

*Interpretation Guidelines are intended to assist the parties in understanding the Board's usual interpretation of the law, to provide guidance to Members and promote consistency in decision-making. However, a Member is not required to follow a Guideline and may make a different decision depending on the facts of the case.*

This Guideline is meant to help parties understand when a Member may: a) require a respondent to pay money into the Board and b) permit a tenant to pay all or part of their rent into the Board.

Subsection 195(1) of the *Residential Tenancies Act, 2006* (the "RTA") reads as follows:

Where the Board considers it appropriate to do so, the Board may, subject to the regulations,<sup>1</sup>

- (a) require a respondent to pay a specified sum into the Board within a specified time; or
- (b) permit a tenant who is making an application for an order under paragraph 1 of subsection 29(1) to pay all or part of the rent for the tenant's rental unit into the Board.

The money paid into the Board is held in a special trust account. Once the application is decided, the Member will order the money paid out to the appropriate party.

### **Requiring Payment Into the Board**

A decision under paragraph 195(1)(a) would generally be made at the hearing after receiving submissions from the parties. As most cases will be heard expeditiously, orders to pay money into the Board would be most appropriate in cases where the hearing will be adjourned for some length of time.

---

<sup>1</sup> No regulation has been passed which affects this provision.

In some cases, the amount owing may increase during the proceedings. The longer the adjournment, the more is at risk to the applicant. The applicant may want the Member to require the respondent to pay money into the Board in order to discourage the respondent from unnecessarily prolonging the proceedings.

Where the potential amount owing will increase during the proceedings, and the matter will be adjourned, the Board may require the respondent to pay into the Board:

- ▶ all or part of the amount that is owing or claimed to be owing as of the hearing date; and/or,
- ▶ the additional amount that will become owing.

It is generally more appropriate to require payment into the Board of the additional amount that will become owing during the delay, because otherwise the respondent's right to dispute the application may be negatively affected.

As an alternative, the Board may require one party to make a payment directly to the other party instead of paying into the Board. However, the consequences of failing to comply in subsection 195(4) would not apply in this situation.

The applicant may want to ensure that there will be no problems collecting the amount ordered. However, in any application for the payment of money, the applicant may have problems collecting the amount ordered to be paid. If Members required money to be paid into the Board whenever a respondent wished to dispute the application, this would discourage some respondents from exercising their right to a hearing of the merits of the application. This would give an unfair advantage to parties with greater economic power, or to parties who claimed more than the amount they are owed. Therefore, it would not be appropriate to require payment into the Board for this reason.

### **Rules for Payment In and Payment Out**

Subsection 195(2) of the RTA states that the Board may establish rules for the payment of money into and out of the Board. The rules for payment into and out of the Board may be found in Rule 31 of the Rules of Practice, Paying Money Into and Out of the Board.

### **Consequences of Failing to Pay Money Into the Board**

The consequences of failing to follow the requirement to pay money into the Board are set out in subsection 195(4):

If a respondent is required to pay a specified sum into the Board within a specified time under clause (1)(a) and fails to do so, the Board may refuse to consider the evidence and submissions of the respondent.

Where the Member determines that there is no reasonable explanation for the respondent's failure to pay money into the Board, the Member may proceed with the hearing and refuse to hear the evidence and submissions of the respondent. The respondent would be entitled to be present at the hearing, to make procedural objections and to cross-examine witnesses. However, the respondent would not be entitled to present their own documents or witnesses nor to argue their case.

If the respondent can provide a reasonable explanation for their failure to comply with the requirement to pay money into the Board, the Member may proceed with the hearing and allow the respondent to participate.

### **Permitting Payment Into the Board**

The Board may permit a tenant who is making an application based on a landlord's breach of the duty to repair in subsection 20(1) or section 161 to pay all or part of their rent into the Board. This request may be made at the time the tenant files the application or at the hearing. For further information see Rule 31, Paying Money Into and Out of the Board, and Guideline 5, Breach of Maintenance Obligations.

The tenant will have to satisfy the Board that special circumstances exist that justify the payment in of rent. Special circumstances may include: where the tenant does not know who to pay or how to contact the landlord; the landlord refuses to accept the rent; or where the tenancy will be terminated and it may be difficult for the tenant to enforce the order. There may be other factors and circumstances to consider.

Note that under subsection 195(5) of the RTA, when a tenant is permitted to pay into the Board, the payment is deemed not to constitute a default in the payment of rent under the tenancy agreement or the RTA.