

Interpretation Guidelines are intended to assist the parties in understanding the Board's usual interpretation of the law, to provide guidance to Members and promote consistency in decision-making. However, a Member is not required to follow a Guideline and may make a different decision depending on the facts of the case.

Section 184 of the *Residential Tenancies Act, 2006* (the RTA) provides that the *Statutory Powers Procedure Act* applies to all proceedings before the Board; and the authority to adjourn hearings is found in section 21 of the *Statutory Powers Procedure Act* which provides that:

A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.

This guideline identifies situations that may warrant the rescheduling or adjournment of a Board hearing.

Rescheduling and adjourning can be defined in the following way:

Rescheduling involves staff setting a new date for the hearing in advance of the date originally set for it, usually confirmed by a new Notice of Hearing;

Adjourning involves a Member's decision regarding when the hearing of an application will proceed and/or be completed.

General Approach of the Board

Section 183 of the RTA directs the Board to "adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter."

Parties should assume that all of their evidence and submissions will usually be heard on the date stated in the Notice of Hearing. This means that the parties should be prepared to present their evidence, call and question witnesses and make their submissions. The Board's decision will generally be made shortly afterwards.

Risks of Failing to Attend the Hearing or Prepare For It

Parties failing to appear at the hearing specified on the Notice take considerable risks. Section 7 of the *Statutory Powers Procedure Act* provides that a tribunal may proceed with a hearing in the absence of any party. In exceptional circumstances, a Member may exercise the jurisdiction to adjourn a case on the Board's motion in order to determine whether the party who did not appear will do so on a later date. However, parties should not expect such a decision.

Where an applicant fails to appear, the Member will normally proceed with the hearing, which means the applicant's case will be dismissed as abandoned, whether or not the respondent has attended.

Where the respondent fails to appear, the Member will normally proceed with the hearing, and may make a decision based on the evidence of the applicant.

Not preparing for a hearing based on the expectation that it will be postponed, even though the other party prefers to proceed, has substantial risks. If the Member decides to proceed with the hearing on the date set, the evidence presented will be considered, even if additional evidence should rightfully have been presented. Being unprepared strongly increases the risk of failure to prove one's case.

Finally, the only remedies for an incorrect order may be "review of the order" (reconsideration), judicial review or appeal; however, appeal is limited to questions of law, and both appeal and judicial review can be very expensive court procedures. It is highly advisable to deal with the application promptly at the start, rather than count on someone interceding later to reverse an order already issued.

RESCHEDULING HEARINGS

If a party realizes it will be difficult to attend a hearing or that they will not be prepared in time for a hearing, they may seek the rescheduling of the hearing date set out in the Notice of Hearing. They should request rescheduling as soon as possible after they realize it is necessary.

The Board will generally only reschedule a hearing if the party seeking the delay is able to obtain the agreement of the other party or parties (see Rule 12).

If a tenant requests rescheduling, they should deal with the landlord's representative, if there is one, or with the landlord directly. If there are multiple landlords, the agreement of each must be obtained.

When a landlord requests rescheduling, they should deal with the tenant's representative, if one exists, or with the tenant directly. If there is more than one tenant, the agreement of each must be obtained.

It is important that parties respond reasonably to requests from another party to reschedule. Although there are always a number of factors to take into account, if parties are unreasonable in their responses to requests to rescheduling, a Member may find that since rescheduling caused no prejudice to either party, the party who refused the request may be ordered to pay costs.

The party seeking the hearing's rescheduling should send or fax to the Board a written request for rescheduling indicating:

- confirmation that the other party or parties have agreed to the rescheduling;
- what dates the party requesting the rescheduling will be available (subject to the availability of a Member); and
- what dates, if any, the other party(ies) indicated they preferred for the rescheduled hearing.

This written request must be received by the Board no later than the morning of the day before the hearing and a copy should be sent to the other party(ies).

All parties should phone the Board no later than the afternoon of the day before the hearing to ensure that the written request was received, and that the hearing has in fact been rescheduled, and to what date, time and place.

