

**Legislation:**

Subsection 188(3) of the *Residential Tenancies Act, 2006* ('the RTA')

**Related Rules:**

Rules 4.1 to 4.5 (Computation of Time)

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

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

*Section 188 of the RTA provides that the applicant shall give the other parties to the application a copy of the application and a copy of the Notice of Hearing issued by the Board for the application. Subsection (3) provides that a party shall file a Certificate of Service in the form approved by the Board in the circumstances set out in these Rules.*

**11.1 The applicant must file with the Board a Certificate of Service signed by the individual who gave the application and Notice of Hearing to another party.**

*The Certificate of Service is a document in which an individual declares that they have given a copy of the application and Notice of Hearing to a respondent, or a document to another person (e.g., notice of termination). Thus, the certificate may only be completed by the individual who served the documents (e.g., applicant, property manager, superintendent, process server, friend, etc.). The applicant may not sign the certificate if they were not the individual who gave the documents. The individual must state when and how the documents were served. In some cases, more than one Certificate of Service will be filed for the same application, because there may have been more than one respondent. However, the individual may certify to serving more than one individual on the same date in the same certificate if they were served in the same manner.*

*The best practice is to serve the application and Notice of Hearing as quickly as possible, and file the certificate right after. If the respondent does not appear at the hearing, it will be important for the applicant to prove that the application and Notice of Hearing were served; otherwise, the Member may not make an order.*

**11.2 The applicant shall file any necessary Certificate of Service within five days after the application and Notice of Hearing are served.**

*Prompt filing of the Certificate of Service is important to ensure that the file is complete for the hearing day. Thus, failure to file a certificate may result in an*

*order for costs against the applicant or their representative, even if the applicant is successful in the application.*

- 11.3 If the applicant does not file the Certificate of Service before the hearing, the applicant may prove service of the application and Notice of Hearing by:**
- (a) filing a Certificate of Service at the beginning of the hearing; or**
  - (b) by calling as a witness at the hearing the individual who gave the application and Notice of Hearing to the other party to the application.**

*The applicant is expected in all cases to file the Certificate of Service as soon as they have given the application and Notice of Hearing, well in advance of the hearing. However, where this is not possible, the applicant may prove the service of the documents in two ways. A certificate may be filed at the start of the hearing. The applicant may also bring the individual who served the documents to the hearing, and call them as a witness if service is questioned.*

*Of course, the party who was allegedly served may challenge the facts in a Certificate of Service and give evidence that they were not served, or were served on a different date or in a different way. The Member may also have questions about the statements made in the certificate or given by a witness at the hearing.*

- 11.4 A Member may direct any party to an application to file a Certificate of Service with respect to any document which was given in relation to the proceedings.**

*Not only the application and Notice of Hearing must be served on another party. For most types of eviction application, the landlord must have earlier served a notice of termination. Also, these Rules require notice to be given to another party in various circumstances. In any of these situations, the Member may require a Certificate of Service to be filed before taking any action that would result from the service of that document.*