



Rules of practice and procedure

Residential Tenancy Dispute
Resolution Service

Alberta 

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Table of Contents

Residential Tenancy Dispute Resolution Service (RTDRS)	7
The RTDRS Vision.....	7
The RTDRS Mission.....	7
Freedom of Information and Protection of Privacy	7
1. Objective and purpose	7
1.1 Objective of the <i>Rules of Practice and Procedure</i>	7
1.2 Purpose of the hearing	7
2. Application for hearing	7
2.1 Limitation period to apply for remedies.....	7
2.2 Grounds for the application	7
• Landlord remedies	7
• Tenant remedies	8
2.3 Filing the application.....	8
• Online submissions	8
• In-person submissions	8
• Multiple remedies on one application	9
2.4 Limit on the amount of claim and award.....	9
2.5 Amending an application before the hearing	9
• Amending application before serving	9
• Amending applications that have already been served	9
2.6 Withdrawal of application	10
2.7 Refusal to accept all or part of an application or conduct a hearing	10
2.8 Dismissing a proceeding	10
2.9 Duplicate filing of a claim at the court.....	10
2.10 Opportunity to settle dispute.....	10
3. Serving the application and exchanging evidence	10
3.1 Documents required for service	10
3.2 Service requirements	11
3.3 Substitutional Service.....	11
3.4 Abridgement.....	11
3.5 Proof of service required for hearing	11
3.6 Evidence not filed with the application.....	11
3.7 Validation of Service.....	12
3.8 Transfer of File to Court	12
4. Replying to an application	12
4.1 Service of respondent's documents	12

5. Making an opposing claim against the applicant	12
5.1 Making a counter-application	12
6. Rescheduling and adjournment of hearings	13
6.1 Rescheduling of a hearing by consent	13
• Application package not served on respondent	13
• Parties consent to re-scheduling	13
6.2 If no mutual consent, party may request an adjournment.....	13
6.3 Adjournment after hearing commences.....	13
6.4 Criteria for granting an adjournment.....	13
7. Notice to Attend	14
7.1 Application for a Notice to Attend to testify	14
8. Conduct of the hearing	14
8.1 Conduct of the hearing	14
8.2 Party may present evidence	14
8.3 Party may be represented or assisted.....	14
8.4 Scope of hearing and making of order	15
8.5 Form of hearing	15
8.6 Decorum.....	15
8.7 Restricted access to the hearing	15
8.8 Method of hearing	15
9. Recording	15
9.1 Recording of the hearing	15
9.2 Private recording	15
9.3 Official transcript/audio recording of an RTDRS hearing.....	16
• 9.3.1 Audio recording of the hearing	16
• 9.3.2 Official transcript: parties to an action	16
• 9.3.3 Audio recording: third party requests	16
• 9.3.4 RTDRS application files	16
10. Introductions and preliminary matters	17
10.1 Commencement of the hearing	17
10.2 Introduction to the hearing process by Tenancy Dispute Officer	17
10.3 Preliminary matters	17
10.4 Authority to act as agent.....	17
11. Presenting evidence and witnesses	17
11.1 Swearing witnesses.....	17
11.2 Presentation of case.....	17
11.3 Relevance of the evidence	17
11.4 Personal information not relevant to proceedings	18
11.5 Consideration of evidence not provided to the other party in advance	18

11.6 Original evidence.....	18
11.7 Video, DVD, CD, VCD, audio, and other physical evidence.....	18
11.8 Witnesses' attendance at the hearing	18
11.9 Exclusion of witnesses and others	18
11.10 Inspection of premises or site.....	19
11.11 Retention of evidence entered as exhibits at hearing.....	19
12. Questions regarding evidence.....	19
12.1 Questions regarding evidence.....	19
12.2 Questions posed through the Tenancy Dispute Officer	19
12.3 Questions by the Tenancy Dispute Officer	19
13. Hearing-related matters	19
13.1 Related matters.....	19
13.2 Adding a related matter.....	19
14. Including affected third parties.....	19
14.1 Respondent may request that a party be added	19
14.2 Respondent may request adjournment	20
14.3 Tenancy Dispute Officer may impose directions	20
14.4 Tenancy Dispute Officer may make order against third party.....	20
14.5 Tenancy Dispute Officer may order notice to a materially affected tenant	20
14.6 Materially affected tenant given opportunity to be heard.....	20
15. Conclusion of hearing	20
15.1 Additional evidence after the hearing	20
15.2 Concluding the hearing	20
16. Telephone hearings	21
16.1 Telephone hearing process.....	21
16.2 Original or true copies of documents.....	21
16.3 Delay in the start of the hearing.....	21
16.4 Identification of people present	21
16.5 Witnesses.....	21
17. Tenancy Dispute Officer's orders	21
17.1 Reasons for decision	21
17.2 Signed orders	21
17.3 Direct filing of orders	21
17.4 Correction or clarification of orders.....	22
17.5 Set aside or vary an order	22
17.6 Administrator Review	23
17.7 Appeals	23
18. Non-compliance	23
18.1 Non-compliance will not stop or nullify proceeding.....	23

19. Costs	23
19.1 Daily witness fee	23
19.2 Travel	24
19.3 Costs of the application	24
• Application filing fee	24
• Service of a private process server	24
• Representation	24
• Registered mail	24
• Photocopying expenses	24
• Developing costs of photographs	24
• Other costs	25
20. Applications filed in court	25
21. Independence and impartiality of Tenancy Dispute Officers	25
21.1 Ex-parte communication with a Tenancy Dispute Officer	25
22. Waiver of fees	25
22.1 On application	25
22.2 Other instances	25
Definitions and usage	26

Residential Tenancy Dispute Resolution Service (RTDRS)

The RTDRS Vision

Fair, accessible, and efficient adjudication of landlord and tenant disputes across Alberta.

The RTDRS Mission

- To provide clear information on the RTDRS process
- To provide adjudication of landlord and tenant disputes that is timely, affordable, independent, unbiased, competent, and in accordance with the law.

Freedom of Information and Protection of Privacy

Pursuant to section 34(2) of the *Freedom of Information and Protection of Privacy Act*, the information is collected for the purpose of dispute resolution in accordance with the *Residential Tenancies Act* and the *Mobile Home Sites Tenancies Act*.

1. Objective and purpose

1.1 Objective of the *Rules of Practice and Procedure*

The objective of the *Rules of Practice and Procedure* is to secure a consistent, efficient and just process for resolving disputes.

These rules will be interpreted broadly to produce the fairest, least expensive and quickest resolution of the dispute.

1.2 Purpose of the hearing

The purpose of the hearing is to enable the Tenancy Dispute Officer to:

- Receive and assess the evidence presented by each party;
- Hear the tenant and landlord explain their versions of a dispute; and
- Make an impartial and binding decision to resolve the dispute.

