RESIDENTIAL TENANCY DISPUTE RESOLUTION SERVICE

Rules of Practice and Procedure

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THE 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.**

REMEDIES

Limitation period to apply for remedies

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

Landlord remedies:

- Recovery of rent arrears
- Recovery of possession of the premises (Order of possession)
- Compensation (in the case of an overholding tenant)
- Termination of the tenancy
- Damages for breach of tenancy agreement
- Amount landlord can deduct from the security deposit

Tenant remedies:

- Damages for the breach or contravention of a tenancy agreement
- Abatement of rent
- Compensation for the cost of performing the landlord's obligations
- Termination of the tenancy

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

How to file an application:

If the rental premises is in Edmonton or the surrounding areas (see Appendix 1):

Bring your completed application form, evidence, and all required copies, to the Residential Tenancy Dispute Resolution Service office located at Unit 112, 10025-102A Avenue, Edmonton, Alberta, T5J 2Y8.

The application fee of **$75** must be paid at the time the application is filed. Payment can be made by Visa, MasterCard, American Express, Debit, cheque and money order. If the fee causes a financial hardship you can contact the Edmonton Community Legal Centre at 780-702-1725 or Student Legal Services at 780-492-8244for information on the fee waiver process.

If the rental premises is in Calgary or the surrounding areas (see Appendix 1):

Bring your completed application form, evidence, and all required copies, to the Residential Tenancy Dispute Resolution Service office located at the Main Floor, Rocky Mountain Plaza, 180-615 Macleod Trail, SE, Calgary, Alberta, T2G 4T8.

The application fee of **$75** must be paid at the time the application is filed. Payment can be made by Visa, MasterCard, American Express, Debit, cheque, and money order. If the fee causes a financial hardship you can contact the Calgary Legal Guidance at 403-234-9266 for information on the fee waiver process.

If the rental premises is in an area of Alberta that is not listed in Appendix 1:

You may file their application with the Residential Tenancy Dispute Resolution Service by fax. You must fax your completed application form and all supporting documentation to (780) 644-2266.

If the filing fee causes a financial hardship, you may apply directly to the Residential Tenancy Dispute Resolution Service for a reduction or waiver of the filing fee. You should contact 310-0000 and then (780) 644-3000 for further information.

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*.

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 receive and assess the evidence presented by each party, to 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. 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.

2.2. Filing the application

An application to the RTDRS can be made by filing a completed application form and all supporting evidence and paying the required application fee. The application form 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, where known

d) set out the remedies sought, and
e) indicate that the applicant has not applied to a court in respect of the same matter and that the applicant is not aware of any application being filed in the courts with respect to this matter and that they will notify our office immediately if they become aware of any such application

NOTE: It is essential that you bring ALL the evidence that you are relying on at the time of filing your application.

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

Required Copies of Evidence:

1 respondent – 2 complete copies of evidence (marked individually as "Item____")

2 respondents – 3 complete copies of evidence (marked individually as "Item___")

3 respondents – 4 complete copies of evidence (marked individually as "Item___")

On receipt of the completed application and application fee, the RTDRS will provide you with a *Notice of Hearing* that give you the date, time and location of the hearing.

Fax Filing:

If the rental premises is located in an area of Alberta that is not listed in Appendix 1, you may file an application with the RTDRS by fax.

The applicant must fax their **completed** application form and one copy of the evidence to (780) 644-2266. The RTDRS will review the application, file it, and set a hearing date and time. The RTDRS will fax back the entire application to the applicant at the fax number that was provided on the application form. The applicant then makes the number of application packages that they require according to the number of respondents. An application package is the filed application and evidence, the *Notice of Hearing* and any information sheets that RTDRS provides to the applicant.

It is the responsibility of the applicant to make a copy of the entire application package for the respondent. This includes the *Notice of Hearing,* application and all supporting documentation.

2.3. Combining sections on one application

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

the issues are related,
and
it appears that 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 at another time.

2.4. Limit on the amount of claim

An applicant with a claim of more than $50,000 must abandon part of the claim so the total amount claimed falls within the limit that may be heard by a Tenancy Dispute Officer. The applicant would forfeit 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 $50,000 into smaller claims.

