

RESIDENTIAL TENANCY Dispute Resolution Service

Open the door to a new way of resolving disputes.

Rules of Practice and Procedure

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**MISSION OF THE RESIDENTIAL TENANCY
DISPUTE RESOLUTION SERVICE**

Albertans recognize the desirability of promoting ongoing harmonious relationships between landlords and tenants.

Albertans recognize that there is a need for a simple process for resolving disputes between landlords and tenants in a manner that is fair, informal, accessible, inexpensive, expeditious and amicable.

Albertans recognize that the small sums of money typically at issue between landlords and tenants require the need for prompt settlement of disputes.

Albertans believe these goals are achievable through innovative dispute resolution services in an informal, quasi-judicial setting.

Albertans believe that it is in the interest of landlords and tenants that the knowledge and skill of persons specializing in both landlord and tenant matters are integral in providing this service.

Conflicts between the Rules and the Regulations

When the *Residential Tenancies Act* (RTA) or Regulations and the Rules of Practice and Procedure conflict, the RTA and Regulations apply.

REMEDIES

Limitation period to apply for remedies

Applications can be made to the Residential Tenancy Dispute Resolution Service within 2 years from the date the claim is discovered.

The RTA allows a landlord to apply for one or more of the following remedies:

- Recovery of rent arrears
- Recovery of possession of the premises (order of possession)
- Recovery of compensation for overholding tenant
- Termination of the tenancy
- Damages for breach of tenancy agreement
- Approval to dispose of goods by public auction
- Amount landlord can deduct from the security deposit
-

RTA sections

- Terminating the tenancy of a tenant or confirming the termination of the tenancy when the tenant has committed a substantial breach of a residential tenancy agreement as per section 29(1). A “substantial breach” is a breach of a covenant specified in section 21 or a series of breaches of a residential tenancy agreement, the cumulative effect of which is substantial.
- Confirming the termination of the tenancy where the landlord has given notice of termination in accordance with section 30(1) and the tenant has not vacated the premises by the time and date of the termination as set out in the notice.
- Terminating the tenancy of a tenant who abandoned the premises and the recovery of possession, where a person (other than the tenant) served with a notice to vacate under section 33(1) has not complied with the notice.
- Directing a person who is not a tenant of the premises to vacate the premises, if the person has not complied with the notice to vacate served in accordance with section 36(1).

The RTA allows a tenant to apply for one or more of the following remedies:

- Recovery of damages resulting from a breach of the lease agreement by the landlord.
- Abatement of rent where a breach by the landlord deprives a tenant of the benefit of the tenancy agreement.
- Compensation for the cost of performing the landlord’s obligations.
- Termination of the tenancy by reason of a breach if in the opinion of the court the breach is of such significance that the tenancy should be terminated.
- Return of security deposit.

HOW TO APPLY FOR A HEARING

Who can apply

An application to the Residential Tenancy Dispute Resolution Service may be made by either:

- A landlord or
- A tenant (or, in some cases, a former tenant, or someone who paid certain fees or charges for a rental unit which they never occupied).

The *Application to the Residential Tenancy Dispute Resolution Service -Instructions for Landlords and Tenants* explains the basic steps in making an application, and what happens after it is filed with the Residential Tenancy Dispute Resolution Service. The text of this pamphlet can be found in the Publications & Forms section of our website at www.governmentservices.gov.ab.ca

What type of application can be filed

A complete list of the remedies that can be sought through the Residential Tenancy Dispute Resolution Service is found in the *Application to the Residential Tenancy Dispute Resolution Service -Instructions for Landlords and Tenants* in the Publications & Forms section of our website.

For most applications, there are instructions that explain how to complete the form. You should review these instructions before completing an application. These instructions will also tell you whether there are certain documents that must be filed with the application. You can download and print instructions and applications from the Affidavits, forms and notices section on our website under Publications & Forms.

Applications and other forms are available at the Residential Tenancy Dispute Resolution Service office, the Provincial Court or at the office of Alberta Government Services, Consumer Services Division, 3rd floor Commerce Place, 10155 – 102 Street, Edmonton, Alberta T5J 4L4.

