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Residential Tenancies in Alberta: Evictions for Non-Payment of Rent No Longer Suspended

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Legislation Commented On: [Tenancies Statutes \(Emergency Provisions\) Amendment Act, 2020](#) (Bill 11); *Late Payment Fees and Penalties Regulation*, [Alta Reg 55/2020](#); and six Ministerial Orders issued in relation to COVID-19

In response to the COVID-19 pandemic, the Alberta government has issued six ministerial orders that affect residential tenancies, as well as one regulation and one amending statute. All eight instruments are described in terms of the changes they make to pre-pandemic residential tenancy law in a table towards the end of this post. For the most part, however, this post focuses on the two ministerial orders dealing with evictions. [Ministerial Order No. 20/2020](#) temporarily suspended the enforcement of some of the eviction orders made by the tenancy dispute officers of the Residential Tenancy Dispute Resolution Service (RTDRS) or by judges of the Provincial Court or Court of Queen’s Bench. Eviction order enforcement was suspended only if the reason to terminate the tenancy was for the failure to pay rent and/or utilities and nothing else, and only if that failure to pay was due to circumstances beyond the tenant’s control caused by the COVID-19 pandemic. Just how civil enforcement agencies have been deciding if those reasons are present is unknown. The suspension of evictions only lasts until Ministerial Order No. 20/2020 lapses. It lapses on the earliest of April 30, 2020, or when the Minister of Justice or the provincial Cabinet terminates it, or 60 days after the Order in Council declaring the state of public health emergency lapses – unless it is sooner continued by a Cabinet order. It appears that the suspension will end on April 30. What happens to evictions on and after May 1? The answer to that question is dictated by [Ministerial Order No. SA: 005/2020](#), which imposes on landlords a duty to negotiate payment plans with their tenants. A landlord cannot get a court or RTDRS order to terminate a tenancy (or to pay rent in arrears or compensation for overholding) unless the landlord can prove either that the tenant failed to carry through on an agreed payment plan or, if there is no agreed payment plan, that the landlord “made reasonable efforts to enter into a meaningful payment plan” before applying to the court or RTDRS. Barring a last-minute Cabinet order, Ministerial Order No. SA: 005/2020 will be the only law standing between tenants who cannot pay their rent due to COVID-19 and their eviction after May 1.

In addition to public health and political problems with Ministerial Order No. SA: 005/2020, there are a number of legal problems with this particular government response to the pandemic.

First, Ministerial Order No. SA: 005/2020 is hard to find and it is unclear how well publicized it has been or how many landlords and tenants know about it. Second, the substance of the ministerial order is vague and open to various interpretations. Third, the government’s informal attempt to explain “reasonable” efforts to enter into a “meaningful” payment plan might raise

more questions than answers. Fourth, tenancy dispute officers at the RTDRS will be the only ones available to resolve disputes about Ministerial Order No. SA: 005/2020 and evictions and very few, if any, of their orders and the reasons for them will be made public. I will elaborate on each of these problems.

First, Ministerial Order No. SA: 005/2020 is hard to find. It is not published in any official source. It can only be found in two places: buried among fifty-plus badly organized orders on the Alberta Government open data [webpage](#), and more easily located in the “Tenants and Landlords” section of the “COVID-19 orders and legislation” page on the Alberta.ca [website](#). The ministerial order has not been published in Part II of the *Alberta Gazette*. It is not required to be published there because section 52.83 of the [Public Health Act](#), RSA 2000 c P-37, exempts it from the [Regulations Act](#), RSA 2000 c R-14, as explained by my colleague, Shaun Fluker, in his post, [COVID-19 and the Exercise of Legislative Power by the Executive](#).

Even though Ministerial Order No. SA: 005/2020 modifies two sections of the [Residential Tenancies Act](#), SA 2004 c 17.1, and two sections of the [Mobile Home Sites Tenancies Act](#), RSA 2000, c M-20, on March 27, 2020, there is no official – or even unofficial – version of either statute that includes the changes made by that ministerial order. [The Centre for Public Legal Education Alberta](#) provides Albertans with information and links for changes to laws due to COVID-19, including changes to [Housing and Real Estate](#) law, but these are also informal resources.