2. Application for hearing

2.1 Limitation period to apply for remedies

Applications can be made to the RTDRS within two years from the date the claim is discovered.

2.2 Grounds for the application

The Tenancy Dispute Officer generally hears and decides only on those matters set out in the application but has the discretion to allow the application to be amended and grant other remedies to the applicant.

Landlord remedies

- Recovery of rent arrears
- Recovery of possession of the premises or site (Order of Possession)
- Compensation (in the case of an overholding tenant)

- Termination of the tenancy
- Damages for breach of tenancy agreement or for a contravention
- Security deposit deductions

Tenant remedies

- Damages for breach of tenancy agreement or for a contravention
- Abatement (reduction) of rent
- Compensation for the cost of performing the landlord's obligations
- Termination of the tenancy
- Recovery of the security deposit

2.3 Filing the application

An application to the RTDRS may be made by:

- A landlord
- An authorized agent or lawyer representing the landlord
- A tenant or former tenant
- An authorized agent or lawyer representing the tenant or a former tenant
- Someone who paid certain fees or charges for a rental unit or site which they never occupied.

An application may be submitted:

- Online
- In-person at either the Edmonton or Calgary RTDRS office
- By Fax
- By mail

An application can be made by filing a completed application form and all supporting evidence and paying the required application fee. The application form must:

- Be signed by the applicant (for in-person or mailed-in applications)
- Show the address of the rental premises
- Include the full name, physical address, email address and telephone number of both parties, where known
- Set out the remedies sought; and
- Indicate that:
 - The applicant has not applied to a court in respect of the same matter;
 - The applicant is not aware of any application being filed in the courts with respect to this matter; and
 - The applicant will notify the RTDRS office immediately if they become aware of any such application.

Online submissions

Applicants may submit their applications via the RTDRS eFiling Service: <https://rocs.alberta.ca/ols-rtdrs/%23!ols-login>

Instructions related to the online filing process are available on the RTDRS website at: <https://www.alberta.ca/rtdrs-apply.aspx>

In-person submissions

Applicants may submit their applications for filing in person at either the Edmonton or Calgary RTDRS office.

Any evidence brought into the RTDRS office should be organized in a manner that can be easily accessed by all hearing participants. Evidence must be in a format that can be run through a standard scanner feed and should adhere to the following standards:

- Any item that is more than one page should be numbered
- All evidence submitted should be on standard sized, single-sided paper (either 8.5 x 11-inch letter sheets, or 8.5 x 14-inch legal sheets)
- Evidence should **not** be stapled, three-hole punched, or put into sleeves or binders
- Photographs submitted as evidence:
 - Should be printed on plain, 8.5 x 11-inch (letter) sized paper, or 8.5 x 14-inch (legal) sized paper
 - If photographs are not of a standard size, they should be firmly taped down onto plain letter or legal sized paper
 - May be submitted on a USB or CD-ROM

It is the applicant's responsibility to provide the completed original application and evidence to the RTDRS. Do not copy your application. The RTDRS will do that for you.

On receipt of the completed application, evidence and application fee, the RTDRS will provide you with a Notice of Hearing or a Notice of Telephone Hearing that gives you the date, time and location of the hearing.

Multiple remedies on one application

A party may list multiple remedies on one application form, provided that:

- The issues are related, and
- It appears the same facts must be heard and considered by the Tenancy Dispute Officer in determining the matters in question.

If the Tenancy Dispute Officer determines during the hearing that one or more issues are not related, the Tenancy Dispute Officer may:

- Transfer the applicable issues to court;
- Dismiss the issues (with or without leave to re-apply); or
- Order those portions of the application that are not related to be heard on different dates.

2.4 Limit on the amount of claim and award

An applicant with a claim of more than \$100,000 must abandon part of the claim so the total amount claimed falls within the limit that may be awarded by a Tenancy Dispute Officer. The applicant forfeits the excess and is not entitled to recover it at the RTDRS or in any other court.

An applicant is prohibited from dividing a claim that exceeds \$100,000 into smaller claims.

With the exception of interest on the security deposit as stipulated in the *Residential Tenancies Act* and the *Mobile Home Sites Tenancies Act*, the RTDRS does not award pre-judgment interest.

2.5 Amending an application before the hearing

Amending application before serving

An applicant may amend the application without consent if the applications have not been served on any respondents. In this case, all copies of the application package should be returned to the office of the RTDRS for amending.

Amending applications that have already been served

If the application has been served, the applicant may:

- Submit an amended application form with the office of the RTDRS; and
- Serve each respondent with the amended application form at least 24 hours prior to the hearing

If service requirements cannot be met, the Tenancy Dispute Officer may adjourn the hearing to allow sufficient service time.

2.6 Withdrawal of application

An applicant can withdraw a claim by completing a Notice of Withdrawal form and submitting it to the RTDRS before a hearing begins. It is the responsibility of the applicant to notify the respondent of a withdrawal. If the applicant chooses to withdraw their application, they are asked to do so as early as possible in order that another applicant's matter can be scheduled instead.

The RTDRS will email or mail a copy of the withdrawal to the address listed for the respondent on the application form if the applicant package was served on the respondent. In such cases, the application fee is forfeited.

Notice of Withdrawal forms are available at <http://www.rtdrs.alberta.ca/>. Complete this form and forward it to the RTDRS office prior to the hearing either in person, by email, by mail, or online.

Within 30 days of the day the RTDRS emails or mails the Notice of Withdrawal to the respondent, the respondent may make an application to the RTDRS for costs.

2.7 Refusal to accept all or part of an application or conduct a hearing

The RTDRS may refuse an application where:

- The applicant has failed to pay the fee
- The application is not in proper form or is incomplete
- An application has been made to the courts in respect of the same matter
- The matter is of such complexity that it should be referred to the courts
- The matter cannot be dealt with in a timely manner and should be referred to the courts

2.8 Dismissing a proceeding

In the event that a matter is dismissed due to the failure of an applicant to attend or reschedule the hearing, the dismissal will be made on a without-prejudice basis (i.e. the applicant may re-file the application after paying a new \$75 filing fee).

2.9 Duplicate filing of a claim at the court

Where a claim for the same remedy has already been filed with the Alberta Court of Justice or Court of King's Bench (also referred to as "court"), the RTDRS will refuse to accept a similar claim.

Where on the same day, simultaneous claims have been made by the parties with both the court and the RTDRS, the application with the court will proceed and the application filed with the RTDRS will be discontinued.

The application fee paid to the RTDRS will be refunded upon written request.

2.10 Opportunity to settle dispute

A Tenancy Dispute Officer may assist the parties to a dispute or may offer the parties an opportunity to settle the dispute. If the parties settle the dispute, the Tenancy Dispute Officer may record the settlement in the form of an order.

