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***COVID-19 RESIDENTIAL TENANCY MEASURES***

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On March 30, 2020, the British Columbia Minister of Public Safety and Solicitor General, issued Ministerial Order No. M089 under the *Emergency Program Act*, in response to the continuing COVID-19 pandemic (the “Order”). The Order applied mostly to residential tenancy matters. Here are the highlights:

**ENDING TENANCIES**

**What is Permitted**

Not all evictions have been banned. You can currently apply 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.

(the “Permitted Reasons”)

The criteria above is what is essentially set out in s.47(d) and (e) of the *Residential Tenancy Act*. 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.

### **What is Not Permitted**

- Except for the Permitted Reasons, a tenant may not be given a Notice to End Tenancy for any reason, including unpaid rent, for cause, renovations, or for landlord/purchaser occupancy.
- Notably, the Order applies to two month notices to end tenancy issued in advance of the sale of a home. Vendors who are contractually obliged to deliver up vacant possession may no longer be in a position to do so. Sales are likely to be impacted as a result of the Order.

### **WRIT OF POSSESSION**

#### **Before March 30, 2020**

If the application for possession was for other than the Permitted Reasons, you cannot apply for a Writ of Possession. Presumably, you will be able to do so when the Order ends.

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.”

#### **After March 30, 2020**

If you apply for an Early Order to End Tenancy for one of the Permitted Reasons and the arbitrator issues an Order of Possession, the new rules regarding service (see below), application for review, etc. still apply.

You can apply to the Supreme Court for a Writ of Possession. It should be brought to the Registry’s attention that the Order of Possession has been issued for a Permitted Reason. If possible, request that the Arbitrator hearing the application note the section from the *Residential Tenancy Act* under which the order has been granted.

### **Rent Increases**

Where rent was set to increase while the Order is in place, the rent increase will not take effect. Tenants are entitled to a self-help remedy of rent deduction where a landlord attempts to collect an ineffective rent increase.

There is an exception. An additional rent increase for additional occupants is permitted, provided the requirement and amount are included in the tenancy agreement.

## **Restricted Tenant Access**

Under the Order, a landlord may take steps to restrict access to common areas of a residential property in order to protect the health, safety, or welfare of those in the building; however, landlords may not restrict access to a tenant's suite, including to a tenant's guests.

This part of the Order is contradictory and open to interpretation. A landlord may declare that no visitors may be in common areas, but what if a visitor needs to cross a common area to access a tenant's suite?

## **Landlord Entry to Rental Units**

Landlords are not permitted to enter rental units except if necessary to protect the public health or if there is an emergency. Agreement between Landlord and tenant on entry appears to remain valid.

## **Document service**

Personal service and registered mail are no longer permitted. Documents may be served by email and will be considered received 3 days later if:

- the recipient acknowledges receipt, or
- the recipient responds without identifying an issue with the transmission of viewing of the document or with their understanding of it, or
- the document is sent to an email address that both parties have routinely used to communicate about tenancy matters.

Document service will likely be a major stumbling block in pursuing remedies.

## **How Long Will this Last?**

The Order applies from the date on which it was made (March 30, 2020) until the date on which the state of emergency declared on March 18, 2020 expires or is cancelled. There is currently no way to accurately predict how long these measures will be in effect.

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**BY GRANT HADDOCK**

*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.*