

R10 SERVING THE APPLICATION OR MOTION & THE NOTICE OF HEARING

Legislation:

Subsections 188(1) and (2) of the *Residential Tenancies Act, 2006*, ('the RTA')

Subsection 6(1) of the *Statutory Powers Procedure Act* ('the SPPA')

Related Rules:

Rules 4.1 to 4.5 (Computation of Time)

Rules 5.1 to 5.6 (Serving a Document on Another Party)

Rules 11.1 to 11.4 (Certificates of Service)

Subsection 188(1) of the RTA states that "An applicant to the Board shall give the other parties to the application a copy of the application within the time set out in the Rules". Subsection 188(2) of the RTA requires the applicant to serve the Notice of Hearing on the respondent. Subsection 6(1) of the SPPA requires that the parties be "given reasonable notice of the hearing ..."

The Board may set a deadline for the applicant to serve (give) the Notice of Hearing and application or motion on the respondent(s). This is to ensure that the respondent will have adequate time to prepare for the hearing.

The rules for serving these documents are set out in Rules 5.1 to 5.4. In most cases, it is expected that the applicant will serve these documents on the respondent as soon as they have filed the application or motion and received the Notice of Hearing from the Board. However, if there is a delay in serving these documents, the applicant must have regard to these Rules.

An explanation of how to count days under the RTA is set out in Rules 4.1 to 4.5.

These Rules do not apply where an application is resolved by written hearing.

10.1 For any type of application under the RTA other than those mentioned in Rules 10.2, 10.3, 10.4 and 10.5, the applicant must give a copy of the application and the Notice of Hearing to the respondent as soon as possible but not later than ten days before the hearing date.

This Rule applies to applications such as, a tenant's rebate application, a harassment application or an application filed together by the tenants of more than one unit.

- 10.2 For an application under section 77 or 78 of the RTA which proceeds to a hearing, the applicant must give a copy of the application and the Notice of Hearing to the respondent as soon as possible but not later than ten days before the time set for the hearing, unless otherwise directed by the Board.**

Ordinarily, an application under section 77 (eviction based on a tenant's notice to vacate or an agreement of the parties to terminate the tenancy) or section 78 (eviction based on a tenant's breach of the settlement of a previous eviction application) will result in an order without a hearing. For these applications, the landlord is not required to give the application to the tenant in most cases. However, if the Member reviewing the application believes it should proceed to a hearing, the applicant will be asked to give the application and a Notice of Hearing to the tenant respondents. The usual rule is that ten days notice must be given by the landlord to the tenant, according to the usual service rules, but the Member may direct more or less notice depending on the circumstances.

- 10.3 Where an order is issued under section 206(1) and a party files a request to re-open the application under subsection 206(4) or 206(5), the party who files the request must give a copy of the request to re-open the application and the Notice of Hearing to the other parties as soon as possible but not later than five days before the hearing date.**

When a request is filed to re-open an application that has been resolved by consent order, the hearing is scheduled promptly. As a result, the usual 10-day service of the request and notice of hearing do not apply.

- 10.4 For applications filed under sections 126, 132 or 148, the applicant must give a copy of the application and the Notice of Hearing to the respondent(s) as soon as possible but not later than 30 days before the hearing date.**

The time to hearing is longer for certain applications than others. For example, an application to increase the rent above the guideline, an application to vary the amount of a rent reduction, or an application to transfer a tenant out of a care home. The Board recognizes that respondents may need more time to prepare for the hearing for this kind of application.