Prior to a hearing, if a Tenancy Dispute Officer is present with the parties during discussions that do not result in a settlement, a different Tenancy Dispute Officer will conduct a hearing of the dispute.

3. Serving the application and exchanging evidence

3.1 Documents required for service

Together with a copy of the Notice of Telephone Hearing, the applicant must serve each respondent with a copy of the application package, which includes:

- The filed application form
- All evidence filed with the RTDRS
- Other information provided by the RTDRS

3.2 Service requirements

Application packages must be served in a manner provided for in the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act* and be served as soon as possible and at least three clear days before the application is to be heard. The three clear days do not include the date the documents are served, the date of the hearing, or any Saturday, Sunday or statutory holiday. For example, if the application is to be heard on a Monday, the application package(s) must be served no later than the preceding Tuesday. Documents may be served on weekends and holidays.

Where a landlord has made reasonable attempts at personal service and/or service through registered mail on the respondent, and the respondent is avoiding service or cannot be found, the landlord may serve the tenant(s) by leaving the application package(s) with an adult who apparently resides with the tenant(s), or by posting the application package(s) in plain sight on the rented site or premises. Landlords should use the mailing address of the rented site or premises. Tenants should use the mailing address provided in the tenancy agreement or the Notice of Landlord.

As per the Administrator’s directive pursuant to section 31(b) of the RTDRS Regulation, parties to any RTDRS application are permitted to effect service by way of email, as long as the parties have previously communicated by email, or the parties previously agreed to communicate by email, and the party serving notice is able to demonstrate to the Tenancy Dispute Officer that the email was delivered, such as with a reply, a read receipt or verifying software.

3.3 Substitutional Service

Where all attempts to locate and serve a respondent have failed or are otherwise impractical, the applicant may file a Declaration in Support of Substitutional Service with the RTDRS requesting substitutional service. Substitutional service is a method of service which is not prescribed in the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*.

Substitutional service may be accomplished by:

- Sending the documents via email,
- Serving a relative (adult) of the respondents,
- Sending the documents by regular mail (provided the applicant has proof of the respondent's address), or
- Other methods as directed by the Tenancy Dispute Officer.

3.4 Abridgement

Prior to the hearing of the application, an applicant may apply to the RTDRS by way of a Declaration in Support of Abridgement of Service to shorten the service time required in Rule 3.2, and a Tenancy Dispute Officer may abridge the minimum three clear days if they believe the circumstances warrant.

3.5 Proof of service required for hearing

The person who served the application package must complete a Declaration of Service prior to the hearing. The Declaration of Service informs the Tenancy Dispute Officer of how service was accomplished. See also Rule 3.7 below.

Declaration of Service forms are available at www.rtdrs.alberta.ca.

3.6 Evidence not filed with the application

If the applicant wishes to present evidence at the hearing that was not filed with the application, or “additional evidence”, the evidence must be filed with the RTDRS, and served on the respondent as soon as possible and at **least 24 hours** prior to the hearing.

Allow at least one full business day for processing before expecting documents or evidence submitted to appear on the RTDRS case file.

If service requirements cannot be met, the Tenancy Dispute Officer may use their discretion and apply Rules 6.3 and 6.4 to adjourn the hearing to a later date, depending on the nature of the evidence.

3.7 Validation of Service

The validity of service will be decided in the hearing by the Tenancy Dispute Officer. In the event that an application package or additional evidence has been served in a manner inconsistent with the requirements of the *Residential Tenancies Act*, the *Mobile Homes Sites Tenancies Act*, or the *Rules of Practice and Procedure*, a Tenancy Dispute Officer who is satisfied that the application package or additional evidence has likely come to the attention of the other party may, on their own initiative or at the request of the party, deem the service to be valid service on the party being served.

3.8 Transfer of File to Court

There are many reasons why it may not be appropriate for the RTDRS to hear a particular application, including:

- Remedies sought that are outside RTDRS jurisdiction
- Complexity of the issues
- Hearing time that would be taken up with the one matter to the detriment of many others.

If it becomes necessary pursuant to section 17 of the regulations for the Residential Tenancy Dispute Resolution Service to transfer the application to the Alberta Court of Justice or the Court of King's Bench, then:

- The applicant will advise the RTDRS if they wish to proceed with the court action, and the level of court to which they will make the application.
- The applicant will be required to pay the RTDRS the difference between the RTDRS application filing fee (\$75) and the current fees of the chosen court (\$100 or \$200 for Alberta Court of Justice and \$250 for Court of King's Bench).
 - The additional filing fee must be paid to the RTDRS within 15 days of the matter being transferred, unless otherwise specified by the Tenancy Dispute Officer.
 - If the additional filing fee is not paid within this time period the application will be deemed abandoned and subject to dismissal.
- The original application package will then be forwarded by the RTDRS to the chosen court.

4. Replying to an application

4.1 Service of respondent's documents

The respondent must file all related evidence with the RTDRS, and serve it on the applicant as soon as possible and **at least 24 hours prior** to the hearing date and time.

If the respondent's evidence is not served as required, the Tenancy Dispute Officer may proceed with the hearing if late service would be inconsequential, or apply Rules 6.3 and 6.4 to adjourn the hearing,

5. Making an opposing claim against the applicant

5.1 Making a counter-application

If the respondent has a claim against the applicant, they may file a counter-application against the applicant, by:

- Filing the appropriate application form and all evidence with the RTDRS
- Paying the application filing fee, and
- Serving the application package in accordance with Rule 3.2 above.

If appropriate, and where the party has sufficient time to serve, the RTDRS will schedule the counter-application to be heard at the same time as the original application.

Where service requirements cannot be met, the hearing will be scheduled to ensure sufficient time for proper service.

At the hearing for the original application, the Tenancy Dispute Officer will make a determination whether to hear the applications separately or to adjourn the original application and hear both claims together on the second hearing date.

6. Rescheduling and adjournment of hearings

6.1 Rescheduling of a hearing by consent

A hearing may be re-scheduled if:

- The application package(s) has not been served on the respondent(s), or
- If **all** parties consent to the re-scheduling of the matter.

The applicant must advise the RTDRS of this in writing or by email prior to the hearing date and time set out in the Notice of Hearing or Notice of Telephone Hearing.

Application package not served on respondent

If the application package(s) has not been served on the respondent(s), the RTDRS will change the date and time of the hearing and issue a new Notice of Telephone Hearing to the applicant. The applicant will be required to serve the respondent(s) as per Rule 3.2 above.

Parties consent to re-scheduling

If both parties agree to re-schedule the hearing and the RTDRS has been advised, as above, the applicant has 10 business days from the date of the original hearing to set a new hearing date and time with the RTDRS or the file will be closed and the \$75 filing fee will be forfeited. The applicant will not be required to re-serve a copy of this date on the respondent if both parties agree to the scheduled time.

