



CONSUMER AFFAIRS

B E R M U D A

Promoting Confident Consumers and Responsible Traders

Non-Rent Controlled Properties Rent, Evictions and Inspections Handbook

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1. Overview

If you are a tenant of property which has an **Annual Rental Value of \$22,800.00 or more** there may be circumstances where your landlord may seek to increase the agreed rent currently being charged. Additionally, there may be instances where you fall behind on your rent and are either late in paying or unable to pay either in full or partially.

The following sections discuss instances where landlords may seek rental increases or pursue repayment for rental arrears, how landlords should handle receipt of damage deposits and provide guidance on how to manage such circumstances.

2. Rent Increases

After you have entered into a tenancy agreement with your landlord, your landlord must follow particular steps in order to attempt to have the agreed rent increased. A landlord cannot just increase a tenant's agreed rent whenever they like, or by any amount.

More often than not a landlord will wait until your tenancy agreement ends before they propose increasing your rent. Alternatively, your landlord may attempt to increase your rent during your tenancy (i.e. before the original agreement between you and your landlord has expired).

Depending on the type of tenancy, landlords must follow certain rules in order to amend a previously agreed rent during the course of a tenancy agreement. If you disagree with your landlord's proposed rental increase, Consumer Affairs advises that you talk with your landlord and try to reach an agreement regarding a lower increase in rent.

If you cannot reach an agreement with your landlord as a tenant you can challenge the increase. If you do not feel confident speaking with your landlord regarding their proposed rental increase it is recommended that you contact Consumer Affairs.

If you require guidance and support regarding your landlord's proposed rental increase, either during your tenancy period, or upon expiration of your tenancy agreement, it is advised that you speak with your landlord before the proposed rent increase comes into effect. If you pay the new rent your landlord will be able to rely on such payment as acceptance of the new rate and it will make challenging the increase difficult in the future.

2.1 Review Existing Tenancy Agreement

If after entering a tenancy agreement your landlord informs you that they wish to increase the agreed rent, Consumer Affairs advises that you check your tenancy agreement. Based on the terms and conditions outlined in the tenancy agreement, your landlord may be able to increase the previously agreed rent under certain circumstances.

If you have entered into a fixed term tenancy (i.e. 6 months, 1 year, etc.) your landlord will not be able to increase your rent during the fixed term period unless you as the tenant agree to the increase or your tenancy agreement expressly states that the landlord may do so.

If your fixed term tenancy agreement allows your rent to be increased during the fixed term period, the tenancy agreement has to state when the increases may be imposed and how they will be imposed. Such a term in the fixed term tenancy agreement is considered a “rent review clause”.

If your fixed term tenancy agreement does not contain a “rent review clause” your landlord may seek to increase your rent after the fixed term tenancy has ended and your tenancy is up for renewal.

If you enter into a new fixed term tenancy with your existing landlord, your new rent must be included in your new agreement or your landlord needs to tell you about the new rent amount before you sign the agreement. If your landlord verbally tells you that the new agreement will be subject to a rent increase Consumer Affairs advises that you follow-up with your landlord and request that you have the notification of increase of rent in writing.

If your tenancy agreement doesn't say what happens after your fixed term ends and you continue to rent your residential unit from your existing landlord, or your tenancy agreement is subject to an automatic renewal clause and you do not provide notice, your landlord has to give you notice before they can increase your rent.

2.2 Notice of Rental Increase

The amount of notice your landlord has to provide you regarding a proposed rent increase will depend on the nature of your tenancy and how frequently you pay rent. For example, if you pay rent from month to month then your notice period for rental increases is one month. If if you pay rent quarter to quarter (i.e. every 3 months) then your notice period for rental increases is three months.

Length of Tenancy Period	Minimum Notice Landlord Must Provide
Less than 1 month	1 months' notice
More than 1 month, but less than 12 months	One period of the tenancy
12 months or more	6 months' notice

If you do not have a fixed tenancy agreement your landlord can increase your rent through a mutual agreement at any time. You might have agreed with your landlord when you started your tenancy that your rent could be increased at a certain point. In this case your landlord can increase your rent in the way you agreed.

If you **live with your landlord** your landlord may be able to increase your rent at any time. If you have a fixed term agreement to live with your landlord, your landlord cannot increase your rent during your fixed term without your permission, unless your agreement specifies that a rental increase must be done through mutual agreement

If you **live with your landlord** and **do not** have a fixed term agreement, your landlord does not have to follow set rules to increase your rent. In most cases your rent can be increased at any time. Although you cannot challenge such a rent increase, Consumer Affairs advises that you try talking with your landlord and propose a rent that you think is fair. If you cannot reach an agreement your landlord can evict you quite easily if you don't accept the increase.

2.3 Negotiating a Rental Increase

When negotiating with your landlord about a rental increase, Consumer Affairs advises that your starting point in negotiations be slightly lower than what your landlord is suggesting (e.g. if your landlord wants to increase the rent from \$1,500 per month to \$2,000 per month, suggest meeting in the middle and paying \$1,750).

If you have historically been a good a tenant your landlord might be open to negotiations rather than face the risk of losing a good tenant.

Before trying to reach an agreement, Consumer Affairs advises that you look at how much similar properties cost to rent in your area. This way you may be able to use this market data as evidence to show why your rent should or should not be increased as high as your landlord is proposing.

