



RESIDENTIAL TENANCY BRANCH PRACTICE DIRECTIVE 2020-02

2020 COVID-19 Pandemic: Extending Time Limits, Adjournments and Settlements March 30, 2020

Purpose

This practice directive deals with circumstances where the current COVID pandemic prevents or delays people from making an application for dispute resolution, applying for a review or submitting and/or serving evidence within the required time for doing so. It also gives direction to the Director's delegates when determining requests for adjournments of hearings and encourages parties to work towards settling issues between themselves where possible. While these are extraordinary times, the principles of procedural fairness and access to justice must always be considered when making decisions.

Preamble

The Residential Tenancy Branch recognizes that these are challenging and unprecedented times. Wherever possible, parties should try to settle disputes between themselves, recognizing that both landlords and tenants may be impacted by lost income, economic uncertainty, and health concerns during this time. However, the Residential Tenancy Branch understands that despite parties' best efforts there will continue to be situations where dispute resolution is necessary to resolve issues.

Circumstances may prevent people from filing applications for dispute resolution, reviews and evidence with the Residential Tenancy Branch or serving these materials on another party within the time limits set out in the Acts or the [Rules of Procedure](#).

Options for Filing Applications and Evidence

Parties are expected to make reasonable efforts to ensure their applications are filed within the time limits set out in the [Residential Tenancy Act](#) or [Manufactured Home Park Tenancy Act](#). The Director has no authority to extend certain time limits concerning the making of applications (see excerpts from the Acts at the end of this document). Applications for dispute resolution can be made by [filing online](#) and evidence can continue to be uploaded to the [online system](#).

Certain applications are not able to be filed through our online system. For a list of these applications [click here](#). All tenancy branch [forms](#) are accessible on the website. **Citizen**

safety and the safety of our staff are of paramount importance. While Service BC Centres and the RTB's Burnaby office are currently open and modifying their operations to ensure everyone's safety, we ask that you stay home, where possible, instead of attending an office in person. Before attending an office, check the respective website [Service BC](#) or [Residential Tenancy Branch](#) for information on dropping off or picking up documents.

For those applications or evidence that cannot be filed online, you may email documents to the branch at RTBGAREF@Victoria1.gov.bc.ca. For parties unable to email documents or upload evidence, contact the RTB to determine what other options may be available. Click [here](#) for contact information.

Options for Serving Applications and Evidence

Parties should also make reasonable efforts to ensure applications and evidence are served on all parties to a dispute resolution using the methods still permitted under the Acts following the [Residential Tenancy \(COVID-19\) Order](#) dated March 30, 2020 and within the time limits set out in the Acts and [Rules of Procedure](#). Parties must think carefully about what method of service they use to ensure the materials are reasonably likely to be received by the other party while maintaining social distancing, social isolation or quarantine.

The Director has issued an [Order](#) allowing parties to use email service in order to minimize in-person interactions and the need for parties to leave their homes. The Director recommends that allowed methods of service that do not require in-person interactions or leaving home are used, such as email or fax. If this is not possible, methods permitted by the Acts that minimize in-person interactions should be used.

The Residential Tenancy (COVID-19) Order made under the *Emergency Program Act* states that a person must not give or serve a document under either of the Acts by leaving a copy of the document with a person. Thus, personal service is not a valid form of service during the duration of that order.

Parties should also be aware that at this time Canada Post will not deliver registered mail to a person's home or business and will require someone attend the post office to pick it up. As such, this may not be an effective method of service in cases where recipients are recommended or legally required to be in self-isolation or quarantine. For more information on Canada Post closures and service interruptions, refer to their [website](#).

If a party is unable to use any of the methods of service currently permitted, they can apply for an order under section 71 of the RTA or section 64 of the MHPTA seeking to

serve the document in an alternative manner. This application is made by completing the following [form](#).

Missed Time Limits Generally

Parties may not be able to meet the time frames set out in the Acts or Rules. If an issue arises as a result of a missed time limit or deadline due to not being able to access the online application services or challenges with serving documents, the Director will consider those circumstances when determining whether to grant an order extending the time limit and, if necessary, adjourn the matter.

