



RTDRS annual report

The second edition annual report for Alberta's
Residential Tenancy Dispute Resolution Service



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Introduction

The Residential Tenancy Dispute Resolution Service (RTDRS) is a quasi-judicial tribunal that allows landlords and tenants to apply for remedies under the Residential Tenancies Act (RTA) or the Mobile Home Sites Tenancies Act (MHSTA).

The RTDRS was created in 2006 to be a less formal and less expensive alternative to taking residential tenancy disputes to court, therefore making it more accessible to self-represented litigants. The RTDRS operates out of two offices – one in Edmonton and one in Calgary – and serves the entire province. The total 2021-22 operating budget for RTDRS was \$2.98 million, 90 per cent of which was allocated to salaries and benefits for the 27 staff members.

While the RTDRS provides an adjudication service to resolve residential landlord and tenant disputes, other branches within Service Alberta provide supports to landlords and tenants including education resources, and the investigation and enforcement of offences under the RTA or MHSTA. Information about these resources is available on alberta.ca or by calling the Service Alberta Contact Centre.

Communities impacted

The RTDRS uses case management software that tracks, among other things, the percentage of applications connected with major urban centres, based on the location of the rental premises. The data shows that close to 75 per cent of all residential tenancy disputes brought before the RTDRS pertain to rental premises located in either Edmonton or Calgary. The incidence of disputes in other municipalities is lower due to significantly fewer rental premises.

Percentage of Applications by Rental Premises Location*	2021-22	2020-21	2019-20
Airdrie	1.0	1.4	1.0
Calgary	30.3	28.9	26.0
Edmonton	44.1	42.9	50.4
Fort McMurray	2.1	2.2	1.9
Grande Prairie	2.1	2.5	2.2
Lethbridge	2.0	2.0	1.4
Medicine Hat	1.0	1.3	0.6
Red Deer	2.9	2.8	2.6
Other locations	14.5	16.0	13.8

*Grouped by municipalities that exceed 60,000

Jurisdiction

The RTA provides that where a landlord or tenant has the right to apply to a court for a remedy under Part 3 or 4.1, they may apply to the RTDRS instead. These remedies include:

- recovery of possession of the rental premises,
- arrears of rent,
- compensation for a tenant overstaying their lease (overholding),
- return of the security deposit,
- damages,
- abatement of rent,
- compensation for a tenant performing a landlord's obligations, and
- termination of the tenancy

Tenancy Dispute Officers (TDOs) are mandated to hear applications and make decisions to resolve the application. While TDOs can award the remedies listed above, they cannot resolve disputes related to questions of constitutional law or human rights. Such questions must be resolved through a court. Similarly, a TDO does not have the authority to award specific performance, such as the repair of a roadway or broken fixture, so litigants seeking this remedy must file their claim at the Court of Queen’s Bench.

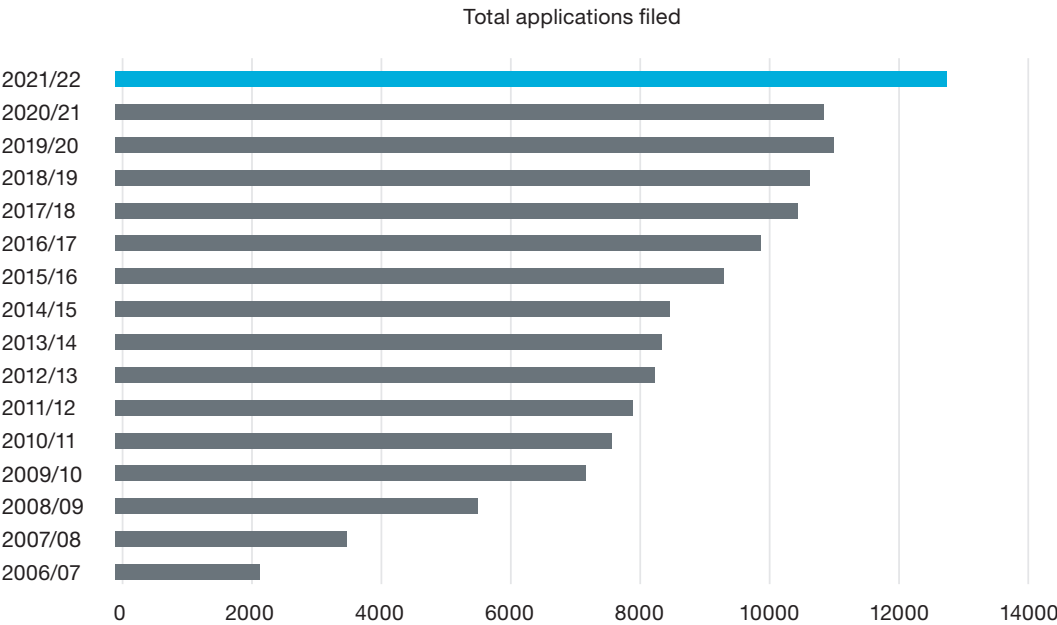
In June 2020, the jurisdiction of the RTDRS was expanded to include disputes related to mobile home site tenancies. The remedies for which mobile home site landlords and tenants may apply to the RTDRS are very similar to the remedies under the RTA, listed above.