- 10.5 For applications filed under the following sections of the RTA, the applicant must give a copy of the application and the Notice of Hearing to the respondent as soon as possible but not later than five days before the hearing date:**
- (a) subsection 29(1), made solely or in part under paragraph 5**
 - (b) subsection 41(6)**

- (c) **section 69, based on notice given under:**
 - (i) **subsection 61(1) that involves an illegal act, trade, business or occupation described in clause 61(2)(a),**
 - (ii) **section 63,**
 - (iii) **section 65, or**
 - (iv) **section 66.**
- (d) **section 94.**

This rule applies to applications to the Board to deal with serious and time-sensitive matters such as the illegal lock-out of a tenant, the retrieval of property after the enforcement of an eviction by the Sheriff and the eviction of a tenant whose conduct may affect the safety of other tenants and the landlord. It also applies to applications to terminate the tenancy of a tenant of a superintendent's unit when their employment has ended. This is important to ensure that a landlord is able to provide accommodation to the new superintendent in a timely manner. Whenever possible, a hearing on these types of application will be scheduled within seven days of the receipt of the application. As a result, the applicant will be required to give these documents to the respondent at least five days before the hearing.

If an applicant believes that the matter should be heard more quickly, they can ask the Board to shorten the time for serving these documents under Rule 15.

10.6 If there is more than one applicant, the applicant who files the application with the Board must give a copy of the Notice of Hearing to the other applicants.

If there are several applicants, it is the responsibility of the applicant who files the application, and receives the Notice of Hearing, to give it to the other applicants. This should be done as quickly as possible to avoid any need to reschedule or adjourn the hearing.

10.7 A party who brings a motion to set aside an ex parte order, an order under subsection 74 (3), or an order under subsection 74(8) must give a copy of the motion and the Notice of Hearing to the other party(ies) at least 48 hours before the time set for the hearing, unless otherwise directed by the Board.

Where the Board issues an ex parte order, the respondent may file a motion to set aside the order within ten days of the date it was issued. Where the Board issues an order under subsection 74(8) to void an eviction order, the respondent/landlord also has ten days to file the set-aside motion. A tenant can also make a motion under subsection 74(11) to void an eviction order after the order becomes enforceable but before it is executed, provided the tenant files a sworn affidavit

stating that the required amounts have been paid to the landlord and the Board.

The usual rule is that the party bringing the motion must give 48 hours notice to the other party(ies) by any of the permitted methods of service. However, the Member may direct the party bringing the motion to give more or less notice depending on the circumstances.

10.7.1 A landlord who files a motion under s.126(13)(b) must give a copy of the motion and the Notice of Hearing to the tenant(s) affected by the motion, at least 10 days before the time set for the hearing, unless otherwise directed by the Board.

Under s.126(13)(b) of the RTA, a Member can order that an increase justified in an Above Guideline Increase Application be deferred until the landlord has completed required repairs. The order will include a date by which the repairs must be completed. Once the landlord has completed the required repairs they must file a motion with the Board by the deadline set out in the order. A hearing will be scheduled and the landlord will have to serve the Notice of Hearing, along with a copy of the motion, on the tenants affected by the motion.

10.8 If a party fails to give the Notice of Hearing and application or motion to any other party(ies) in accordance with these Rules the Member may:

- (a) proceed with the hearing if the Member finds that the other party(ies) suffered no prejudice whatsoever as a result of the party's failure to serve the documents or to serve them on time;**
- (b) adjourn the hearing to give the other party(ies) an adequate opportunity to prepare for the hearing; or**
- (c) dismiss the application or motion if the Member finds that the party deliberately failed to serve the documents in accordance with these Rules.**

A Member may proceed with the application or motion if convinced that the party(ies) who were not served, or not served on time, have consented freely and without pressure from the party who filed the application or motion to proceed then with the hearing. The only other situation in which the hearing should proceed on the scheduled date is where the Member is convinced that the other party(ies) had sufficient time after they knew the details of the application or motion to prepare for the hearing.

The power to dismiss the application or motion should only be used in extraordinary circumstances. This would include a situation in which the party who filed the application or motion, or their agent, appears to have deliberately failed to serve the documents, or to serve them on time.

In most cases, an adjournment will be the appropriate way to resolve a party's failure to serve the documents according to these Rules.

The Member may also determine that any delay caused by the failure of the party who filed the application or motion to serve the other party(ies) promptly, without an appropriate reason, is unreasonable conduct as defined in the Guideline on "Costs".