



CONSUMER AFFAIRS

B E R M U D A

Promoting Confident Consumers and Responsible Traders

Rent Controlled Properties Rent, Evictions and Inspections Handbook

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1. Overview

If you are a landlord of property which has an Annual Rental Value of \$22,800.00 or less there will be circumstances where you will have to coordinate with the Consumer Affairs Rental Unit as your property is subject to rent control obligations (i.e. Rent Control).

Contrary to popular belief the amount of rent that may be charged by a landlord who owns properties falling under the Rent Control is not calculated by dividing the rental unit's Annual Rental Value by 12.

The following sections outline the application process landlords must complete in order to have their initial monthly rent approved, the process landlords must complete to request approved rental increases, how landlords should handle receipt of damage deposits and provide guidance on how to manage circumstances where tenants are in arrears of rent.

2. Notification of New Rental Unit and First Registered Rent

If you have recently completed the construction of a brand new residential home that has a rental unit with an Annual Rental Value of \$22,800.00 or less, Consumer Affairs advises that you immediately contact the Consumer Affairs Rental Unit.

Once you have entered into a rental agreement with the rental unit's first tenant, as the landlord it is recommended that you notify the Consumer Affairs Rental Unit and provide a copy of the tenancy agreement. The rental fees charged in the initial tenancy agreement shall be considered the "first registered rent".

Upon submission of the first tenancy agreement of a rent controlled unit, if you would like to increase the registered rent you will have to:

- Formally apply to the Consumer Affairs Rental Unit for permission prior to charging any increased rents on future tenants; and
- Have the registered rent formally amended.

Consumer Affairs advises that landlords of new rental units falling under the Rent Increases (Domestic Premises) Control Act 1978 are careful in the amount they agreed to charge their first tenant. Although it may be well intentioned, providing a "friends and family discount" for the first rent charged will impact future requests for rental increases of the registered rent and whether it will be approved.

3. Rental Increases

After notifying the Consumer Affairs Rental Unit of the first rent charged of a residential unit falling under Rent Control, landlords may request permission to increase the registered rent if:

1. The landlord and tenant have mutually agreed on the proposed rent increase; or
2. The landlord applies to the Rent Commissioner of the Consumer Affairs Rental Unit for a rent increase

3.1 Mutually Agreed Rental Increase

When a landlord and an existing tenant agree to a rent increase, the landlord must file an RC-2 Rent Increase Application in triplicate with the Rent Commissioner.

Any tenant that agrees to the rent increase must pay the increased amount for a minimum of six months. If not, the rent charged for the residential unit shall revert back to the original amount for any new tenant.

It is unlawful for a landlord to exercise any undue pressure or influence on a tenant (i.e. a threat to serve a notice to quit) in order to obtain an agreement to a proposed increase of rent. It must also be noted that a tenant cannot agree to a rent increase in their first six months of a tenancy.

Tenants whose rent is being paid by Financial Assistance cannot agree to a rent increase and the landlord must submit an RC-8 Rent Increase Application Form (see below).

3.2 Non-Mutually Agreed Rental Increase

If an existing tenant of a residential unit falling under Rent Control **does not agree** to a landlord's proposal to increase the rent, the landlord must file an RC-8 Rent Increase Application Form in triplicate with the Rent Commissioner for approval to increase the rent.

3.3 Vacant Premises

If a residential unit falling under rent control is vacant, and a landlord wishes to increase the existing registered rent, the landlord must submit an RC-7 Rent Increase Application Form. In this instance, neither the tenant vacating the premises nor the prospective tenant will be consulted regarding the landlord's application.

When downloading and printing the abovementioned forms (RC-2, RC-8, RC-7), please print on 8/12" x 14" paper or shrink it to fit the page to ensure that the whole application form is printed.

