

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.

Generally, when someone takes another person to court, they hope that they will collect from the other party some part of their expenses of the lawsuit. The Board has a discretionary power similar to that of the Courts to order "costs". The Board may order one of the parties to pay costs to another party or may order that the Board's costs be paid by a party, a paid agent or counsel to a party. However, the Board does not want to use its power to award costs in a way which would discourage landlords and tenants from exercising their statutory rights.

Subsections 2, 3 and 4 of section 204 of the *Residential Tenancies Act, 2006* (the "RTA") provide that:

- (2) The Board may order a party to an application to pay the costs of another party.
- (3) The Board may order that its costs of a proceeding be paid by a party or a paid agent or counsel to a party.
- (4) The amount of an order for costs shall be determined in accordance with the Rules.

This Guideline sets out the Board's position on when it may be appropriate to order costs. Generally costs may be ordered where a party's conduct in the proceeding was unreasonable. Costs should not be confused with an administrative fine. An administrative fine is a remedy to be used by the Board to encourage compliance with the RTA and to deter landlords from engaging in similar activity in the future. For further information on administrative fines, see Guideline 16.

SUBMISSIONS ON REPRESENTATION COSTS AND BOARD COSTS

Before ordering a party to pay representation costs of another party or before ordering a party, agent or lawyer to pay the costs of the Board, a Member should ensure that the

person who will be affected by the order for costs has an opportunity to make submissions on the matter.

However, if a party has received notice of a hearing and does not attend or if an agent or lawyer is on the record as representing a party and does not attend a hearing, a Member may proceed to make an order for costs without notifying the person affected of the intention to do so, provided that the failure to attend the hearing delayed the process unnecessarily or caused unnecessary expense to the other party.

ORDERING COSTS AGAINST A PARTY OR A PAID REPRESENTATIVE

Costs Ordered in Most Cases

In most cases, the only costs allowed will be the application fee. This should be ordered if the applicant is successful in obtaining an order which allows the relief they asked for in the application, or substantially all of that relief. This includes cases which are resolved by an order based on an application for which no notice is required (sections 77 and 78 of the *RTA*). Where appropriate, this cost will be ordered regardless of whether or not the applicant seeks such a remedy.

It is anticipated that return of the application fee will not usually be ordered in the situations listed below:

1. Applications to increase rents above the guideline; such applications involve many respondents and it would be impractical to order costs in these cases.
2. Applications to evict tenants based on their own notice or agreement to terminate where the application is made before the date of termination.
3. Applications to evict a tenant based on a no-fault ground (e.g. a landlord application for termination of the tenancy for the landlord's own use).

Other Costs

A party who wants to claim costs in addition to the application fee should be prepared to speak to the matter and to provide support for the claim. The other party will also be allowed to make submissions on the issue.

In most cases, costs should not be allowed for the other expenses incurred by the successful party such as travel, expert reports, etc. Neither the fees of a representative for preparation time, nor hearing time, should be allowed except in the circumstances set out below.

Further Costs Where a Party's Conduct is Unreasonable

A Member has the discretion to require a party to pay, as costs, any representation or preparation expenses of another party where the conduct of the party was unreasonable. Conduct is unreasonable if it causes undue expense or delay and includes the following:

1. Bringing a frivolous or vexatious application or motion
2. Initiating an application or any procedure in bad faith
3. Taking unnecessary steps in a proceeding
4. Failing to take necessary steps, such as those required by the *RTA* or Rules
5. Any misconduct at the hearing or in the proceeding
6. Raising an issue which is irrelevant to the proceedings and continuing to pursue that issue after the Member has pointed out that it is irrelevant
7. Asking for adjournments or delays without justification
8. Failing to prepare adequately for the hearing
9. Acting contemptuously toward the Member or showing a lack of respect for the process or the Board
10. Failing to follow the directions of the Member or upsetting the orderly conduct of the hearing
11. Unreasonably maligning another party or slurring the character of the other party

Examples of failing to comply with the *RTA* or Rules would include the following situations:

- Failing to follow a procedural order or direction such as an order to serve another party with a document
- Serving another party in a way which was not appropriate
- Delaying the hearing by not taking actions required in the Rules

The amount ordered by a Member will usually be less than the actual cost since the Rules will set out maximum amounts for the Member to consider.

Generally, only fees for a representative's time spent at the hearing will be allowed. However, in some cases, a further amount for preparation time may be allowed if the unreasonable conduct led to the need for the representative to spend additional time preparing for the hearing.

Representation fees should not be allowed if the representative did not conduct themselves in a professional manner.