How to file an application

An application may be sent or delivered to the Residential Tenancy Dispute Resolution Service office located on the 17th floor, TD Tower, 10088 – 102 Avenue, Edmonton, Alberta T5J 2Z1. Any fee required for an application **must** be paid at the time the application is filed. Payment can be made by Visa, MasterCard, debit, cheque or cash.

Freedom of Information and Protection of Privacy

Pursuant to 34(2) of the *Freedom of Information and Protection of Privacy Act*, the information is being collected for the purpose of dispute resolution in accordance with the *Residential Tenancies Act*. If you have any questions regarding its use, please contact the Alberta Government Services FOIP Help Desk at (780) 427-5848.

PROCEDURES

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 a hearing is to enable the Tenancy Dispute Officer to hear the tenant and landlord explain their versions of a dispute, to receive and assess the evidence presented by each party and make an impartial and binding decision to resolve the dispute.

2. APPLICATION FOR HEARING

2.1. *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.

2.2. *Filing the application*

An application by a landlord or a tenant must be made by filing with the Dispute Resolution Service a *Notice of Application for Hearing* accompanied with the required application fee. The notice of application must:

- a) be signed by the applicant,
- b) show the address of the rental premises,
- c) include the full name, address and telephone number of both parties,
- d) set out the remedies sought, and
- e) indicate that the applicant has not applied to a court in respect of the same matter.

The applicant is also required to bring an affidavit in support of the application and an affidavit of service form. The affidavit of service form should be completed, with the exception of the date of service and authorization by a Commissioner for Oaths, which will be done **after** filing the application. For further documents that should be included with the application, please see sections 3 and 11 below. On receipt of the completed application and documents, the dispute Resolution Service will issue to the applicant a copy of the filed *Notice of Application for Hearing* that shows the date, time and location of the hearing.

2.3. *Combining sections on one application*

At the discretion of the Residential Tenancy Dispute Resolution Service Administrator (hereby referred to as the "Administrator"), a party may list multiple sections on one *Notice of Application for Hearing*, provided that: the issues are related, and

it appears that the same facts must be heard and the same law 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 dismiss those portions of the application with leave to re-apply, or schedule a separate hearing on that issue.

2.4. *Limit on the amount of claim*

An applicant with a claim of more than \$25,000 may abandon part of the claim so the total claimed falls within the limit that may be heard by a Tenancy Dispute Officer. The person forfeits the excess and is not entitled to recover it in the Dispute Resolution Service or in any other court. An applicant is prohibited from dividing a claim that exceeds \$25,000 into smaller claims. Where two or more applications have been joined, the monetary limit for each claim is \$25,000.

2.5. *Amending an application before the hearing*

The applicant may amend the application without consent if the hearing has not commenced. If applications have not been served on any respondents, the application should be returned to the office of the Residential Tenancy Dispute Resolution Service for amending all copies at the same time. If the application has been served, and all requirements can be met to serve each respondent with amended copies before the hearing, the applicant may be permitted to file a revised application with the office of the Residential Tenancy Dispute Resolution Service. A copy of the revised application must be provided to each respondent.

2.6. *Withdrawal of application*

An applicant can withdraw a claim before a hearing begins if both the Residential Tenancy Dispute Resolution Service and the respondent are advised in advance of such withdrawal. The applicant must provide written confirmation of the withdrawal request to the Residential Tenancy Dispute Resolution Service. The Residential Tenancy Dispute Resolution Service will advise the other party that the matter has been withdrawn. In such cases, the application fee is forfeited.

Within 30 days after the day the notice of the withdrawal of the application is sent by the Dispute Resolution Service to the other party, the other party may apply to the Dispute Resolution Service for costs.

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

- a) Where the Residential Tenancy Dispute Resolution Service learns of an applicant's failure to pay the fee.
- b) Where the Residential Tenancy Dispute Resolution Service determines that the matter is of such complexity that it should be referred to the Courts.
- c) Where the notice of application is not in proper form or incomplete.
- d) Where an application has been made to the Courts in respect of the same matter.
- e) Where the matter cannot be dealt with in a timely manner that it should be referred to the courts.
- f) Where the matter is outside the jurisdiction of the Residential Tenancy Dispute Resolution Service or involves a matter of constitutional law or human rights, that it should be referred to the courts.

