

Dispute Resolution Best Practices



What is Dispute Resolution?

- Legal proceeding for resolving landlord-tenant disputes.
- These proceedings are facilitated by the Residential Tenancy Branch (RTB) – the branch of government in charge of residential tenancy law in BC.
- Similar to court, but less formal
 - Parties provide evidence (e.g. testimony, photos, receipts, witnesses)
 - Usually conducted over the phone
 - Arbitrator makes a legally-binding decision
 - Principles of natural justice apply
- *Rules of Procedure* for Dispute Resolution can be found on the RTB website, along with the Act and Regulation



What is Dispute Resolution?

- The decision-maker is called an “Arbitrator”
- Arbitrators are NOT bound by previous RTB decisions
- They ARE bound by relevant court decisions
- The standard of proof is balance of probabilities
- The onus is usually on the applicant to prove their case, generally



Assessing the Case

- Why has the client come to you and what do they want to achieve?
 - Are their goals realistic?
 - Likelihood of success?
- Does the RTB have jurisdiction? Are there other options that you and the client should explore?
 - Has the client attempted to resolve the problem with their landlord?
 - Negotiation?
 - Do they understand all options, and possible outcomes?
- Is a hearing already set? Is the tenant the applicant or respondent?
 - Have they properly served / been served the appropriate documents?



Assessing Your Abilities

- Are you the right person to take on the case?
 - Are you familiar with the RTB's Rules of Procedure, and the Residential Tenancy Act?
- Can you meet the RTB's deadlines?
- Knowing when to say no



Applying for a Hearing



Application Deadlines

- Generally, 2 years from the end of the tenancy
- Disputing a Notice to End Tenancy
 - 10 day Notice for non-payment= 5 days
 - 1 month notice for cause= 10 days
 - 2 month notice for landlord's use of property or ceasing to qualify for a subsidized rental unit= 15 days
 - 4 month notice for demolition/renovation = 30 days



How to File for Dispute Resolution

- In person: at a RTB office or Service BC Centre
- Online: www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/apply-online
- \$100 filing fee
 - Low income applicants can apply for a fee waiver
 - Can recover from landlord if tenant is successful at hearing
- Obtain correct legal name and address of respondent(s)
 - May need to do a land title search
- Where a client wants to make more than one claim, an Arbitrator will generally only hear them together if the claims are related
 - Unrelated claims are usually "severed"



Notifying the Other Parties

- RTB schedules hearing date, provides applicant a hearing package that contains:
 - Notice of Hearing with the date, time, and method of hearing
 - Hearing information sheet
- Applicant must serve this on all other parties within 3 days of receiving it, either in person or by registered mail.



Preparing for a Hearing



Important Deadlines- Evidence

- Applicant evidence must be received by the RTB and the respondent at least **14 days** before date of hearing
- Respondent evidence must be received by the RTB and applicant at least **7 days** before date of hearing
- Cross-Application and supporting evidence must be received by the RTB and applicant at least **7 days** before date of hearing.
- The calculation for number of days does not include either:
 - the day the evidence is received, or
 - the hearing date



Important Deadlines- Other

- Amendments to an application must be received by the RTB and the respondent at least **14 days** before date of hearing
- Requests to adjourn the hearing if both parties agree, must be received by the RTB at least **3 days** before the hearing. The request must be in writing and signed by both parties.
 - If other party does not agree, you can request an adjournment at the hearing.



Serving Evidence

- Deadline is for the day the other party *receives* the evidence. Evidence must be served in one of the following ways, and each method has a different timeline for when it is deemed to be received:
 - In person= same day
 - Leaving in mail slot, posting on door, fax= 3 days later
 - Mail (regular or registered)= 5 days later



Evidence Submission Example

March 2015

Sun.	Mon.	Tue.	Wed.	Thu.	Fri.	Sat.
1	2	3	4	5	6 APPLICANT'S EVIDENCE MUST BE MAILED	7
8 APPLICANT'S EVIDENCE MUST BE FAXED; POSTED ON DOOR; ETC	9	10	11 APPLICANT'S EVIDENCE MUST BE RECEIVED BY RESPONDENT AND RTB	12	13 RESPONDENT'S EVIDENCE MUST BE MAILED	14
15 RESPONDENT'S EVIDENCE MUST BE FAXED; POSTED ON DOOR; ETC.	16	17	18 RESPONDENT'S EVIDENCE MUST BE RECEIVED BY APPLICANT AND RTB	19	20	21
22	23	24	25	26 RTB HEARING DATE 11:00 AM	27	28
29	30	31				



Types of Evidence

- The Rules of Evidence do not apply in general – up to each arbitrator to decide what they will accept.
- Good evidence is:
 - Relevant, Reliable, Authentic, Complete, Legible
- Consider: what is the simplest and most convincing way to prove my case?
- It can be helpful to create a table lining up the factual points that need to be proven in one column, and the evidence to prove those points in the other column.