Between June 1, 2020 and March 31, 2021, the RTDRS received 40 applications for remedies under the MHSTA. In 2021-22, the RTDRS received 66 MHSTA-related applications.

The maximum award at the RTDRS and at Provincial Court is \$50,000. There is no monetary limit on awards at the Court of Queen’s Bench.

The RTDRS received 12,872 applications in 2021-22, a 17 per cent increase over the 10,973 applications received in 2020-21. Historically, the number of applications to the RTDRS increased by an average of four per cent annually. Comparing the first three months of 2022 with the first three months of 2021, the number of applications increased by an average of 25 per cent.

Applications Filed	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	TOTAL
2021/22	985	1,020	1,061	1,072	1,098	1,091	1,015	1,048	816	1,315	1,121	1,230	12,872
2020/21	530	781	823	994	952	1032	1124	1059	759	1011	902	1006	10,973
2019/20	852	916	912	1137	1031	950	903	950	642	1034	937	866	11,130



Processing applications and other documents

The RTDRS receives applications online, in-person, by fax or by mail. Applications are processed by Information Officers who confirm the correct form has been submitted and the information provided is complete. Once confirmed, the Information Officer will schedule the matter before a TDO and issue a Notice of Hearing. Most applications are processed within three business days, unless the information provided in the application is incomplete.

In 2021-22, the RTDRS received 95 per cent of applications via the online eFiling service. In-person front-counter service was closed from March 2020 through to April 2022 due to COVID-19.

In addition to applications, the RTDRS receives and processes forms and evidence that are uploaded to a case management system. In 2021-22, the RTDRS received and processed 87,193 documents – a nearly 12 per cent increase over the 77,965 documents received and processed the year prior.

Filing fee

There is a \$75 fee for filing an application to the RTDRS, which is lower than the \$100-\$200 fee at Provincial Court and the \$250 fee for at the Court of Queen's Bench. Applicants who cannot afford to pay a filing fee may apply to the RTDRS, or to the courts, to have the filing fee waived.

In the 2021-22 fiscal year, the RTDRS waived \$34,050 in filing fees, based on proof of financial hardship on the part of the applicant. In 2020-21, \$34,200 in filing fees were waived.

Information officers

Most initial calls for information about the RTDRS process come through the Service Alberta Contact Centre. The contact centre answers general questions, and refers inquiries about a specific case or a specific issue to RTDRS Information Officers. Information Officers will also answer questions about the RTDRS process if they contact an applicant to get clarification about information uploaded through eFiling. As the RTDRS is a neutral dispute resolution service, RTDRS Information Officers do not offer advice, nor do they advocate for landlords or for tenants. Landlords or tenants who require advice are referred to an external agency or independent legal counsel.

Once an application is processed, the Information Officer will schedule the date of the hearing. The hearing date chosen must allow enough time for the applicant to serve the Notice of Hearing and the entire application package on the responding party. Information Officers also process and upload all forms and evidence submitted by either party.

Hearing scheduling and format

Since March of 2020, the RTDRS has been conducting all hearings by teleconference. This practice began due to restrictions on in-person gatherings during the COVID-19 pandemic. However, teleconference hearings will continue to be the method of service delivery for the foreseeable future as they have proven to be effective, and have improved access to justice. Teleconference hearings are less intimidating, are less costly to attend, and require parties and their witnesses to take less time away from other responsibilities such as work, school or child-care.

Hearings can be brief or take many hours to complete, depending upon the complexity of the issues in dispute and the volume of evidence presented. The RTDRS schedules applications and allocates hearing time based on the various remedies sought in the application.

The factors that affect the time to get an application to hearing are (1) total volume of applications, (2) types of applications, and (3) TDO availability.

