

*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 201 of the *Residential Tenancies Act, 2006* (the RTA) states:

**Other powers of Board**

- 201.** (1) The Board may, before, during or after a hearing,
- (a) conduct any inquiry it considers necessary or authorize an employee of the Board to do so;
  - (b) request a provincial inspector or an employee of the Board to conduct any inspection it considers necessary;
  - (c) question any person, by telephone or otherwise, concerning the dispute or authorize an employee of the Board to do so;
  - (d) permit or direct a party to file additional evidence with the Board which the Board considers necessary to make its decision;
  - (e) view premises that are the subject of the hearing; or
  - (f) on its own motion and on notice to the parties, amend an application if the Board considers it appropriate to do so and if amending the application would not be unfair to any party.

**Same**

- (2) In making its determination, the Board may consider any relevant information obtained by the Board in addition to the evidence given at the hearing, provided that it first informs the parties of the additional information and gives them an opportunity to explain or refute it.

**Same**

- (3) If a party fails to comply with a direction under clause (1) (d), the Board may,
- (a) refuse to consider the party's submissions and evidence respecting the matter regarding which there was a failure to comply; or
  - (b) if the party who has failed to comply is the applicant, dismiss all or part of the application.

**Parties may view premises with Board**

- (4) If the Board intends to view premises under clause (1) (e), the Board shall give the parties an opportunity to view the premises with the Board.

This Guideline is intended to provide guidance on powers of the Board under section 201 of the RTA. The Board does not gather evidence for or on behalf of the parties. The parties are responsible for bringing all relevant evidence and witnesses they wish the

Member to consider to the hearing. However, the Board may, on its own initiative or at the request of a party, decide to exercise its discretion under section 201 to conduct an inquiry, question a person, view premises, amend an application or permit or direct a party to file additional evidence. This discretion will generally be exercised where the information at issue is relevant and necessary to the application and there is no other way to obtain the information or no other evidence that may be utilized in its place. The discretion under section 201 should be considered in light of section 171 of the RTA which states "The Board shall 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 be heard on the matter."

Each subsection is reviewed in turn.

**a. Conduct any inquiry it considers necessary or authorize an employee of the Board to do so.**

- There may be certain limited circumstances where a Member determines that it is necessary to instruct an employee of the Board to make an inquiry before, during or after the hearing. Where possible, the purpose of such an inquiry should be limited to clarifying or obtaining necessary information.
- Where the inquiry is to be conducted by a Board employee, the Member will provide the employee with clear direction as to the nature and scope of the inquiry in writing. The Board employee will provide the results of their inquiry to the Member in writing.
- The results of the inquiry should be provided to the parties within the time and according to the method that the Member directs or orders. The parties should be given reasonable opportunity to review and respond to any information provided.
- Examples where a Member may request a Board employee to make an inquiry include: contacting a party prior to a hearing to ascertain a party's availability for a proposed hearing date; determining the status of a related Board application; or determining when a post-hearing submission will be filed.

**b. Request a provincial inspector or an employee of the Board to conduct any inspection it considers necessary.**

- In special circumstances, a Member may determine that it is necessary to request an inspection because it is not possible for the parties to bring forward the necessary evidence in any other form such as photographs, inspection reports, or witnesses. For example, an inspection may be requested of a unit to determine whether or not there are appliances in the unit or if the damage alleged has occurred.

- Where a Member determines an inspection is necessary, either a provincial inspector or a Board employee will be requested to carry out the inspection.
- The Member will provide the provincial inspector or Board employee a written direction setting out the details of the inspection (e.g. unit address, time to conduct the inspection, and the purpose of the inspection). The provincial inspector or Board employee will, in turn, provide the Member with a written response describing their observations or findings.
- The results of the inspection should be provided to the parties within the time and according to the method that the Member directs or orders. The parties should be given reasonable opportunity to review and respond to any information provided.

**c. Question any person, by telephone or otherwise, concerning the dispute or authorize an employee of the Board to do so.**

- A Member may have some questions relating to a dispute or wish to clarify information already received. For example, the Member may be unable to read one sentence in an affidavit due to poor penmanship.
- In these types of situations where a Member wishes to question a person by telephone or otherwise concerning the dispute, the Member will usually ask a Board employee to question that person. The Member will provide the Board employee a written request setting out the issues or questions they have regarding the matter. The Board employee will provide the Member with a response to these issues and questions in writing.
- Where the Member or the staff employee has received a response to their questions, that response will be provided to the parties within the time and according to the method that the Member directs or orders. The parties should be given reasonable opportunity to review and respond to any information provided.

**d. Permit or direct a party to file additional evidence with the Board which the Board considers necessary to make its decision.**

- See Rule 19. Rule 19 provides disclosure rules in situations where a Member may wish to clarify the contents of an application, dispute, motion or other document filed with the Board.
- Note that subsection 201(3) provides that if a party fails to comply with such a direction, the Board may:
  - refuse to consider the party's submissions and evidence respecting the matter regarding which there was a failure to comply; or

- if the party who has failed to comply is the applicant, dismiss all or part of the application.

**e. View premises that are the subject of the hearing.**

- Premises will normally be viewed in special circumstances only.
- Subsection 201(4) states that if the Member intends to view premises, the Member should give the parties an opportunity to view the premises with the Member.
- In order to provide parties adequate opportunity to view premises with the Member, parties should be provided with reasonable notice of the date and time of the viewing. Where possible, the parties should be canvassed for possible dates and times for the viewing.

**f. On its own motion and on notice to the parties, amend an application if the Board considers it appropriate to do so and if amending the application would not be unfair to any party.**

- The Board may on its own motion consider amending an application before, during or after a hearing. For example to add a party or to remove a party.
- A Member *shall* decide whether or not to amend an application before, during or after a hearing taking into consideration the following factors:
  - Any prejudice a party may experience as a result of the amendment
  - Whether the amendment is significant enough to warrant any delay that may be caused by the amendment
  - Whether the amendment is necessary
  - Any other relevant factors

**Subsection 201(2) provides that in making its determination, the Board may consider any relevant information obtained by the Board in addition to the evidence given at the hearing, provided that it first informs the parties of the additional information and gives them an opportunity to explain or refute it.**

- Parties should be informed of any additional information under consideration by the Member within the time and according to the method that the Member directs or orders. The Member must also file any such information with the Board.
- The parties should be given reasonable opportunity to review and respond to any information provided.