2.5. Amending an application before the hearing

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. If the application has been served, the applicant may file a revised application with the office of the RTDRS and serve each respondent with the amended copy at least 24 hours prior to the hearing. If service requirements cannot be met the Tenancy Dispute Officer may apply Procedure 6.4 or 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 such withdrawal. The RTDRS will mail a copy of the withdrawal to the address listed for the respondent on the *Notice of Hearing* if the application package was served on the respondent. In such cases, the application fee is forfeited.

Notice of Withdrawal forms are available at www.rtdrs.alberta.ca .Complete this form and forward it to the RTDRS office prior to the hearing either in person, by fax, e-mail or by mail.

Within 30 days of the day the *Notice of Withdrawal* is mailed by the RTDRS 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:

a) The applicant has failed to pay the fee,
b) The application is not in proper form or is incomplete,
c) An application has been made to the Courts in respect of the same matter,
d) The matter is outside the jurisdiction of the RTDRS and should be referred to the courts,
e) The matter is of such complexity that it should be referred to the Courts,
f) The matter cannot be dealt with in a timely manner and 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 (e.g. lack of evidence, failure of applicant to attend/ participate at the hearing or no substantial breach determined.)

2.9. Duplicate filing of a 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 RTDRS 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 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 Hearing*, the applicant must serve each respondent with copies of following:

a) The completed application.
b) All evidence filed with the RTDRS.
c) Other information provided by the RTDRS.

Applicants that are eligible for fax filing must attach copies of all information sheets provided by the RTDRS when serving the respondents.

3.2. Service requirements

Application packages must be served in a manner provided for in the *Residential Tenancies Act* and be served at least 3 clear 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 application package(s) must be served no later than the preceding Tuesday. Documents may be served on weekends and holidays.

Where a landlord has attempted 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 appears to be living in the premises or by posting the application package(s) in plain sight on the premises. Landlords should use the mailing address of the residential premises. Tenants should use the mailing address provided in the tenancy agreement or the “notice of landlord.”

3.3. Substitutional Service

Where all attempts to locate and serve a respondent have failed, the applicant may file an *Affidavit for Substitutional Service* with the RTDRS requesting substitutional service. Substitutional service is a method of service which is not prescribed in the *Residential Tenancies Act*. Substitutional service may be accomplished by serving a relative (adult) of the respondents, sending the documents by regular mail (provided you have proof of the respondent’s address), by placing an ad in a local newspaper or other methods as directed by the Tenancy Dispute Officer.

3.4. Timelines

An applicant may apply to the RTDRS by way of an *Abridgement Affidavit* to shorten the service time required in accordance with section 41 of the *Residential Tenancies Act*. The Tenancy Dispute Officer may abridge, expand or amend the timelines in the *Rules of Practice and Procedure* if they feel the circumstances warrant.

3.5. Proof of service required for hearing

The person who served the application package must provide an *Affidavit of Service* informing the Tenancy Dispute Officer of how service was accomplished. *Affidavit 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, it is called additional evidence. Additional evidence must be filed with the RTDRS, and served on the respondent **at least 24 hours** prior to the hearing. If service requirements cannot be met the Tenancy Dispute Officer may apply Procedure 6.4 or adjourn the hearing to allow sufficient service time as per Procedure 3.2. The Tenancy Dispute Officer may use his or her discretion to grant adjournments depending on the nature of the evidence.

3.7. 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 application 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 advise the RTDRS of which court they wish to use. 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/$125 Provincial Court and $200 Court of Queen's Bench). The original application package and fee will then be forwarded by the RTDRS to the chosen court.

If the additional filing fee is not paid to the RTDRS, the application will be deemed abandoned and subject to dismissal.

4. REPLYING TO AN APPLICATION

4.1. Service of the respondent's documents

The respondent should file with the RTDRS and serve all related evidence on the applicant **at least 24 clear hours** (must include one business day) prior to the hearing date and time. If the documents are not served as required, and the situation warrants, the Tenancy Dispute Officer may apply Procedure 6.4 to adjourn the matter to allow for proper service.

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. They must file the appropriate application and all evidence with the RTDRS, pay the application fee, and serve the application package in accordance with Procedure 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 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, by fax or e-mail prior to the hearing date and time set out in the *Notice of Hearing*.