2.8. Dismissing a proceeding

A Tenancy Dispute Officer may by order dismiss a proceeding in circumstances that the Tenancy Dispute Officer considers warranted.

2.9. Filing of the claim at the Court

- a) Where a claim for the same remedy has already been filed with the Provincial Court or Court of Queen's Bench (also referred to as "court"), the Residential Tenancy Dispute Resolution Service will refuse to accept a similar claim.
- b) Where on the same day, simultaneous claims have been made by the parties with both the court and the Residential Tenancy Dispute Resolution Service, the application with the court will be proceeded with and the application filed with the Residential Tenancy Dispute Resolution Service will be discontinued.

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.

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 Application for Hearing*, the applicant must serve each respondent with copies of all of following:

- a) The Affidavit in Support of the Tenant/Landlord's Application.
- b) Any other evidence accepted by the office of the Residential Tenancy Dispute Resolution Service with the application, (including a brief summary of witness disclosure, i.e. what the witness intends to testify they witnessed).
- c) Other information contained in the hearing information package provided by the office of the Residential Tenancy Dispute Resolution Service.
- d) You must ensure that the documents are served at least 3 business days before the application is to be heard. The 3 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 documents must be served no later than the preceding Tuesday.

3.2. If a respondent avoids service

If the respondent is avoiding service or cannot be found, the applicant may contact the office of the Residential Tenancy Dispute Resolution Service or make the application at the start of the hearing and request a Tenancy Dispute Officer's order for substituted service.

3.3. Proof of service required for hearing

If the respondent does not attend the hearing, the applicant must prove to the Tenancy Dispute Officer the respondent(s) was served, as required under the Act. The person who served the documents must provide an affidavit of service informing the Tenancy

Dispute Officer how service was accomplished. The Tenancy Dispute Officer will ask that person to swear an oath or make an affirmation to tell the truth at the hearing.

3.4. Evidence not filed with the application

Copies of any documents, photographs, videos or audiotape evidence not filed with the application, but which the applicant wishes to present as evidence at the hearing, should be filed with the office of the Residential Tenancy Dispute Resolution Service, and served on the respondent as soon as possible. This should be done at least three (3) days prior to the hearing. If the evidence is not served as required, the Tenancy Dispute Officer may apply Procedure 11.5. There is also a duty, as a matter of fairness that the respondent provide their evidence that they intend to rely on in advance of the hearing to the applicant. This includes a brief summary of witness disclosure, i.e. what the witness intends to testify they witnessed. The Tenancy Dispute Officer may use his or her discretion to grant adjournments depending on the nature of the evidence.

3.5. Notice of other physical evidence

An applicant wishing to present other physical evidence must notify the office of the Residential Tenancy Dispute Resolution Service and the respondent, in writing, at least three (3) days in advance of the hearing. If the notice is not served as required, the Tenancy Dispute Officer must apply Procedure 11.5.

3.6. Transfer of File to Court

If it becomes necessary pursuant to Section 17 of the regulations for the Residential Tenancy Dispute Resolution Service to transfer the file to the Provincial Court or the Court of Queen's Bench, the following process will be used. It will be the decision of the applicant to determine if they wish to proceed with the action and to advise the Residential Tenancy Dispute Resolution Service which court they wish to use. The original documents along with the application for notice of hearing and fee will be forwarded by the Residential Tenancy Dispute Resolution Service to the appropriate court.

4. REPLYING TO AN APPLICATION

4.1. Service of the respondent's documents

If the respondent wishes to dispute the application, the respondent should file copies of all documents, photographs, video or audio tape evidence intended to be used to defend the respondent's position, with the Residential Tenancy Dispute Resolution Service and serve the applicant with copies of the evidence as soon as possible, and at least two (2) days before the hearing. If the documents are not served as required, the Tenancy Dispute Officer must apply Rule 11.5.

4.2. Notice of other physical evidence

Subject to Procedure 11.5, the respondent wishing to present other physical evidence must notify the office of the Residential Tenancy Dispute Resolution Service and the applicant, in writing, at least two (2) days in advance of the hearing.

