Residential Tenancy Act - JUDICIAL REVIEW PACKAGE

What is it?

A judicial review is a review of a decision of the dispute resolution officer of the Residential Tenancy Board. A Supreme Court Justice decides whether the decision should be upheld or not. It is not an appeal.

How is the application made?

The application must be made by petition and supporting affidavits. The process related to petitions is set out in Supreme Court Civil Rule 16-1.

Who needs to be given notice?

1. The landlord.

2. The decision maker c/o the Residential Tenancy Branch. You can serve the Residential Tenancy Branch in person at the Burnaby Office, 400 - 5021 Kingsway, Burnaby, British Columbia, V5H 4A5 or by registered mail at:

   The Residential Tenancy Branch
   PO Box 9844
   Stn Prov Govt
   Victoria, British Columbia
   V8W 9T2

3. The Attorney General. Supreme Court Civil Rule 4-3(6) sets out how service on the Attorney General is affected.

Service on Attorney General

(6)A document to be served on the Attorney General must be served at the Ministry of Justice in the City of Victoria, and is sufficiently served if it is left during office hours with any lawyer on the staff of the Attorney General at Victoria or mailed by registered mail to the Deputy Attorney General at Victoria.

the address for service by registered mail is:

Deputy Attorney General
Ministry of Justice
PO Box 9280
Stn Prov Govt
Victoria, British Columbia
V8W 9J7

4. and any other person involved in the matter must be given notice.

How much does it cost?

The filing fee to commence a proceeding in the Supreme Court is $200. If you choose to have your affidavit sworn in the court registry there is a $40 fee to swear or affirm each affidavit. If the affidavit has been previously sworn by a commissioner for taking affidavits there is no cost to file an affidavit with the court.

If you cannot afford the filing fees you may wish to make an application to the court for an order waiving the fees pursuant to Rule 20-5. There is a separate package prepared for this type of application if you wish to apply.

How long do I have to file an application for judicial review?

The time limit to file a judicial review application is 60 days from the date of the tribunal's decision pursuant to the *Administrative Tribunals Act*.

The Petition (Form 66):

You will be the petitioner and the landlord will be the respondent. The names of the parties should be the same as those named in the Residential Tenancy Branch proceeding.

- Part 1 of the petition requires you to set out all of the orders you are seeking.
- Part 2 of the petition requires you to set out all of the material facts on which the petition is based.
- Part 3 of the petition requires you to set out the legal basis relied on to support the orders sought.
- Part 4 of the petition requires you to list each affidavit you intend to rely on in support of the orders sought.

Urgent Applications

The filing of a petition for a judicial review of a dispute resolution officer's order does not stay the order from the Residential Tenancy Branch. Unless a court order by a Supreme Court Justice is granted staying the order of possession the landlord is entitled to enforce the order following the review periods set out in the *Residential Tenancy Act*.

Often because the order of possession issued by the dispute resolution officer requires the tenant(s) to vacate the premises by a certain date and time the petitioner (tenant) may not be able to have the hearing of the judicial review before the date of possession set out in the order because of the time for service requirements set out in the rules. Depending on when the date of possession is the petitioner may apply to the court for an order shortening the service requirements set out in the rules. This is called a "short leave" application and the court registry will be able to provide you with the required requisition to apply for short leave. If the date for possession is imminent and there is such urgency that the petitioner does not have time to first serve all of the documents you may apply to the court for a without notice hearing asking to stay the order of possession pending the hearing of the judicial review. If you are seeking this relief it should be included in Part 1 of the petition as one of the orders you are applying for.

The affidavit (Form 109):

An affidavit is your evidence in support of the judicial review proceeding and if you are seeking a stay of the order of possession, it must include the evidence you rely on for the court to grant a stay. You may provide one affidavit addressing all of the orders sought or file separate affidavits in support of each application. The court's decision is based on the evidence before them so you should ensure that your affidavit includes all the evidence you wish to rely on for the application(s). You will want to attach copies of the order from the Residential Tenancy Branch and any reasons for decision that you may have received from them. No new evidence should be provided as this is not a new hearing but a review of the information that was before the dispute resolution officer.

Here is some helpful information with respect to affidavits;

Supreme Court Civil Rule 22-2 is the rule for affidavits.

The following may assist you when drafting an affidavit in support of or in response to an application to the court.