Approximately 84 per cent of applications to the RTDRS are for possession and/or termination, and are given scheduling priority. The applications for remedies post-possession/termination, such as for damages or return of the security deposit, are scheduled to be heard as soon as possible after 30 business days from the date of filing.

	2021-22	2020-21	2019-20
Avg # of business days between filing and hearing of possession/termination applications	17	11	24
Avg # of business days between filing and hearing of other types of applications	48	36	45

The increase in the wait time between filing and hearing, from 2020-21 to 2021-22, is due primarily to the dramatic increase in the number of applications for dispute resolution.

Section 30 of the RTA or section 33 of the MHSTA allows a landlord to apply to the court or the RTDRS to terminate a tenancy with 24 or 48 hours notice, respectively, due to the tenant doing or permitting significant damage to the residential premises or mobile home site, or physically assaulting or threatening to assault the landlord or other tenants. The RTDRS gives these applications super-priority, and they are typically heard in fewer than five business days. RTDRS received 155 such applications in 2019-20, 392 in 2020-21, and 527 in 2021-22, which represents a 240 per cent increase over three years.

Each TDO conducts between five and 13 hearings per day, depending on the type and anticipated length of the hearing. When a TDO is away unexpectedly, the other TDOs make every effort possible to absorb the absent TDO's assigned hearings into their schedules, so the affected parties do not need to wait longer for the hearing of the application. Most applications are heard when scheduled, while some are adjourned to be heard on a later date, and a few are withdrawn at or prior to the hearing.

Starting in January 2022, and in an effort to reduce the number of unnecessary adjournments and wasted hearing time, RTDRS initiated a limited pilot project whereby Information Officers pro-actively contacted applicants who had not uploaded a Declaration of Service proving the respondent was properly notified of the hearing. The pilot will be considered for expansion in 2022-23, as it was successful in reducing adjournments by approximately 20 per cent.

Types of disputes

The most common type of dispute is about rent not being paid when due. Other common disputes pertain to allegations of interference with the rights of other tenants or the landlord, interference with the peaceful enjoyment of the rental premises, inadequate notice, violations of the terms of the lease agreement, damage to the rental premises, improper retention of the security deposit, and the rental premises not meeting Minimum Housing and Health Standards.

Applications by Type	2021-22	2020-21
RTA Applications		
• Landlord Application for Recovery of Possession	9,596	7,940
• Landlord Application for Damages	1,013	1,024
• Tenant Application for Return of the Security Deposit	1,057	990
• Tenant Application for Termination or Other Remedies	1,140	979
MHSTA Applications		
• Landlord Application for Recovery of Possession	61	38
• Landlord Application for Damages	1	1
• Tenant Application	4	1
Total	12,872	10,973

Tenancy dispute officer authority

The RTDRS Regulation defines the duties and powers of a Tenancy Dispute Officer as:

- providing information to landlords and tenants
- administering oaths and affirmations, and taking affidavits
- holding hearings, determining matters of procedure, making decisions and orders
- issuing notices
- entering a rental premises or a mobile home site for the purpose of discharging their duties
- ordering independent inspections if further evidence is required
- amending applications or permitting applications to be amended
- questioning the parties and witnesses, and
- granting remedies.

The RTDRS Regulation also provides that Tenancy Dispute Officers:

- are commissioners for oaths while acting in their official capacity
- may refuse to accept an application for prescribed reasons
- may assist parties to settle the dispute and record the terms of settlement in the order
- may decide whether to hear related applications together or separately
- may by order dismiss a proceeding where warranted
- may issue a notice requiring a person to attend a hearing and give evidence or produce records, and
- may apply by originating notice to the Court of Queen's Bench for a warrant requiring a person to attend a hearing and give evidence or produce records.

After holding a hearing and when making an order, a Tenancy Dispute Officer may:

- order a remedy the applicant applied for as well as a remedy the applicant did not apply for but which the TDO is satisfied was justified
- include the terms and conditions the TDO considers fair and proper in all the circumstances, and
- consider any relevant information obtained by the TDO, in addition to any evidence given at the hearing, if the TDO first informs the parties of the additional information and gives them an opportunity to explain or refute it.

Transfers to court

TDOs must refer applications to either the Provincial Court or the Court of Queen's Bench when they believe the matter:

- involves the determination of a question of constitutional law or human rights,
- lies outside the jurisdiction of the RTDRS, or
- is more appropriate for the court.

In 2021-22, 43 applications were transferred to the courts from the RTDRS.