5. MAKING AN OPPOSING CLAIM AGAINST THE APPLICANT

5.1. *Making a counter claim*

The party making a counter claim against the applicant must file a *Notice of Application for Hearing*, and serve it in accordance with Procedure 3 and the Act. If appropriate, and where the party has sufficient time to serve, the Residential Dispute Resolution Service office must schedule the application to be heard by the same Tenancy Dispute Officer at the same time as the original application.

6. RESCHEDULING AND ADJOURNMENT OF HEARINGS

6.1. *Rescheduling of hearing by consent more than one day in advance*

A hearing will be rescheduled if consent is received from the applicant, respondent and Office of the Residential Tenancy Dispute Resolution Service. The Office must have sufficient time to notify the Tenancy Dispute Officer before noon on the second to last business day before the hearing. Adjournments will not be left open indefinitely. If the applicant does not arrange for a new hearing date within 60 days after the granting of adjournment, the file will be closed and the \$75.00 fee will be forfeited.

6.2. *Rescheduling within one day of the hearing*

If less than one day remains before the scheduled hearing, the Tenancy Dispute Officer will apply the criteria in Procedure 6.5 when considering a request for an adjournment.

6.3. *If no mutual consent, party may request an adjournment*

If a party requests that a hearing be rescheduled because the party is unable to attend due to circumstances beyond his or her control—and if the opposing party does not consent to the hearing being rescheduled—the hearing must commence at the scheduled time. The Tenancy Dispute Officer will then consider a request to adjourn the hearing to a later date. The Tenancy Dispute Officer may apply the criteria outlined below in Procedure 6.5.

6.4. *Adjournment after hearing commences*

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

- (a) at the request of the parties, or
- (b) on the Tenancy Dispute Officer's own initiative.

6.5. *Criteria for granting 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:

- a) the oral or written submissions of the parties;
- b) 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 Procedure 1;
- c) 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;
- d) the degree to which the need for the adjournment arises from the intentional actions or the neglect of a party seeking the adjournment;

- e) the possible prejudice to each party; and
- f) any other circumstance that is fair and reasonable.

7. NOTICE TO ATTEND

7.1. Application for a “Notice to Attend” to testify

Any request to a Tenancy Dispute Officer to issue a "Notice to Attend" to testify must be submitted, in writing, to the office of the Residential Tenancy Dispute Resolution Service, and must

- a) set out the name and address of the witness(es),
- b) provide a summary of the evidence the witness(es) is expected to produce, and
- c) describe any documents that the witness(es) must bring to the hearing.

A Tenancy Dispute Officer may issue a "Notice to Attend" before the hearing, or may deal with the request as a preliminary matter or after evidence has been heard.

7.2. Application for a “Notice to Attend” to produce documents and/or evidence

Any request to a Tenancy Dispute Officer to issue a "Notice to Attend" for a person to produce documents and/or other items of evidence may be submitted, in writing, to the office of the Residential Tenancy Dispute Resolution Service and must describe the documents and/or other items of evidence that the person is to produce. The Tenancy Dispute Officer may issue a "Notice to Attend" before the hearing, or may deal with the request as a preliminary matter at the hearing or after evidence has been heard.

8. CONDUCT OF THE HEARING

8.1. Conduct of the hearing

The Tenancy Dispute Officer must 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.

8.4. Scope of hearing and making of order

The Tenancy Dispute Officer must take evidence on the matters stated on the *Notice of Application for Hearing*. The Tenancy Dispute Officer may, with the consent of the parties, amend the application to hear additional related matters or make another order that could have been applied for and is justified.

8.5. Form of hearing

A submission may be made orally (including by telephone) or in writing and with the consent of both parties.

The opposing party must be given an opportunity, at that or a later time, and in the manner the Tenancy Dispute Officer considers appropriate, to respond to the submission.

8.6. Interruptions

Disrupting the other party's presentation with questions or comments will not be permitted. The Tenancy Dispute Officer may give directions to a party who presents rude, antagonistic or improper behavior. Each party will be given the opportunity to question witnesses.

9. RECORDING OF A HEARING

9.1. Private recording

Private recording of the hearing is not permitted.