If you cannot reach an agreement with your landlord, Consumer Affairs advises that you think carefully about your housing options before deciding to leave. If you decide to move out make sure you've found a new place to live before you leave.

2.4 Failure to Pay a Rental Increase

If you are unable to successfully negotiate with your landlord about the proposed rental increase, and you do not pay the new amount, your landlord may try to evict you.

Your landlord will have to follow an eviction process to have you removed; including providing you with a written notice (i.e. a "Notice to Quit") to leave the property first before getting a court order (i.e. a "Possession Order").

3. Rental Deposits

A "damage deposit" or "security deposit" is considered the sum of money that a landlord may request a prospective tenant to provide at the start of a tenancy which can be used by the landlord to: (i) minimize the risk of non-payment of rent; (ii) cover the costs of fixing damage to their property; and/or (iii) cover the cost of the removal of a tenant's furniture.

3.1 Return of Damage Deposit

At the end of your tenancy you may be entitled to have to your damage deposit returned. Your landlord or real estate agent can only take money from your damage deposit if there is a good reason (e.g. you have damaged the property and repairs and maintenance is required).

When you are leaving a residential premise Consumer Affairs advises that you review your tenancy agreement to confirm the timeframe within which you should expect to receive your damage deposit. If you do not have a lease agreement you should reasonably expect return of your damage deposit within 30 days of leaving your old home and your landlord has vacant possession.

At the end of your tenancy you will need to review your tenancy agreement and ensure that you satisfy all leaving obligations prior to exiting the premises (i.e. have the residential unit repainted and/or professionally cleaned). After completing all tenant obligations you will then need to contact your landlord or real estate agent and ask them for your damage deposit back.

Consumer Affairs advises that you write or email your landlord or real estate agent when you ask for your deposit back. This way you will have a record of communication indicating that you asked for your damage deposit and when you asked.

Your landlord or real estate agent can only take money from your damage deposit if there's a good reason, for example:

- If you have damaged the property;
- If you have lost or broken some items from the inventory that was on or in the premises at the time in which you entered the tenancy agreement.

Your landlord or letting agent should tell you why they are taking money from your damage deposit. Consumer Affairs advises that you ask your landlord or real estate agent to give you their reasons in writing.

Your landlord or real estate agent cannot take money from your deposit for 'reasonable wear and tear'. This means things that gradually get worse or need replacing over time (e.g. old water faucets, doors and windows, etc.)

Your landlord or real estate agent also cannot take money from your deposit to replace or fix the property or its fixtures and fittings that need to be replaced due to their own neglect, such as:

- Fixing any damage caused by a repair they didn't do when they should have (i.e. a leak you told them about that got worse and damaged the floor;
- Decorating a whole room if there are a few scuff marks on a wall that have appeared while you've lived in the property

However, **if you have clearly abused or neglected the property** and its fixtures and fittings, your landlord or real estate will likely seek to claim the cost of damages from your damage deposit.

If you want more information about the money your landlord or real estate agent wants to take from your deposit, it is recommended that you ask them:

- Why they're taking the money;
- How they worked out how much to take off your deposit

If you and your landlord or real estate agent agree how much of your damage deposit you should get back, you will usually get the money within a couple of weeks. If you still cannot agree with your landlord, Consumer Affairs advises that you consider legal proceedings. However, if you consider legal proceedings you will likely incur court costs and legal costs if you obtain the advice of a lawyer.

3.2 Before Leaving the Property

At the end of your tenancy period Consumer Affairs advises that you conduct a full inspection of the residential unit and take pictures of the fixtures and fittings and structural foundation (e.g. faucets, sinks, appliances, doorways and door frames, walls with new paint, etc.).

It is a good idea to get evidence of the condition of the property when you leave in case you and your landlord disagree on how much of your damage deposit you should get back. The evidence will help you argue that you should get all or most of your damage deposit back.

4. Rental Arrears

As a tenant you will be obligated to ensure that you pay your landlord the agreed monthly rental payment consistently on time. Failure to pay your rent consistently on time amounts to a breach of contract and may result in your landlord seeking possession of your residential unit.

The following sections discuss the necessity for paying rent and how to approach rental payments that are due (i.e. rent in arrears) in order to avoid facing the possibility of your landlord seeking possession of your residential unit (i.e. file a Notice to Quit).

4.1 Managing Rental Arrears

If you fall behind on your rent payments to your landlord, as a tenant you will be considered to be in “rent arrears”.

Appreciating that tenants often face financial turmoil and the management of rent arrears can be difficult, in the event that you are late in paying your monthly rent, or unable to pay your rent (either partially or in full), Consumer Affairs advises that you act as quickly as possible.

If you ignore your rent arrears, continue to fail to pay (either partially or in full) or fail to pay on time, the problem will only get worse.

4.2 Confirm Who is Responsible for Paying the Rent in Arrears

If your landlord informs you that you are behind on your monthly rent, Consumer Affairs advises that you first check to see who has to pay the rent. You might not be responsible for paying back all of the rent arrears. It is important to check before you pay your landlord any money.

If you live with someone else as part of a joint tenancy (i.e. you signed a tenancy agreement with someone else) you will both be responsible for paying the rent arrears. If one tenant does not pay their rent arrears, your landlord may hold you responsible for paying the rent arrears.