The Queen’s Printer claims that its official versions of those two statutes are current to April 2, 2020 ([here](#) and [here](#)), but neither of those statutes include the new sections that set out landlords’ duty to negotiate a reasonable payment plan before applying to the RTDRS or the courts. That means landlords and tenants have to know that there is a ministerial order that modifies those statutes and that they therefore cannot rely on the accuracy of the official Queen’s Printer versions (or the CanLII versions as their source is the Queen’s Printer). The Queen’s Printer is required to print and publish the statutes of Alberta: [Queen’s Printer Act](#), RSA 2000 c Q-2, section 3. Why that duty does not include statutes modified by ministerial orders is unclear.

Second, the substance of Ministerial Order No. SA: 005/2020 – the landlord’s duty to negotiate in good faith – is relatively vague and will be open to different interpretations, depending on the facts. The ministerial order adds section 26(1)(c.1) to the *Residential Tenancies Act* and adds section 30(f) to the *Mobile Home Sites Tenancy Act*. Both of these added sections state that if a landlord wants an order to terminate a tenancy, or an order requiring a tenant to pay rent in arrears, or compensation for overholding, or an order requiring the tenant to deliver up possession,

the landlord must demonstrate that an agreed payment plan was in place to which the tenant failed to adhere or that the landlord made reasonable efforts to enter into a meaningful payment plan prior to making an application.

What does it mean to say “the landlord must demonstrate”? Does it mean the landlord must prove on the balance of probabilities? Or does a “demonstration” demand something less?

The new section 29(1.1) of the *Residential Tenancies Act* and section 32(1.1) of the *Mobile Home Sites Tenancy Act* state a similar pre-condition in slightly different words about the landlord's right to terminate the tenancy for a substantial breach:

the landlord may not terminate a tenancy without first making reasonable efforts to enter into a meaningful payment plan or entering into a payment plan and having the tenant fail to adhere to such a plan.

The landlord has to demonstrate or have done one of two things under Ministerial Order No. SA: 005/2020 in order to terminate a tenancy (i.e. to get an eviction order). The first is to show that an agreed payment plan was in place and the tenant failed to follow through on that plan. Landlords are accustomed to proving the existence of an agreement (i.e. a lease or residential tenancy agreement), and accustomed to proving non-payment or a different breach. If an agreed payment plan is in place, this precondition to the granting of an order should be relatively simple to fulfill – depending, of course, on how well drafted the payment plan is. A back-of-the-envelope payment plan might cause more problems than it solves.

Without an agreed payment plan in place, a landlord must demonstrate “that the landlord made reasonable efforts to enter into a meaningful payment plan.” What will amount to “reasonable” efforts or “meaningful” payment plans? What amounts to reasonable efforts to negotiate payment plans under pandemic conditions, with the future still so unpredictable? What makes the suggested terms of a payment plan “meaningful” in the context of the uncertainty caused by COVID-19?

It should also be noted that, unlike Ministerial Order No. 20/2020 which suspended evictions, none of the additions made by Ministerial Order No. SA: 005/2020 are restricted to failures to pay rent and/or utilities and nothing else. They include orders for termination sought for significant interference with the rights of either the landlord or other tenants, illegal acts, significant damage to the premises, and other types of substantial breaches. Neither are the additions tied to failures to pay due to circumstances beyond the tenant's control caused by the COVID-19 pandemic.

Third, the government has offered, in a very informal fashion, its own understanding of what it means for a landlord to make reasonable efforts to enter into a meaningful payment plan. In a 2-page document entitled [Rent Payment Plans COVID-19](#), available on the *Alberta.ca* website, the government explains what it thinks “reasonable efforts” and (presumably) “meaningful payment plans” are in the following words:

Reasonable effort means the landlord was willing to develop a payment plan that considers the tenant's financial circumstances – and establishes a payment each month that will result in full repayment of the amount owing within a specified time period, such as six months, after the end of the state of public health emergency.

