

Understanding the Hearing Process



The branch encourages landlords and tenants to try to resolve disputes without a legal order. In a case where that doesn't happen, the branch can hold a hearing to decide the matter. Either a tenant or landlord can apply to the branch for a hearing. After the hearing, the hearing officer issues an order, and that order is legally binding.

The branch holds hearings on:

- applications for Order of Possession, to decide if a tenant must move out of a rental unit
- claims for compensation, to decide if a landlord or tenant must pay money to the other party
- decisions on specific issues or questions

The branch also has jurisdiction to hold hearings on:

- agreements made under *The Residential Tenancies Act*, and *The Life Leases Act*
- certain sections of *The Condominium Act* and *The Cooperatives Act*, specifically in deciding if a tenant living in a rented condominium unit or cooperative member must move out

The branch does not have the authority to hold hearings on:

- mortgage agreements
- occupancy arrangements set out in a marital separation agreement
- commercial leases

- rent-to-own or options-to-purchase agreements, except for the tenancy agreement part
- shared accommodation

Hearings to end tenancies

To end a tenancy, a landlord must first give the tenant a written notice on a standard branch form. The notice tells tenants when they must move out and why. If tenants don't move out on the notice, the landlord can apply for an Order of Possession and the branch holds a hearing. An Order of Possession gives a landlord the authority to enforce the written notice. Sometimes landlords apply for an Order of Possession before they give tenants the written notice to move. They then give the tenant the notice to move out at the same time as they give the Notice of Hearing.

Compensation awards after a hearing

If a landlord or tenant breaches a tenancy agreement or *The Residential Tenancies Act*, it may cause the other party to suffer a financial loss. If that happens, that party may file a claim against the one who caused it. If the claimant proves his/her case, the branch may award compensation.

Some common reasons for awarding compensation to a landlord include:

- outstanding rent, late payment fees and NSF charges
- damage to the rental unit
- the cost of cleaning a rental unit after a tenant moves out
- unpaid utility bills
- loss of rental income, advertising and storage costs when a tenant abandons a rental unit

Some common reasons for awarding compensation to a tenant include:

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- overpaid rent
- personal property lost or damaged during the tenancy
- moving expenses
- compensation for unreasonable delay of repairs

The branch **does not award compensation for pain and suffering, lost wages, outstanding loans or employment contracts** outside of the tenancy agreement.

Scheduling a hearing

A person who wants a hearing must complete the branch's standard *Claim* form or an *Application for an Order of Possession* form and deliver it to the branch. The forms are available at any office of the Residential Tenancies Branch, by fax, mail or in person.

After the branch receives the form and the required fee, a hearing will be scheduled. The branch will create a Notice of Hearing and make copies for the landlord and all tenants who are named on the hearing document.

The person who asks for the hearing is called the claimant. The claimant must serve the Notice of Hearing to the other people (respondents). A respondent is a person, one of several people, or a company, who the claimant is claiming against or trying to move out of a rental unit.

Serving the respondent

Claimants must give the respondent(s) a copy of the claim or application and the Notice of Hearing. They must give these documents at least five days before the hearing. To properly serve the documents, claimants must:

- hand them directly to the respondent
- hand them to an adult at the respondent's home
- send them to the respondent by registered mail and ensure they are received

Claimants must make reasonable attempts to give respondents the documents at least five days before the hearing date. The branch considers it reasonable if the claimant makes at least three tries at different times of day.

If claimants still can't serve respondents, they can apply to the branch for substitutional service. The claimant tells the branch how they tried to serve the respondent and suggests how they think they could be served successfully. To apply for substitutional service, claimants must complete an application and pay a fee. If approved, the branch will give the claimant a written confirmation of the approval.

What to expect when attending hearings

It's in everyone's best interest to attend a branch hearing at the set time. If you don't attend, the hearing officer will probably hold the hearing without you. That means you don't have a

chance to tell your side of the issue. If you can't attend, you can prepare a written submission. Include any evidence and information you have, and send it to the branch by noon on the day before the hearing. Ask the branch to consider it at the hearing.

A Notice of Hearing will always include either the name of a mediator from the branch or a form called *Offer to Settle*. If a mediator has been assigned, the parties can call and tell the mediator how they would like to settle the dispute; or use a branch form to write down how they would like to resolve the matter and mail it to the branch.

Either way, the information will be received by a mediator. A mediator is an impartial person who will try to help the parties come to an agreement. If the parties reach an agreement, the mediator writes it up and cancels the hearing.

If one of the parties doesn't do what was promised in the mediated agreement, the branch will issue an order to enforce it. The order is final and cannot be appealed.

Preparing for a hearing

Before a hearing:

- Review the details of the claim or application.
- Consider what information and evidence you may need to prove your side of the matter.
- Prepare evidence that relates to the claim or application.
- Make three copies of the evidence – one for each party and one for the hearing officer. Bring the original versions of everything, if possible. The hearing officer may want to review the originals.
- Evidence may include tenancy agreements, rent ledgers, rent receipts, condition reports, photographs, invoices, estimates, police reports or utility bills. Normally, a hearing officer will not consider any evidence **after** the hearing. Be sure to take everything you think is relevant to the hearing.
- Branch hearings are open to the public. You may want to view another hearing before you go to your own. It may help you prepare. You may call the branch and ask for the dates and times of some upcoming hearings.