Hearing process

An RTDRS hearing is structured like a civil court trial, but less formal. The TDO is the adjudicator and the landlord and tenant are the litigants or "parties". While TDOs are not bound by the formal rules of evidence, they do require the parties provide evidence to prove what they are alleging. Evidence can include records, as well as the testimony of the parties or other witnesses. The two parties will often present conflicting evidence, and the TDO has to determine which party's evidence is more persuasive.

As with any civil litigation, the applicant has the burden of proof in the hearing. However, in cases where tenants apply for return of the security deposit, the burden of proof lies with the landlords, due to the strict rules regarding security deposits outlined in the RTA and MHSTA. Landlords therefore must demonstrate they acted in compliance with the legislation.

The standard of proof is the same as the civil standard, which is “on a balance of probabilities”. This means it is more likely than not what is being alleged is true. Respondents can refute the applicant’s proof by submitting their own defence evidence.

In order to help applicants and respondents understand the RTDRS decision-making process and prepare for the hearing, the RTDRS provides parties with considerable information on both the alberta.ca webpages and with the Notice of Hearing. The information provided or made available in writing includes: the RTDRS Procedure Summary, the Hearing Procedure tip sheet, the Telephone Hearing tip sheet, the Evidence tip sheet, and information about defending against an application and filing a counter-application (if necessary).

In late 2021 and early 2022, RTDRS developed and produced its first informational webinar – “What to Expect at an RTDRS Hearing” – which can be found on the YourAlberta: Learn YouTube Channel. It is also included on the RTDRS Forms and Documents and Hearing Process web pages, and is referenced in the application package that the applicant receives and serves on the respondent.

TDOs have independent decision-making authority, like a judge. Also like a judge, TDOs must make findings of fact based on the evidence provided by the two parties, and then apply the law to the facts in order to arrive at their decision. The law applied by a TDO includes the RTA or MHSTA, the related regulations, and the common law including the law of contracts.

The RTDRS Regulation gives TDOs the authority to determine the admissibility, relevance and weight of any evidence given by the parties. Often times, the TDO will assess at least some of the evidence submitted as irrelevant or inconsequential to the legal issue(s) they are deciding. Still, by having less onerous rules of evidence than are applied in court, the RTDRS is a more accessible forum for dispute resolution.

Most parties are self-represented at an RTDRS hearing, but some hire an agency or legal counsel to assist them in presenting their case. Even when one party has legal representation at the hearing and the other party does not, TDOs will provide balance, as they are authorized to ask questions of parties and witnesses to establish the facts necessary to make a fair decision.

Hearing outcomes

Parties are free to voluntarily settle the issues in dispute even after an application is filed with the RTDRS. Often at the start of a hearing, the TDO will offer the parties an opportunity to discuss the matter privately, without the TDO present, for the purpose of voluntary settlement. When successful, the parties will explain to the TDO the terms of the settlement, and the TDO will include those terms in an enforceable “Consent Order” issued under the TDO’s name.

Once a hearing has concluded, in almost every case, the reasons for decision are provided verbally and the resulting order is issued the same day. For a small number of applications where, for example, the matters in dispute are numerous or the issues of law complex, the TDO will reserve their decision at the end of the hearing and deliver it to the parties in writing within 30 days. Reserving a decision provides the TDO with time to consider all the evidence, discern the various issues, apply the necessary legal analysis, and put their reasons for decision in writing. The reasons for a reserved decision are delivered to the parties in writing, along with the order, usually by email.

Published decisions

After the written reasons for decision are delivered to the parties, the decision can be published on the CanLII.org website, where court and tribunal judgments across Canada are published. Before an RTDRS decision is published on CanLII, any identifying information about the parties is redacted to comply with the Freedom of Information and Protection of Privacy Act.

Publishing written reasons for decision provides landlords and tenants with some insight into how TDOs evaluate the legal issues in various types of applications, as the decisions can be sorted or searched on CanLII.org using key words. Reading previous RTDRS decisions can assist applicants or respondents with preparation for an upcoming hearing.

RTDRS began publishing written reasons for decision on CanLII in 2019. In the 2019-20 and 2020-21 fiscal years, the service published just over 50 decisions. In 2021-22, the RTDRS published 46 written reasons for decision.

Requests for exceptions

Upon their own initiative, or upon request made in writing by one of the parties to the order, a TDO can set aside, vary, clarify or amend the order. If a party to an order believes an amendment is necessary to clarify the order or deal with an obvious error or inadvertent omission, the party must request the amendment within 30 days after the order is received.

