



Policy Number: 08-005
Subject: Order of Possession
Chapter: Orders of Director

Legislation	s. 42
Definitions	<p>Notice of Termination: a written document used by a landlord or tenant to terminate, or bring to an end, a tenancy on a specified date.</p> <p>Order of Possession: a written Order, issued by the Residential Tenancies Section, directing a tenant to move out of the rented premises on a specified date.</p>
Purpose	The purpose of this policy is to outline how a landlord may obtain an Order of Possession.
Policy	<p>When a tenancy has been terminated, but the tenant has remained in possession of the rented premises beyond the termination date, the landlord may apply to this Section for an Order of Possession.</p> <p>Typically, after receiving an Application for Dispute Resolution, a hearing will be scheduled, during which evidence would be submitted to establish that the rental agreement between the landlord and the tenant had been properly terminated. If the adjudicator hearing that application is satisfied that the termination notice is valid and that the tenancy had been terminated, that adjudicator may issue an Order of Possession.</p> <p>Where the safety or security of a landlord or tenant is at risk, or where there is significant risk of damage to the rented premises, the Director may issue an Order of Possession without conducting a hearing. See: Policy 08-007: Orders Without Hearing – Urgent.</p> <p>A landlord and tenant may enter into a mediated agreement in which the tenant agrees to vacate the rented premises on a specified date. They may also enter into a mediated agreement where the tenant agrees to vacate the rented premises if other terms of the mediated agreement are not complied with (e.g., paying rent by a specified date). If the tenant does not comply with the mediated agreement and does not vacate the rented premises, a landlord may apply for an Order of Possession, without holding a hearing. See: Policies 08-002: Certification of Orders, and 08-004: Mediation Agreement Converted to Order.</p>



Procedure Overview

Before a landlord can seek an Order of Possession, a termination notice must have been issued, or a discontinuance agreement must have been entered into, terminating the rental agreement on a specified date.

After the termination notice has been issued (or after the discontinuance agreement had been entered into), the landlord may submit an [Application for Dispute Resolution](#), checking the box: “Premises Vacated”. At the time of making application, a copy of the termination notice, or discontinuance agreement, must be submitted. The landlord must also pay the \$20.00 filing fee. Once the application has been processed, if a hearing is required, a hearing date will be scheduled. The landlord is required to serve the tenant with the application and the notice of the hearing 10 clear days before the hearing date (see [Policy 05-001](#)).

At the hearing, the landlord would be required to provide evidence establishing that the termination notice was valid (see [Policy 07-001](#)). The landlord would have to establish that the notice was properly served and that it met all the time-frame requirements of the section of the Act under which it was issued. If the notice was issued for cause, the landlord would also have to present additional evidence to establish that they were justified in issuing the notice.

This additional evidence may include, but is not limited to:

- (a) In the case of a termination notice issued for [failure to pay rent \(s. 19\)](#): rent records, rent receipts, e-Transfer receipts, a rent ledger, etc.
- (b) For a termination notice issued for a [material breach of a term of the rental agreement \(s. 20\)](#): a copy of the rental agreement, a copy of the notice to remedy the breach, and evidence of the breach, which may include photographs, videos, witness statements, etc.
- (c) For a termination notice issued because the [premises are uninhabitable \(s. 21\)](#): photographs or videos of the property, a notice from a municipality, etc.
- (d) For a termination notice issued because the tenant had not lived up to their [obligation to keep the unit clean or repair damage \(s. 22\)](#): photographs or videos of the rented premises showing the condition of the property, or the damage; a copy of a notice to repair/clean, etc.
- (e) For a termination notice issue because the tenant contravened the covenant of [peaceful enjoyment \(s. 24\)](#): photographs, videos, witness statements, police reports, etc.



	<p>The hearing of an application for an Order for Possession must take place after the date the rental agreement was terminated and the tenant was required to vacate the rented premises. If the adjudicator determines that the termination notice was valid, the adjudicator may issue an Order for Possession. In most cases, as the tenant was supposed to have moved out before the hearing date, the adjudicator would grant the order and order “that the tenant move immediately”.</p> <p>If the tenant moves out before the hearing, the landlord may still proceed with a claim for compensation (if applied for), but the landlord should advise the adjudicator at the commencement of the hearing that the tenant is no longer occupying the rental premises.</p> <p>Where the tenant fails to vacate the rented premises after receiving a valid termination notice, the landlord is entitled to an award for rent up to the date of the hearing, calculated at a daily rate. The daily rate of rent is calculated by determining the amount of rent that would be paid in a year, divided by the number of days in that year. For example, if the rent is set at \$1000.00 per month, the annual amount of rent would be \$12,000.00 (\$1000.00 per month x 12 months) and that amount would be divided by 365 days (so long as it is not a leap year), resulting in a daily rate of \$32.88.</p> <p>If the landlord is making a claim for rent, it must be indicated on the application.</p> <p>If, in addition to receiving an Order of Possession, the landlord is also awarded an amount in compensation for damages, or rent, etc., the adjudicator should apply the security deposit against the amount awarded, even if the landlord had not indicated on the application that she was seeking to retain the deposit.</p>
<p>Forms & Form Letters</p>	<ul style="list-style-type: none"> • Notice of Hearing • Application For Dispute Resolutions • Order of Possession • Order to Sheriff to Deliver Possession of Property
<p>X-Reference</p>	<ul style="list-style-type: none"> • Section 05-001: Service of Application on Respondent • Section 05-002: Service of Termination Notice • Section 07-001: General Information • Section 07-002 Failure to Complete Repairs • Section 07-004: Breach of Material Term • Section 07-005: Interference with Peaceful Enjoyment and Reasonable Privacy



	<ul style="list-style-type: none">• Section 07-006: Premises Uninhabitable• Section 07-008: Failure to Pay Rent• Section 08-002: Certification of Orders• Section 08-004: Mediation Agreement Converted to Order.• Section 08-007: Order Without a Hearing – Urgent
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Other Resources	