

18. Use of Forms

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also 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 Guideline may be revised and new Guidelines issued from time to time.

The issue sometimes arises as to whether an arbitrator will issue an order based on a form which is not the current form required by the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* (the Legislation). The problem usually arises with respect to a Notice To End Tenancy, which is in a form previously prescribed by the former *Residential Tenancy Act*¹ prior to adoption of the current form. This guideline covers when an arbitrator will issue an order based upon a previous form and when an arbitrator will not accept an older version and require a landlord to serve a notice in the current form.

Notice To End Tenancy

If the landlord has served the old, single sheet Termination Notice, and seeks an order of possession based upon that notice, the arbitrator will deny the application² and require the landlord to serve a Notice To End a Tenancy in the form required by the Legislation and thereafter reapply for the order. If a tenant applies to set aside this old version of the notice³, that application will be granted.

Where a new form of Notice To End Tenancy is required⁴, a reasonable transition period will be afforded to a landlord prior to denying an application by a landlord to enforce the notice, or granting an application to set it aside, on the basis that it is not in the required form. The transition period will only be allowed where the change was not substantive in the circumstances in which the notice was issued, having regard to section 28 of the *Interpretation Act*. For example, if a tenant relied on information in the form which is out of date to their detriment, such as the time limited for bringing an application to set aside the notice, then the arbitrator may find the notice to be invalid. However, the old, single sheet form of notice will continue to be unacceptable.

A form not approved by the Director is not invalid if the form used still contains the required information and is not constructed with the intention of misleading anyone⁵. As a result, it is advisable to apply to an arbitrator to dispute the notice, so that the validity of the notice can be determined. Where a tenant accepts a Notice To End A Tenancy that is in the old form or is not in the required form and the tenant vacates in response to the notice, the landlord cannot rely upon the failure to give notice in the required form and allege that the tenant owes the landlord rent as a result of the improper ending of the tenancy.

Other Forms

If an application is made on an application form which predates the version currently

1 Under s. 42(2)(a) of the prior Act, now *Residential Tenancy Act*, s. 52; *Manufactured Home Park Tenancy Act*, s. 45

2 RTA, s. 52; MHPTA, s. 45

3 RTA, s. 47(4); MHPTA, s. 40(4)

4 RTA, s. 52; MHPTA s. 45

5 RTA, s. 10(2); MHPTA, s. 10(2)

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required by the Legislation, the arbitrator may order the form amended, or may accept the application as validly filed. The arbitrator may refuse to order the application amended to the current form if a respondent proves prejudice that is attributable to the use of the previous version

An arbitrator will not order amended a form which is not required by the Legislation or any predecessor legislation at any time; for example, if a Notice To End A Tenancy is handwritten and does not contain the information required by the Legislation in any version. In such situations the arbitrator will find that the proper form has not been served and make the appropriate order.

With respect to all forms required by the Legislation, a form not approved by the Director is not invalid if the form used still conveys the required information and is not constructed with the intention of misleading anyone⁶.

Reproductions

Mechanical reproductions of a form required under the Legislation, either by photocopying or printed by a computer, and containing the exact wording of the required form, are acceptable as a form required by the Legislation.

⁶ RTA, s. 10(2): MHPTA, s. 10(2)