



COVID-19 updates: Where are we now?

Housing issues and recent
changes to EI and Canada
Recovery Benefits

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POST COVID UPDATE: WHERE ARE WE NOW?

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October 5, 2021

WHERE HAVE WE BEEN?

- COVID-19 Order came into effect on March 30, 2020.
- COVID-19 Order was supposed to end when the declaration of the state of emergency expired or was cancelled.
Moratorium on evictions
- Notices to end tenancy that were provided before the COVID-19 Order (prior to March 30, 2020), remained in effect and orders of possessions were granted.
- Most evictions were not permitted.

WHERE HAVE WE BEEN?

- However, landlords could still be granted an order of possession in situations where:
 - Notices to end tenancy were provided to tenants prior to the COVID-19 order;
 - A notice to end had been given by the tenant;
 - The tenancy was a fixed term and requires the tenant to vacate at the end of the term under the circumstances;
 - The tenancy agreement was a sublease;
 - The landlord and tenant had mutually agreed the tenancy has ended; and
 - The rental unit was uninhabitable or the tenancy was frustrated.

WHERE HAVE WE BEEN?

- During the COVID-19 Order, landlords could also apply for an order of possession if it was unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for the COVID-19 Order to end. Same approach as an application for an early end to tenancy (the “Exceptional Circumstances Provision”).
- Landlords could also apply for an order of possession if the rental unit had to be vacated to comply with an order of the federal, provincial, regional or municipal government authority.

WHERE HAVE WE BEEN?

- Landlords and tenants could only obtain writs of possession from the Court in the following circumstances:
 - When the COVID-19 Order expired or was cancelled;
 - Under the Exceptional Circumstances Provision (s 56 of the RTA);
 - If the rental unit was uninhabitable (s 56.1 of the RTA); or
 - If the tenancy agreement was frustrated (s 56.1 of the RTA).
- The order of possession had to clearly state whether it was granted under sections 56 or 56.1 of the RTA. This told the Court whether the order was enforceable.

WHERE HAVE WE BEEN?

- If a landlord or tenant has already filed an order of possession before March 30, 2020, and the Court had not issued a writ of possession, the Court could return the order of possession to the landlord or tenant.
- If a writ of possession was granted on or before March 30, 2020, unless the writ of possession was obtained under sections 56 or 56.1 of the RTA, the landlord could not enforce the writ of possession until after the COVID-19 Order expired.
- A landlord or tenant who obtained a writ of possession for reasons not outlined under sections 56 or 56.1 of the RTA could not enforce it, otherwise they could be subject to fines or jail time.

WHERE HAVE WE BEEN?

Rent Increases

- A landlord could give a notice for rent increase during the COVID-19 Order.
- However, the rent increase would not come into effect until the COVID-19 Order expired or was cancelled, unless:
 - The rent increase is for one or more additional occupants; and
 - was authorized under the tenancy agreement.
- If a landlord had already given a notice for rent increase prior to the COVID-19 Order, the increase would not come into effect until after the COVID-19 Order expired or was cancelled.
- If a landlord did collect the increase amount during the COVID-19 Order, the tenant could deduct the additional amount from future rent payments.
- The rent increase freeze does not apply to non-profit housing where rent is based on income.

WHERE HAVE WE BEEN?

Landlord's right of access restricted

- Landlords were not allowed to enter a rental unit even if the landlord gave proper notice in accordance with the RTA.
- A landlord was only able to enter the rental unit if:
 - An emergency in relation to COVID-19 existed; and
 - The entry was necessary to protect the health, safety, or welfare of the landlord, a tenant, an occupant, a guest or the public.
- A landlord had to receive consent from the tenant before entering the unit for the following reasons:
 - To make regular repairs;
 - To show the unit to prospective tenants; and
 - To host an open house.

WHERE HAVE WE BEEN?

Extensions of time

- When considering whether to extend a limitation period, the COVID-19 pandemic was considered an exceptional circumstance.
- To request an extension of time, a party would need to provide a reasonable explanation why they were unable to file an application or evidence within the requisite timelines.

WHERE HAVE WE BEEN?