If you live with someone else, but you all signed separate tenancy agreements, you will only have to pay the rent you agreed to pay. This means that the landlord cannot hold you responsible for rent arrears in the event that your roommates fail to pay their rent.

Under normal circumstances, when you start a new tenancy with your landlord you are only responsible for paying rent from the date your tenancy started. You do not need to pay rent arrears owed by the tenant before you.

However, if you took over someone else's tenancy (i.e. "assignment" or "succession") you might be responsible for the previous tenant's rent arrears. Consumer Affairs advises that you exercise caution when taking over someone else's tenancy. Rather than taking over an existing tenancy agreement between the prior tenant and the landlord, Consumer Affairs advises that you enter in a new tenancy agreement with the landlord.

If your landlord asks you to pay someone else's arrears and you don't think you're responsible, remind your landlord when you moved in. Explain to the landlord that the rental arrears aren't yours.

To assist in your conversations with your landlord, Consumer Affairs advises that when negotiating with your landlord you have your tenancy agreement, or statement of terms, on hand so you can: (i) prove when your tenancy started; and (ii) that your tenancy agreement is separate from the tenancy agreement entered into between the previous tenant and the landlord.

Consumer Affairs advises that prior to entering a tenancy agreement you ask your landlord to provide you with the basic terms of your tenancy agreement in writing. The basic terms should include when the tenancy starts and end, the amount of rent you will be expected to pay and how often.

4.3 Confirm the Amount of Rental Arrears

After confirming whether you owe your landlord rental arrears, Consumer Affairs advises that you make sure the amount your landlord says you owe matches your own records (i.e. bank statements or receipts if you pay rent in cash).

In most circumstances Consumer Affairs advises that you do not pay your monthly rent in cash as it may make it difficult to quantify your amount of rental arrears and prove that you have made payments in the future. If you do pay in cash, it is advised that you ask your landlord to provide an invoice or receipt reflecting:

- The date that you paid; and
- How much you paid;

Consumer Affairs advises that you always manage and update your personal records. After checking your personal records confirm whether the amount of rental arrears declared by your landlord is accurate. To verify the declared rental arrears you should ask your landlord for a copy of their records indicating how much rent you have paid since your tenancy started.

4.4 Negotiating Repayment Plans

After confirming the amount of rental arrears owed to your landlord, Consumer Affairs advises that you contact your landlord to inform them of your personal circumstances and your desire to enter in a repayment plan.

If you are in rent arrears, your landlord could try to evict you. If you propose entering into a repayment plan your landlord might let you stay.

A repayment plan means that, in addition to your agreed rental payments, you will make additional smaller payments to your landlord over a longer period of time in order to repay the rent in arrears. You still have to pay the full amount of rent arrears that you owe. However, it could be easier to enter into a repayment plan than pay the full amount outstanding in one lump sum.

When negotiating a repayment plan with your landlord Consumer Affairs advises that you do not offer more than you can realistically afford. Although you may have good intentions, agreeing to an overly aggressive repayment plan could make the problem worse if you cannot keep up with your payments.

If your landlord agrees to a repayment plan, Consumer Affairs advises that you write the repayment plan down and that you and your landlord sign it. If your landlord does not agree to a repayment plan, Consumer Affairs advises that you pay your landlord as much as you can afford.

If your landlord decides to pursue legal action and possession of your residential unit, being able to show that you made attempts to enter into a repayment plan may help you in court as it will indicate that you have made genuine efforts to pay your rental arrears.

If you are receiving a housing allowance from the Department of Financial Assistance, and find yourself in rent arrears, Consumer Affairs advises that you check that you are receiving the correct amount.

5. Evictions

If you have found yourself continuously in breach of your tenancy agreement with your landlord, your landlord may seek possession of your landlord. The following sections discuss the grounds upon which a landlord of a non-rent controlled property may evict a tenant.

5.1 Grounds for Eviction

Unlike properties falling under the remit of the Rent Increases (Domestic Premises) Control Act 1978, landlords of properties falling under the Landlord & Tenant Act 1974 are afforded much **greater flexibility to terminate** a tenancy agreement and evict a tenant.

Under section 13 of the Landlord and Tenant Act 1974 a landlord may terminate a tenancy agreement if:

- A tenant has failed to comply with the terms and conditions outlined in the tenancy agreement;
- A tenant becomes subject to bankruptcy or liquidation; or
- An event has occurred that renders the tenancy agreement void (e.g. damage to the landlord's property or a nuisance to your neighbors).

If you have rent arrears your landlord will probably try to evict you (i.e. "seek possession"). If your landlord wants to seek possession they must follow certain procedural steps; which includes giving you a written notice.

Although not expressly stated in the Landlord and Tenant Act 1974, tenants are afforded legal rights under contract law. If a landlord is operating in contravention of the terms and conditions of a tenancy agreement (i.e. failure to maintain the property, failure to provide advance notice prior to entering the rented premises), a tenant is afforded the legal right to:

- Provide their landlord with **notice of the breach** and **request that the breach is fixed** within a prescribed period of time; and
- **Terminate their tenancy agreement** if the breach of the tenancy agreement is not corrected within the prescribed period of time.