1. Affidavits are simply written evidence. A witness must state only what she or he saw, heard, did or said. Your Affidavit should not say "My son missed school twice" unless you saw that happen, in which case the affidavit should say "I took my son to school late only twice." What you **think** is not evidence.

2. Affidavits must not contain **irrelevant** information. The application determines what is relevant. The evidence in the affidavit must relate to the issue or matter that is the subject of the application. You should include dates, either the day or the month or sometimes the season, or else the information may be rejected as irrelevant.

3. Affidavits must not contain **argument**. An affidavit must not say "I think it is unfair that ..." or "My ex-husband should ..." or include any rhetorical questions like "why should I do this when my ex-wife ..."

4. Sometimes it is acceptable to quote what another person said. This is called "hearsay". An affidavit may contain **hearsay** if either:

    a) The person quoted is the **other party** (eg. your ex-husband or ex-wife), and they admit a relevant fact. For example, an affidavit can say "My ex-wife said on January 5, 2010 that she took my camera."

    b) The affidavit is being used at an **application** which is not a Summary Trial (Rule 9-7), and you state who told you the information and that you believe it to be true. For example, an affidavit on an application can say "I was informed by Constable Blogs of the Vancouver Police Department on January 2, 2010 and believe that the police closed their file on the criminal investigation."

    c) The person quoted is a **child** and the court gives leave for that evidence to be presented as hearsay. The court will often permit such evidence to avoid children being witnesses.

5. Affidavits must not contain **speculation.** Don't say "My son is sad." You can say "I saw my son cry after ..." or, with leave of the court, "my son told me he was sad because..."

6. Affidavits should not contain **long exhibits**, like long email chains or diary notes. Such documents usually include a great deal of inadmissible material, like argument, speculation and irrelevant information, which the judge or master deciding the application must ignore.

The Justice Education Society website has a guidebook called, A Guide to Preparing Your Affidavit. This guidebook may assist you in preparing your affidavit for your application. The guidebook is available at the following link;

http://www.supremecourtbc.ca/sites/default/files/web/A-Guide-to-Preparing-Your-Affidavit.pdf

Notice of Hearing of Petition (Form 68):

Once the petition has been filed with the court it must be served on all of the parties and persons entitled to notice as indicated above. Each person served with the petition has the option to file and serve a response to the petition and the times for filing a response are;

a) 21 days if they were served in Canada
b) 35 days if they were served in the United States of America
c) 49 days if they were served anywhere else, or
d) if the time for response has been set by order of the court, within that time.

A respondent that wishes to file a response to the petition may find the form (Form 67) on line at http://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/acts_rules_and_forms/ or there is also a Response Package on the Supreme Court website at the following link, http://www.courts.gov.bc.ca/supreme_court/self-represented_litigants/info_packages.aspx.

The actual hearing of the judicial review must be heard by a judge and cannot be heard until after the time for filing a response has passed. If the petition includes an order asking for a stay of the order of possession that was issued by the Residential Tenancy Branch and there is urgency the petitioner may apply for an urgent without notice application by completing the notice of hearing (Form 68) and indicating that is without notice. The court can hear the urgent without notice application for a stay and direct the balance of the relief to be adjourned generally to specific date, which will require the filing of a requisition with the court registry to confirm the next date.

Petition Record

Whether you are setting the petition down for hearing to apply for an interim order asking to stay the order of possession or you are setting the matter for hearing of the judicial review, you are required to prepare a petition record pursuant to Rule 16-1(11). The petition record is for the court so they have all of the documents being relied on before them at the hearing and must be provided to the registry where the hearing is to take place, no later than 4pm on the day that is one full day before the date set for hearing or if it is an urgent without notice application, at the time the matter is set down for hearing. A petition record must be prepared as follows:

a) the petition record must be in a ring binder or in some other form of secure binding;
b) the petition record must contain, in consecutively numbered pages, or separated by

tabs, the following documents in the following order:
   i. a title page bearing the style of proceeding and the names of the lawyers, if any, for the petitioner and the petition respondents;
   ii. an index;
   iii. a copy of the filed petition;
   iv. a copy of each filed response to petition;
   v. a copy of each filed affidavit that is to be referred to at the hearing;

c) the petition record may contain
   i. a draft of the proposed order,
   ii. a written argument,
   iii. a list of authorities, and
   iv. a draft bill of costs;

d) the petition record must not contain
   i. affidavits of service,
   ii. copies of authorities, including case law, legislation, legal articles or excerpts from text books, or
   iii. any other documents unless they are included with the consent of all the parties.

