prohibit tenant and guest access to such areas of residential properties in order to contain and prevent the spread of COVID-19. Landlords may also distribute educational materials to tenants, employees, and property managers regarding safety tips, social distancing practices, how and when to report symptoms, which symptoms to monitor, and even cleaning protocols that both staff and tenants can employ to help contain COVID-19. The Ministry of Health has guides, pamphlets, notices, and other useful resources that landlords can access on its website. BC Housing has also made a statement that they are working to gather and provide critical supplies for frontline employees and cleaning products for rental properties at this time.

With regards to the collection and use of personal information under the *Personal Information and Privacy Act*, no change has been enacted to the *Residential Tenancy Act* regarding disclosure requirements in light of COVID-19. Therefore, landlords should operate with respect to privacy concerns as if regular *PIPA* rules apply. To stay up to date on any changes related to a tenant's privacy and personal information, landlords should look to the RTB's website for regular COVID-19 updates.

**Question 3- What to do if tenant passes away? Does this mean we cannot access the unit? We cannot allow the family to the the building to retrieve personal contents as a no visitor policy is in place.**

If a rental building provides hospitality support services, personal health care services, therapeutic or rehabilitative treatment or services, such a property is not governed under the *Residential Tenancy Act*. This question raises this concern. If you are unsure as to whether or not your rental property is or is not exempt from the *Residential Tenancy Act*, it is best to consult a housing lawyer to determine this issue prior to proceeding.

April 9, 2020

If the *Residential Tenancy Act* does apply to the rental property, then the tenancy would likely be frustrated in the event that the tenant passes away. A tenancy is frustrated when it can no longer continue. Some other examples of when a tenancy is frustrated under the *Act* includes when a rental unit is destroyed by fire or a natural disaster, for example. The event of a tenant's death may likely be deemed an exceptional circumstance under the Order and the landlord may be able to obtain an order of possession by applying for dispute resolution with the RTB during this time.

Usually, executors of the deceased's estate are named in an individual's will. If the deceased tenant does not have a will in place, the law normally appoints an administrator of the estate. The landlord should discuss continuing or terminating the tenancy with the deceased's executor or administrator and provide them with all relevant documents related to the tenancy or any RTB dispute.

**Question 4 - To what extent is the landlord responsible for managing common spaces ie. elevators, common gardens, common meeting room?**

As per the Order, a landlord may restrict access to common areas. Common areas, by definition of the *Residential Tenancy Act*, include elevators, lobbies, common rooms, and so on. At this time, many landlords have closed down common rooms, gyms, pools, and other common areas within residential buildings as a preventative measure, and this option is permitted by the Order as well.

It is unclear, based on the wording of the Order, whether or not landlords can enact a strict no guest or no visitor policy at this time.

**Question 5 - Should landlords be doing rent reviews with changes to income?**

Yes. If a tenant's rent is subsidized based on a tenant's income amount, tenants, or landlords on behalf of tenants, can review and recalculate rent in the event that a tenant is subject to a change of income the tenant due to COVID-19. BC Housing has a step by step process for this on their website.

**Question 6- BC Housing has stated that the rent increase moratorium due to the emergency order does not apply to subsidized tenants where rent is based on income. Is this true? I am not sure if landlord issued rent increases are frozen until after the pandemic or not.**

The Order states that landlords can issue notices of rent increase to tenants during this time. However, a rent increase cannot come into effect until after the emergency order is lifted. This means, so long as the Order remains in effect, landlords cannot require tenants to pay higher rent based on any rent increase.

April 9, 2020

Rental units rented that receive funding from BC Housing to subsidize rent are, by law, exempt from the *Residential Tenancy Act's* provisions regarding rent increases. The Order is silent as to what the powers of such housing providers are during the current state of emergency. For more details, it is best to contact BC Housing directly.

**BY RIPAN HANS**

*This article is for general information purposes only and does not constitute legal advice. Every situation is unique and readers are encouraged to seek out the advice of a lawyer when implementing the strategies suggested in this article.*

April 9, 2020