

**Legislation:**

Section 3 of the *Residential Tenancies Act* (the "RTA")  
Section 206 of the RTA  
Section 4.1 of the *Statutory Powers Procedure Act* (the "SPPA")

**Related Rules:**

Rule 13 (Mediation by the Board)

*There will be cases in which the parties, between themselves, resolve an application without any assistance from a Mediator employed by the Board. They may also retain the services of a private mediator or any other person to assist them in settling the dispute between them. These Rules deal with the consequences of such an agreement.*

*Section 3 of the RTA provides that the Act applies, regardless of any agreement or waiver to the contrary. Thus, parties may only settle an application by agreeing to terms or conditions which are consistent with the legislation. Section 4.1 of the SPPA permits an order to be issued without a hearing, on the consent of the parties, so long as the Act under which the order is issued permits this. The power to issue a "consent order" under the RTA is restricted by section 3, in that no order may include terms which contravene the Act. This is further confirmed by subsection 194(2) of the RTA which allows a settlement to contain provisions which contravene the Act, but only where it was mediated by the Board.*

*If the parties settle the issues raised by the application, and part of the agreement is that the application will be withdrawn, the applicant may withdraw the application without the consent of the Board at any time prior to the commencement of the hearing (subject to the provisions of subsection 200(3) of the RTA). However, if any term of the agreement to settle is not in accordance with the Act, the fact that the parties agreed to it will not prevent the applicant from applying again or affect the result of any subsequent application.*

*If the parties settle the application, and part of the agreement is that an order should be issued in accordance with what the parties have agreed, these Rules will apply.*

**14.1 If the parties have settled an application without mediation by the Board, and all parties request that some or all of the terms of their agreement be made part of an order, a party may file the agreement at the beginning of the hearing.**

*A party may file an agreement to settle or "minutes of settlement" before the hearing date, but all of the parties should still attend the hearing. If a party files the agreement at the hearing, this should be done before any evidence is heard. The Member will then review the agreement in accordance with Rule 14.2.*

**14.2 If the Member is satisfied that the terms of the agreement:**

- (a) are in accordance with the provisions of the RTA, and**
- (b) do not include any term which the RTA would not permit to be ordered for the application, an order may be issued in accordance with the agreement or, with the consent of the parties, another order may be issued that would be more appropriate, based on what the parties have agreed to and in compliance with this Rule.**

*Parties to an application may settle issues that are beyond the scope of the application in their agreement. Or, their settlement may include terms that would normally not be included in an order for that type of application.*

*The Member will ask the parties any questions necessary to satisfy themselves that the parties fully appreciate the consequences of their agreement and that it was voluntarily settled. This will be difficult in some cases without understanding all of the facts of the case. Nevertheless, in view of section 3 of the RTA, the Member should ensure that the parties' agreement is not inconsistent with any provision of the Act. In some cases, they may ask for evidence to confirm this.*

*If the Member believes that another order would be appropriate, based on the basic principles that the parties have agreed to, the Member may ask whether the parties consent to that order. If the Member decides not to adopt the agreed terms within an order, and the parties do not agree to any variation proposed by the Member, the hearing on the merits of the application will proceed, unless the applicant wishes to withdraw the application (and, if required, permission to withdraw is granted, such as in a harassment application).*

**14.3 If the parties to an application have settled, or are close to a settlement of the issues between them, they may request that a Board Mediator facilitate a mediated settlement of the application before the Board.**

*Only settlements resulting from mediation by the Board will dispose of the application without an order. Settlement of the issues raised by an application without the assistance of a Board Mediator may result in an agreement, but an order in accordance with the agreement will only be issued if the terms are not inconsistent with the Act.*

*If the parties have already settled some or all of the issues between them and approach a Board Mediator, the Mediator may agree to conduct a mediation with them in accordance with Rule 13. This will include eliciting from each party their interests and whether the terms they have already agreed to satisfy those interests.*

*The special provisions for settlements mediated by the Board recognizes that Mediators employed by the Board will have a role in ensuring that the mediation is fair and the parties realize what they may be giving up, if they are agreeing to settlements that may contravene the Act. If the parties have settled the application themselves or through an outside mediator, the Board cannot be sure that the parties were aware of their rights.*

**14.4 Rules 14.1 through 14.3 do not apply to agreements made under s.206 of the RTA.**

*Under section 206 of the RTA the Board may issue an order on consent without holding a hearing if the parties submit an agreement. In these cases, it is not necessary for the parties to appear before a Member at a hearing.*