

Legislation:

Section 191 of the *Residential Tenancies Act, 2006* ('the RTA')

Related Rules:

Rules 4.1 to 4.5 (Computation of Time)

Rules 10.1 to 10.8 (Serving the Application or Motion & Notice of Hearing)

Rules 11.1 to 11.4 (Certificates of Service)

Section 191 of the RTA provides that a party may give another person a document by various means listed in subsection (1), including handing it to the person, mailing it to them, leaving it in a mail box or a place where mail is ordinarily delivered. It refers to giving a document to a "person" rather than a "party" because it includes all documents mentioned in the RTA, such as notices of termination and rent increase, which are not related to applications when they are given. Clause 191(1)(g) deems "any other means allowed in the Rules" to be sufficient service of the document

These Rules also set out when a document is considered to have been given to another person, depending upon the method of service used. For service by mail, subsection 191(3) of the RTA provides that service is effective five days after mailing.

Other Permitted Methods of Service**5.1 A person may give a notice or document to another person by any of the following methods:**

- (a) by courier to that person;
- (b) if there is a fax machine where the person carries on business or in the residence of the person, by fax;
- (c) for service on a person who occupies the rental unit, by placing it under the door of the unit or through a mail slot in the door;
- (d) for service on a tenant of a notice under section 27 of the RTA, by any permitted method of service or posting it on the door of the rental unit;

- (e) **if the document is an application or was created after the application was filed, by hand delivery, mail, courier or fax to the representative for a party; or**
- (f) **if the document is an application or was created after the application was filed, by any method directed or permitted by the Board in writing.**

Where a notice or document is given by a method other than the methods of service permitted by subsection 191(1) of the RTA or this rule, that notice or document will be deemed to have been validly given if it is proven that the information in the notice or document came to the attention of the person for whom it was intended.

Board Permitting Other Methods of Service

5.2 A Member may give written directions to a party, either on his or her own initiative or on that party's request, regarding one or both of the following:

- (a) who shall be served with the application or any other document; or**
- (b) how an application or document shall be served.**

If a party is unsure about how the requirements of the RTA should be interpreted in a particular case, they may ask in writing for a Member to issue written directions. The party may also want directions because they have had difficulty in serving documents on another party according to the methods permitted by the RTA and these Rules. Such a party may ask in writing that a Member issue written directions to serve the documents by another method, as permitted by Rule 5.1. Finally, the Member may, on their own initiative, direct service on additional parties who should have been served or direct the method of service if there has been some problem to date.

Using Courier Delivery

5.3 If a notice or document is delivered to another person by courier, it is deemed to be given on the day following the day it was given to the courier but, if that is a non-business day, it is deemed to be given on the next business day.

This Rule recognizes that couriers usually deliver documents the next day. If the party who mailed the document can prove that the other party received it earlier than the deemed date, see Rule 5.6. For example, if a party paid for "same day"

courier service, and the delivery occurred on the same day the document was given to the courier, it would be found to be given that day.

Using Xpresspost

5.4 A notice or document given by Xpresspost is deemed to be given by mail.

Although Xpresspost is marketed as a courier-like service, a notice or document given by this method is deemed to be given by mail. Subsection 191(3) of the RTA specifies that a notice or document that is given by mail is deemed to have been given on the fifth day after mailing.

Using Fax

5.5 If a notice or document is given to another person by fax, it will be found to be given on the date imprinted on the fax.

If a fax is received by 11:59 P.M. on Monday, it will be found to have been given on Monday. After midnight, it will be found to be given on Tuesday.

Earlier Receipt

5.6 If the person who gave a notice or document to another person can prove that the person received it on an earlier date than the date deemed by the RTA or these Rules, the Board will find that it was given on the earlier date.

This Rule would apply if, at a hearing, the date of service is an issue. If the other party admits receiving the document earlier than five days after mailing, this would be accepted. If the party who gave the document can show in some other way that the other party received it earlier, the earlier date may be accepted.