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 the applicant will undertake to amend the date and time on the *Notice of Hearing* on the respondent(s) copy and serve the respondent(s) as per Procedure 3.2 above.

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 $75.00 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 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 should send someone on their behalf or appear via teleconference to request an adjournment. At the discretion of the Tenancy Dispute Officer a party may make a request for an adjournment in writing for consideration. 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 Procedure 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:

a) at the request of the parties, or
b) 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:

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;
f) any other circumstance that is fair and reasonable.

In some circumstances adjournments will be made sine die (open ended). In these cases if the applicant does not arrange for a new hearing date within 60 days after the granting of the adjournment, the file will be closed and the $75.00 fee will be forfeited.

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 *Notice to Attend Affidavit* to the RTDRS .

The Affidavit 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.

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 to attend ($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 Queen'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 on the claims in the application package. 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 that is justified.

8.5. Form of hearing

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

8.6. Interruptions

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

may give directions to a party who presents rude, antagonistic or improper behavior and may require them to leave the hearing room. Each party will be given the opportunity to present evidence, give oral testimony and question witnesses. To maintain professional decorum, electronic devices must be turned off, sunglasses must be removed, and refreshments must be left outside of the hearing room. The Tenancy Dispute Officer may require children to remain outside of the hearing room.

8.7. Restricting Public Access to the Hearing

The RTDRS hearings are open to the public, unless the Tenancy Dispute Officer believes there is sufficient reason to deny the public access. While hearings are open to the public, the application files are not. That means that while a member of the public can attend a RTDRS hearing, they will not be given access to the file.

If an applicant or respondent wishes the hearing to be closed, he or she shall file with the application a written request explaining the reasons for the request, and give a copy to each respondent/applicant. The RTDRS must know as soon as possible that a request to close the hearing will be made so that it can make any special arrangements required to prevent public access to the hearing. It is important that the applicant explain the basis of the request because otherwise a Tenancy Dispute Officer may decide special arrangements are not required.

If a Tenancy Dispute Officer decides that all or part of the hearing should be closed to the public, he or she may:

a) decide which persons who are not parties may be present at the closed portions of the hearing;
b) direct any persons who will be present at the hearing to file an undertaking to maintain confidentiality;
c) issue an order for the parties in which any personal information related to the closed portion of the hearing is severed.

Once the TDO has heard the submissions of the parties at the start of the hearing, the TDO may decide that the evidence and submissions on one or more particular issues should be heard while excluding the public. The Tenancy Dispute Officer might also conclude that the entire hearing should be closed to the public. Of course, it is also possible that the request will be unsuccessful and the hearing will be open.

If the hearing will be closed, this Rule authorizes the Tenancy Dispute Officer to include specific directions about how the proceedings will be conducted. For example, during the portion of the hearing to be closed to the public, the TDO can specify who should be in the hearing room. In a particularly sensitive case, those present can be required by the TDO to sign an undertaking not to disclose what took place during the closed portion of the hearing.

8.8 Method of Hearing

A hearing may be conducted in the following manners, as determined by the RTDRS:

- In person at the RTDRS offices. Although it is not recommended, one or both parties may appear via telephone if they are unable to attend in person. The RTDRS must be notified of a party's intention to appear via telephone at least **60 minutes** prior to the scheduled time in the *Notice of Hearing.*
- Telephone conference hearings for fax applications related to rental premises outside of Calgary and Edmonton and surrounding areas

9. RECORDING OF A HEARING

9.1. Private recording

Private recording of the hearing is not permitted.

9.2. Official transcript

The party requesting the transcript must arrange for and pay the cost of the transcription services. The RTDRS 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 RTDRS after use.

9.2.1 Official Transcript: Parties to an Action

The RTDRS uses the *Freedom of Information and Protection of Privacy Act (FOIP)* as a guide for its privacy practices. A party to an action (i.e. landlord, tenants or their written-authorized representatives) requesting an official transcript must provide written notice, stating the reasons for the request, to the other party and to the office of the RTDRS. The party requesting the transcript must arrange for and pay the cost of the transcription services. The RTDRS 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 RTDRS after use.