A TDO may set aside or vary an order if the order was made without notice to one or more parties, if the order was made following a hearing at which a party did not appear because of an accident, a mistake or insufficient notice of the hearing, or on other grounds consistent with procedural fairness.

A request that the order be set aside or varied must be made within 20 days of the earlier of:

- the date upon which the RTDRS provided a copy of the original order to the requesting party, and
- the date upon which the original order first came to the requesting party's attention.

A TDO may also issue an interim order staying the original order, pending resolution of the request.

Enforcement of orders

Once an RTDRS order has been filed with the Court of Queen's Bench, and the applicant has served the filed order on the respondent, the order is enforceable in the same manner as an order of the Court. While the RTDRS can direct-file the order at the Court of Queen's Bench, the RTDRS is not involved in enforcement of the order. The civil enforcement process is within the jurisdiction of the Court.

Due to limited public access to courthouses as a result of the COVID-19 pandemic, in April 2020 the RTDRS began direct-filing its orders by email to the Court of Queen's Bench. This additional service has been greatly appreciated by applicants, and the RTDRS has made it part of standard practice. In 2021-22, 9,087 orders were direct-filed at the Court, and then emailed or otherwise delivered to the applicant.

Appeals

A party who believes the TDO made an error of law or jurisdiction may file an appeal with the Court of Queen's Bench within 30 days of the date the order was filed with the Court. A party who believes the RTDRS process itself was unfair can seek judicial review. If the Court determines the TDO made an error of law or of jurisdiction, or the process itself lacked required elements of procedural fairness, the TDO's order may be quashed and the application sent back to the RTDRS for re-hearing.

In 2021-22, less than one per cent of all RTDRS orders were the subject of an application for judicial review or an appeal to the Court of Queen's Bench. The Court referred one application back to the RTDRS for re-hearing.

Governance

The RTDRS Administrator is appointed to oversee the service, is responsible for developing and enforcing the RTDRS Rules of Practice and Procedure and the Code of Conduct for TDOs (both available online), and for ensuring the service is administered in accordance with the applicable legislation and regulations.

A party to an RTDRS order may submit a complaint alleging that either the RTDRS Rules of Practice and Procedure or the Code of Conduct for TDOs were not followed. The RTDRS Administrator will review the procedure and the hearing recording, and provide a response to the complainant, usually in writing. Whether or not the RTDRS Administrator's review identifies a breach of either the Rules or the Code, the feedback provided through complaints is considered an opportunity to improve the service and is taken into account when developing TDO training.

Sometimes parties submit a complaint about the outcome of an RTDRS hearing to the Office of the Alberta Ombudsman or to the Minister for Service Alberta. However, no government official, including the Alberta Ombudsman or a Minister, can alter the outcome of an RTDRS hearing. In both instances, the complaint will be referred back to the RTDRS Administrator who will conduct her review as described above and report her conclusions to the Minister or to the Ombudsman's Office, as required.

While the RTDRS Administrator does not have the authority to change or overturn the decision of a TDO, if her review identifies a breach of the Code of Conduct for TDOs, she may recommend the TDO set aside their order and schedule the matter for rehearing, depending upon the severity of the breach. The RTDRS Administrator can also address performance issues with the TDOs as their supervisor.

Despite the significant increase in number of applications in 2021-22, there were 23 per cent fewer complaints about TDO conduct. The RTDRS Administrator reviewed and responded to 56 complaints in 2021-22, and 73 the year prior.

Red tape reduction

The RTDRS is continually seeking to make its service as efficient and accessible as possible. While RTDRS process is dictated by the RTA, the MHSTA, and the RTDRS Regulation, over the course of the 2021-22 year, the RTDRS reduced red tape for the landlords and tenants who use the service by:

- instead of requiring sworn affidavits to verify service or in support of applications for subservice, abridgement of service, or a notice to attend, replacing them with signed declarations that do not need to be sworn before a Commissioner for Oaths;
- processing written correspondence from the applicant indicating they are withdrawing their application in the same way as the notice of withdrawal required in the RTDRS Regulation;
- implementing a dedicated telephone line that allows parties to leave a message with an updated telephone number at which they wish to be contacted for the hearing, rather than requiring they wait to speak with an Information Officer;
- streamlining the RTDRS webpages so they are more intuitive and information is easier to locate;
- including hyperlinks within the email automatically sent to parties after a hearing to make it easier for them to find post-hearing information online; and
- proactively contacting applicants who have not apparently followed the directions in the application package to make sure they understand the obligation to serve the application package and notice of hearing on the respondent in advance of the hearing.