5.2 Notice to Quit

A Notice to Quit is a formal legal document which is used by a landlord that wishes to have their tenant fix a lease violation and communicate that failure to correct the breach of the tenancy agreement by a specified time and date will result in the landlord seeking permission to obtain possession of the residential unit.

Before a landlord can legally evict a tenant from their property, section 13 of the Landlord and Tenant Act 1974 states that a landlord must:

- Apply to the courts in order to obtain a “Notice to Quit Order”; and
- Serve a Notice to Quit on their tenant.

Upon gaining possession of a Notice to Quit Order, the landlord will have permission to serve a Notice to Quit on their tenant. The Notice to Quit will state the period of time within which the tenant must correct the breach of the tenancy agreement (i.e. repair damages caused to property within 30 days, pay outstanding rent within 30 days).

Failure to correct the breach within the prescribed period of time will result in the landlord seeking possession of the property.

However, there may be circumstances where the **breach of the tenancy agreement is so severe** (i.e. the tenant has not paid rent for 6 months or more, the tenant poses a physical risk of harm to the landlord) that the **courts may not require the landlord to allow the tenant to correct the breach**. In this circumstance the Notice to Quit will likely state a specified time and date the tenant must vacate the premises (i.e. 30 days or one calendar month).

Appreciating the fact that many landlords act in contravention of a signed lease agreement, and/or the Landlord and Tenant Act 1974, a tenant may also utilize a Notice to Quit. **A tenant may serve a Notice to Quit** on their landlord in order to:

- Provide their landlord with formal notice of a breach of their signed tenancy agreement and/or the Landlord and Tenant Act 1974; and
- Communicate their intention to terminate their tenancy if the issue is not addressed by a prescribed time and date.

It is important to note that if a landlord obtains permission from the courts to serve a Notice to Quit on their tenant, this **does not automatically result in the landlord having the right to evict** the tenant. After a landlord has served a Notice to Quit on their tenant, the landlord will have to wait to determine whether their tenant will obey the notice, serve a Counter Notice, or whether the tenant will disregard the Notice to Quit.

If a tenant refuses to correct their breach of the tenancy agreement and/or refuses to leave the premises on the date specified in the Notice to Quit, once the date specified on the Notice to Quit has passed the landlord will have to submit an application to the courts to obtain a “Possession Order”. For further guidance on Possession Orders, please see below.

5.3 Confirm Validity of Notice to Quit

If you receive a Notice to Quit, this indicates that your **landlord has officially started the legal process** required in order to obtain possession of their property.

Upon receiving a Notice to Quit from a landlord, Consumer Affairs advises that the tenant in receipt **review the Notice to Quit to confirm that it is valid**. A Notice to Quit will be considered invalid if it does not include:

- The first and last name of the tenant(s);
- The residential address of the property currently occupied by the tenant(s);
- The “grounds for eviction” relied upon (i.e. section 13 of the Landlord and Tenant Act 1974);
- The date the Notice to Quit expires (i.e. within one calendar month of receipt of the Notice to Quit).

If you receive an **invalid** Notice to Quit, your landlord’s ability to pursue possession of their residential property will be impacted as they will have to serve a valid Notice to Quit; this will result in administrative and procedural delays for the landlord.

Whether you receive a valid or an invalid Notice to Quit from your landlord, Consumer Affairs recommends that you contact your landlord immediately and discuss the reasons for why they are seeking possession of the property (i.e. outstanding rent). If you **do not wish to leave the property** it is advised that you propose ways in which you may be able to address your landlord’s concerns (i.e. pay the outstanding rent through installments, in addition to ongoing monthly rent).

By entering into negotiations with your landlord you may be able to persuade your landlord to reconsider serving a valid Notice to Quit and end their pursuit of possession of their property. It is at this stage that Consumer Affairs recommends that you comply with any mutually agreed solutions; otherwise your landlord will likely continue their pursuit for possession.

If your **landlord is unwilling to enter into negotiations**, it is important to note that obtaining permission from the courts to serve a Notice to Quit does not automatically grant your landlord the authority to physically remove you from their residential property.

If a tenant refuses to correct their breach of the tenancy agreement and/or refuses to leave the premises on the date specified in the Notice to Quit, **once the date specified on the Notice to Quit has passed** the landlord will have to submit an application to the courts to **obtain a “Possession Order”**. For further guidance on Possession Orders, please see below.

5.4 Disputing a Notice to Quit

Whether you receive a valid or an invalid Notice to Quit from your landlord, if you are of the view that the grounds they are relying to support your eviction **lack merit** you will be entitled to apply to the courts to pause the eviction.

If following receipt of a Notice to Quit you wish to pause the eviction proceedings, you will have to submit an application to the courts clearly outlining that your landlord's pursuit of possession of their property is "oppressive". Under the Landlord and Tenant Act 1974, the actions of a landlord may be considered "**oppressive**" if it can be proven that:

- As a tenant you have taken, or are currently taking, all reasonable steps necessary to remedy the breach;
- The damages incurred are trivial (i.e. finger prints on painted walls); or
- It would be unreasonable for the landlord to order termination of the tenancy agreement (i.e. a tenant paid a monthly rent a day late and there is no other rent due).