Generally speaking, the Member may refuse to allow representation fees if the conduct of the representative does not demonstrate an understanding of the following:

- Legislation, Regulations, Rules and Guidelines
- The position of their client
- The role of an agent appearing before a quasi-judicial Board
- Standards of proper behaviour and conduct in a hearing

Further Costs Where the Conduct of the Paid Representative of a Party is Unreasonable

A Member has the discretion to order a party to pay costs to another party where the conduct of the party's representative was unreasonable. Conduct is unreasonable if it causes undue expense or delay and includes situations listed above under the heading "Further Costs Where a Party's Conduct is Unreasonable". Unreasonable conduct may also include displaying an inadequate knowledge of the *RTA* and other relevant legislation.

In addition to making an award of costs, the Board may exclude from a hearing any person, other than a lawyer qualified to practice in Ontario, appearing as an agent on behalf of a party if it is found that the agent is not competent to properly represent or advise the party or does not understand and comply at the hearing with the duties and responsibilities of an advocate and adviser.

Cases Where Costs Should Not Be Allowed

As a general principle, a Member should not order costs of any kind in favour of a party if the conduct of that party was not proper. For example, if the applicant was responsible for an adjournment because they were not prepared, the Member might decide that they should not be awarded any costs. If both parties were responsible for unreasonable conduct, neither should be ordered to pay the costs to the other, although one or both may be ordered to pay the Board costs.

Amount of Costs

Rule 27 of the Board's Rules of Practice sets out the criteria for Members to consider when determining the amount of costs to order.

ORDERING THE BOARD'S COSTS

The Board expects parties and their paid representatives to act reasonably in pursuing their applications or defending their positions. This includes bringing applications only when

there are substantial grounds. It also includes taking all required procedural steps, not taking unnecessary ones and acting in a courteous and orderly way at a hearing.

When a party or a paid representative acts improperly or unreasonably in a proceeding, the Board may order the party or their paid representative to pay to the Board an amount that will partly cover the expenses that the Board has incurred as a result of that conduct. If the unreasonable conduct was the fault of the party's representative, the Board will normally order that the paid representative pay the Board's costs.

Pursuant to section 196 and Rule 9, failure to pay costs ordered may result in the Board refusing to allow the filing of an application; a stay in proceedings; a delay in the issuance of an order; and/or a discontinuance of the proceeding. See Rule 9 "Refusing to Accept or Proceed with an Application" for further details.

General Approach

A Member has the discretion to order a party or a paid representative to pay the costs of the Board. This power, however, should be used sparingly. It was not the intent of the Legislature that this power should ever be used to obtain cost recovery for salaries, administration or other expenses of the Board.

In those rare situations in which a party or their representative is responsible for unreasonable conduct, this power allows the Board to accomplish two objectives:

1. Recover some of the taxpayers' monies which funded the proceedings, and,
2. Discourage inappropriate practices and conduct by parties and their representatives.

An award of Board costs is appropriate in cases in which the adjudicative costs to the public have been unjustifiably increased by the unreasonable conduct or omission of a party or their agent or lawyer.

Unreasonable conduct would include the situations listed above under the headings "Further Costs Where a Party's Conduct is Unreasonable" and "Further Costs Where the Conduct of the Paid Representative of a Party is Unreasonable."

Ordering Board costs is not related to which party is successful. Since the reason such costs are awarded is to encourage proper conduct, it is conceivable that a successful party who adds unnecessary steps to the proceeding or behaves inappropriately at a hearing, may have to pay the Board's expenses for part of the proceeding.

The discretion for a Member to order Board costs to be paid by an agent or lawyer would only be used where, on the balance of probabilities, it is the behaviour of the agent or lawyer and not the client which is in issue.

Ordering Party Costs and Board Costs

An order for a party to pay both the representation/preparation fees of another party and to pay the Board's costs in the same case would only be made in exceptional circumstances.

This would usually include the following:

- A case in which a party clearly and knowingly misled the Board, such as filing an inflated claim for arrears, a false certificate of service, or an altered invoice
- A case where a party was reckless or indifferent about the truthfulness of their evidence, such as stating that the other party did not serve a document which they know they received
- Situations in which the party failed to comply with directions from the Member about the orderly conduct of the hearing
- Evidence of harassment of the other party to prevent the application or defence of the application

Generally, if the party who would pay the costs has been unsuccessful, it is more appropriate to order them to pay costs to the successful party. If the party whose conduct was unreasonable was the successful party, they should be ordered to pay Board costs.