Pursuant to Rule 16-1(12) the petitioner must serve a copy of the petition record index on each person that has filed a response to the petition (petition respondent)

Following the hearing if the judge makes an order it is the petitioner's responsibility to draft an order and submit it to the registry for entry, unless otherwise ordered by the judge. There is an Order Package that has been prepared and available online or at the court registry that will assist you in preparing an order.

Additional information:

BC Supreme Court Self Help Centre website at: http://www.supremecourtselfhelp.bc.ca/.

The Justice Education Society has a guidebook for Judicial Reviews and that guidebook is available at the following link;

http://supremecourtbc.ca/sites/default/files/web/judicial-review.pdf.

The Community Legal Assistance Society has a guidebook for Judicial Reviews and that guidebook is available at the following link;

https://d3n8a8pro7vhmx.cloudfront.net/clastest/pages/142/attachments/original/1447095384/JudicialReviewGuideEvictions-plusAppA_October2015.pdf?1447095384

The Residential Tenancy Branch has information with respect to the Judicial Review Process and what happens after the hearing if a new hearing is ordered. The information is available online at the following link;

http://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/solving-problems/dispute-resolution/after-the-hearing/review-clarify-or-correct-a-decision

This guide book has been prepared for general informational purposes and should not be used

instead of obtaining legal advice. The circumstances of every case are different and it is always recommended that applicants should obtain some legal advice before filing a proceeding in Supreme Court.

Included in this package are:

1) The *Judicial Review Procedure Act*
2) Rule 16-1 - Petitions
3) Civil Form 66 – Petition to the Court
4) Civil Form 109 – Affidavit
5) Civil Form 68 – Notice of Hearing

Judicial Review Procedure Act

[RSBC 1996] CHAPTER 241

Definitions

1 In this Act:

"application for judicial review" means an application under section 2;

"court" means the Supreme Court;

"decision" includes a determination or order;

"licence" includes a permit, certificate, approval, order, registration or similar form of permission required by law;

"record of the proceeding" includes the following:

(a) a document by which the proceeding is commenced;

(b) a notice of a hearing in the proceeding;

(c) an intermediate order made by the tribunal;

(d) a document produced in evidence at a hearing before the tribunal, subject to any limitation expressly imposed by any other enactment on the extent to which or the purpose for which a document may be used in evidence in a proceeding;

(e) a transcript, if any, of the oral evidence given at a hearing;

(f) the decision of the tribunal and any reasons given by it;

"statutory power" means a power or right conferred by an enactment

(a) to make a regulation, rule, bylaw or order,

(b) to exercise a statutory power of decision,

(c) to require a person to do or to refrain from doing an act or thing that, but for that requirement, the person would not be required by law to do or to refrain from doing,

(d) to do an act or thing that would, but for that power or right, be a breach of a legal right of any person, or

(e) to make an investigation or inquiry into a person's legal right, power, privilege, immunity, duty or liability;

"statutory power of decision" means a power or right conferred by an enactment to make a decision deciding or prescribing

(a) the legal rights, powers, privileges, immunities, duties or liabilities of a person, or

(b) the eligibility of a person to receive, or to continue to receive, a benefit or licence, whether or not the person is legally entitled to it,

and includes the powers of the Provincial Court;

"tribunal" means one or more persons, whether or not incorporated and however described, on whom a statutory power of decision is conferred.

Application for judicial review

2 (1) An application for judicial review must be brought by way of a petition proceeding.

(2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

(a) relief in the nature of mandamus, prohibition or certiorari;

(b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

Error of law

3 The court's power to set aside a decision because of error of law on the face of the record on an application for relief in the nature of certiorari is extended so that it applies to an application for judicial review in relation to a decision made in the exercise of a statutory power of decision to the extent it is not limited or precluded by the enactment conferring the power of decision.

Existing provision limiting judicial review not affected

4 Subject to section 3, nothing in this Act permits a person to bring a proceeding referred to in section 2 if the person is otherwise limited or prohibited by law from bringing the proceeding.

Powers to direct tribunal to reconsider

5 (1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.

(2) In giving a direction under subsection (1), the court must

(a) advise the tribunal of its reasons, and

(b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the

whole or any part of the matter that is referred back for reconsideration.