If you are of the view that your landlord's service of a Notice to Quit is "oppressive", Consumer Affairs advises that you submit an application to the courts to pause the eviction **immediately following receipt of the Notice to Quit**.

Failure to act immediately may impact your ability to pause the eviction. For example, if you file the pause application after the period of time specified in the Notice to Quit has expired, it is likely that:

- Your landlord will have submitted an application with the courts to obtain a "Possession Order"; and
- The courts will not look favorably on your delay to submit the application.

For further guidance on Possession Orders, please see below.

6. Pausing an Eviction

If you have received a Notice to Quit from your landlord and are of the view that your landlord's service of a Notice to Quit is "oppressive", Consumer Affairs advises that you submit a pause application to the courts to pause the eviction **immediately following receipt of the Notice to Quit**.

Failure to act immediately may impact your ability to pause the eviction. For example, if you file the pause application after the period of time specified in the Notice to Quit has expired, it is likely that:

- Your landlord will have submitted an application with the courts to obtain a "Possession Order"; and
- The courts will not look favorably on your delay to submit the application.

In order to effectively pause Notice to Quit proceedings, the Landlord and Tenant Act 1974 states that you **must give your landlord formal notice** that you intend to dispute the Notice to Quit **within 12 days of receiving the Notice to Quit**.

If you wish to pause Notice to Quit proceedings it is likely that you will incur legal costs if you hire a lawyer to act as your legal representative, and will face court filing fees due to filing an application with the courts.

Given the risk of incurring legal costs, prior to filing an application to pause an eviction Consumer Affairs advises that tenants perform a fully comprehensive review of the Notice to Quit and consider the following:

- Are the grounds relied upon in the Notice to Quit valid;
- Is the landlord's pursuit of possession "oppressive"; and
- What supporting evidence is available in support.

If you are of the view that your landlord's application for possession is valid (i.e. you are aware of the fact that you have overdue rent or caused significant damage to the property), and decide that you will not dispute your landlord's Notice to Quit, Consumer Affairs advises that you **consider your residential housing options** if you **decide to leave the premises**.

If you are of the view that your landlord's application for possession of their residential property is invalid, and **decide to not leave** the premises by the date specified in the Notice to Quit, your landlord will have to submit an application to the courts to **obtain a "Possession Order"**. For further guidance on Possession Orders, please see below.

7. Forced Evictions

If you receive a Notice to Quit from your landlord and **decide to not leave** the premises by the date specified in the Notice to Quit, it is likely that your landlord will submit an application to the courts to **obtain a "Possession Order"**.

Once your landlord has obtained a possession order, the possession order will specify a date by which you will have to leave. If you do not leave by the date on the possession order your landlord will need to then submit an application to the courts in order to obtain a **"Warrant of Eviction"**.

A Warrant of Eviction will afford the landlord the ability to appoint a bailiff to visit the premises and physically remove the illegal tenant from the landlord's property.

It is important to note that there may be circumstances where a landlord will not be required to obtain a Warrant of Eviction to remove a tenant (i.e. tenants who share the same living accommodation as their landlord).

7.1 Possession Order

In the event a landlord serves a Notice to Quit on their current tenant, and their tenant refuses to leave the premises by the date specified in the Notice to Quit, the landlord may apply to the court to obtain an “Order for Possession”.

When faced with an application for a possession order, the court will consider the following:

- Whether the landlord acted reasonably in starting legal proceedings against their tenant;
- Whether the landlord had previously informed their tenant that they were in breach of the tenancy agreement;
- Whether the tenant has had a reasonable opportunity or has taken reasonable steps to remedy the breach; and
- Whether the tenant, having corrected the breach has continued to comply with the terms and conditions in the tenancy agreement.

If a tenant is found to be repeatedly in breach of his obligations, either outlined in the terms and conditions of tenancy agreement, or the legal obligations imposed on tenants under the Landlord and Tenant Act 1974, the court may:

- Award the landlord an Order for Possession;
- Consider the tenancy agreement terminated; and
- Order the tenant to fix the harm caused to the landlord (i.e. pay all outstanding rent, repair damages caused to the property).

In the event a landlord is awarded a possession order, the possession order might state a date by which the tenant will have to leave the landlord’s property. It is this stage that Consumer Affairs notes that the courts may award a landlord permission to issue on their tenant any one of the following types of possession orders:

- An outright possession order;
- A suspended possession order; or
- A postponed possession order.

An **outright possession order** will state that the tenant will have to leave the property by a certain date. If you receive an outright possession order from your landlord, and **do not leave** the property by the specified date, your landlord will have the legal right to apply to the courts for permission to issue against you a “**Warrant of Eviction**”.

If you receive a **suspended possession order** from your landlord, your landlord will be afforded a fixed date for possession and that date will be postponed so long as you comply with a mutually agreed, legally enforceable arrangement.

For example, you will be allowed to enter into an arrangement with your landlord and stay in your home so long as you keep up the rent payments and fix any harm caused to your landlord (i.e. pay back any rent that is due, fix any damages caused to the property). If you **do not stick to this agreed arrangement**, your landlord can apply for the courts for permission to issue against you a “**Warrant of Eviction**”.

If your landlord attempts to issue a suspended possession order on you, and the courts granted your landlord authority to do so **more than 6 years ago**, your landlord would need to re-apply for permission to issue a Warrant of Eviction. It is at this stage that Consumer Affairs advises tenants, which receive a suspended possession, to **confirm the date on which the courts awarded your landlord permission** to issue the suspended possession order.