Types of Evidence

- Evidence can be in the form of **documents**:
 - Tenancy Agreement
 - Condition Inspection Reports
 - Pictures
 - Copies of Emails and Text Messages
 - Letters
 - Receipts
 - etc.
- Evidence can be in the form of **testimony**.
 - Sworn, real-time testimony is generally best, as the witness is available for cross examination
 - If your client or a witness cannot attend the hearing, he/she can write a signed and dated statement, or swear an affidavit that the facts they are alleging are true
 - Consider becoming a commissioner for taking affidavits



Digital Evidence

- Digital evidence may be submitted for a dispute resolution hearing:
 - Photographs
 - Video recordings
 - Audio recordings
- Evidence must be a fair and accurate representation of the events depicted on it. For example, evidence may not be accepted if:
 - Video quality is poor
 - Parts of an audio recording are missing
 - Source is not credible



Accepted Devices for Digital Evidence

- Acceptable devices for the file copy are:
 - USB Device / Memory Stick
 - Compact Disk (CD)
 - Digital Video Disk (DVD)
- Must also submit the Digital Evidence Details form
- You need to confirm that other party can access the digital evidence. Confirm this with them as soon as possible.



Organizing Evidence

- Evidence must be organized, clear, and legible. All parties need an identical copy.

- 1. Cover page- List RTB file number, hearing date, names of tenants and landlord
- 2. Table of contents (all pages numbered)
- 3. Written submission
 - Introduction/Issue (s)
 - Facts/background
 - Law
 - Argument
 - Requested remedy/Conclusion
 - Your signature



Submitting Evidence to the RTB

It is not at all clear how best to upload your submissions. Based on the difficulties arbitrators seem to have at hearings I do the following:

1. Combine all the evidence into 1 PDF file called “Tenant Evidence” or similar which is less than 10 MB, and add page numbers.
2. If the PDF is too big, compress, or break into 2 or more files eg “Tenant Evidence p 1-40” and “Tenant Evidence p 41-90”
3. Make a Submissions PDF which includes an Index of Evidence
4. Upload them all into one “Issue”
5. Upload a proof of service PDF as well.



Client Preparation

- Consider going over the following with your clients:
 - The start time of the hearing
 - How to call in to the hearing
 - The general dispute resolution process
 - All testimony you will ask your client to give
 - How to address the arbitrator
 - Important to act in a professional and a respectful manner, no matter what the issue.
 - Important not to interrupt the other party or arbitrator.
 - The Arbitrator has full control over the proceedings- don't make promises you may not be able to keep.



Witnesses Preparation

- Consider going over the following with your witnesses:
 - All questions you will ask and what they might be cross examined on.
 - Tell the truth and don't exaggerate
 - Listen carefully to the questions and take your time before answering
 - If you don't know, say so, don't guess
 - If you don't remember, say so, don't guess
 - If you don't understand the question, say so
 - Answer the questions directly, then give an explanation if you need to
 - Stay on topic
 - Do not engage in personal attacks
 - Exclusion of witnesses



Self Preparation

It's important for you to prepare, too!

- Write down direct-examination questions that you expect to ask your client and your own witnesses.
 - Refer to evidence where appropriate
- Write down cross-examination questions that you think you will ask the landlord and/or their witnesses.
 - Refer to evidence where appropriate
- Write out a closing argument loosely. Expect that the contents of this will change drastically depending on the testimony that comes out during the hearing.
 - Important to refer to evidence here



Procedural Requests

- Well before a hearing, think about any procedural requests you may have.
 - Do you need an adjournment?
 - Do you need to ask the Arbitrator to accept documents that were filed late? Or object to an opposing party's late evidence?
 - Does your client need a translator?
 - Does your client need special accommodation due to a disability?
 - It is rare, but possible to get an in-person hearing.



