



RTDRS Annual Report

The first edition Annual Report for Alberta's
Residential Tenancy Dispute Resolution Service

Fiscal Year 2020-21



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Overview

The Residential Tenancy Dispute Resolution Service (RTDRS) is a quasi-judicial tribunal to which landlords and tenants can 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 - but serves the entire province.

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 such as education resources, and the investigation and enforcement of offences under the RTA or MHSTA. Information about these resources is found on alberta.ca or by calling the Service Alberta Contact Centre.

Communities Impacted

The RTDRS uses case management software that allows for the tracking of various data, including the percentage of applications connected with major urban centres, based on the location of the rental premises. The data shows that 40 to 50 per cent of all residential tenancy disputes brought before the RTDRS pertain to rental premises located in Edmonton, while between 25 and 30 per cent pertain to rental premises located in Calgary. The incidence of disputes in other municipalities is lower due to significantly fewer rental premises.

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

*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
- 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 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.

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

Beginning June 1, 2020, mobile home site landlords and tenants were able to apply to the RTDRS for possession and termination-related remedies. On November 16, 2020, the jurisdiction of the RTDRS was further expanded to include damages-related remedies. Between June 1, 2020 and March 31, 2021, the RTDRS received 40 applications for remedies under the MHSTA.

The RTDRS received 11,130 applications in 2019/20, and 10,973 applications in 2020/21. Typically, the number of applications increases year over year by an average of 4 per cent. The COVID-19 pandemic and the related Ministerial Order suspending evictions during the month of April 2020 resulted in an unprecedented drop in the number of applications filed with the RTDRS.

In comparing the first three months of 2021 with the first three months of 2020, landlord applications for possession for non-payment of rent decreased by an average of 15 per cent while landlord applications for possession due to tenant interference with the rights of other tenants or of the landlord increased by an average of 69 per cent.

Applications

The RTDRS receives applications in-person, online or by fax. 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.

There is a \$75 filing fee for applications to the RTDRS, which is lower than the \$100-\$200 fee for Provincial Court and the \$250 fee for 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 January 2019, the RTDRS introduced eFiling, which allows parties to file applications and upload records for the hearing, online. By mid-2020, and through to the date of this report, 96 per cent of applications were filed online, due in large part to the RTDRS offices being closed to in-person access in response to the COVID-19 pandemic.

In the 2019/20 fiscal year, the RTDRS waived \$16,800 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. The doubling of fee waivers in one year is attributed to the financial hardship brought on by the COVID-19 pandemic.

Information Officers

Most initial calls for information about the RTDRS process come through the Service Alberta Contact Centre. The Contact Centre will answer general questions, and refer questions 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. However, as the RTDRS is a neutral dispute resolution service, 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.

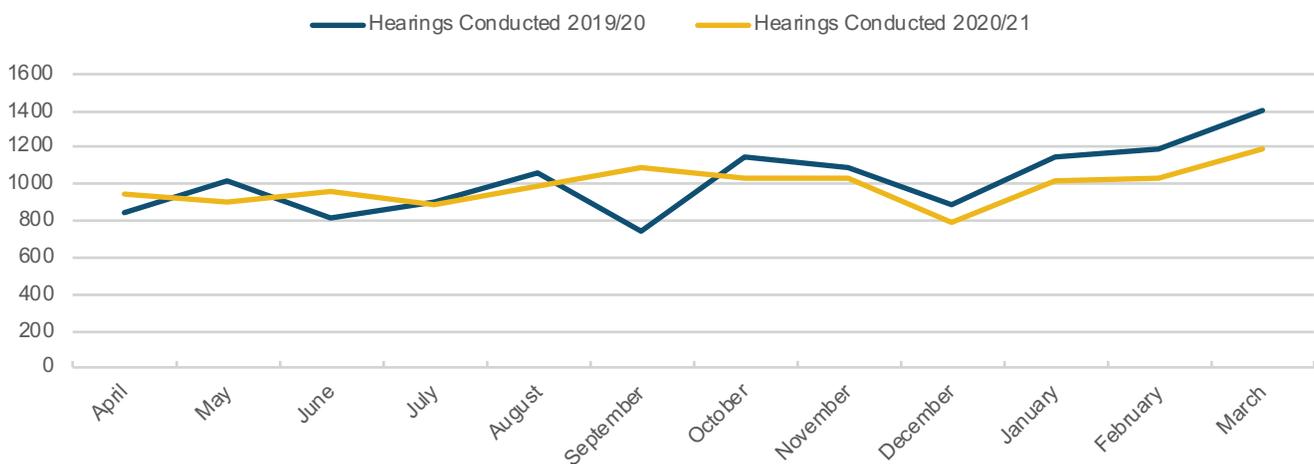
Hearing Scheduling and Format

Prior to 2019, RTDRS dispute resolution hearings were conducted in-person if the rental premises were located in Calgary or Edmonton, and by teleconference if the rental premises were located elsewhere in the province. In 2019, RTDRS expanded the number of hearings conducted by teleconference in order to achieve a more efficient use of limited resources. Due to the COVID-19 pandemic, and the related safety restrictions on in-person gatherings, the RTDRS has conducted all hearings by teleconference from March 18, 2020 through to the date of this report.