A **postponed possession order** is similar to a suspended possession order as it affords a tenant to stay in their home so long as they comply with a mutually agreed arrangement with their landlord. However, a postponed possession order differs from a suspended order in that it **does not fix a date**. In the instance, where a tenant is in breach of an arrangement with their landlord, your landlord will be required to apply to the court for a date to obtain possession of the premises and then apply for a “**Warrant of Eviction**”.

In the event a tenant is in **breach of a postponed possession order**, before a landlord can apply for a possession date, they must write to their landlord at 14 days prior to submitting the application. When writing to their tenant, the landlord must provide their tenant with the following information:

- Details of the breach (i.e. the amount of rental arrears, unrepaired damage to property);
- Notice that they are intending to submit an application to the courts for a date for possession; and
- Notice that they are intending to apply for a Warrant of Eviction.

If upon receiving the letter from your landlord you are of the view that your landlord is incorrect regarding the facts of a **breach of a postponed possession order** (i.e. you do not think the amount of arrears your landlord says you owe is right, or you have repaired the previously identified damages), or are of the view that they have gotten other information wrong, Consumer Affairs advises that you **formally reply to your landlord within 7 days**.

By contacting your landlord, and discussing their potential misunderstanding of the facts, you may be able to persuade your landlord from applying for a date for possession and avoid having to face the possibility of leaving your home.

If your landlord is unwilling to negotiate, and chooses to enforce the postponed possession order (i.e. applies to the courts for a fixed date of removal), if you do not leave by the date on the possession order your landlord will need to get a “Warrant of Eviction”. A Warrant of Eviction will afford the landlord the ability to appoint a bailiff to visit the premises and physically remove the illegal tenant from the landlord’s property.

It is important to note that there may be circumstances where a landlord will not be required to obtain a Warrant of Eviction to remove an illegal tenant (i.e. tenants who share the same living accommodation as their landlord).

7.2 Warrant of Eviction

If you receive an outright possession order from your landlord, or fail to comply with the terms and conditions associated with a suspended or postponed possession order, you will have to vacate the premises by a specified time and date..

If you do not leave by the date specified in the possession order, and your landlord still wants possession of their residential property, your landlord will have to apply to the courts for a “Warrant of Eviction”.

Through the possession of a Warrant of Eviction your landlord will have the legal authority to appoint a bailiff to visit your home and have you and your personal possessions removed. Upon being awarded a Warrant of Eviction, and the appointment of a bailiff, you will receive a **Notice of Eviction** from the bailiff.

The Notice of Eviction will serve as advance notice as it will specify the time and date the bailiff will attend your home and have you removed. By providing a tenant advance notice of their eviction, the tenant is afforded the time needed to arrange for transportation and obtain the administrative support needed to remove their personal assets from the landlord’s property.

Upon receipt of a Notice of Eviction, Consumer Affairs advises tenants to carefully consider their available housing options. Depending on Bermuda’s housing market at the time of your eviction the number of options may not fit your needs or fall within your monthly financial budget.

There is no fixed procedure for an eviction. However, bailiffs must act reasonably. They are entitled to use a reasonable amount of force if they need to enter your home, to remove you and remove anyone else who is there. Your landlord will likely be at the eviction so that the bailiff can handover the keys of the property to them.

If you fail to hand over the keys to the property, the locks will be changed to prevent you re-entering. If you are not at home when the bailiffs arrive, they are allowed to enter the premises and change the locks.

Your landlord has a right to vacant possession of your property which means that all your furniture and belongings must be removed. The bailiffs should not remove any of your furniture or belongings but will usually watch while you do this. If you refuse to remove your possessions your landlord can apply for a court order which will grant the bailiff the authority to physically remove your possessions.

If the bailiffs think there might be some resistance from you they may ask the police to be present when they carry out the eviction. The police are not allowed to help the bailiffs with the eviction. They are only there in case there is a breach of the peace. Once you have been evicted you will not usually be able to get back into the property.

If you **experience difficulties in finding an appropriate home** (i.e. too small/large, outside of financial budget, not handicap accessible or friendly for physically impaired tenants), Consumer Affairs advises tenants to **exercise hesitancy in signing a long-term tenancy agreement**. Entering into a long-term agreement with a home that does not fit your needs, or is outside of your monthly budget, will likely result in further issues in the future.

If possible, Consumer Affairs advises that you **consider alternative, short-term housing** (i.e. a vacation rental unit, shared living accommodations with roommates, family member homes) until a more appropriate home becomes available. Appreciating that many Bermudian residents do not have readily available short-term living options, Consumer Affairs recognizes that many tenants are faced with the possibility of having to stay in their home up to the date of eviction.

7.3 Suspending a Warrant of Eviction

If you find yourself **unable to find appropriate short-term housing** prior to your eviction date, Consumer Affairs recommends that you **contact the courts** and attempt to persuade the court to **provide you more time** in the property (i.e. request the courts to postpone or suspend the enforcement of the Warrant of Eviction).