Effect of direction

6 In reconsidering a matter referred back to it under section 5, the tribunal must have regard to the court's reasons for giving the direction and to the court's directions.

Power to set aside decision

7 If an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may set aside the decision instead of making a declaration.

Power to refuse relief

8 (1) If, in a proceeding referred to in section 2, the court had, before February 1, 1977, a discretion to refuse to grant relief on any ground, the court has the same discretion to refuse to grant relief on the same ground.

(2) Despite subsection (1), the court may not refuse to grant relief in a proceeding referred to in section 2 on the ground that the relief should have been sought in another proceeding referred to in section 2.

Defects in form, technical irregularities

9 (1) On an application for judicial review of a statutory power of decision, the court may refuse relief if

(a) the sole ground for relief established is a defect in form or a technical irregularity, and

(b) the court finds that no substantial wrong or miscarriage of justice has occurred.

(2) If the decision has already been made, the court may make an order validating the decision despite the defect, to have effect from a time and on terms the court considers appropriate.

Interim order

10 On an application for judicial review, the court may make an interim order it considers appropriate until the final determination of the application.

No time limit for applications

11 An application for judicial review is not barred by passage of time unless

(a) an enactment otherwise provides, and

(b) the court considers that substantial prejudice or hardship will result to any other person affected by reason of delay.

No writ to issue

12 (1) No writ of mandamus, prohibition or certiorari may be issued.

(2) An application for relief in the nature of mandamus, prohibition or certiorari, must be treated as an application for judicial review under section 2.

Summary disposition of proceedings

13 (1) On the application of a party to a proceeding for a declaration or injunction, the court may direct that any issue about the exercise, refusal to exercise or proposed or purported exercise of a statutory power be disposed of summarily, as if it were an application for judicial review.

(2) Subsection (1) applies whether or not the proceeding for a declaration or injunction includes a claim for other relief.

Sufficiency of application

14 An application for judicial review is sufficient if it sets out the ground on which relief is sought and the nature of the relief sought, without specifying by which proceeding referred to in section 2 the claim would have been made before February 1, 1977.

Notice to decision maker and right to be a party

15 (1) For an application for judicial review in relation to the exercise, refusal to exercise, or proposed or purported exercise of a statutory power, the person who is authorized to exercise the power

(a) must be served with notice of the application and a copy of the petition, and

(b) may be a party to the application, at the person's option.

(2) If 2 or more persons, whether styled a board or commission or any other collective title, act together to exercise a statutory power, they are deemed for the purpose of subsection (1) to be one person under the collective title, and service, if required, is effectively made on any one of those persons.

Notice to Attorney General

16 (1) The Attorney General must be served with notice of an application for judicial review and notice of an appeal from a decision of the court with respect to the application.

(2) The Attorney General is entitled to be heard in person or by counsel at the hearing of the application or appeal.

Court may order record filed

17 On an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision, the court may direct that the record of the proceeding, or any part of it, be filed in the court.

Informations in the nature of quo warranto

18 (1) Informations in the nature of quo warranto are abolished.

(2) If a person acts in an office in which the person is not entitled to act and an information in the nature of quo warranto would, but for subsection (1), have been available against the person the court may, under an application for judicial review, grant an injunction restraining the person from acting and may declare the office to be vacant.

(3) A proceeding for an injunction under this section may not be taken by a person who would not immediately before February 1, 1977, have been entitled to apply for an information in the nature of quo warranto.

Relationship between this Act and *Crown Proceeding Act*

19 This Act is subject to the *Crown Proceeding Act*.

References in other enactments

20 If reference is made in any other enactment to a proceeding referred to in section 2 or 18, the reference is deemed to be a reference to an application for judicial review.

Application of Act in relation to laws of treaty first nations

21 If a final agreement provides that the court has jurisdiction to hear an application for judicial review of a decision taken under a law of the treaty first nation by the treaty first nation or a public institution established under a law of the treaty first nation, this Act applies in relation to the application as if the law of the treaty first nation were an enactment.

Form 66

No. ……..
…… Registry

In the Supreme Court of British Columbia

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*
R.S.B.C. 1996, C. 241

Between

Petitioner(s)

and

Respondent(s)

PETITION TO THE COURT

ON NOTICE TO:

……..
[name and address of each person to be served]

……...

……

……

This proceeding is brought for the relief set out in Part 1 below, by

[Check whichever one of the following boxes is correct and complete any required information.]