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 remedies sought in the application.

Approximately 82 per cent of applications are for possession and/or termination, and are given scheduling priority. These applications are typically heard and resolved within 15 business days, depending upon various factors including TDO availability.

HEARINGS CONDUCTED



The applications for remedies post-possession/termination, such as for damages or return of the security deposit, are scheduled as soon as possible after 30 business days from the date of filing. The significant reduction in the wait-time between filing and hearing, from 2019/20 to 2020/21, is due primarily to a 40 per cent increase in the number of TDOs over the course of 2020.

RTDRS applications are scheduled as efficiently as possible, based on available hearing time. Each TDO typically conducts between 5 and 13 hearings per day, depending on the type and therefore the anticipated length of the hearing.

Most applications are heard when scheduled, while a few are withdrawn or adjourned to a later date. 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.

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

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	2020/21
RTA Applications	
• Landlord Application for Possession	7,940
• Landlord Application for Damages	1,024
• Tenant Application for Return of Security Deposit	990
• Tenant Application for Termination and other remedies	979
MHSTA Applications	
• Landlord Application for Possession	38
• Landlord Application for Damages	1
• Tenant Application for any remedy	1
Total	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 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.



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 prove what they are alleging with evidence, which can include records as well as the testimony of the parties or other witnesses. It is almost always the case that the two parties will present conflicting evidence and the TDO will have to determine which party’s evidence is more persuasive.

As with any civil litigation, the burden of proof in the hearing is usually on the applicant. In cases where tenants apply for return of the security deposit, however, the burden of proof lies with the landlords to demonstrate they followed the strict requirements in the RTA or MHSTA regarding security deposits. Respondents can refute the applicant’s proof by submitting their own defence evidence. The standard of proof is the civil standard “on a balance of probabilities”, which means it is more likely than not what is being alleged is true.

In order to help applicants and respondents understand the RTDRS decision-making process and prepare for the hearing, considerable information is provided to parties both on 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).

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, at least some of the evidence submitted will be assessed by the TDO to be irrelevant or inconsequential to the legal issue(s) the TDO must decide. 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 or of witnesses in order 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 then 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 in order 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. Frequent users of the RTDRS have reported that reading previous RTDRS decisions has allowed them to be better prepared for future hearings.

RTDRS began publishing written reasons for decision on CanLII in 2019. In the 2019/20 fiscal year, the service published just over 50 decisions, and then published approximately the same number again during the 2020/21 fiscal year.

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 an amendment is necessary to clarify the order or deal with an obvious error or inadvertent omission, the request must be made within 30 days after the order is received by the requesting party.

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

Orders issued through the RTDRS are enforceable in the same manner as an order of the Court once the RTDRS order has been filed with the Court, and the applicant has served the filed order on the respondent. While the RTDRS can direct-file the order at the Court, the RTDRS does not have the authority to enforce the order. The civil enforcement process is within the jurisdiction of the Court, and so the conditions under which a successful applicant is able to collect the amount awarded in an RTDRS order are outside the scope of the service.

Due to limited public access to courthouses as a result of the COVID-19 pandemic, on April 1, 2020, the RTDRS began direct-filing its orders by email to the Court of Queen's Bench. Between April 1, 2020 and March 31, 2021, 7,890 orders were direct-filed by the RTDRS on behalf of applicants.

Appeals

A party who believes the TDO made an error of law or jurisdiction may file an appeal with the Court 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 2020/21, fewer than 1 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, and none were sent back to the RTDRS by the Court for re-hearing.

Governance

The RTDRS Administrator 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 of which are 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.

31 complaints about the RTDRS or TDO conduct were filed with the RTDRS Administrator in the fiscal year 2019/20, and 73 were filed in 2020/21. The significant increase in complaints in 2020/21 is attributed primarily to the added stresses brought on by the COVID-19 pandemic, and the heightened consequences of an RTDRS hearing for the parties.



Red Tape Reduction

The RTDRS is continually seeking to make its service as efficient as possible. While much RTDRS process is dictated by the RTA and RTDRS Regulation, over the course of the 2020/21 year the RTDRS reduced red tape for the landlords and tenants who use the service by:

- applying the RTDRS Administrator's authority under the RTDRS Regulation to permit service of notice by email under certain circumstances
- more clearly defining the terms used to describe the various online application "status" types, to reduce the number of calls to the RTDRS seeking this information
- accepting applications that have core details, even if other information is miscategorised or incomplete, to avoid requiring applicants to file an amendment
- streamlining the hearing process by requiring parties uploading records online to label and group the records by theme or issue
- adjusting the online application to allow parties to insert both a mailing address and an address for service
- handling all fee waiver requests internally rather than receiving them through a third-party referral agency such as Calgary Legal Guidance or Edmonton Community Legal Centre, and
- direct-filing orders with the Court of Queen's Bench, as described above, and thereby preventing the applicant from having to go into a courthouse to do so themselves.