

Legislation:

Section 185 of the *Residential Tenancies Act* (the “RTA”)

Staff of the Landlord and Tenant Board will check applications when they are filed and inform the applicant if the application is incomplete, or if they note any errors that may potentially invalidate the application; the applicant will decide how they want to proceed.

Although staff will review applications, it is always the applicant’s responsibility to ensure that their application is complete, accurate and in compliance with the RTA. Ultimately it will be up to the Member hearing the application to decide whether or not the application is valid.

Applications that will be Refused

- 8.1 Where the RTA requires an application, other than an application made under section 126, to be accompanied by prescribed information, staff will not accept the application if the prescribed information is not filed at the same time.**

Subsection 185(1) of the RTA requires that an application be accompanied by the prescribed information. If the prescribed information is not filed along with the application, the application is not properly filed and it will be returned.

The only exception is for applications for an above guideline rent increase, made under section 126 of the RTA. Staff will not check these applications for the required information before the application is filed. The process staff will follow is set out in Rules 8.5.1 and 8.5.2 below.

- 8.2 Staff will not accept a landlord’s application for compensation for arrears, damages and/or misrepresentation of income where the landlord has indicated that the tenant is not in possession of the rental unit.**

An application for the payment of arrears (s.87), compensation for damages (s.89) and compensation for misrepresentation of income (s.90) can only be made to the Board if the tenant is still in possession of the rental unit at the time the application is filed.

- 8.3 Staff will not accept an application to terminate the tenancy and evict the tenant for non-payment of rent if the application is being filed on or before the termination date in the landlord’s notice of termination.**

The RTA states that an application to terminate a tenancy and evict a tenant cannot be made until the day following the termination date specified in the notice. If the application is filed on or before the termination date, it will be returned to the landlord and the landlord informed of the earliest date that they can file the application.

- 8.4 Staff will not accept an application to terminate the tenancy and evict the tenant based on a notice of termination under section 62, 64 or 67 of the RTA if the application is made before the seven-day remedy period specified in the notice expires.**

Where a notice of termination gives the tenant a seven-day period to remedy the notice, the application to terminate the tenancy and evict the tenant cannot be made before the 8th day. An application that is filed before the seven-day remedy period expires will be returned.

- 8.5 Staff will not accept an application to terminate the tenancy and evict the tenant if it is filed later than 30 days after the termination date specified in the notice, unless it is an application based on the tenant’s failure to pay rent.**

Applications for an Above Guideline Rent increase (s.126 of the RTA)

- 8.5.1 Staff will check an application made under section 126 to ensure that the landlord has included the following:**

- (i) a completed application Form L5 – Application for a Rent Increase Above the Guideline Order;**
- (ii) if the application includes a claim under s.126(1)1:
 - (a) a completed Schedule 1 – Details of Operating Costs**
 - (b) supporting documents****
- (iii) if the application includes a claim under s.126(1)2:
 - (a) three copies of a completed Schedule 2 – Details of Capital Expenditures;****

- (b) three copies of a completed “Information about Rental Units in the Complex” form
 - (c) three copies of completed “Capital Expenditures: Additional Details” forms
 - (d) two additional copies of the L5 application form
 - (e) three copies of any supporting documents for the application
 - (f) a compact disk containing the information filed with the application in portable document format
- (iv) if the application includes a claim under s.126(1)3
 - (a) a completed Schedule 1 – Details of Operating Costs
 - (b) supporting documents

Although staff will check the application to ensure that the necessary forms have been filled out and that supporting documents have been filed, they will not check to confirm that there are supporting documents for each cost claimed, nor will they confirm any of the amounts claimed by the landlord against the supporting documents. Further, staff will not check for calculation errors.

8.5.2 If the information listed in Rule 8.5.1 is missing from an application made under section 126 of the RTA, staff will send the applicant a letter that:

- (i) lists the information that is missing, and
- (ii) informs the applicant that a hearing will not be scheduled until the missing information is received.

After a landlord files an application for an above guideline rent increase, staff will check the application to ensure that the information set out in Rule 8.5.1 has been filed. If anything is missing, staff will let the applicant know in writing. The Board will not schedule a hearing for an application for an above guideline rent increase until all the required material has been filed.

Applications with Potential Errors

8.6 Unless the application is made under section 126 of the RTA, staff will inform the applicant of any information that is missing or that may be inaccurate and give them an opportunity to correct or complete the information before the application is considered “filed.”

These errors include errors or incomplete information in the name and address of the parties and rental unit; not clearly indicating which grounds are being applied for; clerical errors in calculating the amounts claimed in the application and the application not being signed.

This rule does not apply to applications for an above guideline rent increase. The process Board staff will follow for this type of application is set out in Rules 8.5.1 and 8.5.2 above.

- 8.7 (a) If there is a potential error which may invalidate the Notice of Termination, staff will contact the applicant and ask them how they wish to proceed.**
- (b) Staff will return an application by mail if the applicant does not inform the Board how they wish to proceed within one business day from the time they were contacted.**

If a landlord filed an application by fax, mail or courier and an error is noted that could invalidate the Notice of Termination, staff will call the landlord to inform them of this error and ask them how they wish to proceed. If staff are unable to reach the landlord, they will leave a message explaining the error and asking that the landlord contact the Board by the end of the following business day. Staff will also inform the landlord that if they do not do so, the application will be returned.

- 8.8 If the Notice of Termination specifies a termination date that is not at least the number of days required by the RTA for that type of notice, this error is considered to potentially invalidate the notice.**

For example, if a termination notice is given for nonpayment of rent, the termination date for a daily or weekly tenancy must be at least 7 days and 14 days for monthly or yearly tenancies. These types of timeframes cannot be extended by the Board and thus, if the landlord has specified a termination date that is less than the number of days required, the notice would be invalid.

- 8.9 In addition to rule 8.8, other errors that potentially invalidate a Notice of Termination for non-payment of rent given under section 59 of the RTA may include:**
- (a) Failing to identify the tenant of the rental unit;**
 - (b) Failing to identify the rental unit;**
 - (c) Indicating an amount other than rent in the total amount the tenant owes;**
 - (d) Indicating inconsistent amounts that the tenant owes within the notice;**

- (e) Incorrectly calculating the amounts the tenant owes (in the table explaining how the arrears owing were calculated);
 - (f) Failing to sign or fill in the landlord's or agent's name in the signature field of the notice form;
 - (g) Failing to provide contact information for the landlord or agent.
- 8.10 Errors that could potentially invalidate a Notice of Termination for reasons other than nonpayment of rent under the RTA may include:**
- (a) Failing to identify the tenant of the rental unit;
 - (b) Failing to identify the rental unit;
 - (c) Failing to indicate the reason for termination on a notice form that has more than one reason;
 - (d) Failing to provide any details in the Notice of Termination where the form requires details explaining the reason to be provided;
 - (e) Failing to give complete information in the notice as to how the tenant can remedy the problem where the Notice of Termination is under section 62, 64 or 67 of the RTA;
 - (f) Failing to sign or fill in the landlord's or agent's name in the signature field of the notice form;
 - (g) Failing to provide contact information for the landlord or agent.
- 8.11 Notwithstanding Rules 8.6 to 8.10, it will always be the applicant's decision whether or not to make any changes to the application or file it as is.**
- 8.12 Notwithstanding Rules 8.1 to 8.10, the applicant is ultimately responsible for ensuring that the application is complete, accurate and in compliance with the RTA.**