Serving documents

- Serving documents in-person was suspended, and email service of all documents was permitted.
- All documents were sufficiently served by email if:
 - the document was emailed and that person confirms receipt of the document. Deemed received on the date the person confirms receipt;
 - the document was emailed and that person responds to the email without identifying an issue with viewing or understanding the document. Deemed received on the date the person responds; or
 - the document was emailed to the email address that the person routinely used to correspond about tenancy matters. Deemed received three days after it was emailed.

WHERE HAVE WE BEEN?

Ministerial order no. 195 (effective June 24th)

- Repealed the COVID-19 order.
- amongst other things, all evictions allowed to proceed except evictions related to non-payment of rent.
- Moratorium on rent increases continued.

WHERE HAVE WE BEEN?

Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (no. 2) Regulation (effective July 31, 2020)

- Policy Guideline # 52—COVID-19: Repayment Plans and Related Measures.
- Amended the Residential Tenancy Regulation.
- The moratorium on eviction for non-payment of rent ended on August 18, 2020. Tenants were expected to pay full rent as of September 1, 2020.
- Tenants were required to repay the rent and utility charges that become due from March 18, 2020 to August 17, 2020 (the “Affected Rent”).

WHERE HAVE WE BEEN?

Ending the tenancy for the Affected Rent

- A landlord could provide a notice to end tenancy for non-payment of rent for rental arrears that accrued prior to March 18, 2020.
- A landlord could not issue a notice to end tenancy for non-payment of rent for the Affected Rent, unless the landlord has given the tenant a repayment plan for the unpaid amount and the tenant has defaulted on the repayment plan.
- A landlord could not issue a notice to end tenancy for cause for the Affected Rent for any reason (e.g. if one or more payments of the affected rent are late, breach of material term etc.)

WHERE HAVE WE BEEN?

Repayment Plans

- The landlord had to give the tenant a repayment plan if the tenant and landlord had not entered into a prior agreement (a written agreement entered before July 16, 2020).
- A repayment plan had to be served in person, by registered mail, or as ordered by the RTB.
- The earliest a repayment plan could have been issued was August 18, 2020.
- The date the first instalment was due had be at least 30 days after the date the repayment plan was given by the landlord.
- Tenants had until July 10, 2021 to repay the Affected Rent.

WHERE HAVE WE BEEN?

- A repayment plan had to be in writing and include the following:
 - the date the repayment period starts and ends (July 10, 2021);
 - the total amount of the Affected Rent that is overdue and the amount that must be paid in equal installments; and
 - the date on which each instalment must be paid (the date the rent is due under the tenancy agreement).
- If the repayment plan did not comply with the above, or included information that is inaccurate or incomplete, the landlord (or tenant if provided by the tenant), had to give the tenant another repayment plan that complied with the above.

WHERE HAVE WE BEEN?

Amendment to the repayment plan

- The tenant and landlord could agree to amend the repayment plan, but only as follows:
 - To extend the repayment period;
 - to change the amount payable in each instalment if the amount payable in earlier instalments is less than the amount payable in later instalments; and
 - to change the dates of instalments if the date of the first instalment is not earlier than the date the first instalment must be paid.

WHERE HAVE WE BEEN?

Rent increase freeze continued

- A landlord could give a notice of a rent increase, but the rent increase would not come into effect until November 30, 2020.

Landlord's right of access restricted

- A landlord could enter a rental unit for any of the following reasons by providing the tenant with proper notice for the following reasons:
 - Conducting move-in and move-out condition inspections and monthly condition inspections;
 - Making regular repairs; and
 - Showing the unit to prospective tenant and hosting an open house.

WHERE HAVE WE BEEN?

Tenant's right of access restricted

- A tenant could not request monetary compensation if the landlord terminated or restricted access to common areas for the following reasons (unless the RTB has already held a hearing before June 24, 2020):
 - to protect the health, safety or welfare of the landlord, the tenant, an occupant or a guest of the residential property due to the COVID-19 pandemic;
 - to comply with an order of a federal, British Columbia, regional or municipal government authority, including orders made by the Provincial Health Officer or under the Emergency Program Act;
 - to follow the guidelines of the British Columbia Centre for Disease Control or the Public Health Agency of Canada.

WHERE HAVE WE BEEN?