- ☐ the person(s) named as petitioner(s) in the style of proceedings above
- ☐ …… (the petitioner(s))
  [name(s)]

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner(s)

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s)

a) if you were served with the petition anywhere in Canada, within 21 days after that service,

b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

c) if you were served with the petition anywhere else, within 49 days after that service, or,

d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is: *[set out the street address of the address for service for each petitioner: One or both of a fax number and an e-mail address may be given as additional addresses for service.]* Fax number address for service (if any) of the petitioner(s): E-mail address for service (if any) of the petitioner(s):
(3)	The name and office address of the petitioner's(s') lawyer is:

Claim of the Petitioner(s)

Part 1: ORDER(S) SOUGHT

[Using numbered paragraphs, set out the order(s) that will be sought at the hearing of the petition and indicate against which respondent(s) the order(s) is(are) sought.]

1.

2....

Part 2: FACTUAL BASIS

[Using numbered paragraphs, set out the material facts on which this petition is based.]

1.

2.

Part 3: LEGAL BASIS

[Using numbered paragraphs, specify any rule or other enactment relied on and provide a brief summary of any other legal basis on which the petitioner(s) intend(s) to rely in support of the orders sought.]

1.

2…..

Part 4: MATERIAL TO BE RELIED ON

*[Using numbered paragraphs, list the affidavits served with the petition. Each affidavit included in the list must be identified as follows: "*Affidavit #*.....[sequential number, if any, recorded in the top right hand corner of the affidavit]…….. of …….[name]……..,* made ……*[dd/mmm/yyyy]…….".]*

1.

2….

The petitioner(s) estimate(s) that the hearing of the petition will take ……..... .
[time estimate]

Date: ……..

…….
Signature of petitioner(s)

…….
[type or print name]

To be completed by the court only:

Order made

- ☐ in the terms requested in paragraphs ……. of Part 1 of this notice of application
- ☐ with the following variations and additional terms:

……..

……..

……..

……..

Date: ……. ……..
Signature of ☐ Judge ☐ Master

Form 109

This is the …….. affidavit
of …… in this case
and was made on ……

No. ……
……Registry

In the Supreme Court of British Columbia

Between:

Petitioner/Tenant

and

Respondent/Landlord

AFFIDAVIT

I, ……..……..., of……..……..,
[name] *[address]*

…….. ……, SWEAR (OR AFFIRM) THAT:
[occupation]

1. I am the ……..in this proceeding and as such have personal knowledge of the matters and facts hereinafter deposed to, save where stated to be on information and belief and where so stated I verily believe the same to be true.

2.

SWORN (OR AFFIRMED) BEFORE)
ME at ……., British)
Columbia on ……..…..)
) ……..
)
……..)
A commissioner for taking affidavits)
for British Columbia

……..
[print name or affix stamp of commissioner]

Form 68

No. …….....
……..Registry

In the Supreme Court of British Columbia

Between

Petitioner/Tenant

and

Respondent/Landlord

NOTICE OF HEARING

To: ……
[name(s) of petition respondent(s), if any]

TAKE NOTICE that the petition of …….....…….
[party(ies)]

dated …….....…….. will be heard at the courthouse at
[dd/mmm/yyyy]

….....…… on …….....…… at
[address] *[dd/mmm/yyyy]*

…….. .
[time of day]

1. Date of hearing

[Check whichever one of the following boxes is correct.]

☐ The parties have agreed as to the date of the hearing of the petition.

☐ The parties have been unable to agree as to the date of the hearing but notice of the hearing will be given to the petition respondents in accordance with Rule 16-1(8)(b) of the Supreme Court Civil Rules.

☐ The petition is unopposed, by consent or without notice.

2. Duration of hearing

[Check the correct box(es) and complete the required information.]

☐ It has been agreed by the parties that the hearing will take …….....…
[time estimate]

☐ The parties have been unable to agree as to how long the hearing will take and

a) the time estimate of the petitioner(s) is ……. minutes, and

b) ☐ the time estimate of the petition respondent(s) is …….. minutes.

☐ the petition respondent(s) has(ve) not given a time estimate.

3. Jurisdiction

[Check whichever one of the following boxes is correct.]

☐ This matter is within the jurisdiction of a master.

☐ This matter is not within the jurisdiction of a master.

Date: .....

…….
Signature of petitioner(s)

.....
[type or print name]