Just what “the amount owing” refers to is unclear. When coupled with an earlier warning that “tenants are still obligated to pay their rent during the state of public health emergency,” this explanation gives the impression that any meaningful payment plan must result in tenants paying

the full amount of rent that had been agreed to pre-pandemic sometime fairly soon after the public health emergency ends. However, the government’s description of “reasonable efforts” and “meaningful payment plan” has no legal status. A court or RTDRS tenancy dispute officer would be free to interpret the modifications made by Ministerial Order No. SA: 005/2020 in keeping with the way courts have interpreted duties to negotiate in good faith in other contexts.

Fourth, these interpretative issues are compounded by the fact that all of the disputes, or at least those in the near future, will be heard by the tenancy dispute officers at the RTDRS. The courts are not open for business right now, except for urgent matters and evictions are not on their lists of urgent matters (see [here](#) and [here](#)). The RTDRS is still conducting hearings by telephone, a method that it commonly used before the pandemic. The RTDRS continues to accept applications through its online eFiling service. Its [website](#) even indicates that “Applications for possession or termination of the tenancy agreement will be given priority in the RTDRS hearing schedule.” (This *Alberta.ca* website indicates the Alberta government sees, and wants the RTDRS to see, evictions as urgent matters to be given priority, and the return of security deposits as “non-urgent applications,” a categorization which seems to show a bias in favour of landlords, as well as a lack of awareness that most tenants need the return of their security deposit in order to rent new premises – but I digress.)

RTDRS tenancy dispute officers do not have to decide similar cases in the same way. Neither do they have to give written reasons for their orders instead of oral reasons to the parties at the end of their hearing, unless they reserve their decision. In either instance, they need not make their orders or reasons public. The RTDRS did start to post a small percentage of their written reasons on CanLII at the beginning of 2020, backdated to the beginning of 2019 ([ABRTDRS](#)), but nothing new has been posted since early February. These structural factors mean that, except in the rare case, no one but the parties will ever know how Ministerial Order No. SA: 005/2020 is being interpreted, and therefore we may never know if there is any consistency to the interpretation or if everything depends on which tenancy dispute officer hears the case.

As noted at the beginning of this post, and as of April 27, 2020, there are six COVID-19-related ministerial orders that are relevant to residential tenants and their landlords in Alberta, one regulation (the *Late Payment Fees and Penalties Regulation*, [Alta Reg 55/2020](#)), and one statute (Bill 11, the [Tenancies Statutes \(Emergency Provisions\) Amendment Act, 2020](#)). The Act repeats and “validates” everything done under or in reliance on two of the Ministerial Orders – the ones about late payment fees and rent increases – as well as the regulation. In the end, although there are eight different government instruments changing residential tenancy law in Alberta, there are only four types of changes due to the repetition and the need to change the law under both the *Residential Tenancy Act* and the *Mobile Home Site Tenancy Act*. The eight different instruments, their subject matter and their implementation are summarized in the table below.

Instrument	Date	Topic	Legislation and section amended	Are changes made to the legislation available from the Queen's Printer?
Ministerial order no. SA: 003/2020 (Service Alberta)	March 27, 2020	Relieves tenants under the <i>Residential Tenancies Act</i> from paying late payment fees from April 1 to June 30, 2020 and prohibits landlords from ever collecting those fees.	None.	Yes, as the <i>Late Payment Fees and Penalties Regulation</i> , Alta Reg 55/2020 .
Ministerial order no. SA: 004/2020 (Service Alberta)	March 27, 2020	Relieves tenants under the <i>Mobile Home Sites Tenancies Act</i> from paying late payment fees from April 1 to June 30, 2020 and prohibits landlords from ever collecting those fees.	Section 24(1) of the Mobile Home Sites Tenancies Act	In substance, but as section 24.1 pursuant to Bill 11.
Ministerial Order No. SA: 005/2020 (Service Alberta)	March 27, 2020	Amends the <i>Residential Tenancies Act</i> and the <i>Mobile Home Sites Tenancies Act</i> to prohibit landlords from evicting tenants or recovering arrears unless tenants have breached an agreed payment plan or the landlord made reasonable efforts to enter into a meaningful payment plan.	Adds sections 26(1)(c.1) and 29(1.1) to the Residential Tenancies Act and sections 30(f) and 32(1.1) to the Mobile Home Sites Tenancies Act	No.
Ministerial order no. SA: 006/2020 (Service Alberta)	March 27, 2020	Suspends rent increases during the state of public health emergency.	Adds sections 13.1 and 14.1 to the Residential Tenancies Act and section 15.1 and 16.1 to the Mobile	In substance, but as s 14.1 of the Residential Tenancies Act and 16.1 of the Mobile Home

