



Residential Tenancies Program

Policy and Procedure Guide

Policy Number: 08-007
Subject: Order Without Hearing - Urgent
Chapter: Orders of Director

Legislation	s. 47(1), 48(a)&(b)
Definitions	<p>Affidavit: A statement signed by a person under oath or affirmation stating that the contents are, to the best of their knowledge, true. It is also witnessed and signed by a commissioner for oaths or some other authority authorized to administer an oath or affirmation.</p> <p>Order: A formal written decision given by an adjudicator.</p> <p>Ex-Parte Order: A legal order that is issued without the other party being provided notice of the application for such an order</p>
Purpose	The purpose of this section is to identify the requirements for a request for an urgent order without a hearing – legally referred to as an ex-parté order. Such orders can be issued by the Director in extreme circumstances.
Policy	<p>This section of the legislation provides for an applicant to request, in extreme circumstances, an ex-parté order thereby, denying a respondent of two important and fundamental elements of Natural Justice:</p> <ul style="list-style-type: none">• the right to be notified of a claim and,• the right to defend against the claim. <p>As such, the burden of proof is very high and the approval of ex-parté orders is made with a high level of discretion. An applicant must clearly demonstrate, with supporting evidence, that the proof provided clearly rises to the level that would authorize the director to ignore the fundamental elements of Natural Justice noted above.</p> <p>An applicant will be expected to be able to provide the following evidence as examples depending on the situation (<i>this list is not a complete list and other information may be required</i>):</p> <ul style="list-style-type: none">• Time & date stamped photos• Time & date stamped video• Sworn affidavits• Supporting eye witness affidavits



- Police reports
- Municipal inspection reports and orders
- Fire Department reports, order from the Fire Commissioner
- Letters from the utility provider indicating that the tenant has caused the utility to be discontinued
- Contemporaneous records of incidents & responses
- Letter, email, text messages where the date, sender, recipient and messages can be verified.

Safety and Security of Landlord or Tenant at Risk: (Section 48(a))

Where a landlord/tenant identifies their personal safety or security is at risk, the immediate contact should be to the police or the appropriate authority, depending on the situation. The following will identify some examples but under no circumstances represents a complete or exhaustive list of a risk to safety and security:

- *Credible and specific threat to cause physical harm or death*
- *Physical Assault*

The applicant should be aware that fear about what the other party might do in the future would NOT constitute grounds for an urgent order without a hearing.

Similarly, a persons past history (criminal or otherwise) or current dealings before a court would NOT in and of itself constitute grounds for an urgent order without a hearing.

Property at Significant Risk: (Section 48(b))

A tenant or person permitted on the premises by the tenant shall not place the landlord's property at a significant risk:

- *causes utilities to be disconnected,*
- *unsafe use of candles in place of electricity,*
- *unsafe uses of fuel based space heaters in place of central heating,*
- *removes or disables fire suppression systems,*
- *causing flooding through a negligent action.*

Such actions of the tenant or person permitted on the premises by the tenant, provides grounds for the landlord to request an urgent order without a hearing.



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	<p>The examples above are not meant to be a comprehensive list. In situations as above, the applicant shall provide an affidavit outlining the events and provide sufficient evidence to clearly support their request.</p> <p><u>The Regular Hearing Process Should be Followed:</u></p> <p>Where the utilities of a property are discontinued by the utility provider and has since been reconnected, an urgent order is no longer required as the situation is no longer urgent.</p> <p>Where a behaviour of a tenant that could be considered a risk has subsided or changed in severity, an emergency order is no longer required as the situation is no longer urgent.</p>
Procedure Overview	<p><u>Where the landlord or tenant requests a hearing or an Order in an emergency situation:</u></p> <ol style="list-style-type: none">1. The applicant may file an affidavit outlining reasons why the matter is urgent and involves the safety and or security of a landlord or tenant.2. The applicant must, along with their affidavit, provide evidence as mentioned above to support their claim satisfactory to the director that the matter is urgent and involves the safety and security of the landlord or tenant.3. Based on a complete and thorough review of the affidavit and other information provided by the applicant, the director may in exceptional circumstances only:<ul style="list-style-type: none">• contact the RNC or RCMP (where police may have been involved), to request the status of the situation; or• immediately order that a hearing be held; or• without holding a hearing, make an order where the matter is urgent and involves the safety or security of a landlord or a tenant; or where the tenant has put the landlord's property at significant risk. (Section 48(a) & (b)).
Forms & Form Letters	<ul style="list-style-type: none">• Affidavit• Witness Affidavit
X-Reference	Notice of Termination, section 7 of this manual.



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	Orders of the Division, section 8 of this manual.
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Other Resources	