Witnesses and lawyers

If a tenant or landlord wants the hearing officer to know something that another person witnessed, it is best to have the witness come to the hearing. A signed, written statement from a witness is also acceptable at a hearing; but direct evidence is considered better by the hearing officer.

Branch hearings are informal and most people represent themselves. Hearing officers will answer any questions you have about the hearing process. They will also make sure that both parties are treated fairly and have an equal opportunity to tell their side of the matter.

Understanding the Hearing Process *continued*

Hearing process

Check-in

- A mediator will greet you and ask you to say who you are.
- If you are the claimant, the mediator will ask you to provide your *Declaration of Service*. The declaration is a document where you swear, in writing, that you served the respondent(s).

Screening

- A screening officer is a hearing officer who reviews the list of hearings and assigns them to mediators or other hearing officers. The screening officer begins by confirming which parties are present.
- If the landlord and tenant are both present, the screening officer will ask them if they would like to try to come to an agreement. If both parties agree, a mediator will escort them to another room where they can speak privately. Otherwise, they stay in the hearing room until the assigned hearing officer escorts them to a hearing room.
- If the parties try to come to an agreement and it doesn't succeed, the tenant and landlord will return to the screening room. The branch will proceed with their hearing as originally scheduled.
- If only one party attends the hearing, the hearing will go ahead. The hearing officer will only hear from one party directly and will consider any written information that has already been given to the branch by the other party. This is called a default hearing.

The hearing

- The hearing officer will ask the people present to give their names and possibly their addresses. The hearing officer will ask any witnesses to leave the hearing and wait in reception until they are called back in.
- The hearing officer will give the parties general information about how to conduct themselves in the hearing.

- The hearing officer will ask the claimant to speak first and tell his/her side. The claimant should give the hearing officer and the respondent copies of any documents or other evidence to support the claim or application. If the claimant has witnesses, they should be called in, one at a time, to speak.
- After the claimant presents his/her case, the respondent will be invited to tell his/her side, give evidence and call witnesses.
- The parties should focus their information on the matters in dispute.
- Both parties must remain quiet and respectful while the other speaks. The hearing officer will give both parties plenty of opportunity to respond or ask questions.
- If one of the parties wants to ask a question of the other party or a witness, he/she must direct the question to the hearing officer and not ask the question directly.
- While a branch hearing is not as formal as a court hearing, everyone present is expected to act respectfully and follow the hearing officer's instructions.
- When the hearing is over, the hearing officer will say so.

The decision

- The hearing officer will consider the tenancy agreement, *The Residential Tenancies Act* and the information and evidence given at the hearing.
- The hearing officer will make a decision on the matters in dispute and will issue an order. The order will include reasons for the decision.
- The hearing officer will send the order to all parties involved.

Appeals

If you don't agree with the decision, you have the right to file an appeal. You can appeal by contacting the Residential Tenancies Commission. The contact information and the deadline for appeal will be printed on the order.

Condition reports: useful for both landlords and tenants

A condition report is a written, detailed description of the condition of a rental unit when the tenant moves in and out.

A condition report can help protect the interests of both the landlord and the tenant. A condition report can be used as evidence when there is:

- a claim against a security deposit
- a claim for compensation for damage or cleaning
- an application for an Order of Possession

Landlords or tenants can ask that a condition report be done when tenants move in, and again when they move out. A

Condition reports: useful for both landlords and tenants

continued

condition report should also be done when a unit is sublet or assigned.

At the beginning of a tenancy, both the landlord and tenant should carefully inspect the premises together. Any damages, like scratches or burns, should be noted on the form. The landlord and tenant should both sign and date the condition report and each keep a copy.

When a tenant moves out, the landlord and tenant should check the unit together. Ideally, both should sign the condition report at the end of the inspection. However, if a tenant leaves without signing the report, the landlord should still complete the report. The landlord may want to ask another tenant or neighbour to witness the condition of the unit. Damages that were not there when the tenant moved in should be noted on the condition report form. The landlord and tenant should date and sign this last report and each should keep a copy. Either one can use a condition report to negotiate on the refund of a security deposit. The branch considers condition reports when deciding claims or other matters, and generally accepts condition reports as evidence as long as:

.....
“...BOTH THE LANDLORD
AND TENANT SHOULD
CAREFULLY INSPECT THE
PREMISES TOGETHER”
.....

- the landlord gave the tenant a reasonable chance to complete a report, even if it remains unsigned
- the report isn't changed after the landlord and tenant sign it

The branch provides sample copies of condition reports and forms are also available at some stationery stores. Some landlords choose to create their own condition reports.

Need information?

ONLINE
manitoba.ca/rtb

OFFLINE
in person or by phone

Visit your branch office Monday to Friday
from 8:30 a.m. to 4:30 p.m.

Winnipeg at 302-254 Edmonton Street
or call **945-2476**

Brandon at 157-340 9th Street
or call **726-6230**

Thompson at 113-59 Elizabeth Drive
or call **667-6496**

Toll free 1-800-782-8403

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