4. Applying for a Rental Increase

When a landlord of a residential unit falling under Rent Control applies for a rent increase on existing tenants, the process follows these steps:

1. After obtaining the appropriate application form, the landlord submit a request to increase of rent to the Rent Commissioner for review
 - a. Mutually Agreed (RC-2 Form)
 - b. Non-Mutually Agreed (RC-8 Form)
 - c. Vacant Premises (RC-7 Form)
2. A landlord is restricted from receiving an approved rental increase request, via an RC-7 or an RC-8 form, once per calendar year
3. Depending on the type of application form received the Rent Commissioner shall send a copy of the application form to the tenant for comments (i.e. Non-Mutually Agreed)
 - a. Upon receipt of the application form the tenant shall respond to the Rent Commissioner with comments
4. The Consumer Affairs Rental Unit shall conduct an inspection of the residential unit specified in the application form.
5. Following completion of the inspection the Rent Commissioner shall make a decision and issues a rental certificate to the landlord and the tenant (if appropriate)
 - a. The rental certificate shall state whether the request to increase has been approved, the amount of approved monthly rent and the exact date the rent increase will take effect.
6. If neither the landlord nor tenant (if appropriate) is satisfied with the rent assessed for the unit, the aggrieved party must file an RC-5 Application for Review Form in triplicate with the Rent Commissioner to have the terms of the rental certificate reviewed for a fee.
 - a. The application for review received from the landlord or tenant shall be sent by the Rent Commissioner to the other party for comments (if appropriate).
7. After receiving comments from the other party regarding the review of the rental certificate the Rent Commissioner shall conduct a further review in consultation with the Rent Increases Advisory Panel.

If after the review either party still feels aggrieved by the Rent Commissioner's decision, an appeal may be made to the Magistrates' Court. The court will not interfere with the Rent Commissioner's decision unless satisfied that the decision was manifestly unfair and unreasonable.

5. New Tenants

When premises are to be rented to a new prospective tenant, the landlord cannot advertise or offer the premises for rent at an amount which is above the registered rent approved in accordance with the Rent Increases (Domestic Premises) Control Act 1978.

Landlords found to be charging rent above that which has been approved may be liable to a fine of \$1,000. Consumer Affairs advises tenants that have been overcharged to **not start withholding rent** as your landlord may elect to take you to court for non-payment of rent. If a tenant discovers that they have been overcharged the tenant may apply to court and file a claim requesting recovery from the landlord for the excess rent charged.

In addition to the obligation to not overcharge tenants rent above the Rent Commissioner's approved registered rent, a landlord must inform a prospective tenant in writing of the rent charged to the previous tenant. If an increase has taken place since the previous tenant the landlord must show the prospective tenant the rent certificate provided by and signed by the Rent Commissioner.

Failure by the landlord to notify the prospective tenant (i.e. rent charged to previous tenant and any approved rent increase) may render the landlord liable to a fine of \$1,000, imprisonment for up to six months, or both.

6. Rental Deposits and "Key Money"

While it is lawful for a landlord to demand the payment of a half month's rent (two weeks) by way of deposit, the payment of "key money" by a tenant is unlawful and any such payment may be recovered from a landlord.

A "damage deposit" or "security deposit" is considered the a 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 minimize the risk of non-payment of rent, damage to their property or the removal of a tenant's furniture.

A landlord who charges more than a half month's rent (two weeks) for a damage deposit or security deposits, renders themselves liable to a fine of \$1,000, imprisonment for six months or both, if he/she refuses to refund the tenant for the excess.

If a landlord informs a prospective tenant that the availability of a residential unit under rent control is conditional on them providing "key money", this is considered the payment of a premium as a condition for the grant of a tenancy.

Additionally, a landlord may state that “key money” is necessary as part of the tenancy due to the landlord selling the tenant pieces of furniture at a price in excess of their value. A landlord who demands or receives “key money” renders themselves liable to a fine of \$1,000, imprisonment for six months, or both.

6.1 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).

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 that you can rely on in the future 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:

- You've damaged the property
- You've 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 real estate 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:

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

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, Consumer Affairs advises that you ask them:

- Why they're taking the money;
- How they worked out how much to take off your deposit;
- To provide invoices of works and service performed to fix any damage.