9.2.2 Official Transcript: 3rd Party Requests

A third party (i.e. not the landlord or tenants involved in the hearing) who wishes to obtain a transcript of a hearing must make a request for access to Service Alberta's FOIP Coordinator under the *Freedom of Information and Protection of Privacy Act (FOIP)*. For further information on the process, call the FOIP Coordinator at 780-422-7880.

9.2.3 RTDRS Application Files

RTDRS application files are confidential. Parties to an action (i.e. landlord, tenants or their written-authorized representatives) may request copies of file documents if they have been lost or misplaced and must pay for the cost of photocopying. Third parties do not have open access to RTDRS application files, but they may apply for access through FOIP using the process outlined in 9.2.2 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. As a courtesy, the Tenancy Dispute Officer will wait approximately 10 minutes for both parties to arrive if they are not present at the assigned time for the hearing. If satisfied that proper notice was served to the respondent, 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

Upon request, the Tenancy Dispute Officer may consider any preliminary matters 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 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 it is not relevant.

11.4. Personal information not relevant to the proceedings

The RTDRS may, upon filing of an Affidavit and 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 to disclose the relevant information, or to 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* 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 he or she is satisfied:

that there has been a willful or recurring failure to comply with the service requirements, or

that 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 Procedure 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 that the original document be placed into evidence rather than a copy.

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 Procedures 3.1, 3.2, 3.3, 3.5, and 4.1 or where the Tenancy Dispute Officer has applied Procedure 6.4.

CD's or DVD's 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 CD or DVD will be, as long as they are compatible with Windows Media Player.

11.8. Witnesses' attendance at the hearing

Subject to Procedure 11.9 parties are responsible for having their witnesses available in person or by way of telephone conference call at the time of the hearing. If a party's

witness will be heard by way of teleconference the RTDRS must be notified of this at least 24 hours prior to the scheduled hearing time.

Witnesses must be available until called, 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 room. They will be called into the hearing room when it is their turn to present testimony and/or be cross-examined.

11.10. 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.

11.11 Return of Evidence Entered as Exhibits at Hearing

Evidence submitted by a party may be returned to that party once the 30 day appeal period has elapsed. The party who submitted the evidence may pick up their original evidence from the RTDRS office. The party will sign a form indicating that they received the documents and that the appeal period has lapsed.

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. Subject to Procedure 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 presents rude, antagonistic or 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 which 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 that the application is related and it is appropriate it be considered at that time, the other party will have an opportunity to explain why they think that the matter should be adjourned. In such situations, the Tenancy Dispute Officer will rule on whether to adjourn in accordance with Procedure 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 a hearing in cases where the respondent has a claim against the third party that arises from the application.

14.2. 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 Procedure 14.1. Tenancy Dispute Officer will decide whether an adjournment is appropriate having regard to procedure 6.4.

14.3. Tenancy Dispute Officer may impose directions

The Tenancy Dispute Officer may impose directions in respect of service of the *Notice of Application, Affidavit in Support* and all relevant evidence to be served on a 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.

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 Procedure 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 require that a 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 direct that the applicant or respondent provide the affected tenant with the *application package,* and all relevant evidence in accordance with Procedure 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 in person, by telephone (at the time of the hearing) or in writing by way of an Affidavit.

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 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 do so 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

If the rental premises are not listed in Appendix 1, you are eligible for fax filing of your application and a telephone hearing. The applicant must provide a contact phone number for both themselves and the respondent on the application form. These numbers must be in service and allow RTDRS to reach both parties so a hearing may be conducted. If the phone number listed on the application form is incorrect, it is the responsibility of that party to contact the RTDRS and provide a 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 face-to-face hearings.

16.2. Original or true copies of documents

In accordance with Procedure 11.6, 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.

16.3. 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 45 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 Procedure 11.8, a party to a conference call may request that a witness be contacted by the Tenancy Dispute Officer during the conference call hearing.

17. THE 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 their written reasons for decision within thirty (30) days of the conclusion of the proceedings.

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. 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 thirty (30) days of the conclusion of the proceeding.