Parties should be aware there are generally some time limits that the Director cannot extend. Please refer to the excerpts from the Acts and Policy Guideline set out at the end of this document. During the declared state of emergency, however, these time limits may not necessarily be applicable in light of section 3 of the Limitation Periods (COVID-19) Order made under the *Emergency Program Act* on March 26, 2020. If a question arises regarding one of these time limits, the Director will consider whether the Limitation Periods (COVID-19) Order is applicable and, if so, whether the time limit should be waived, suspended or extended.

In the case of evidence filed with the RTB or served on another party outside of the time frames set out in the Rules of Procedure, the Director will consider the circumstances, any potential prejudice to the other party and the principles of procedural fairness when deciding whether to exercise their discretion to accept the late-filed or late-served evidence and, where necessary, adjourn the proceedings so that other parties have sufficient opportunity to consider and respond to the evidence.

Process and Procedure for Adjournments

Although hearings typically take place via telephone conference and so can be participated in at home and without in-person contact, the RTB recognizes that as a result of the COVID-19 pandemic, there may be circumstances where parties need to seek an adjournment of matters already scheduled for hearing. If parties can agree to reschedule the hearing to a later date, Rule 5.1 permits the RTB to reschedule a hearing if signed consent from both the applicant and respondent are received not less than three days before the hearing (see excerpt from the Rules of Procedure at the end of this document).

In the event parties miss the three-day deadline, the signed consent from both parties should still be uploaded to the online system and all parties must call in to request the

adjournment. In these circumstances where both parties agree to adjourn, the arbitrator should grant the adjournment.

In the event parties do not mutually agree to reschedule the hearing, Rule 7.8 allows the arbitrator to adjourn a hearing to another date and Rule 7.9 sets out the criteria for the Director to consider when determining whether to grant an adjournment (see excerpts from the Rules at the end of this document). Parties should raise these issues as a preliminary matter at the start of the hearing, and the arbitrator will consider the parties' oral submissions in light of the criteria set out in the Rules. If a party cannot call into the hearing, they should arrange for someone to call in on their behalf to explain the circumstances that have prevented them from being there.

An arbitrator may adjourn the matter to another date if necessary, to ensure parties are given a fair opportunity to be heard or to submit relevant evidence, or the arbitrator may deny the adjournment and proceed with the hearing.

If a party is unable to call in or have someone call in on their behalf to request the adjournment and the dispute resolution hearing proceeds, the party may apply for a review if they were unable to attend because of circumstances that could not be anticipated and were beyond their control.

Settlements

When parties have not settled the dispute between themselves prior to the hearing, section 63 of the *Residential Tenancy Act* and section 56 of the *Manufactured Home Park Tenancy Act* give authority to the Director to offer parties the opportunity to settle their disputes and to assist them with settling their disputes. Where possible, arbitrators should ask parties whether they are willing to resolve issues by way of settlement and assist parties in resolving issues in a mutually agreeable and fair manner in light of the current circumstances. Parties considering settlements should identify to the arbitrator if they are not comfortable or feeling coerced into any agreements, as once a settlement is made, it is final and binding on both parties.

Existing Practice Guidelines

Parties should be aware that due to the Residential Tenancy (COVID-19) Order and Limitation Periods (COVID-19) Order made under the *Emergency Program Act*, certain portions of the policy guidelines, or some guidelines in their entirety, will be inapplicable for the duration of the order. Before relying on a statement in a policy guideline, a party should review the *Emergency Program Act* order as those will govern if there is a contradiction or inconsistency between the order and a policy guideline. For further information, parties may contact the Residential Tenancy Branch or refer to the [Policy](#)

[Guidelines](#) page for further information, which will provide updated information as soon as practicable.

Policy direction on extending time periods is currently set out in Policy Guideline 36. Policy direction on adjourning a dispute resolution hearing is currently set out in Policy Guideline 45. Relevant excerpts from both policy guidelines are set out at the end of this document.

Arbitrators consider each application for an extension of time or an adjournment on its merits. An arbitrator may not extend the time limit for making an application to dispute a Notice to End Tenancy beyond the effective date of the Notice. An arbitrator also may not extend the general time limit for making an application for dispute resolution of two years from the date the tenancy ends or is assigned. Finally, an arbitrator may not extend the three-day time limit (or such other period of time specified by the Director) for giving the other party a copy of an application for dispute resolution or a copy of a decision to proceed with a review.

