

54. Ending a tenancy: Orders of Possession

July - 22

This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised, and new guidelines issued from time to time.

This policy guideline clarifies circumstances respecting an arbitrator exercising their discretion in determining the effective date of an order of possession.

A. LEGISLATIVE FRAMEWORK

Section 55 of the *Residential Tenancy Act* (the “RTA”) and Section 48 of the *Manufactured Home Park Tenancy Act* (the “MHPTA”) address when the director of the Residential Tenancy Branch (“the RTB”) must grant an order of possession to a landlord and when a landlord may request an order of possession of a rental unit. Section 55 of the RTA and Section 48 of the MHPTA state that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit. These sections also set out that an order of possession takes effect on the date specified by the director in the order. The date specified in the order of possession as the date the order takes effect is called the “effective date”.

If a party wants to apply for a review of a decision or order, including an order of possession, section 80 (a) (iii) of the RTA and section 73 (a)(iii) of the MHPTA require that a party apply for review within two days after receiving the decision or order if it relates to section 55 of the RTA and section 48 of the MHPTA.

[Policy Guideline 24](#) outlines the grounds on which a review may be considered; when the RTB may refuse, accept, or dismiss an application for review of a decision or order; and the format of the hearing, if a review is granted.

Under section 84(1) of the RTA and section 77(1) of the MHPTA, an order of possession can only be filed for enforcement at the Supreme Court after a review of the director’s decision or order has been refused, dismissed, or concluded, or the time period to apply for a review has expired.

B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received¹. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.

¹ Morse v. Crystal River Court ltd., 2021 BCSC 1868 para. 54

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- e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

A. CHANGES TO POLICY GUIDELINE

| Section | Change | Notes | Effective Date |
|---------|--------|----------------------|----------------|
| new | new | New policy guideline | 2022-07-21 |

Change notations

am = text amended or changed

del = text deleted

new = new section added