9.2. Official transcript

A party requesting an official transcript must provide written notice, stating the reasons for the request, to the other party and to the office of the Residential Tenancy Dispute Resolution Service. The party requesting the transcript must arrange for and pay the cost of the transcription services. The Residential Tenancy Dispute Resolution Service will provide a copy of the recording of the hearing (if available) directly to the transcription service. The transcription service will be required to return the original copy to the Residential Tenancy Dispute Resolution Service after use.

10. INTRODUCTIONS AND PRELIMINARY MATTERS

10.1. Commencement of the hearing

The hearing must commence at the scheduled time unless otherwise decided by the Tenancy Dispute Officer. If satisfied that proper notice was served to the respondent, the Tenancy Dispute Officer may conduct the hearing in his or her absence and may make a decision or 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 must explain how the hearing will proceed and must answer relevant questions the parties may have about the hearing process.

10.3. Preliminary matters

Upon request, the Tenancy Dispute Officer must consider any preliminary matters including but not limited to questions of jurisdiction, substituted service, adjournment, 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 will be required to swear under oath or affirm that the evidence that will be given is true. The Tenancy Dispute Officer will administer an oath or affirmation based on the election of the witness.

11.2. Order of presentation

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 not relevant.

11.4. Personal information not relevant to the proceedings

A Tenancy Dispute Officer 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, provided that the Tenancy Dispute Officer first determines that the personal information is not relevant.

11.5. Evidence in advance

The applicant and respondent should provide the Tenancy Dispute Officer and the other party copies of all documents and photographs (or clear reproductions), which are intended to be used as evidence, at least three (3) days prior to the hearing for the applicant and at least two (2) days prior to the hearing for the respondent if they are disputing it. This includes a list of witnesses and a brief summary of the evidence each will give. Sufficient copies of any evidence not served in accordance with Procedure 3.1, 3.4 or 4.1 must be brought to the hearing for the Tenancy Dispute Officer and the other party.

11.6. Consideration of evidence not provided to the other party in advance

If the documents or other evidence is not served on the other party as required, the party submitting the evidence must satisfy the Tenancy Dispute Officer that it is relevant. If the evidence is relevant, the Tenancy Dispute Officer may refuse to consider it in cases where he or she is satisfied:

that there has been a willful or recurring failure to comply,

or

that the other party will have an opportunity to review it and argue that the matter be adjourned.

Acceptance of any new evidence at the hearing will be at the discretion of the Tenancy Dispute Officer.

The Tenancy Dispute Officer must rule on whether to adjourn, in accordance with Procedure 6.5, and give a reason(s) for granting or refusing the adjournment.

11.7. Evidence not received by Tenancy Dispute Officer

The Tenancy Dispute Officer will decide whether to adjourn a hearing to receive evidence that a party states has been forwarded to the office of the Residential Tenancy Dispute Resolution Service but that the Tenancy Dispute Officer has not received at the time of the hearing.

11.8. Original evidence

A party can provide a copy of any document 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 that the original document be placed into evidence rather than a copy. Unless the Tenancy Dispute Officer so directs, a party may offer a legible copy of the document as evidence.

11.9. Videotape, DVD or audiotape and other physical evidence

Videotape, audiotape and physical evidence may be brought to the hearing, provided that the office of the Residential Tenancy Dispute Resolution Service and the other party has been properly served in accordance with Procedures 3.4, 3.5, 4.1 and 4.2. Procedure 11.5 will apply.

Videotape must be in VHS format unless the party provides compatible playback equipment.

11.10. Witnesses' attendance at the hearing

Subject to 11.10 and 11.11, parties are responsible for having their witnesses available in person at the hearing. Witnesses must be available until called or excused by the Tenancy Dispute Officer, or until the hearing ends.

11.11. Witnesses unable to attend

A party may request that his or her witnesses provide evidence from a different location. The office of the Residential Tenancy Dispute Resolution Service and the other party must receive a written request at least two (2) days prior to the hearing. The Tenancy Dispute Officer will consider any prejudice to the other party when deciding whether to grant the request. The Tenancy Dispute Officer may waive the advance notice requirement if satisfied that sufficient reason exists for the failure to provide advance notice.