17.3. Correction or clarification of orders

In accordance with the *Residential Tenancy Dispute Resolution Service 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

fifteen (15) 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 mail a copy of the amended order to the other party at the address listed in the application.

17.4. 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 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 motion setting out the grounds of appeal, paying the applicable filing fee, 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 motion, 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 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 ($10.00 a day for a regular witness, $20.00 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 $0.15 per kilometer.

19.3. Costs of the Application

Application filing fee under Part 5 of the *Residential Tenancies Act*: $75.00.

Service of a private process server - actual costs to a maximum of $50.00 so long as an invoice is provided.

Representation by an agent - to a maximum of $75.00 so long as the agent does not directly work for the party and an invoice is provided.

Representation by legal counsel: $100.00.

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

Photocopying expenses: actual costs to a maximum of $25.00 for the cost of making photocopies necessary to support the claim (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 *Affidavit of Service*) when a receipt is provided. If there isn't a receipt, the Tenancy Dispute Officer may award the following:

Photocopies - up to 25¢ per page.

Developing costs of photographs: actual costs to a maximum of $50.00 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:

1-12 pictures up to $14.00

13-24 pictures up to $19.00

25-36 pictures up to $26.50

36+ pictures up to $50.00.

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 nor have they 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 Procedure 6.4.

21.1. Ex-parte communications with a Tenancy Dispute Officer

The applicant, respondent and their counsel/agents and witnesses shall not communicate *ex parte* (without the other party present) with the Tenancy Dispute Officer at any time. This includes by way of written or oral communications.

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

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

22. WAIVER OR REDUCTION OF FEES

22.1. On Application

Applicants may request a fee reduction or waiver due to financial hardship. Low-income Albertans can obtain more information on this process by contacting the following:

Edmonton	Edmonton Community Legal Centre	780 702-1725
	Student Legal Services	780 492-8244
Calgary	Calgary Legal Guidance	403 234-9266
Lethbridge	Lethbridge Legal Guidance	403 380-6338
Red Deer	Central Alberta Community Legal Clinic	403 314-9129
Grande Prairie	Grande Prairie Legal Guidance	780-882-0036
Other Areas of Alberta	RTDRS	780 644-3000 For toll-free dial 310-0000 first.

The request for a waiver or reduction 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. Upon approval of the reduction or waiver of the application filing fee, these legal services will provide a letter that must be submitted to the RTDRS with the application form.

22.2. Other instances

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

DEFINITIONS AND USAGE

Act	the *Residential Tenancies Act* of Alberta (RTA).
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 activities of the RTDRS
Advocate	A person who provides assistance to a party.
Affidavit	This is 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 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), you do not count weekends or statutory holidays. 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.
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 parties 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 may take place in person or by telephone conference call.
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.

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.
Procedure	*Rules of Practice and Procedure (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.
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 and order within the time limits specified in the *Rules of Practice and Procedure (RPP)*.
Reschedule	The act of the RTDRS re-designating a time, date and place for the hearing.
Respondent	The party against whom the application has been made; sometimes called the "other party".
Schedule	The act of the RTDRS designating a time, date and place for the hearing, when a application is filed.
Serve	The formal, legal manner of giving a party required documents as set out in the legislation.
Sever	***T***o 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.

APPENDIX 1

Edmonton and Surrounding Area includes:

Alberta Beach	Ardrossan	Beaumont	Bon Accord
Bruderheim	Calmar	Devon	Edmonton
	Fort Saskatchewan	Gibbons	Hay Lakes
Keephills	Lamont	Leduc	Legal
Chipman	Millet	Morinville	Namao
New Serepta	Nisku	Onoway	Redwater
St. Albert	Wabamum	St. Michael	Sherwood Park
Spruce Grove	Stony Plain	Thorsby	Tofield

Calgary and Surrounding Area includes:

Carstairs	Cremona	Madden	Crossfield
Airdrie	Cochrane	Balzac	Beiseker
Irricana	Kathryn	Keoma	Aredenode
Strathmore	Lyalta	Dalroy	Conrich
Delacour	Chestermere	Langdon	Carseland
Dalemead	Turner Valley	Millarville	De Winton
Priddis	Red Meadows	Okotoks	Black Diamond
High River	Bragg Creek	Aldersyde	