If you and your landlord or real estate agent agree as to 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.

7. 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 face the possibility of your landlord seeking possession of your residential unit (i.e. file a Notice to Quit).

7.1 Managing Rental Arrears

If you fall behind on your rental payments 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 in full Consumer Affairs advises that you act as quickly as possible. If you ignore your rent arrears the problem will only get worse.

7.2 Confirm Who is Responsible for Paying the Rent 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 confirm responsibility 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. This means that the landlord cannot hold you responsible for rent arrears in the event that your roommates fail to pay their rent. Consumer Affairs advises that you review your tenancy agreement and confirm the agreed rental payments for each roommate.

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 you are negotiating with your landlord you have your tenancy agreement or statement of terms on hand. This way you will be able to prove when your tenancy started and that your tenancy agreement is separate from the tenancy agreement entered into between the previous tenant and your landlord.

If you do not have a tenancy agreement you will have to rely on the implied terms and conditions outlined in the Landlord and Tenant Act 1974 and the Rent Increases (Domestic Premises) Control Act 1978.

Instead of having to rely on the law 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, end, the amount of rent you will be expected to pay and how often.

7.3 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).

Consumer Affairs advises that you consistently 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.

If you are reliant on a housing allowance from the Department of Financial Assistance, Consumer Affairs advises that you contact the Department of Financial Assistance to find out how much your landlord has been paid.

7.4 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 specified period of time in order to repay the rent in arrears. Entering into a repayment plan could be easier than paying the full amount of the outstanding rent 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 your proposed repayment plan, Consumer Affairs advises that you write the repayment plan down and that you and your landlord both sign it. If your landlord will not agree to your proposed repayment plan, Consumer Affairs advises that you pay your landlord as much as you can afford.

If your landlord decides to pursue legal action against you for the outstanding rent and seeks to obtain possession of your residential unit, making a payment against your rent arrears may help you in court as it will indicate that you have made genuine efforts to pay your rental arrears.

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

8. Evictions

If you have found yourself continuously in breach of your tenancy agreement with your landlord, your landlord may seek possession of your landlord. In addition to acting in breach of your tenancy agreement with your landlord, your landlord may rely on specified grounds outlined in the Rent Increases (Domestic Premises) Control Act 1978 in order to evict you from the premises; even if you are acting in compliance with the tenancy agreement. The following sections discuss the grounds upon which a landlord of a Rent Controlled property may evict a tenant.

8.1 Grounds to Evict

As tenant of a rent-controlled property it is important to note that a landlord of a rent-controlled property can rely on specified legislative grounds in order to serve an eviction notice and gain possession of your residential unit.

Under the Rent Increases (Domestic Premises) Control Act 1978 a landlord of a rent-controlled property can evict a tenant based on the following:

- A tenant **fails to pay rent or breaches any other term or condition** outlined in the tenancy agreement between the landlord and the tenant (e.g. damage to property, unapproved sub-letting, illegal tenants);
- The landlord requires the premises for their **own occupation**, or for the occupation of their father, mother or any child or grandchild of theirs over the age of 18 years or married;
- The landlord wishes to **rebuild the premises or intends to carry out extensive renovations and repairs** that cannot be carried out with the tenant in occupation of the residential unit;
- The landlord specifies that the **tenant is “undesirable”**, and the landlord has given an opportunity to remedy the issue complained of and the tenant has failed to do so; or
- The tenant is a **resident of an apartment unit in a building**, which is **also occupied by the landlord**, and the landlord requires occupancy of the apartment unit and the apartment building does not compromise of more than 3 apartment units.

8.2 Undesirable Tenants

Under the Rent Increases (Domestic Premises) Control Act 1978 an “undesirable” tenant is defined as a tenant who:

- Uses the premises for **illegal purposes**;
- Persistently **allows persons of bad character on the premises**;
- Causes **unnecessary annoyance, disturbance, inconvenience or damage** to the landlord, or his property, or to any other person or the property of that other person occupying the same building at a tenant or any building adjacent to the property currently occupied by the “undesirable” tenant; or
- In breach of his tenancy agreement with the landlord, the tenant is **persistently in arrears of his rent** for periods of not less than two weeks and at the time of service of a notice to quit on the “undesirable” tenant the tenant is in arrears of rent of two months or more.