As part of your application to have the enforcement of the Warrant of Eviction suspended or postponed, you will have to provide the courts with supporting information which will help persuade the judge (i.e. provide an explanation as to why you haven't been able to stick to the a repayment plan agreed with your landlord and what you will do in the future to make sure you do stick to it). It is not enough to say that you will be made homeless if the Warrant to Evict is not suspended.

If the court accepts your request for the Warrant to Evict to be **suspended**, this would stop the eviction from going ahead for an indefinite period of time. It is important to note that there are only a **very few circumstances** when a court will suspend a Warrant of Eviction (e.g. the warrant was wrongly issued before the date of the possession order, no notice of eviction was issued). If the eviction is suspended you will remain **obligated to pay rent for the suspension period**.

If the court accepts your request for the Warrant to Evict to be **postponed**, this would stop the eviction from going ahead for a limited period of time (i.e. an additional month to find accommodation). If the eviction is postponed you will remain **obligated to pay rent for the postponement period**.

If you want to apply for the Warrant to Evict to be suspended or postponed, Consumer Affairs advises that you submit your application to the courts well in advance of the eviction date (i.e. at least 7 days prior to eviction); preferably **immediately following receipt** of the Warrant to Evict. If you have a good reason for the warrant to be suspended, then it's worth applying to the court. However, you will have to pay a court filing fee for such an application.

If the courts **reject your request** to postpone or suspend the enforcement of the Warrant of Arrest, and you face the possibility of becoming **homeless after the eviction**, the Bermuda Housing Corporation may be able to assist in helping you find housing. If you think you will need the assistance of the Bermuda Housing Corporation, Consumer Affairs advises that you contact the Bermuda Housing Corporation as soon as possible.

Alternatively, you might **decide not to move before the eviction date** if you think you have a **good chance of persuading the landlord** to let you stay on. If you are unable to persuade your landlord to let you stay, you **might be able to persuade the court to stop the eviction** if either of the following applies:

- Your financial circumstances have changed (i.e. you can now pay your rent and arrears); or
- Your landlord hasn't followed the procedures for eviction properly

However, Consumer Affairs advises that you must remain mindful of the possibility that you may end up owing your landlord more if you stay in the property longer without their permission. You might have to pay your landlord rent (i.e. "mesne profits") up until the day you leave.

If there are any further legal proceedings pursued by the landlord, in order to have you removed from their property, it is likely that you will have to pay the court filing fees and legal costs for yourself and your landlord

8. Disputing an Eviction in Court

Consumer Affairs appreciates that there may be circumstances where a tenant may consider submitting an application to the courts in order to:

- Dispute a Notice to Quit; or
- Pause a Warrant to Evict

The purpose of this section is to provide guidance on the legal procedures that will need to be taken following the commencement of legal proceedings.

8.1 Claim Forms and Defense Forms

If a **tenant refuses to leave** a landlord's property **following receipt of a Notice to Quit**, it is likely that the landlord will submit an application to the courts in order to obtain a **"Possession Order"**. For further guidance on the impact of a Possession Order, please see above.

In the event the landlord is awarded a possession order, and elects to commence a possession claim, the **tenant will receive court papers**. Such court papers will include:

- A **copy of the application form** the landlord filed with the courts when making their request for a possession order (i.e. the **"claim form"**); and
- A **defense form** which affords the tenant the opportunity to dispute the landlord's application for possession (i.e. to make an argument to pause or stop the eviction).

If a tenant wishes to **stop an eviction**, Consumer Affairs recommends that tenants, when submitting their defense form, **provide the courts with as much supporting evidence as possible** in order to support the argument that their landlord's claim for possession lacks merit (i.e. landlord claims tenant has failed to pay rent, but bank statements and transfer indicate the tenant is up-to-date on monthly payments and pays on time).

Consumer Affairs notes that it is slightly easier for a tenant to **delay an eviction** so long as the **courts are provided with a valid reason** for doing so (i.e. a physical disability limits the number of residential options that can facilitate the tenant's unique needs). The amount of extra time the court may grant a tenant will depend on:

- The tenant's rationale for requesting a delay in the eviction; and
- The grounds upon which the landlord is relying on to evict the tenant.

If a tenant wishes to **dispute their landlord's claim for possession**, the court papers will disclose a period of time for the tenant to file their defense form (i.e. **within 12 days** to the address specified on the form).

If a tenant misses the deadline to submit their defense Consumer Affairs advises tenants to submit their defense form as soon as possible. However, **late submission will likely influence** the court's decision as to whether or not they will grant a possession order or pause or stop the eviction.

If you find it difficult to complete the defense form, Consumer Affairs advises tenants to:

- Communicate their defense in a separate letter (“defense letter”);
- Write your case number, found on the claim form, on the defense letter;
- Attach the defense letter to the defense form;
- Attach a copy of any supporting evidence to the defense form;
- Keep a copy of the defense letter in a safe and secure location; and
- Obtain a proof of submission to the courts.

When completing the defense form, or writing your defense letter, Consumer Affairs advises tenants to provide as much detail as possible as the court will rely on the statements of fact and evidence provided in order to determine whether:

- The tenant has a strong defense; and
- Whether the landlord’s behavior is considered “oppressive”.

Consumer Affairs cannot understate that failure to disclose all relevant details clearly and provide supporting evidence will often be the difference between being evicted or being able to stay in your home.