If both parties cannot agree on the new time the applicant must serve the respondent with a copy of the new Notice of Telephone Hearing.

6.2 If no mutual consent, party may request an adjournment

If a party requests that a hearing be adjourned because the party is unable to attend and the opposing party does not consent to the adjournment, the hearing will commence at the scheduled time. The person who is unable to attend must have someone attend at the hearing on their behalf, or appear via teleconference, to request an adjournment.

If the applicant or respondent are unable to do that, they may request an adjournment in writing prior to the hearing date. The applicant or respondent must submit a written request or complete the Adjournment Request Form detailing the reason they are requesting an adjournment. The Tenancy Dispute Officer will then consider the request to adjourn the matter to a later date. The Tenancy Dispute Officer may apply the criteria outlined below in Rule 6.4. If an adjournment is granted, the Tenancy Dispute Officer will set a new date and time for the hearing to commence.

6.3 Adjournment after hearing commences

At any time after the hearing commences, the Tenancy Dispute Officer may adjourn the hearing to a later time:

- At the request of the parties, or
- On the Tenancy Dispute Officer's own initiative.

6.4 Criteria for granting an adjournment

Without restricting the authority of the Tenancy Dispute Officer to consider other factors, the Tenancy Dispute Officer may apply the following criteria when considering a party's request for adjournment at the time of the hearing:

- The oral or written submissions of the parties;
- Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1;

- Whether the adjournment is required to provide a fair opportunity to be heard, including whether a party has sufficient notice of the hearing and/or time to address any new evidence;
- The degree to which the need for the adjournment arises from the intentional actions or the neglect of a party seeking the adjournment;
- The possible prejudice to each party;
- Any other circumstance that is fair and reasonable.

If an applicant does not proceed with their application on the hearing date, the Tenancy Dispute Officer may grant an order allowing an applicant up to a maximum of 60 days to schedule a new hearing date for the application.

If the applicant fails to arrange for a new hearing date within the timelines granted by the Tenancy Dispute Officer, the application will be dismissed on a without prejudice basis and the \$75 filing fee will be forfeited. If the applicant wishes to have their matter heard after the application was dismissed without prejudice, the applicant must file a new application and pay an additional \$75 filing fee.

7. Notice to Attend

7.1 Application for a Notice to Attend to testify

A party may request that a Tenancy Dispute Officer issue a Notice to Attend to testify by submitting a Declaration in Support of a Notice to Attend to the RTDRS.

The Declaration must:

- Set out the full name of the witness(es),
- Provide a summary of the evidence the witness(es) is expected to produce, and
- Describe any documents that the witness(es) must bring to the hearing.

The party requesting the Notice to Attend is responsible for serving it on the witness and paying the witness fees. The Notice to Attend must be personally served on the witness, which means giving it to the person. When serving the Notice to Attend on the witness, the party must pay their witness conduct money (\$10 per day or \$20 per day for an expert witness.)

A Tenancy Dispute Officer may adjourn a matter and issue a Notice to Attend after evidence has been heard if they feel the notice is warranted.

A warrant may be issued by the Court of King’s Bench for parties who fail to comply with a Notice to Attend issued by the RTDRS.

8. Conduct of the hearing

8.1 Conduct of the hearing

The Tenancy Dispute Officer will conduct the hearing in accordance with these *Rules of Practice and Procedure*.

8.2 Party may present evidence

Each party will be given sufficient opportunity to present his or her relevant evidence.

8.3 Party may be represented or assisted

A party to a hearing may be represented by an agent or a lawyer or someone authorized to do so by the party.

8.4 Scope of hearing and making of order

The Tenancy Dispute Officer will allow evidence in support of the claim(s) in the application package(s). The Tenancy Dispute Officer may amend the application to hear additional related matters or make another order that could have been applied for by the applicant, as is justified.

The Tenancy Dispute Officer shall issue a written order to adjourn or conclude applications in all instances.

8.5 Form of hearing

A submission may be made orally during the hearing or by writing on the application form. At the discretion of the Tenancy Dispute Officer, written submissions may be presented at the time of the hearing.

8.6 Decorum

Hearings before a Tenancy Dispute Officer are quasi-judicial, and parties are expected to conduct themselves in a courteous manner throughout.

Each party must come prepared to present their case, which may include relevant evidence, oral testimony and/or questioning witnesses. Parties must speak only when the Tenancy Dispute Officer invites them to, so that each party has equal opportunity to participate without interruption. The Tenancy Dispute Officer may cut short a party's opportunity to present their case, or exclude them from the hearing, should they demonstrate rude, antagonistic or other improper behavior.

8.7 Restricted access to the hearing

RTDRS hearings are closed to the public unless the Tenancy Dispute Officer grants permission for certain members of the public to attend, after consultation with the parties. While a member of the public might be granted permission to attend a RTDRS hearing, they will not be given access to the application or supporting documents on file.

If a Tenancy Dispute Officer decides that all or part of the hearing will be open to certain members of the public, they may:

- Decide which persons who are not parties may attend the hearing,
- Issue an order for the parties in which any personal information related to the hearing is severed, and
- In a particularly sensitive case, require those seeking to be present at the hearing sign an undertaking not to disclose what took place during the hearing.

8.8 Method of hearing

All RTDRS hearings will be scheduled to take place before a Tenancy Dispute Officer by way of telephone conference.

If a party to an action prefers to have their hearing heard in person, in either the Edmonton or Calgary RTDRS office location, they must obtain the consent of the other party and make this request to the Tenancy Dispute Officer at the teleconference. If the Tenancy Dispute Officer determines the hearing will be conducted in person, they will adjourn the hearing to another date.

9. Recording

9.1 Recording of the hearing

Tenancy Dispute Officers are required to record all hearings in a digital audio format. The RTDRS does not transcribe hearing recordings.

9.2 Private recording

Private recording of the hearing is not permitted.

9.3 Official transcript/audio recording of an RTDRS hearing

The RTDRS uses the *Freedom of Information and Protection of Privacy (FOIP) Act* as a guide for its privacy practices.

9.3.1 Audio recording of the hearing

Audio recordings may be requested upon the conclusion of the hearing and not before.

Parties to an RTDRS application (i.e. landlords, tenants or their written-authorized representatives) may request a copy of the audio recording of the hearing. The party must complete the RTDRS Audio Recording Request form and submit it to the RTDRS in person, online, by email or by mail.

The RTDRS will provide the audio recording (if available) to the party on a USB/thumb drive provided to the RTDRS by the requesting party or by email.