11.12. Exclusion of witnesses and others

At the discretion of the Tenancy Dispute Officer, witnesses and others who are not party to the hearing may be excluded from the hearing room. They will be called back into the hearing room when it is their turn to present testimony and/or be cross-examined.

11.13. Inspection of Premises

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.

12. QUESTIONS REGARDING EVIDENCE

12.1. Questions regarding evidence

At the request of a party and/or as directed by the Tenancy Dispute Officer, a party will be given an opportunity to ask questions about the other party's evidence. The Tenancy Dispute Officer may ask questions of any party or witness at any time during the hearing, subject to Procedure 12.3.

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 evidence, or if a party to a hearing presents rude, antagonistic or improper behavior.

12.3. Questions by the Tenancy Dispute Officer

The Tenancy Dispute Officer will ask questions of a party or witness if 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 a matter that is related to the matter before him or her.

13.2. Adding a related matter

A party may ask the Tenancy Dispute Officer to consider a related matter. If the Tenancy Dispute Officer determines that the matter is related and it is appropriate it be considered, the other party will have an opportunity to make argument that the matter be adjourned. In such situations, the Tenancy Dispute Officer must rule on whether to adjourn, in accordance with Procedure 6.5, and must 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 a hearing in cases where the respondent has a claim against the third party that arises from the claim of the applicant.

14.2. May request adjournment

A respondent may request an adjournment of a hearing for the purposes of adding a third party under this procedure, and the Tenancy Dispute Officer will decide whether an adjournment is appropriate having regard to procedure 6.5.

14.3. Tenancy Dispute Officer may impose directions

The Tenancy Dispute Officer may impose directions upon the respondent respecting service of the notice of application for a hearing, notice of the reconvened hearing, delivery of particulars of the respondent's claim against the third party or delivery of copies of any relevant evidence upon the third party. Procedure 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 Procedure 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 evidence.

The third party will have an opportunity at the reconvened hearing to present relevant evidence, including an opportunity to argue that the party is not properly a third party.

14.5. Tenancy Dispute Officer may require that materially affected tenant be given notice

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 may direct that the applicant or the respondent provide a notice of the hearing and copies of the application, affidavit and all relevant evidence to the affected tenant.

14.6. Materially affected tenant given opportunity to be heard

A materially affected tenant will have an opportunity to be heard in a manner and at a time to be determined by the Tenancy Dispute Officer. The submission of the affected tenant may be made in writing.

15. CONCLUSION OF HEARING

15.1. No additional evidence

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 must specify what evidence will be submitted and the date by which the evidence must be submitted. The Tenancy Dispute Officer must also provide an opportunity to the other party to respond to the additional evidence and specify the date that the hearing is concluded.

15.2. Concluding the hearing

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

16. CONFERENCE CALL HEARINGS

16.1. Conference call process

Except as otherwise set out in these Rules of Practice and Procedure, conference call hearings will be conducted in the same manner as face-to-face hearings.

16.2. Evidence to be provided in advance

Copies of all documents and audio/videotape evidence must be provided to the office of the Residential Tenancy Dispute Resolution Service and the other party at least three (3) days before the hearing for the applicant and at least two (2) days for the respondent if they are disputing it, together with notice of any other physical evidence to be presented. If the evidence is not served as required, the Tenancy Dispute Officer will rule on

whether the evidence is necessary to the making of the decision and if so, must provide the other party an opportunity to review the evidence. The Tenancy Dispute Officer may adjourn the hearing for that purpose.

16.3. Original or true copies of documents

In accordance with Procedure 11.8, a Tenancy Dispute Officer may require a party to a conference call hearing to provide an original or true copy of any document placed into evidence, and may adjourn the hearing for that purpose.

16.4. 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 60 minutes after the scheduled start time.

16.5. Identification of people present

All parties participating in the hearing must be identified.

16.6. Witnesses

A party to a conference call may request that a witness be contacted by the Tenancy Dispute Officer during the conference call hearing. Parties are required to inform the office of the Residential Tenancy Dispute Resolution Service about the number of witnesses who will be participating in the conference call before noon on the second to last business day before the hearing.