In some cases, exceptional circumstances arise at the last moment (such as the death of a close family member) which prevent the party from meeting the procedures set out above. In such circumstances, the party should notify the Board by telephone as soon as they become aware of this, and inform the other party or their agent, as well. The case will remain on the list of hearings for the scheduled time, but the Member will be apprised of the telephone message and, if convinced that the circumstances are indeed exceptional, may adjourn the hearing without the party being present.

A party may request that a hearing be rescheduled because they are covered by section 1 of the *Human Rights Code*, and the Board is unable to accommodate their needs at the

originally scheduled hearing. Such requests will be addressed by the Board in accordance with the Board's *Human Rights Policy*.

It may be necessary from time to time for the Board to reschedule a hearing on its own initiative. For example, the Board may determine that it is necessary to reschedule a hearing to a different date in order to ensure that a sign-language interpreter is available, if so required by one of the parties. In such cases, the parties and their representatives will be notified.

When Partial Mediation is Achieved

When a Board Mediator assists the parties in mediation and a partial settlement is reached by the parties, an interim agreement may be signed by the parties. The parties to the interim agreement may agree to reschedule the hearing to a later date for a Member to determine the unresolved issues (see Rule 13.12).

ADJOURNMENTS

Procedural Issues

If a party is unable to obtain consent to a rescheduling from the other parties in advance of the hearing date, the party or their agent must attend on the hearing date to request an adjournment from the Member. A request for an adjournment will normally be heard at the outset of the session for which the hearing is scheduled.

An adjournment is a procedural decision. If the request is made at the start of the hearing, the Member is not "seized" with the case, thus the same Member is not required to conduct the hearing on the adjourned date. However, if the request is made part way through a hearing, the Member will likely be seized with the case because they heard evidence. For instance, an applicant may discover that the respondent's case involves facts that they did not realize were going to be raised, and that evidence from a witness who is not present is necessary to counter the respondent's defence. In such a situation, the hearing must be adjourned to a time when the same Member can continue the hearing.

Balancing Rights Between the Parties

Section 183 of the RTA states that the Board should be expeditious, but should ensure that the parties are given "an adequate opportunity to know the issues and to be heard on the matter." The key question becomes how to balance the rights of the parties to ensure that matters are resolved quickly while not sacrificing their rights to a fair hearing. The determining factors a Member will weigh are very different depending on whether the

parties agree to adjourn, or one party's request to adjourn is contested by one or more other parties.

Agreement to Adjourn

If the parties agree to adjourn the hearing, the Board will not interfere with this agreement in most circumstances. The hearing will be adjourned to a date set by the Board, although the parties may have an opportunity to offer some preferred dates.

However, sometimes the Member may decide it would not be in the public interest to proceed as the parties have arranged. Although the Member will not normally force the parties into a hearing immediately, the parties may be required to proceed on an earlier date than what was agreed upon.

Considerations Where There is No Agreement

Parties are generally required to make themselves available to attend scheduled hearings by making whatever arrangements are necessary. The granting of adjournments is in the discretion of the Member hearing the application. However, if the parties cannot attend the scheduled hearing and are not able to reach an agreement regarding one party's wish to adjourn the hearing, the Member should weigh the prejudice that might be suffered by each party. The Member will consider the prejudice to a party having to appear repeatedly, without a good reason for having to do so. As discussed below, if a Member grants an adjournment, certain conditions may be imposed upon either party in order to alleviate the prejudice the other party may experience as a result of the adjournment.

Therefore, when appearing before the Member the parties should present specific reasons why they would be significantly prejudiced by an adjournment. For example, a delay may economically prejudice a party or may mean a lost opportunity. There may also be aggravating circumstances, such as an urgent need for certain repairs or the continued tenancy will be a threat to other tenants' safety.

The Member is also entitled to consider the conduct of the party opposing the adjournment. For example, if that party is the applicant, and they delayed serving the application until the last day permitted by the Rules, thus giving the respondent the minimum time contemplated, the request is more likely to be granted. Also, if the party opposing the request has shown bad faith or refused to provide information about their case to the respondent which would allow them to prepare quickly for the hearing, this should weigh in favour of an adjournment.