The audio recording can be listened to using any M4A audio player. Some of the older audio recordings have been made using For the Record (FTR) software, and can only be listened to using the FTR Player, which can be downloaded for free at <https://www.fortherecord.com/products/ftr-player/>

9.3.2 Official transcript: parties to an action

.See Rule 9.3.1 above. Only a party to an RTDRS application may request an audio recording of the hearing. **The party requesting the audio recording must arrange for and pay the cost of private transcription services.**

9.3.3 Audio recording: third party requests

A third party (i.e. not the landlord(s), tenant(s) or agent(s) involved in the hearing) who wishes to obtain a copy of a hearing recording must make a request for access to the program are FOIP contact under the *Freedom of Information and Protection of Privacy (FOIP) Act*.

9.3.4 RTDRS application files

RTDRS application files are confidential. Parties to an action (i.e. landlords, tenants or their written authorized representatives) may request copies of file documents if they have been lost or misplaced.

Third parties do not have open access to RTDRS application files, but they may apply for access through FOIP using the process outlined in Rule 9.3. above. Personal identifiers may be blocked out, in compliance with the provisions of FOIP.

The RTDRS will comply with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information.

Absent a formal request in the form of a subpoena, warrant, court order or other appropriate authorization, there is no obligation on the part of the RTDRS to release information to a law enforcement agency. However, it is the policy of the RTDRS to assist law enforcement and provide the information, provided the information is to assist them in an investigation that meets the criteria under the FOIP Act (See Table 1 below). Such disclosure is discretionary in nature and therefore requires a careful consideration of all relevant facts prior to determining whether it should be done.

Furthermore, even where one of the grounds under FOIP is established, the disclosure must be limited to only that which is reasonable and necessary to affect the grounds. The decision to release the information must be authorized by the Administrator.

TABLE 1

Section 40(1)(q) of the FOIP Act allows a public body to disclose personal information to a public body or law enforcement agency in Canada to assist in an investigation:

- (i) undertaken with a view to a law enforcement proceeding, or
- (ii) from which a law enforcement proceeding is likely to result.

“Law enforcement” is defined in section 1(h) of the Act as:

- i) Policing, including criminal intelligence operations,
 - ii) A police, security or administrative investigation, including the complaint giving rise to the investigation, that leads or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the investigation or by another body to which the results of the investigation are referred, or
 - iii) Proceedings that lead or could lead to a penalty or sanction, including a penalty or sanction imposed by the body conducting the proceedings or by another body to which the results of the proceedings are referred.
-

10. Introductions and preliminary matters

10.1 Commencement of the hearing

The hearing will commence at the scheduled time unless otherwise decided by the Tenancy Dispute Officer. However, both parties must remain available for the telephone hearing for up to 90 minutes from the hearing start time in case of delays. If the respondent does not attend but was served with proper notice, the Tenancy Dispute Officer may conduct the hearing in the respondent's absence and may issue a binding order. If the applicant fails to attend the hearing, the Tenancy Dispute Officer may dismiss the application with or without leave to re-apply.

10.2 Introduction to the hearing process by Tenancy Dispute Officer

At the beginning of the hearing, the Tenancy Dispute Officer will explain how the hearing will proceed and will answer relevant questions that the parties may have about the hearing process.

10.3 Preliminary matters

A Tenancy Dispute Officer may consider any preliminary matter brought forward by a party including, but not limited to::

- Questions of jurisdiction
- Substitutional service
- Adjournments
- Adding a related matter
- Amending the application, and
- Summoning a witness or documents.

10.4 Authority to act as agent

A Tenancy Dispute Officer may require an agent to provide proof of that person's appointment to represent a party and may adjourn a hearing for this purpose.

11. Presenting evidence and witnesses

11.1 Swearing witnesses

Witnesses may be required to swear under oath or affirm that the evidence that will be given is true. The Tenancy Dispute Officer may administer an oath or affirmation based on the election of the witness.

11.2 Presentation of case

The applicant will present his or her case and evidence first unless the Tenancy Dispute Officer decides otherwise.

11.3 Relevance of the evidence

The parties must present only evidence that is relevant to the application being heard. The Tenancy Dispute Officer may ask a party to explain the relevance of the evidence and may decline to hear the evidence, if it is not relevant.

11.4 Personal information not relevant to proceedings

The RTDRS may, at the request of a party, permit the party to sever personal information from a document or other material that is being submitted into evidence.

If, once the hearing commences, the Tenancy Dispute Officer determines that the personal information severed is relevant to the case, the applicant will have to decide whether to disclose the relevant information, or withdraw the applicable evidence from the application.

11.5 Consideration of evidence not provided to the other party in advance

If evidence is not served on the other party as required, the party submitting the evidence must satisfy the Tenancy Dispute Officer that the evidence is relevant and that they have a valid reason for not serving the other party in accordance with the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act* and *Rules of Practice and Procedure*.

Where the evidence is irrelevant, the Tenancy Dispute Officer will refuse to consider it.

In cases where the evidence is relevant the Tenancy Dispute Officer has the option to refuse to consider the evidence where s/he is satisfied that:

- There has been a willful or recurring failure to comply with the service requirements, or
- The other party will not have sufficient opportunity to review the evidence and the evidence provided is not significant enough to require an adjournment of the matter.

Submission of any new evidence at the hearing will be at the discretion of the Tenancy Dispute Officer. The Tenancy Dispute Officer may refuse to accept the evidence or apply Rules 6.3 and 6.4 to adjourn the matter as required.

11.6 Original evidence

A party can provide a legible copy of any document or a clear reproduction of photographs to be presented into evidence at the hearing, and make the original available to the Tenancy Dispute Officer if requested to do so. The Tenancy Dispute Officer has the discretion to direct the original document, rather than a copy, be placed into evidence.

11.7 Video, DVD, CD, VCD, audio, and other physical evidence

Video, DVD, CD, audio and physical evidence may be presented at the hearing, provided that:

- The RTDRS and the other party has been properly served in accordance with Rules 3.1, 3.2, 3.3, 3.5, and 4.1, or the Tenancy Dispute Officer has applied Rule 6.4.

CDs or DVDs must be provided in a format compatible with Windows Media player. Cell phone photos will not be accepted, however, cell phone pictures and videos downloaded to a USB, CD or DVD will be, as long as they are compatible with Windows Media Player.

11.8 Witnesses' attendance at the hearing

Subject to Rule 11.9, parties are responsible for having their witnesses available for the teleconference at the time of the hearing. Witnesses will testify at the Tenancy Dispute Officer's discretion.

If the hearing is to take place in person, witnesses may be required to attend in person. Witnesses must be available until called, until excused by the Tenancy Dispute Officer, or until the hearing ends.

11.9 Exclusion of witnesses and others

At the discretion of the Tenancy Dispute Officer, witnesses and others who are not a party to the hearing may be excluded from the hearing. A witness will be telephoned for the hearing when it is their turn to present testimony and/or be cross-examined.

11.10 Inspection of premises or site

On the Tenancy Dispute Officer's own initiative, the Tenancy Dispute Officer can decide whether to conduct an on-site inspection, and will appoint the date and time for the inspection. All parties are entitled to be present at the inspection.

