

Legislation:

Section 4 of the *Statutory Powers Procedure Act* ('the SPPA')
Section 183 of the *Residential Tenancies Act, 2006* ('the RTA')

1.1 These Rules will be interpreted broadly to produce the fairest and most expeditious resolution of the application.

Under section 183 of the RTA, the Board shall adopt the most expeditious method of determining the questions arising in an application that affords to all parties directly affected by it an adequate opportunity to know the issues and to be heard on the matter. It is important that the Rules should be interpreted and applied in a manner that is consistent with the RTA.

1.2 Where a provision of the RTA or the SPPA, or of a regulation under either of them, applies directly to a particular issue, that provision will determine the issue, regardless of any Rule to the contrary.

If there is any situation in which one of these Rules would produce one result, but a specific provision of the RTA, the regulations or the SPPA would produce a different result, the legislation or regulations would apply. In other words, the RTA, the SPPA and the regulations prevail over these Rules.

1.3 Where something is not provided for in these Rules, the practice may be decided by referring to a similar provision in these Rules.

These Rules cannot deal with every situation. This Rule contemplates that a Member would seek guidance from other Rules on analogous subjects in deciding how to proceed.

1.4 No defect in an application, a document created after the application was filed, or in a step taken in the proceedings after the application was filed, will make the application invalid unless the rights of another party are substantially prejudiced by the defect, and the prejudice cannot be remedied.

If any part of a proceeding is tainted by a procedural error, this should not prevent the Board from determining the case on its merits. The same is true if there is a

flaw in the application or any other document created for the purpose of the application. However, this Rule does not allow a Member to disregard any defect in a document created before the application was filed (e.g., a notice of rent increase or a notice of termination) or a step taken before that date (e.g., the service of such a notice). Further, this Rule would not apply if the error was detrimental to another party's rights in a significant way, and could not be remedied. If there is prejudice claimed on both sides, it is up to the Member to weigh the prejudice and balance the rights of the parties. This Rule is similar to a rule of the civil courts.

- 1.5 A Member may waive a Rule where appropriate, provided that the Rule does not have a non-waiver provision. If a Member waives a Rule, the Member shall give reasons for waiving the Rule in the order or decision. Rules that have a non-waiver provision, such as Rules 4.5, 13.22 and 26.6, may not be waived.**

There will be situations where a Rule that is appropriate in most situations would not be fair or just in a specific case. For that reason, a party may request that a Rule be waived, or a Member may waive a Rule on his or her own initiative. For example, a Member may waive a Rule for the purpose of accommodating a party in accordance with the Human Rights Code. In most cases, a Rule would not be waived without inviting and considering submissions from the parties. This Rule is authorized by subsection 4(2) of the SPPA.

Despite this Rule, Rules 4.5, 13.22 and 26.6 may not be waived.

- 1.6 After the application is filed, a party may waive service by the Board or by another party of a Notice of Hearing or any other document.**

Under subsection 4(1) of the SPPA, a party may waive any procedural requirement of the "governing legislation". This Rule deals with only some of the procedural requirements to which subsection 4(1) would apply. It deals with a situation such as scheduling the hearing of a set aside motion, which will be heard very quickly if the landlord agrees to waive service of the Notice of Hearing. There are other rules in the RTA and in the Rules which require the Board to give a document to a party after the application has begun. Parties are allowed to waive service of these documents because they wish to expedite the proceedings or because they have been advised of them at the hearing or by telephone.