Instrument	Date	Topic	Legislation and section amended	Are changes made to the legislation available from the Queen's Printer?
			Home Sites Tenancies Act	Sites Tenancies Act pursuant to Bill 11
Ministerial Order No. 20/2020 (Justice and Solicitor General)	March 27, 2020	Suspends, until it lapses, the enforcement of eviction orders made by the courts or the Dispute Resolution Service if the breach is solely for failure to pay rent and/or utilities due to circumstances beyond tenants' control caused by the COVID-19 pandemic.	Rule 9.26 of the <i>Alberta Rules of Court</i> and the authority of civil enforcement officers and bailiffs under the Civil Enforcement Act, RSA 200, c C-15 .	No.
Ministerial Order No. SA: 009/2020 (Service Alberta)	April 9, 2020	Prohibits the entry of a landlord, prospective buyer or prospective tenant into a tenant's premises on notice if any of those persons are self-isolating or in quarantine. Extends the time a tenancy dispute officer has to make an order from 30 to 60 days after the hearing.	Amends section 23(3) of the Residential Tenancies Act by adding section 23(4.1). Amends section 18 of the Residential Tenancies Dispute Resolution Service Regulation, Alta Reg 98/2006 .	No.
<i>Late Payment Fees and Penalties Regulation</i> , Alta Reg 55/2020	In effect on April 1, 2020	For tenancies under the <i>Residential Tenancies Act</i> only, prohibits a landlord from charging late payment fees for late or no payment of rent from April 1 to June 30, 2020,	None.	Yes, as the <i>Late Payment Fees and Penalties Regulation</i> , Alta Reg 55/2020 .

Instrument	Date	Topic	Legislation and section amended	Are changes made to the legislation available from the Queen's Printer?
		and from enforcing or collecting those fees after June 30.		
Bill 11: Tenancies Statutes (Emergency Provisions) Amendment Act, 2020	Royal Assent April 2, 2020; in effect March 27, 2020	<p>Prohibits rent increases for all residential tenancies during the state of public health emergency.</p> <p>Prohibits a landlord of a mobile home site from charging late payment fees for late or no payment of rent from April 1 to June 30, 2020, and from enforcing or collecting those fees after June 30.</p> <p>Validates the <i>Late Payment Fees and Penalties Regulation</i>, Alta Reg 55/2020.</p>	<p>Amends the Mobile Home Sites Tenancies Act by adding sections 16.1 and 24.1.</p> <p>Amends the Residential Tenancies Act by adding section 14.1</p>	Yes.

According to a [report](#) from rental brokerage firm SVN Rock Advisors, Inc, about 70 per cent of Alberta tenants paid rent in April. A March 2020 report by the Canadian Centre for Policy Alternatives, [The Rent Is Due Soon: Financial Insecurity and COVID-19](#), found that 46% of residential tenants in Canada have less than a month's worth of savings and one-third have two weeks or less of living expenses set aside. As tenants' savings run out and layoffs continue, most expect things to be worse in May (see [Rent relief in Canada top of mind for tenants as pandemic goes on](#)).

Ministerial Order No. SA:005/2020 is the only thing stopping evictions for non-payment of rent for COVID-19 related reasons after April 30. As of May 1, Alberta's residential tenants may be the only residential tenants in Canada not protected from evictions by bans or suspensions ([Rent relief: What each province is doing to help residential tenants during the pandemic](#)). Instead

Alberta residential tenants will be relying on reaching payment plans with their landlord that they can live with in order to avoid being evicted, or relying on their landlords being so unreasonable that the RTDRS will refuse to grant an eviction order.

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