Guidelines on service are set out in Policy Guideline 12, relevant excerpts of which are set out at the end of this document.

Supplemental Practice Directives for 2020 COVID-19 Pandemic

In cases where an arbitrator has the authority to extend the time limit for making an application for dispute resolution or applying for a review, when considering a request from a landlord or tenant to do so because they were unable to meet the time limit in light of the COVID-19 pandemic, **arbitrators are directed to consider the COVID-19 pandemic as an exceptional circumstance** for the purposes of section 66 of the RTA (section 59 of the MHPTA).

While Policy Guideline 36: Extending a Time Period ordinarily requires “persuasive evidence to support the truthfulness of what is said”, in the current circumstances, a party will only need to provide a reasonable explanation of why they or someone on their behalf was unable to file the application within the required time limits. If an adequate explanation is provided, **arbitrators should exercise their discretion to ensure a party affected by the COVID-19 pandemic is not prejudiced.**

The same applies if the arbitrator has authority to waive, suspend or extend a time limit under the Limitation Periods (COVID-19) Order and is making a determination whether to do so.

In cases where evidence has not been received by the RTB or served on another party within the time limits set out in the Rules of Procedure due to the COVID-19 pandemic, arbitrators will determine whether to exercise their discretion to accept the late-filed or late-served evidence as set out in Rule 3.17. **Arbitrators will consider the circumstances, including:**

- the explanation as to why the party was not able to submit their evidence online or serve it on the other party;
- the prejudice to the party and the impact on a fair outcome if the evidence is not considered;
- any potential prejudice to another party, including prejudice that may arise from adjourning the proceedings so that the other party has an opportunity to review and respond to that evidence, if they were not served with it or served late; and
- the general principles of procedural fairness.

Where parties to a dispute resolution proceeding have consented to reschedule a hearing pursuant to Rule 5.1, but the consents are received less than 3 days before the hearing, then given the current circumstances, **the arbitrator is directed to grant an adjournment at the time of the hearing.**

Where a party to a dispute resolution proceeding has asked for an adjournment and another party does not consent, arbitrators are to consider the criteria set out in Rule 7.9 and determine the extent to which COVID-19 has impacted a party's ability to prepare and participate in a dispute resolution hearing in a fair manner. As explained in Policy Guideline 45, a party may request a hearing be rescheduled because of circumstances beyond the party's control. **Arbitrators are directed to consider the COVID-19 pandemic as a factor that is beyond the party's control when determining if an adjournment is appropriate.**

In cases where a party provides evidence that they did not pick up registered mail because of a need or legal requirement to self-isolate or quarantine, **arbitrators are directed not to consider this a refusal or deliberate failure to pick up the registered mail and so should not apply the deeming provision in section 90(a) of the Residential Tenancy Act or section 83(a) of the Manufactured Home Park Tenancy Act to find that the documents were received on the fifth day after mailing.**

Additionally, where a party does not attend a hearing and the other party's evidence is that they served the Notice of Hearing via registered mail but there is no proof it was picked up, **arbitrators should exercise their discretion to adjourn the hearing and require the Notice of Hearing and any other documents be re-served and, if appropriate, make an order allowing for service in a manner not currently permissible under the Acts in light of the Residential Tenancy (COVID-19) Order set out in the Acts or the Director's order for email service.**

While these Practice Directives are not legally binding on arbitrators, where an arbitrator decides to use an approach not outlined in these Practice Directives, **the arbitrator must explain in their decision their reasons for doing so.**

Relevant Legislation

Section 66(1) and (3) of the *Residential Tenancy Act* (RTA) and section 59(1) and (3) of the *Manufactured Home Park Tenancy Act* (MHPTA) establish the authority for director's orders on changing time limits relevant to this practice directive. Sections 58(2)(b) and 60 of the RTA and sections 51(2)(b) and 53 of the MHPTA also establish a general time limit that the Director has no discretion to extend.