17. THE TENANCY DISPUTE OFFICER'S ORDERS

17.1. The Tenancy Dispute Officers Orders

After the hearing is concluded, the Tenancy Dispute Officer will provide an oral reason for the decision for the record. A written order will be provided to the parties within thirty (30) days after the proceedings conclude.

17.2. Signed Orders

The Tenancy Dispute Officer will provide a signed order to both affected parties to the hearing, even if one did not attend, and a signed copy for the hearing file.

17.3. Correction or clarification of orders

The Tenancy Dispute Officer may take the following steps on his/her own initiative or at the request of a party within 15 days of the order being rendered. The other party will be provided a copy of the amended decision or order.

Correct typographic, grammatical, arithmetic, or other similar errors in his or her order, clarify the order, and deal with an obvious error or inadvertent omission in the order.

17.4. Appeals

Section 23(1) of the *Residential Tenancy Dispute Resolution Service Regulation* sets out the steps for appealing a RTDRS 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 Queen's Bench

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

and

- (b) by filing in the Court of Queen'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 directed by Court of Queen's Bench.

18. NON-COMPLIANCE

18.1. Non-compliance with Procedures

A Tenancy Dispute Officer may consider any breach of these Rules of Practice and Procedure in determining payment or repayment of the filing fee.

18.2. 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 filing of the claim that may be considered:

19.1. Daily witness fee

If a landlord or tenant (whoever is calling the witness) has to pay the witness a fee to appear at the hearing (\$10.00 a day for a regular witness, \$20.00 a day for an expert witness), these costs may be recoverable by the landlord or tenant if they are successful. A landlord or tenant who calls a witness who is a party or a current officer, director or partner of a party to the proceeding is not entitled to recover a daily witness fee.

19.2. Travel

At the discretion of the Tenancy Dispute Officer, either the cost of public transportation or an allowance for travel by motor vehicle of \$0.15 per kilometer.

19.3. Costs of the Application

For filing of notice of application under Part 5 of the *Residential Tenancies Act*: \$75.00.

For service of a private process server: the actual costs to a maximum of \$50.00 (provide invoice).

Representation by an agent: \$75.00

Representation by legal counsel: \$100.00

Actual and receipted costs of mailing as required in the *Residential Tenancies Act*.

Other related costs as directed by the Tenancy Dispute Officer.

20. NOTICE AND AFFIDAVITS

Section 41 of the *Residential Tenancies Act* applies.

Section 41 says: “If a landlord or tenant applies to a court to obtain a remedy under section 26, 30, 33, 36 or 37, the landlord or tenant shall serve on the other party to the application a notice of the application and a supporting affidavit at least 3 days, exclusive of holidays, Saturdays and Sundays or any shorter period of time that the court may approve, before the day named in the notice for the hearing.”

21. CERTIFICATE OF DISCLOSURE

The Residential Tenancy Dispute Resolution Service will require applicants to acknowledge by way of a signed certificate attesting to the fact that they have not been served with, and are not aware of any filing of a *Notice of Application for Hearing* with the Dispute Resolution Service by the parties; and they have not filed a similar claim with any court in Alberta and they are not aware of any other claim being filed on this matter.

22. INDEPENDENCE AND IMPARTIALITY OF TENANCY DISPUTE OFFICERS

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

A Tenancy Dispute Officer before proceeding with a hearing must disclose to the parties any circumstances that may give rise to a reasonable apprehension of bias.

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.

23. WAIVER OF FEES

23.1. On Application

A waiver or reduction of fee upon application can be requested by an applicant on the basis of economic hardship. The request for a waiver or reduction of fee must be accompanied by the required information and waiver/reduction of fee documents.

23.2. Other instances

In all other cases, a Tenancy Dispute Officer (as delegated) may allow for a fee waiver or reduction where, in the opinion of the delegated Tenancy Dispute Officer, a waiver or reduction of fee is warranted.

24. MISCELLANEOUS

24.1. Timelines

A Tenancy Dispute Officer can abridge, expand or amend the timelines in the Rules of Practice and Procedures.