11.11 Retention of evidence entered as exhibits at hearing

Video, DVD, CD, audio and physical evidence submitted into evidence will not be returned to the party as it becomes part of the record and the property of the RTDRS.

12. Questions regarding evidence

12.1 Questions regarding evidence

A party may ask questions about the other party's evidence either on their own initiative or as directed by the Tenancy Dispute Officer. Questions should be held until the questioner is granted the opportunity to speak by the Tenancy Dispute Officer. A Tenancy Dispute Officer is not required to allow questions that interrupt the procedure, are discourteous, or are irrelevant to the legal issue to be decided.

Subject to Rule 12.3, the Tenancy Dispute Officer may ask questions of any party or witness at any time during the hearing.

12.2 Questions posed through the Tenancy Dispute Officer

Each party may be required to pose questions through the Tenancy Dispute Officer to ensure the relevancy of their question, or if a party to a hearing demonstrates rude, antagonistic, or other improper behavior.

12.3 Questions by the Tenancy Dispute Officer

The Tenancy Dispute Officer may question a party or witness, as necessary, to determine the relevancy or sufficiency of evidence, or to assist the Tenancy Dispute Officer in reaching a decision.

13. Hearing-related matters

13.1 Related matters

A Tenancy Dispute Officer may hear any other applications that relate to the application before them.

13.2 Adding a related matter

A party may ask the Tenancy Dispute Officer to consider hearing a related application at the same time.

If the Tenancy Dispute Officer determines the application is related and may be considered at that time, the other party may argue that the related application should be adjourned to a later date. In such situations, the Tenancy Dispute Officer will rule on whether to adjourn in accordance with Rules 6.3 and 6.4, and give a reason(s) for granting or refusing the adjournment.

14. Including affected third parties

14.1 Respondent may request that a party be added

A respondent may request that a third party be added to an application in cases where the respondent has a claim against the third party that arises from the application.

14.2 Respondent may request adjournment

A respondent may request an adjournment of a hearing for the purposes of notifying a third party added to an application under Rule 14.1.

The Tenancy Dispute Officer will decide whether an adjournment is appropriate having regard to Rules 6.3 and 6.4.

14.3 Tenancy Dispute Officer may impose directions

The Tenancy Dispute Officer may impose directions in respect of service of the application package and all relevant evidence to be served on a third party. Rule 3 applies.

14.4 Tenancy Dispute Officer may make order against third party

After the respondent has complied with the directions of the Tenancy Dispute Officer imposed under Rule 14.3, whether or not the third party appears at the hearing, the Tenancy Dispute Officer may make an order against the third party as permitted under the Act.

The third party will have an opportunity to present relevant evidence at the hearing and make their case, and may make an argument that they are not properly a third party to the application, all of which the Tenancy Dispute Officer will consider before rendering a decision.

If the third party does not appear at the hearing, and the Tenancy Dispute Officer is satisfied that the third party was served as directed under Rule 14.3, the Tenancy Dispute Officer may make an order against the third party as permitted under the Act.

14.5 Tenancy Dispute Officer may order notice to a materially affected tenant

The Tenancy Dispute Officer may determine, in accordance with the regulations, that a tenant who is not a party to the dispute may be materially affected by the hearing. If such a determination is made, the Tenancy Dispute Officer may adjourn the hearing and direct that the applicant or respondent provide the affected tenant with the application package, and all relevant evidence in accordance with Rule 14.3.

14.6 Materially affected tenant given opportunity to be heard

A materially affected tenant will have an opportunity to be heard at a time determined by the Tenancy Dispute Officer. A submission of an affected tenant may be made orally during the hearing or in writing by way of an affidavit.

15. Conclusion of hearing

15.1 Additional evidence after the hearing

Additional evidence may be submitted after the hearing only with the permission of the Tenancy Dispute Officer and only if the hearing **has not been formally concluded**. If permission is given, the Tenancy Dispute Officer will specify what evidence will be submitted and the date by which the evidence must be submitted. The Tenancy Dispute Officer will also provide an opportunity to the other party to respond to the additional evidence and specify the date that they must respond by.

15.2 Concluding the hearing

The hearing is concluded when the Tenancy Dispute Officer declares it concluded.

16. Telephone hearings

16.1 Telephone hearing process

An applicant must provide a contact telephone number for both themselves and the respondent on the application form.

If the application is to be heard by telephone, and the telephone number for a party listed on the application form is incorrect or not shown, it is the responsibility of **that party** to contact the RTDRS and provide a telephone number where the party can be contacted for purposes of conducting a telephone hearing.

Please note that a hearing can proceed without both parties present or as determined by the Tenancy Dispute Officer.

Except as otherwise set out in these *Rules of Practice and Procedure*, telephone hearings will be conducted in the same manner as in-person hearings.

16.2 Original or true copies of documents

In accordance with Rule 11.6, a Tenancy Dispute Officer may require a party to a telephone hearing to provide an original or true copy of any document placed into evidence, and may adjourn the hearing for that purpose.

16.3 Delay in the start of the hearing

In the event of a delay of a start of a hearing, each party must remain available, at the designated telephone number, to commence the hearing for up to 90 minutes after the scheduled start time.

16.4 Identification of people present

All parties participating in the hearing must be identified.

16.5 Witnesses

Subject to Rule 11.8, a party participating in a telephone hearing may request that the Tenancy Dispute Officer contact a witness during the hearing.

17. Tenancy Dispute Officer's orders

17.1 Reasons for decision

After the hearing is concluded, the Tenancy Dispute Officer will provide oral reasons for the decision for the record. If the Tenancy Dispute Officer decides to reserve their decision, they will provide the participating parties with written reasons for the decision within 30 days of the conclusion of the proceedings.

A redacted version of reasons for decision provided in writing will be published on the publicly-accessible CanLII service, available at <https://www.canlii.org/en/>

17.2 Signed orders

Where they have not reserved their decision, the Tenancy Dispute Officer will provide a copy of the signed order to the parties participating in the hearing by the end of the day upon which the hearing concluded (or immediately after the hearing conclusion where the order is for vacant possession within 48 hours or less).

In the case of a reserved decision, the Tenancy Dispute Officer will provide a written copy of the order to the parties participating in the hearing within 30 days of the conclusion of the proceeding.

17.3 Direct filing of orders

After the order is issued, the RTDRS will give, email, fax or mail copies of the order to both parties. An RTDRS order must be filed at the Court of King's Bench in order to be enforced as a judgment of the Court.

The RTDRS will file the order directly with the Court of King's Bench and send a copy of the filed order to the applicant only. If the applicant chooses, they may file the order with the Courts themselves but, either way, it is recommended the order be filed as soon as possible. The applicant must serve the filed copy of the order on the respondent.