RTA	<p>Determining disputes</p> <p>58 (2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless</p> <p style="padding-left: 40px;">(b) the application was not made within the applicable period specified under this Act</p> <p>Latest time application for dispute resolution can be made</p> <p>60 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.</p> <p style="padding-left: 40px;">(2) Despite the <i>Limitation Act</i>, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).</p> <p style="padding-left: 40px;">(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.</p> <p>Director's orders: changing time limits</p> <p>66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [<i>starting proceedings</i>] or 81 (4) [<i>decision on application for review</i>].</p>
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	<p>(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.</p>
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MHPTA	<p>Determining disputes</p> <p>51 (2) Except as provided in subsection (4), if the director accepts an application under subsection (1), the director must resolve the dispute under this Part unless</p> <p style="padding-left: 40px;">(b) the application was not made within the applicable period specified under this Act</p> <p>Latest time application for dispute resolution can be made</p> <p>53 (1) If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.</p> <p>(2) Despite the <i>Limitation Act</i>, if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).</p> <p>(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.</p> <p>Director's orders: changing time limits</p> <p>59 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 52</p> <p>(3) <i>[starting proceedings]</i> or 74 (4) <i>[decision on application for review]</i>.</p>
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	(3) The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.
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Relevant Residential Tenancy Branch Rules of Procedure

The following **Rules of Procedure** address late evidence and adjournments:

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*].

Rescheduling

5.1 Rescheduling of a dispute resolution hearing by agreement not less than three days before the hearing

The Residential Tenancy Branch will reschedule a dispute resolution hearing if signed written consent from both the applicant and the respondent is received by the Residential Tenancy Branch directly or through a Service BC Office not less than three days before the scheduled date for the dispute resolution hearing.

5.2 If agreement to reschedule the dispute resolution hearing cannot be obtained

When agreement to reschedule a hearing cannot be reached, a party or the party's agent may make a request at the hearing to adjourn the hearing under rule 7.8 [*Adjournment after the dispute resolution hearing begins*].

Adjourning a hearing

7.8 Adjournment after the dispute resolution hearing begins

At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

7.10 Mandatory attendance

If the dispute resolution hearing is adjourned, the arbitrator will order the parties to attend on the date when the dispute resolution hearing will be reconvened.

If a party does not attend the reconvened hearing at the scheduled time, the arbitrator may commence, continue and conclude the hearing. Pursuant to Rule 7.3, the arbitrator may issue a decision and order in the absence of a party.

7.11 Refusing a request for adjournment

If the arbitrator determines that an adjournment should not be granted, the dispute resolution hearing will proceed as scheduled.

When a request for adjournment is refused, reasons for refusing the request will be provided in the written decision.

Relevant Residential Tenancy Branch Policy Guidelines

Policy Guideline 12: Service Provisions states that the purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review, as well as to allow a party to prepare for a hearing and gather documents they may need to serve and submit as evidence in support of their position. It also states:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Policy Guideline 36: Extending a Time Period sets out the considerations for extending a time limit established by the RTA or MHPTA in exceptional circumstances. It states, in part:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* provide that an arbitrator may extend or modify a time limit established by these Acts **only in exceptional circumstances**. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Policy Guideline 45: Adjourning and Rescheduling a Dispute Resolution hearing addresses considerations when dealing with a request to adjourn and reschedule a dispute resolution hearing. It states:

Sometimes a party may request that a hearing be adjourned and rescheduled because of circumstances beyond the party's control. A hearing may be adjourned and rescheduled if the party truly had no opportunity to make alternative arrangements and if the circumstances arose close to the time of the hearing.

For example, circumstances for which a hearing might be adjourned and rescheduled include:

- a party was involved in a car accident the morning of the hearing;
- a party, or a member of their family was hospitalized unexpectedly just prior to the hearing (i.e., not because of a scheduled medical matter);
- a natural disaster occurred in the party's community; or
- a party is involved in another dispute resolution hearing scheduled for the same time.

Circumstances for which a hearing might not be adjourned and rescheduled include:

- a party is on vacation; or
- a party did not exchange evidence in a timely manner.

A party who is unable to attend a hearing for circumstances that could not be anticipated and were beyond the party's control may apply for review consideration. See Policy Guideline 24: Review Consideration of a Decision or Order.