24.2. Communications with a Tenancy Dispute Officer

The landlord/tenant and their counsel/agents and witnesses shall not communicate *ex parte* (no written or oral communications about the hearing that is scheduled or has commenced, unless all other parties are fully involved) with the Tenancy Dispute Officer. In some non-judicial processes, however, it may be appropriate to deal with a matter *ex parte*, with the consent of the Tenancy Dispute Officer, as long as the communication encourages or facilitates settlement. Some examples include but are not limited to:

- The failure of a party or an attorney/agent to comply with the order to attend the process.
- Any request by the landlord and tenant for additional time to complete the hearing process.
- With the written consent of the landlord and tenant(s), any procedural action by the RTDRS that would facilitate the hearing process.
- The Tenancy Dispute Officer's assessment that the case is inappropriate for the hearing process.

25. DEFINITIONS AND USAGE

Act	the <i>Residential Tenancies Act</i> of Alberta (RTA).
Adjournment	a Tenancy Dispute Officer's order to continue a hearing at a later date, either at the request of one or both of the parties, or on the arbitrator's own initiative; sometimes called a "reconvene".
Administrator	the person or his/her delegate who has the responsibility to manage the day-to-day activities of the Residential Tenancy Dispute Resolution Service.
Advocate	a person who provides assistance to a party.
Agent	a person appointed by a party to act on that party's behalf.
Applicant	the landlord or tenant who applies for a hearing by completing a <i>Notice of Application for Hearing</i> and paying any required fee.

Counter claim	an application made to counter an existing application or made in response to a related application.
Days	in the calculation of time expressed as "at least" a number of days, the first and last days must be excluded. If the date the document or notice is due falls on a weekend or holiday, and it must be • served on a business, or • filed in an office, then it must be served or filed on the previous business day. If the document or notice must be provided to the office of the Residential Tenancy Dispute Resolution Service, weekends and holidays are not to be included in the calculation of days. (For further elaboration, see "Computation of Time" in section 22 of the <i>Interpretation Act</i>).
Decision	the conclusion or determination of the Tenancy Dispute Officer which legally resolves the matters outlined in the <i>Notice of Application for Hearing</i> , including orders, if necessary to implement the decision.
Evidence	any type of written or oral documentation presented by the parties at the hearing in support of the case, including: <ul style="list-style-type: none">▪ documents (e.g. the tenancy agreement, letters, receipts, pictures and the sworn or un-sworn statements of witnesses);▪ photographs, videotape or audiotape and other physical evidence;▪ oral statements of the parties or witnesses.
Hearing	the procedure in which parties are called together by a Tenancy Dispute Officer and given an opportunity to present evidence and arguments, and question the other parties. A hearing may take place by telephone conference call.
In writing	except where an original document is required, documents to be submitted in writing may be submitted by fax.
Materially affected	has a relevant and significant impact on a party.
Party	the applicant or respondent named on the <i>Notice of Application for Hearing</i> or added to the application by a Tenancy Dispute Officer; or an officer representing a business named on the application. Does not include witnesses, family members, and other people not named on the application. "Party" may include multiple applicants or respondents.
Personal information	recorded information about an identifiable individual including: <ul style="list-style-type: none">▪ 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.

Procedure	<i>Rules of Practice and Procedure</i> (RPP).
Reasons	the grounds and conclusions on which a Tenancy Dispute Officer has based the decision, including both factual evidence and law.
Relevant	evidence is relevant when it relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact. argument is relevant when it relates to or bears upon the matter at hand.
Reserve	the act of a Tenancy Dispute Officer deciding not to make a decision at the hearing, but to take some time to provide the written decision/order within the time limits specified in the RPP.
Reschedule	the act of the Residential Tenancy Dispute Resolution Service office re-designating a time, date and place for the hearing.
Respondent	the landlord or tenant against whom the <i>Notice of Application for Hearing</i> has been made; sometimes called the “other party”.
Schedule	the act of the Office of the Residential Tenancy Dispute Resolution Service designating a time, date and place for the hearing, when a <i>Notice of Application for Hearing</i> is filed.
Serve	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.
Substituted Service	an alternative method of service authorized by a Tenancy Dispute Officer where the party has made reasonable efforts to serve and has been unable to serve hearing documents, notices or decisions in accordance with the regulations.