

Converting a Mediated Settlement into a Director's Order

The Residential Tenancies Act:

- Requires that a Residential Tenancy Officer attempt to mediate disputes, and failing successful mediation, investigate and render a decision;
- Provides Residential Tenancy Officers with authority to issue a Director's Order if a party fails to comply with a mediated settlement.

Reference:

Residential Tenancies Act: Section 16, 17, 17A

Details:

Mediated settlements are usually preferable because both sides can potentially achieve their goals. If one of the parties defaults on a mediated settlement, the terms of the settlement can be turned into an Order of the Director.

Once an Order is issued, it is subject to the normal appeal period and is enforceable after being made an Order of the Small Claims Court.

When preparing an Order based on a Mediated Settlement, it is important to accurately transfer the terms. It is acceptable to exclude any terms with which compliance has been achieved. When in doubt, it is equally acceptable to issue an Order that speaks to all the terms of the Mediated Settlement, even those that may have already been complied with. At execution, the onus would be upon the judgment debtor (the unsuccessful party) to show those areas in which they have achieved compliance.

Procedure:

- When a party to a Mediated Settlement believes the other party defaulted on the terms they can complete the required form, Convert Mediated Settlement into Order of the Director, file it with the Residential Tenancy Officer who prepared the Mediated Settlement and send a copy to the other party.

- Sending the form to the other party can be sent to the last known address, a forwarding address provided by the other party or to an electronic address (email) of the other party.
- The Residential Tenancy Officer will verify that the request arises out of a default by one of the parties to the Mediated Settlement;
- After receiving the request, the Residential Tenancy Officer will prepare and issue an Order of the Director that mirrors the terms of the Mediated Settlement. Any dates (for termination of tenancy, etc.) should not be varied;
- If appropriate, portions of the Mediated Settlement can be omitted from the Order of the Director if compliance with those portions has been achieved. However; there is no risk in issuing an Order of the Director for the full terms of the Mediated Settlement. This is because a party proving compliance with a portion of a Mediated Settlement can prevent execution on that portion by proving their compliance to the Sheriff;
- Copies of the Order of the Director are to be mailed to the parties;
- An Order of the Director cannot deal with a security deposit not addressed in the Mediated Settlement or rent that has become due following the mediation;
- Caution should be used when a significant amount of time has passed between the signing of a Mediated Settlement and a request for an Order of the Director. An Officer may decline to enforce some or all of a Mediated Settlement if he or she believes too much time has passed for the settlement to be reasonably enforced.