The Member must take into account the public interest in resolving the case as soon as possible. However, the public interest in an expeditious result is greater in some types of

applications than in others. A claim for eviction because the tenant threatens the safety of the landlord or other tenants should be dealt with as swiftly as possible, as should a case in which the tenant claims there is ongoing harassment by the landlord or their staff.

Adjournment to Allow Representation

Section 10 of the *Statutory Powers Procedure Act* allows parties the right to be represented by a lawyer or agent at the hearing. However, the right to representation does not automatically guarantee an adjournment. Therefore, the onus is on a party notified of a hearing and wishing to be represented and to make all reasonable efforts to find a lawyer or agent able to represent them on the date on their Notice of Hearing. Nevertheless, a short adjournment may be allowed where a representative has been retained, but is unavailable on the date set for the hearing, or where the party can demonstrate that they have made reasonable efforts to retain a lawyer or agent before the hearing but have yet been unable to do so.

Adjournment to Permit Another Application

A respondent may also request an adjournment because they have filed or will be filing an application against the applicant. This should merit an adjournment only if the respondent's application will affect the outcome of the application being considered.

Adjournment Requests Respecting Court Proceedings

Some parties seek adjournments on the basis that a Court will rule on a similar issue between other parties in the future. This would generally be an invalid reason for permitting a case to remain undecided for a long period: it would be preferable to proceed with the hearing.

Adjournment on Consent for Mediation

A party sometimes hopes that a case may be settled, and that they need more time to resolve the issues with the other party. Although the Board encourages this, and in many cases offers mediation services, a hearing should not be delayed for this purpose, unless both parties agree.

Adjournment to Prepare Case

A respondent may request an adjournment because they may not know the case they must answer. If the respondent demonstrates that the information about the applicant's claims is unclear or not detailed enough to allow them to know what evidence they must present at the hearing, this may justify an adjournment. In deciding whether the claim is sufficiently complete and clear, the Member should evaluate the application, documents filed with it and any information the respondent already had.

A party may request an adjournment to acquire evidence required to prove the facts of the case. It may be a respondent who makes this request because they have received the application too close to the hearing date (though technically "on time" according to the rules for giving applications). Also, any party who has become aware of the other party's intended evidence, and wishes to review or obtain their own evidence to refute their position may request an adjournment.

Adjournment to Prepare for Section 82

In an application by a landlord for rent arrears (section 87 of the RTA) or for termination of the tenancy for rent arrears (section 59 of RTA), section 82 permits tenants to raise any issue that could be raised in a tenant application under the RTA. Where the tenant raises issues under section 82 that the landlord could not reasonably have anticipated and cannot address at the hearing with a short recess, the landlord may request an adjournment to another date for the purpose of investigating the tenant's allegations and obtaining relevant evidence.

Adjournment to Accommodate the needs of a party

At the beginning of a hearing a party may request an adjournment to a later date on the ground that they are covered by section 1 of the Human Rights Code, and the Board is unable to accommodate their needs at the hearing. If the Member determines that it is not possible to accommodate the needs of the party at the hearing, an adjournment may be granted. Further information respecting the Board's accommodation practices can be found in the *Board's Human Rights Interpretation Guideline*.

Conditions for an Adjournment

The Member may decide that a condition should be attached to the granting of an adjournment. Examples of some conditions that may be included:

- an adjournment may be given on the condition that the party requesting it will disclose to the other party(ies) some further information about their position or a copy of evidence that the party will present to the Board when the hearing resumes;

- in a case involving a claim for the payment of money, the Member may decide that a respondent requesting an adjournment should pay the amount claimed by the applicant, or a lesser sum, into the Board as security for the payment of any order which may result from the application, or may come due before the next hearing date (see section 195 of the RTA and Guideline 3, entitled “Costs”);
- the adjournment will be granted on a “peremptory” basis, which means that no further adjournment requests will be granted to the party that requested the adjournment, except in the most exceptional circumstances or where the other party consents to the subsequent adjournment request;
- a party opposing the adjournment may ask for costs incurred resulting from the adjournment and any such costs will be considered pursuant to Guideline 3 (also see subsection 204(2) of the RTA).