During the Hearing

Typical Structure of a Hearing

- 1) Introduction, procedural issues, swearing in.
- 2) Applicant presents evidence
- 3) Respondent challenges applicant's evidence
- 4) Respondent presents evidence
- 5) Applicant challenges respondent's evidence
- 6) Applicant makes final argument / closing statement
- 7) Respondent makes final argument / closing statement

At the Start of the Hearing

- Have a pen/paper or computer ready so you can take notes.
- Have all of your submitted documents in front of you
- Introduce yourself and explain you are acting as an advocate/ agent for your client
 - RTB Policy Guideline #26 - Advocates, Agents and Assistants



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At the Start of the Hearing

- Be prepared to ask for any procedural requests you may have
 - For example, evidence issues or adjourning the hearing
- Write down the names of everyone attending
- Check that the Arbitrator and other party have received your evidence – be prepared with your proofs of service to detail how and when the evidence was served

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Landlord's Testimony

- Take notes on what the landlord is saying- write down anything you want to question them on or bring up during your presentation. Don't interrupt. One exception: If the landlord is presenting evidence that your client never received.
- You can ask questions of the landlord and their witnesses, so can the arbitrator.
- 2 goals of cross-examination:
 1. Identifying problems with their evidence:
 - Gaps or inconsistencies, incorrect or exaggerated, not supported by the documentary evidence
 2. Attacking credibility when there is a reason to believe that the person is
 - Being dishonest, has a lack of knowledge, or simply mistaken



Your Client/ Witness Testimony

- Direct examination of your client/witnesses:
 - Ask questions to get them to provide the needed testimony
 - Point them to documentary evidence and present it through their testimony
 - Testimony should be first-hand, not hearsay
 - Don't ask leading questions, but do ask follow up questions if you don't elicit the evidence you need
- Both the landlord and arbitrator will have opportunity to ask your client/witnesses questions after you are finished.



Closing Statement

- Usually, this is when you present documentary evidence and explain your legal arguments.
- Be as concise as possible, explain the structure of your presentation to the arbitrator
 - Ie. “I will be making the following three points...”
- Reference the law, policy guidelines, case law, etc.
- Refer back to testimony.
- Refer to documentary evidence. Before explaining each piece of evidence, tell the arbitrator what page it is on and pause to allow them to locate it.
- Explain what the evidence demonstrates and why it is relevant– don’t assume the arbitrator knows this.



At the End of the Hearing

- Thank the arbitrator for conducting the hearing
- Decision generally provided within 30 days of hearing date
- Arbitrators’ decisions are legally binding and enforceable



After the Hearing



RTB Review

- There are only 3 reasons for the Residential Tenancy Branch to review a decision or order:
 1. person was unable to attend the hearing due to circumstances that could not have been anticipated and were **beyond their control.**
 2. person has **new and relevant evidence** that was not available at the time of the original hearing
 3. person has evidence that the decision was obtained by **fraud**



RTB Review- Timelines

Timeline for RTB review depends on the issue:

- **2 Days:**
 - Notice to End Tenancy for non-payment
 - Early end to tenancy
 - Order of Possession
 - Landlord withholding consent to sublet or assign unit
- **5 Days:**
 - Notice to End Tenancy for any reason other than non-payment
 - Repairs and Maintenance
 - Terminating or restricting services or facilities
- **15 Days:**
 - Any other matter



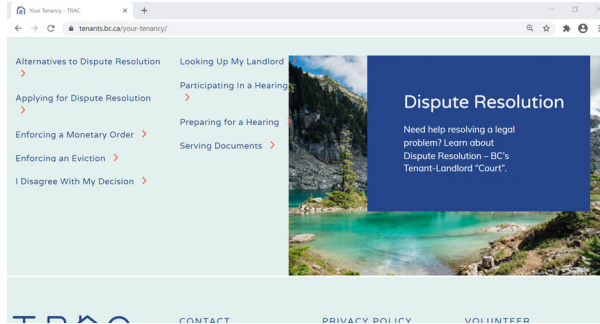
Judicial Review

- If you believe your client was denied natural justice / procedural fairness, or that their decision is patently unreasonable, you can seek a Judicial Review through Supreme Court.
- The Residential Tenancy Branch is considered an “expert” tribunal – the test for Judicial Review is very high.
- A Supreme Court judge will usually order a re-hearing at the RTB if the Judicial Review is successful.



Improving Your Knowledge

- For more information on Dispute Resolution:
 - RTB Rules of Procedure (www.gov.bc.ca/landlordtenant)
 - TRAC Website (www.tenants.bc.ca) "Dispute Resolution" Tab



Questions?