Applications for monetary orders for unpaid Affected Rent made before July 31, 2020

- If a valid repayment plan has been given to a tenant and the tenant is in good standing, an arbitrator could grant a monetary order, subject to the terms of the repayment plan.
- If a tenancy has ended prior to a repayment plan being given, and the tenant has failed to pay an installment, the arbitrator could grant a monetary order that the unpaid Affected Rent be paid in full as of the date of the order.
- Where a landlord was required to give a repayment plan but no valid repayment plan had been given and no valid prior agreement exists, the arbitrator could assist the parties in completing a repayment plan that meets the requirements of the Regulation or dismiss the application with leave to reapply.

WHERE HAVE WE BEEN?

Applications for monetary orders for unpaid affected rent made on or after July 31, 2020

- If no valid repayment plan has been given to a tenant and the tenant is in good standing, then an arbitrator could dismiss the application with leave to reapply, until such time as the tenancy ends and/or the tenant has failed to pay, at least, one installment.
- Applications for monetary orders for unpaid Affected Rent made after this time when a tenant is in good standing would be considered an attempt to circumvent the Regulation.
- A tenant could not be evicted due to unpaid Affected Rent until a landlord has given the tenant a repayment plan for the total amount of the Affected Rent.

WHERE HAVE WE BEEN?

Guest bans

- At the beginning of the COVID-19 pandemic, many non-profit housing providers instituted building-wide guest bans.
- Guest bans were directly contrary to public health advice concerning people who use drugs.
- Vancouver Coastal Health had recommended “that housing providers continue allowing visitors and use other prevention strategies so people do not use alone in their rooms.”
- Building-wide guest bans were not permitted under the Regulation and remain unlawful under the RTA.

WHERE ARE WE NOW?

For the most part, the status quo has been restored.

Rent increase freeze continues

- The rent increase freeze has been extended once again, until December 31, 2021.
- Annual rent increase notices issued with an effective date after March 31, 2021 and before January 1, 2022 are cancelled. This means the earliest a tenant can see a rent increase is January 2022.
- The annual rent increase amount for 2022 will be 1.5%.

No more restrictions on tenant's right of access

- Landlords and tenants should continue to wear masks when accessing common areas and accessing and showing rental units.
- A landlord can no longer restrict or schedule the use of common or shared areas (effective July 10, 2021). If restrictions are kept in place a tenant can apply for dispute resolution for monetary compensation. A landlord would have to demonstrate the restrictions are reasonable.

WHERE ARE WE NOW?

No more restrictions on landlord's right of access

- A landlord may enter a rental unit, while wearing a mask, for any of the following reasons by providing the tenant with proper notice:
 - Conducting move-in and move-out condition inspections and conducting monthly inspections;
 - Making regular repairs; and
 - Showing the unit to prospective tenants - restricted to a maximum of six people, if space allows.
- Guest bans may continue

WHERE ARE WE NOW?

Service by email still permitted

- At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that documents pertaining to their tenancy may be served on them by email.
- A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so.
- If an email address given for the purposes of serving documents changes at any time, the onus is on the party to ensure an updated address is provided to the other party.

WHERE ARE WE NOW?

Renovictions

- Landlords will no longer be able to issue a notice to end tenancy for renovations and repairs. A notice to end tenancy for renovations or repairs that is issued to a tenant after July 1, 2021 is not valid.
- Instead, landlords will need to apply to the RTB for an order to end tenancy and an order of possession.

WHERE ARE WE NOW?

- In their application to end a tenancy for renovations and repairs, a landlord must show that:
 - they have all the necessary permits and approvals required for the renovations or repairs;
 - the unit must be vacant in order to carry out the repairs;
 - the renovations or repairs are necessary to prolong or sustain the use of the rental unit or building; and
 - no reasonable accommodations can be made to maintain the tenancy.

WHERE ARE WE NOW?

- The landlord will need to serve the notice of hearing on the tenant, who will be able to participate in the hearing and provide evidence that the landlord does not meet the statutory requirements to end the tenancy.
- Successful landlords will receive an order of possession with an effective date of no earlier than four months from the date of the order.

WHERE ARE WE NOW?

Tenant's compensation

- If the landlord does not complete renovations or repairs as stated in the notice to end tenancy, a tenant can apply to the RTB for compensation that is the equivalent to 12 months' rent.
- Previously, the onus was on the tenant to prove that the landlord did not do what they stated they would do on the notice to end tenancy, which was very difficult to do. As of July 1, 2021, the onus will now be on the landlord to prove they did what they said they would instead of the tenant.