In order for a landlord to service a Notice to Quit on an “undesirable” tenant, section 10 of the Rent Increases (Domestic Premises) Control Act 1978 states that the landlord must give the undesirable tenant the opportunity to remedy any harm being caused.

If the tenant fails to rectify the issue complained of the landlord may then apply to the courts for permission to serve a 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 legal permission to obtain possession of the residential unit.

Upon receipt of a Counter Notice from a tenant objecting to the Notice to Quit, the landlord must then **send copies of the Notice to Quit and the Counter Notice to the Consumer Affairs Rent Commissioner** and **request a date for the issue to be heard** before the Rent Increases Arbitration Tribunal.

At the hearing the Rent Increases Arbitration Tribunal will determine whether the tenant is considered undesirable and if necessary either:

- Confirm the Notice to Quit; or
- Order the tenant to remedy the matter and suspend the enforcement of the Notice to Quit.

If the Rent Increases Arbitration Tribunal is satisfied that the tenant is **not considered “undesirable”**, the Notice to Quit is considered **cancelled**. If the tenant is **considered “undesirable”** the tenant will be obligated to leave the landlord’s property by the date specified in the Notice to Quit.

8.3 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 legal permission to obtain possession of the residential unit.

With respect to the eviction process specifically applied to “undesirable” tenants (see above), Consumer Affairs appreciates that the process for evicting a tenant is far more burdensome when trying to evict a tenant for either of the following reasons:

- A tenant fails to pay rent or breaches any other term or condition outlined in the tenancy agreement between the landlord and the tenant (e.g. damage to property, unapproved sub-letting, illegal tenants);
- The landlord requires the premises for their own occupation, or for the occupation of their father, mother or any child or grandchild of theirs over the age of 18 years or married;
- The landlord wishes to rebuild the premises or intends to carry out extensive renovations and repairs that cannot be carried out with the tenant in occupation of the residential unit; or
- The tenant is a resident of an apartment unit in a building, which is also occupied by the landlord and the landlord requires occupancy of the apartment unit and the apartment building does not comprise of more than 3 apartment units.

Before a landlord can legally evict a tenant from their property for either of the above reasons, the landlord must:

- Apply to the courts in order to obtain a “Notice to Quit Order”; and
- Serve a Notice to Quit (i.e. Notice to Quit for Non-Payment, Notice to Quit for Personal Possession, or Notice to Quit for Renovations and Repairs) on their tenant.

Upon gaining permission to serve a Notice to Quit Order on their tenant, the Notice to Quit will inform the tenant that:

- They have the legal right to serve a Counter Notice on the landlord; and
- That the **Counter Notice must be served on their landlord within 14 days** of receiving the Notice to Quit.

If a tenant wishes to serve a Counter Notice on their landlord, the Counter Notice must:

- State why the tenant is disputing the Notice to Quit (i.e. rent due is up-to-date and the landlords statement of rental arrears is inaccurate); and
- Be printed and copied in triplicate and a copy of the Counter Notice provided to their landlord to the Rent Commissioner at Consumer Affairs.

If the **tenant fails to submit a Counter Notice on the landlord within 14 days** of receiving the Notice to Quit, the tenant will be obligated to vacate the premises in accordance with the terms outlined in the Notice to Quit.

Upon receipt of the tenant’s Counter Notice, the **landlord must re-apply to Magistrate’s Court within 14 days of receiving the Counter Notice** and request possession of the tenant’s rental unit. After filing another application for permission, a Magistrate judge shall decide whether the tenant shall be forced to vacate the property and by what date.

If the landlord fails to re-apply for possession with the courts, upon receiving a Counter Notice, the Notice to Quit is considered void and must restart the Notice to Quit application process.