8.2 Attendance in Court and Failure to Appear

After submitting the defense form to the courts, with supporting documentation, the court will inform both parties (i.e. the landlord and the tenant) as to **when and where a court hearing will be held (i.e. “possession hearing”)**.

Consumer Affairs cannot understate the importance of attending the court hearing as this is the formal opportunity for both parties to present their respective arguments to the court. If a tenant fails to attend the court hearing, the landlord will be granted the possession order in default.

If a tenant is **unable to attend** to the possession hearing, Consumer Affairs advises tenants to **immediately inform the court (i.e. provide adequate notice)** and provide a valid explanation as to why they will be unable to attend (e.g. because you have to self-isolate due to Covid-19, personal emergency, medical emergency). In response the court might:

- Arrange for the hearing to happen by phone or video call; and
- Change the date of the hearing

Consumer Affairs recommends tenants, upon their arrival to the rescheduled possessing hearing tenants, provide the courts with evidence in support of their explanation for being unable to attend the original possession hearing date (i.e. medical certificate, doctor’s note).

If a tenant **fails to inform the courts as to why they are unable to attend**, and/or provide supporting evidence, it is likely that the courts will dismiss your defense form. A tenant’s absence in court, without providing a valid explanation, will likely result in the court electing to solely rely on the evidence provided by the landlord has given them and grant your landlord judgement in default due to your failure to attend.

Appreciating that there may be circumstance where a tenant is unable to provide adequate notice of their inability to attend the possession hearing (i.e. was involved in a motor vehicle accident on the way to the possession hearing), Consumer Affairs recommends such tenants to:

- Immediately contact the courts to explain your reason for not attending;
- Provide the courts with supporting documentation (i.e. police report of the accident, medical bills, etc.); and
- Request the courts for your matter to be relisted in court and for judgement in default be set aside.

Given the impact of personal and/or medical emergencies, so long as adequate supporting evidence is provided it is likely that the courts will:

- Set judgement in default aside;
- Arrange for the hearing to happen by phone or video call; and/or
- Relist the possession order for a future date so that way both parties may be afforded the opportunity to present their argument.

8.3 Completion of Possession Hearing

Following completion of a possession hearing the courts will provide both parties with a formal document which outlines their decision and the performance obligations that may be imposed on the landlord and the tenant. The court's decision may state the following:

- That the tenant may continue to reside in the landlord's property until a specified date (i.e. postpone the eviction so that the tenant may find alternative housing);
- That the tenant may continue to reside in the landlord's property (i.e. stop the eviction on the grounds that the landlord's application for possession did not have merit; or
- That the tenant may continue to reside in the landlord's property so long as they satisfy a specified list of obligations (i.e. continue to pay rent on a monthly basis and continue to comply with the terms and conditions in the tenancy agreement).

If the court rejects a tenant's defense, and obligates a tenant to leave their home and handover possession to their landlord, the court might give the tenant time to find somewhere else to live (i.e. the possession order may afford the tenant 30 days to leave, or longer).

It is important to note that **a tenant can appeal** against the court's decision to grant their landlord a possession order; but only if the tenant can prove that mistakes were made in the possession hearing (e.g. if the court didn't look at relevant information or incorrectly applied the law).

Although the option to appeal a court decision is available, Consumer Affairs recognizes that a tenant's chances of successfully appealing a court decision are low and will likely result in the tenant having to pay for court filing fees and the legal fees for their landlord and themselves.

If a tenant is ordered to leave a landlord's property, and does not leave by the date on the possession order, the landlord will have to apply to the court in order to obtain a **Warrant to Evict**. By obtaining a Warrant to Evict, a landlord will be afforded the authority appoint a bailiff to visit your home to make you leave. For further guidance on the impact of a Warrant to Evict, please see above.

9. Inspections

A landlord, or any person authorized in writing by a landlord, may enter their tenant's residence in order to inspect the condition of the tenant's residential unit and determine whether or not the tenant's residential unit requires repairs and/or maintenance.

However, in order for a landlord to legally conduct a property inspection, a landlord must consider the following legal obligations outlined in the Landlord and Tenant Act 1974:

- That the inspection must be conducted at a reasonable time of the day; and
- That the landlord must give their tenant notice in writing a least 24 hours prior to entering their tenant's residential unit.

When a landlord conducts a property inspection, **a landlord cannot change the locks without first giving their tenant notice** and providing them with a **replacement key**.

Doing so is considered a breach of the tenancy agreement and/or a breach of the Landlord and Tenant Act 1974 and affords the tenant the opportunity to **immediately terminate** the tenancy agreement and leave the premises.

However, if a tenant elects to immediately terminate the tenancy agreement, and leave the premises, the tenant will be obligated to pay all outstanding rent up until the date the residential unit is vacated. For example, if a tenant terminates a contract on the 20th day of the month, and rent is due on the 1st of the next month, the tenant will be obligated:

- To pay their landlord a pro-rated monthly rent for the month that they left the residential unit (i.e. pay for 20 out of 30 days of the month); and
- Any other outstanding rent that is due.

Similarly, **a tenant cannot change the locks to their residential unit** during their tenancy for any reason. Doing so is considered a breach of the tenancy agreement and/or a breach of the Landlord and Tenant Act 1974 and may result in the landlord choosing to pursue eviction proceedings.



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