WHERE ARE WE NOW?

Additional rent increase

- Landlords will be able to apply to the RTB for dispute resolution to request an additional rent increase for capital expenditures.
- Eligible capital expenditures include:
 - those that are made to maintain the property to comply with health and safety standards;
 - Those that are made to replace a major system that is no longer operative or is at the end of its useful life; or
 - Those that are made to reduce energy use, greenhouse gas emissions or improve the security of the property.

WHERE ARE WE NOW?

Complaints to the RTB

- Drawing on guidance from the BC Ombudsperson and feedback from service users and RTB staff, the RTB have taken steps to make their complaints process more accessible, transparent, and fair.
- Once received, the complaint or concern will be forwarded to the appropriate manager/supervisor for review.
- Complainants will receive a written response outlining the steps that were taken to review the complaint.
- The RTB will respond to the complaint within 30 days of receipt.

WHERE ARE WE GOING?

Expanding Grounds for Review Consideration

- If a landlord or tenant disagrees with an RTB decision, either party can apply to the RTB to have that decision reviewed. The grounds for review have been expanded to include:
 - Due to circumstances that were outside a party's control and not anticipated, the party submitted evidence after the deadline to submit evidence but before the hearing and that evidence was not before the RTB arbitrator;
 - A procedural error was made by a person who performs administrative tasks for the RTB that affected the result of the hearing;
 - A technical irregularity or error occurred that affected the result of the hearing;
 - The RTB arbitrator did not determine an issue they were required to determine; and
 - The director determined an issue they were not able to determine.

WHERE ARE WE GOING?

- The already existing grounds for review of an RTB decision will also change. A party can request a review of an RTB decision if they were unable to attend part of the hearing instead of unable to attend the entire hearing.
- Parties who request a review on the grounds of new and relevant evidence must also demonstrate the evidence would have some effect on the decision.
- The RTB will also have the authority to review their decisions on their own initiative, rather than waiting for a landlord or tenant to file for review themselves.
- These changes to the grounds for review of RTB decisions also apply to parties who receive a notice of administrative penalty from the Compliance and Enforcement Unit (CEU).

WHERE ARE WE GOING?

Greater Authority for the CEU to Pursue Investigations

- The CEU will be able to compel a party to produce different types of materials, including records from a third party who have information that might be relevant to the investigation, but are not a part of the investigation themselves.
- Although a recent study by UBC confirmed BC is the eviction capital of Canada (used data between 2013 and 2018), we don't know how the COVID-19 pandemic really affected or renters, or how many renters lost their home.

COVID UPDATE

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October 5, 2021



Employment Insurance

**10 changes you need to know
about!**

#1

It now takes 420 hours to qualify for all EI benefits in all places (until September 24, 2022).

#2

The minimum EI benefit is \$300 for claims started between September 26 and November 20, 2021.

After that, the usual rules – 55% of average weekly earnings – apply.

#3

No more 50-week claims.

Claimants now get between 14 and 45 weeks depending on region and hours worked.

#4

The one week waiting period is back.

#5

Claimants once again need a doctor to fill out the form for sickness benefits.

#6

El sickness to be extended to max 26 weeks in the summer of 2022.

#7

Separation money like severance or pay in lieu of notice is not deducted from EI and does not delay the start of benefits (until September 24, 2022).

#8

Quitting or being fired for misconduct only matters if it was your last job (until September 24, 2022).

#9

Fishers qualify with \$2,500. Benefits can be calculated using earnings from current claim or one of the last two fishing claims for the same season, whichever is highest (until December 18, 2021).

#10

There is a review of the EI program going
on right now.

Canada Recovery Benefit

4 changes you need to know!

#1

It's ending. Last payment period ends
October 23, 2021 unless extended.

#2

Canada Recovery Benefit now pays \$300 per week (down from \$500).

#3

All EI benefits (regular and special) for claims started on or after September 27, 2020 count as income to qualify for the Canada Recovery Benefits.

#4

Temporary rules exempting EI and CRB payments from IA and DA deduction end after December 2021 (unless extended again)