17.4 Correction or clarification of orders

In accordance with the RTDRS Regulation, the Tenancy Dispute Officer may, on their own initiative or at the request of a party, correct typographic, grammatical, arithmetic or other similar errors evident in an order. Within 30 days of the order being received, the Tenancy Dispute Officer may clarify the order or deal with an obvious error or inadvertent omission in the order.

In the case of typographical, grammatical or similar error, if the Tenancy Dispute Officer who granted the order is not available, any other Tenancy Dispute Officer may make the necessary amendments to the order.

The RTDRS will deliver a copy of the amended order to the other party at the email or mailing address listed in the application.

17.5 Set aside or vary an order

Pursuant to section 19.1 of the RTDRS Regulation, a Tenancy Dispute Officer may set aside or vary an order of the Tenancy Dispute Officer, on their own initiative or at the request of a party.

If the Tenancy Dispute Officer finds it just and reasonable to do so, they may issue an interim order staying the original order, pending the Tenancy Dispute Officers' final determination.

The Tenancy Dispute Officer may set aside or vary an order if:

- There is a clear breach of natural justice; for example, the order was made without notice to one or more parties;
- 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
- If it is just and reasonable to do so on other grounds consistent with procedural fairness.

Any request to set aside or vary an order must be made within 20 days after the earlier of:

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

Unless the Administrator directs otherwise, the decision to set aside or vary the order will be made by the Tenancy Dispute Officer who granted the original order.

The Tenancy Dispute Officer's reasons for decision **must** be provided to the parties in writing and make reference to the Tenancy Dispute Officer's authority to set aside or vary an order as set out in the RTDRS Regulation.

If the Tenancy Dispute Officer decides that a previous order should be set aside, the RTDRS will issue a Notice of Hearing and unless directed by the Tenancy Dispute Officer, the re-hearing shall be held as if it were the original hearing. The Notice of Hearing package must be served by the party making the application.

Service must be affected as outlined in Rule 3.2. The party making the application may apply to the RTDRS to shorten the three clear day service requirement as indicated in Rule 3.4.

If the Tenancy Dispute Officer issues an interim order to stay the original order, or a set aside order, the original order that was filed at the Court of King's Bench will not be stayed or set aside unless the party files a copy of the interim or set aside order at the Court of King's Bench. Similarly, if the Tenancy Dispute Officer issues an amended order varying the original order. An amended order, or an order to set aside or stay the original order, once filed at the Court of King's Bench, and unless the Court orders otherwise, will stay any execution or garnishee summons issued pursuant to the original order.

An order of a Tenancy Dispute Officer is binding on the parties to the dispute unless it is set aside or amended by a Tenancy Dispute Officer or varied on appeal.

17.6 Administrator Review

Parties who have concerns or feedback regarding the quality of services, policies or procedures can submit a request for Administrator Review. All such feedback is considered an opportunity to improve the RTDRS. In response to a request identifying concerns about how the hearing was managed, the RTDRS Administrator can review the conduct of a Tenancy Dispute Officer in reference to the **Code of Conduct**. This review is not a replacement for an appeal, as the Administrator cannot rehear the application, nor overturn or change a TDO decision.

The RTDRS Administrator will conduct a review after the hearing is concluded and the final order is issued, and typically responds in writing within 30 days.

17.7 Appeals

Section 23(1) of the Residential Tenancy Dispute Resolution Service Regulation sets out the steps for appealing a Residential Tenancy Dispute Resolution Service order:

Any party who is subject to an order of a Tenancy Dispute Officer may appeal the order **on a question of law or of jurisdiction** to the Court of King's Bench

- (a) within 30 days after the order is filed, by
 - i. filing in the Court of King's Bench a notice of appeal setting out the grounds of appeal, and
 - ii. serving a copy of the filed notice of appeal on
 - A. The appeal respondent
 - B. The Dispute Resolution Service, and
 - C. Any other person that the Court of King's Bench directs,

and

- (b) by filing with the Court of King's Bench not later than 7 days after the last day for service on those persons served pursuant to clause (a)(ii)
 - i. An affidavit of service of the notice of appeal, and
 - ii. A copy of a requisition to the Dispute Resolution Service for a transcript of evidence, together with
 - A. a receipt for payment of the transcript at the expense of the appellant, or
 - B. written confirmation from the Dispute Resolution Service that a transcript is not available.

Note: Commencing an appeal does not stop the order from taking effect, except when so directed by Court of King's Bench.

18. Non-compliance

18.1 Non-compliance will not stop or nullify proceeding

Failure to comply with these *Rules of Practice and Procedure* will not in itself stop or nullify a proceeding, a step taken, or any document or order made in the proceeding.

19. Costs

A Tenancy Dispute Officer may at any time and, on any conditions that the Tenancy Dispute Officer considers appropriate, award costs in respect of any matter coming before the Dispute Resolution Service.

The following are costs associated with commencing an application that may be considered.

19.1 Daily witness fee

If the applicant or respondent (whoever is calling the witness) has to pay the witness a fee to appear at the hearing (\$10 a day for a regular witness, \$20 a day for an expert witness), these costs may be recoverable by the applicant or respondent if they are successful.

A witness who is also a party or is a current officer, director or partner of a party to the proceeding is not entitled to recover a daily witness fee.

19.2 Travel

The Tenancy Dispute Officer may grant either the cost of public transportation or an allowance for travel by motor vehicle of 15 cents per kilometre.

19.3 Costs of the application

Application filing fee

- Under Part 5 of the Residential Tenancies Act: \$75
- Under Part 5.1 of the Mobile Home Sites Tenancies Act: \$75

Service of a private process server

Actual costs to a maximum of \$50, as long as an invoice is provided.

Representation

- Representation of an agent: up to a maximum of \$75, as long as the agent does not directly work for the party and an invoice is provided
- Representation by legal counsel: \$100

Registered mail

Actual and receipted costs of registered mail as required in the *Residential Tenancies Act* or *Mobile Home Sites Tenancies Act*.

Photocopying expenses

Actual costs to a maximum of \$25 for the cost of making the following necessary photocopies in support of the claim (when a receipt is provided):

- one set for the Residential Tenancy Dispute Resolution Service
- one set for the applicant,
- one set for each respondent and
- one set to attach to the Declaration of Service when a receipt is provided.

If there is no receipt, the Tenancy Dispute Officer may award up to 25 cents per page for photocopies.

Developing costs of photographs

Actual costs to a maximum of \$50 for the cost of purchasing film and/or developing two sets (one set for the Residential Tenancy Dispute Resolution Service and one set for the applicant/respondent) of photographs, as long as the photographs are necessary to support the claim and a receipt is provided.

