

2. Ending a Tenancy: Landlord's Use of Property

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The Residential Tenancy Branch issues policy guidelines to help Residential Tenancy Branch staff and the public in addressing issues and resolving disputes under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*. This policy guideline may be revised and new guidelines issued from time to time.

This policy guideline addresses the requirements for ending a tenancy for landlord's use of property or end of employment with the landlord, including:

- the good faith requirement,
- the requirement to have permits and approvals in place before giving a notice to end tenancy for demolition, major renovations or repairs, or conversion, and
- the vacancy requirement for major renovations or repairs.

It also addresses tenant applications for compensation arising from a Notice to End Tenancy for landlord's use of property.

A. LEGISLATIVE FRAMEWORK

Section 49 of the *Residential Tenancy Act* (RTA) and section 42 of the *Manufactured Home Park Tenancy Act* (MHPTA) (see [Policy Guideline 33: Ending a Manufactured Home Tenancy Agreement – Landlord use of Property](#)) allow a landlord to end a tenancy for "landlord's use of property."

The RTA allows a landlord to end a tenancy under section 49, if the landlord:

- Intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit;
- enters into an agreement to sell the rental unit, all conditions of the sale are satisfied and the purchaser asks the landlord, in writing, to end the tenancy because the purchaser or a close family member intends, in good faith, to move in;
- has all necessary permits and approvals required by law in place and intends, in good faith to:
 - perform major renovations or repairs that can only be completed if the rental unit is vacant, and the only way to achieve that vacancy is by ending the tenancy,
 - demolish the rental unit, or
 - convert it to another use, including a caretaker's unit, strata unit, non-profit housing cooperative or non-residential use.

The MHPTA allows a landlord to end a tenancy under section 42, if the landlord:

- has all necessary permits and approvals required by law in place and they intend, in good faith to:
 - convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park.

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B. PERMITS

When ending a tenancy under section 49 (6) of the RTA or section 42 (1) of the MHPTA, a landlord must have all necessary permits and approvals that are required by law before they can give the tenant notice. This includes any additional permits, permit amendments, and updates. It is not sufficient to give notice while in the process of or prior to obtaining permits or approvals. If a notice is disputed by the tenant, the landlord is expected to provide evidence that they have the required permits or approvals.

Some local governments may not issue permits unless a rental unit is already vacant. They may require certain things to be done first that may render the building uninhabitable or may involve withdrawing essential services and facilities. These requirements may include providing a clearance report from an industrial hygienist confirming whether hazardous materials, if encountered, have been safely removed and ensuring that utility services (gas, power, water, sewer) have been severed and constructing a safety fence around the site.

If this is the case, landlords may be able to obtain a conditional demolition permit in an effort to meet the requirements of the Act while still recognizing the municipality's pre-conditions for a final permit. An arbitrator may consider conditional permits when determining the validity of a notice to end tenancy.

If a permit or approval is not required from the local government, a landlord should obtain written proof from the local government. Local governments may have information about when permits or approvals are required on their website. The Residential Tenancy Branch is unable to advise people about the specifics of permit requirements. Landlords should check with the permit department in the municipality or regional district in which the rental unit is located to determine the requirements.

C. GOOD FAITH

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

In *Gichuru v Palmar Properties Ltd.* (2011 BCSC 827) the BC Supreme Court found that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the notice to end tenancy. When the issue of an ulterior motive or purpose for an eviction notice is raised, the onus is on the landlord to establish that they are acting in good faith: *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636.

Documentary evidence that may support that a landlord is acting in good faith includes, but not limited to:

- a notice to end tenancy for a rental unit that the landlord or close member is moving out of ((for RTA section 49 (3) or section 49 (4));

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- a contract of purchase and sale and the purchaser's written request for the seller to issue a notice to end tenancy (for RTA section 49 (5)); or
 - a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work (for RTA section 49 (6)).

If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

D. RENOVATIONS OR REPAIRS

In *Berry and Kloet v British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 (see also *Baumann v. Aarti Investments Ltd.*, 2018 BCSC 636), the BC Supreme Court found there were three requirements to end a tenancy for renovations or repairs:

1. The landlord must have the necessary permits;
2. The landlord must intend, in good faith, to renovate the rental unit; and
3. The renovations or repairs require the rental unit to be vacant.

In order for the third requirement to be met:

- a. the renovations or repairs must be so extensive that they require the unit to be empty in order for them to take place; and
- b. the only way to achieve this necessary emptiness or vacancy must be by terminating the tenancy.

In considering this third requirement, an arbitrator must determine first whether the unit needs to be empty (i.e. unfurnished and uninhabited) for the renovations to take place, and second, whether the required emptiness can only be achieved by ending the tenancy. A landlord cannot end a tenancy for renovations or repairs simply because it would be easier or more economical to complete the work.

If repairs or renovations require the unit to be empty and the tenant is willing to vacate the suite temporarily and remove belongings if necessary, ending the tenancy may not be required.

In other words, section 49 (6) does not allow a landlord to end a tenancy for the purpose of renovations or repairs if any of the following circumstances apply:

- the landlord does not have all necessary permits and approvals required by law;
- the landlord is not acting in good faith;

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- the renovations or repairs do not require the unit to be empty (regardless of whether it would be easier or more economical to conduct the renovations or repairs if the unit were empty); or
 - it is possible to carry out the renovations or repairs without ending the tenancy (i.e. if the tenant is willing to temporarily empty and vacate the unit during the renovations or repairs, and then move back in once they are complete).

E. COMPENSATION FOR ENDING TENANCY FOR LANDLORD'S USE

Both the RTA and MHPTA require a landlord who gives notice to end a tenancy for landlord's use to pay compensation to the tenant for ending the tenancy. For more information, see [Policy Guideline 50 – Compensation for Ending a Tenancy](#).

F. CONSEQUENCES FOR NOT USING THE PROPERTY FOR THE STATED PURPOSE

If a tenant can show that a landlord who ended their tenancy under section 49 of the RTA or section 42 of the MHPTA has not:

- taken steps to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (RTA only),

the tenant may seek an order that the landlord pay the tenant a set amount of additional compensation for not using the property for the purpose stated in the Notice to End Tenancy.

For more information, see [Policy Guideline 50 – Compensation for Ending a Tenancy](#).

G. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	Am	Updated to reference MHPTA changes	2018-06-05
A	am	Added requirements for ending tenancies	2018-05-17
B	am	Added reference to arbitrators being able to consider conditional permits when determining the validity of a 2 Month Notice to End Tenancy for Landlord's Use of Property	2018-05-17
C	am	Added reference to Supreme Court of British Columbia case that clarified a dishonest motive or purpose for ending a tenancy precludes a finding of good faith	2018-05-17

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D	new	Added reference to Supreme Court of British Columbia case that sets out test for determining whether a rental unit needs to be vacant in order for renovations to take place.	2018-05-17
E	new	References compensation requirement for ending tenancy and new policy guideline 50.	2018-05-17
F	new	References additional compensation requirement for not using unit for stated purpose and new policy guideline 50.	2018-05-17

Change notations

am = text amended or changed

del = text deleted

new = new section added