Appreciating the fact that many landlords act in contravention of a signed lease agreement and the Rent Increases (Domestic Premises) Control Act 1978, 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 Rent Increases (Domestic Premises) Control Act 1978; and
- Communicate their intention to terminate their tenancy if the issue is not addressed by a specified time and date.

It is important to note at this stage 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 to Quit, serve a Counter Notice, or 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.

8.4 Confirm Validity of Notice to Quit

If you receive a Notice to Quit, Consumer Affairs cannot understate the significance of confirming the validity of the Notice to Quit as 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 **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 your 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 them 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 from 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 by obtaining permission from the courts to serve a Notice to Quit on their tenant this 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.

8.5 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 are entitled to apply to the courts to pause the eviction.

If 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 Rent Increases (Domestic Premises) Control Act 1978, 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. fingerprints on painted walls); or
- It would be unreasonable for the landlord to order termination of the tenancy agreement (i.e. a tenant paid their 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.

9. 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 with the courts **immediately following receipt of the Notice to Quit**.

Failure to act immediately may impact your ability to pause the eviction. 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 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**.

It is important to note that 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 it is advised 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 of their residential property 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 do not dispute your landlord's Notice to Quit 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.

10. 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 specified in 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 an illegal tenant.

10.1 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 1074, 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 may 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 serve 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 serve on their tenant a **"Warrant of Eviction"**.

If you receive a **suspended possession order** from your landlord, your landlord will be granted 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, if your landlord is granted a suspended possession order 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 evict **more than 6 years ago**, your landlord would need to re-apply for permission to apply to issue a Warrant of Eviction. It is at this stage that Consumer Affairs advises tenants in receipt of a possession order 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 the opportunity 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 this instance if a tenant is in breach of an arrangement with their landlord, the 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 tenant at least 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.

10.2 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 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 of your eviction and 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 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 available 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 and/or to remove you and anyone else who is there. Your landlord will likely be at the eviction so that the bailiff can hand over 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 from 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 the tenant being evicted, 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** following an eviction (i.e. too small/large, outside of financial budget, not handicap accessible or friendly for physically impaired tenants), Consumer Affairs advises that you **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.

10.3 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 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 and suspends the Warrant to Evict, this would stop the eviction from going ahead for a period of time specified by the courts. 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 during 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 postponed or 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.

Additionally, 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

11. 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 in order to effectively dispute a Notice to Quit or pause a Warrant to Evict.

11.1 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 their 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 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 reason for requesting a delay in the eviction; and
- The grounds upon which the landlord is relying on to evict the tenant.

It is important to note that 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
- 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.

11.2 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; or
- Change the date of the hearing

Consumer Affairs recommends tenants, upon their arrival to the rescheduled possessing hearing, 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 is unable to provide supporting evidence explaining their non-attendance, it is likely that the courts will dismiss their defense form. A tenant’s failure to attend court and provide a valid explanation will likely result in the court electing to solely rely on the evidence provided by the landlord and grant the landlord judgement in default.

Appreciating that there will be circumstances 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 tenants facing such a possibility to:

- Immediately contact the courts to explain their 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 their 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.

11.3 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 mandates that the 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** 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 personal property, and they do 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 your home to make you leave. For further guidance on the impact of a Warrant to Evict please see above.

12. 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 their 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:

- 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, it must be noted that **the landlord cannot change the locks without first giving their tenant notice** and providing them with a **replacement key**. Doing so is a breach of the tenancy agreement and/or a breach of the Rent Increases (Domestic Premises) Control Act 1978 and affords the tenant the opportunity to **immediately terminate** the tenancy agreement and leave the premises.

If a tenant elects to 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 Rent Increases (Domestic Premises) Control Act 1978 and may result in the landlord choosing to pursue eviction proceedings.

To assist in providing a tenant adequate notice in writing, a landlord of a rent controlled residential unit (i.e. falls under the Rent Increases (Domestic Premises) Control Act 1978) may utilize an RC-5 Notice of Intent Enter Rental Premises Form to serve notice on their tenant that they wish to conduct an inspection.



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