If there isn't a receipt, the Tenancy Dispute Officer may award the following:

- Up to \$14 for one to 12 pictures
- Up to \$19 for 13 to 24 pictures
- Up to \$26.50 for 25 to 36 pictures
- Up to \$50 for more than 36 pictures

Other costs

Any other related costs as directed by the Tenancy Dispute Officer.

20. Applications filed in court

The RTDRS will require applicants to check off a box in their application certifying that:

- They have not filed an application with the RTDRS or any court in Alberta on the same matter, and
- They have not been served with or are aware of any application filed with the RTDRS or court in Alberta by the respondent on this matter.

21. Independence and impartiality of Tenancy Dispute Officers

A Tenancy Dispute Officer shall be independent of the parties and be impartial.

Before proceeding with a hearing, a Tenancy Dispute Officer must disclose to the parties any circumstances that may give rise to a reasonable apprehension of bias. Parties raising allegations of bias will be dealt with as a preliminary matter. A Tenancy Dispute Officer who, during a hearing, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose the circumstances to the parties.

In the above circumstances the Tenancy Dispute Officer may adjourn at their discretion or upon the request of a party subject to Rules 6.3 and 6.4.

21.1 Ex parte communication with a Tenancy Dispute Officer

But for the exceptions specified below, the applicant, respondent and their counsel/agents and witnesses shall not communicate ex parte (without the other party present) with the Tenancy Dispute Officer. This includes by way of written or oral communications.

The Tenancy Dispute Officer will determine the extent to which it is necessary to communicate ex parte with any party or their counsel/agent for the purposes of resolving a request to amend, clarify, set aside or vary an order.

With the consent of the Tenancy Dispute Officer it may be appropriate to deal with a matter ex parte, as long as the communication encourages or facilitates settlement. Examples include but are not limited to:

- The failure of a party or an attorney/agent to attend the hearing process.
- A request by the applicant for additional time to complete the hearing process.

22. Waiver of fees

22.1 On application

Applicants may request a filing fee waiver due to financial hardship directly with the RTDRS. Low-income Albertans can obtain more information on this process by contacting the RTDRS at 780-644-3000 (for toll-free, dial 310-0000 first).

The request for a waiver of fee must be accompanied by three months proof of income in the form of pay stubs or a print out from your bank account. Once the request is submitted, the applicant may be required to provide additional or alternate proof of income.

22.2 Other instances

In a hearing, a Tenancy Dispute Officer (with delegated authority) may allow for a future fee waiver where, in the opinion of the Tenancy Dispute Officer, a fee waiver is warranted.

Definitions and usage

Act – The *Residential Tenancies Act* of Alberta (RTA) or the *Mobile Home Sites Tenancies Act* of Alberta (MHSTA).

Adjournment – A Tenancy Dispute Officer’s order to continue a hearing at a later date, on the Tenancy Dispute Officer’s own initiative, at the request of either at the request of one or both of the parties; sometimes called a “reconvene”.

Administrator – The person or their delegate who has the responsibility to manage the day-to-day operations of the RTDRS

Advocate – A person who provides assistance to a party.

Affidavit – A voluntary, written statement of facts sworn or affirmed before a commissioner for oaths.

Agent – A person appointed to act on that party’s behalf.

Applicant – The party who applies for a hearing by completing an application and paying any required fee.

Application package – The completed application form, evidence, Notice of Hearing and any other information provided by the RTDRS to be served on the respondent.

Counter-application – An application for remedy made by the respondent to counter an existing application.

Days – In the calculation of time expressed as “at least” a number of days, the first and last days must be excluded. i.e. if the hearing is scheduled for Tuesday, the documents must be served no later than the previous Wednesday (Thursday, Friday and Monday would be the clear days). Weekends or statutory holidays are not counted. For further elaboration, see “Computation of Time” in section 22 of the *Interpretation Act*.

Decision – The conclusion or determination of the Tenancy Dispute Officer which legally resolves the matters outlined in the application, including orders, if necessary to implement the decision.

Declaration – A written statement of facts, signed by the person who verifies the facts are true.

Evidence – Presented by the parties at the hearing in support of the case, including:

- Documents (e.g. the tenancy agreement, letters, receipts, pictures and the sworn or un-sworn statements of witnesses);
- Photographs, video or audio and other physical evidence;
- Oral statements of the parties or witnesses.

Ex parte – Communication with a Tenancy Dispute Officer without the opposing party’s presence.

Hearing – The procedure in which parties are called together by a Tenancy Dispute Officer and given an opportunity to present evidence, submit arguments, and question the other parties. A hearing will take place by telephone conference call, or in person upon request and with consent of the other party and agreement of the Tenancy Dispute Officer.

In writing – Except where an original document is required, documents to be submitted in writing may be submitted by fax prior to filing.

Jurisdiction – The legal authority of the RTDRS to hear a case.

Materially affected – Has a relevant and significant impact on a party.

On the record – hearings are conducted “on the record”, meaning what is being said by everyone involved in the hearing is recorded using an audio recording device

Party – The applicant or respondent named in the application or added to the application by a Tenancy Dispute Officer, or an officer representing a business named on the application. A party to an application does not include witnesses, family members, and other people not named on the application. “Party” may include multiple applicants or respondents.

Personal information – Submitted information about an identifiable individual including:

- Name, address or telephone number;
- Race, national or ethnic origin, colour, or religious or political beliefs or associations;
- Age, sex, sexual orientation, marital status or family status;
- Identifying number, symbol or other particular assigned to the individual;
- Fingerprints, blood type or inheritable characteristics;
- Health care history, including physical or mental disability;
- Educational, financial, criminal or employment history;
- Anyone else's opinions about the individual;
- Personal views or opinions of the individual, except if they are about someone else.

Reasons – The grounds and findings on which a Tenancy Dispute Officer has based the decision, including both evidence and law. Relevant Evidence is relevant when it relates to or bears upon the matter in issue, or tends to prove or disprove an alleged fact.

Reserve – The act of a Tenancy Dispute Officer to decide not to make a decision at the hearing, but to take some time to provide the written decision and order within the time limits specified in the Rules of Practice and Procedure (RPP).

Reschedule – The act of the RTDRS to re-designate a date and time for the hearing.

Respondent – The party against whom the application has been made; sometimes called the “other party”.

Rule – in these *Rules of Practice and Procedure (RPP)*.

Schedule – The act of the RTDRS to designate a date and time for the hearing, when an application is filed.

Service of notice – The formal, legal manner of giving a party required documents as set out in the legislation.

Sever – To delete or strike over information in such a way that the information is no longer legible.

Substitutional service – An alternative method of service authorized by a Tenancy Dispute Officer, where the party has made all reasonable efforts but has been unable to serve hearing documents, in accordance with the regulations and/or *Rules of Practice and Procedure (RPP)*.

Withdrawal – To discontinue or abandon an action.

Witness – individuals who have first-hand knowledge of the facts of the dispute