23. Amending an Application for Dispute Resolution

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This Policy Guideline addresses the process to be followed when amending an Application for Dispute Resolution and changing the issues identified in an Application for Dispute Resolution.

A. LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation)[1] empower the director to establish and publish Rules of Procedure for the conduct of dispute resolution proceedings.

Rule 4 of the Rules of Procedure addresses amending an Application for Dispute Resolution. Rule 3 addresses serving the application and submitting and exchanging evidence.

The rules require an amendment to be related to existing claims on the initial application. Under rule 2.3 (Related issues), arbitrators may dismiss unrelated claims with or without leave to reapply.

Rule 4.7 (Objecting to a proposed amendment) allows a respondent to object to an amendment on the grounds that they did not have sufficient time to respond to the amendment.

Rule 4.2 (Amending an application at the hearing) allows an application to be amended at the hearing without serving an Amendment to an Application for Dispute Resolution (form RTB-42) if the amendment could reasonably have been predicted.

B. SEQUENCE OF EVENTS

The following sequence of events must be followed in amending an application for dispute resolution:

1. the applicant completes an Amendment to an Application for Dispute Resolution (form RTB-42);
2. the applicant submits this form and a copy of all supporting evidence to the Residential Tenancy Branch directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event to each other party not less than 14 days before the date of the hearing;

[1] *Residential Tenancy Act* s. 9; *Manufactured Home Park Tenancy Act* s. 9.

3. the Residential Tenancy Branch or Service BC accepts the Amendment to an Application for Dispute Resolution form submitted in accordance with the Rules of Procedure;
4. the applicant serves each respondent with a copy of the Amendment to an Application for Dispute Resolution form with all supporting evidence as soon as possible, and in any event, so that it is received not less than 14 days before the date of the hearing; and
5. the arbitrator, at the hearing, considers whether the principles of administrative fairness have been met through the amendment submission process and whether any party would be prejudiced by accepting the amendment(s), determines whether to accept the amendment(s) and records the determination in a written decision.

A party must be prepared to provide proof of service of the Amendment to an Application for Dispute Resolution and supporting evidence for each respondent.

C. NAMING PARTIES

Parties who are named as applicant(s) and respondent(s) on an application for dispute resolution must be correctly named. See Policy Guideline 43: Naming Parties for more information.

At the time of application, the applicant may correct names and addresses without submitting an Amendment to an Application for Dispute Resolution form.

However, once the applicant has served the respondent(s) with the Notice of Hearing Package, including the Application for Dispute Resolution, an applicant should complete and submit an Amendment to an Application for Dispute Resolution form to alter the names and contact information provided on the initial Application for Dispute Resolution.

Where both parties are present at the hearing and one party was not correctly named, the arbitrator may amend the application to show the correct name. Where a party is not present, the arbitrator may decline to amend the application, and may decline to issue a decision or order involving the incorrectly named party.

In addition, if any party is not correctly named, the arbitrator may dismiss the matter with or without leave to reapply. If the arbitrator does not dismiss the matter and issues an order, it might not be enforceable.

D. ADDING OR REMOVING A PARTY

A party may be added to an application in accordance to rules 7.12 to 7.15.

An applicant may request to remove a party through the Amendment to an Application for Dispute Resolution form. A respondent wishing to remove a party may identify this as a preliminary matter at the hearing. If any documentary evidence is required to

support such a request, it should be provided to the other party and to the Residential Tenancy Branch in accordance with rule 3 (Serving the application and submitting and exchanging evidence).

In exceptional circumstances, an applicant may make an oral request to the arbitrator at the hearing that another person be added as a party to that proceeding. If an arbitrator determines that the additional party should be added, the arbitrator may adjourn the hearing and require the applicant to provide notice of the application and supporting evidence to the additional party and require the respondent(s) to provide their evidence to the additional party as well.

If a landlord is entitled to claim compensation from an overholding tenant under the legislation, and the new tenant brings proceedings against the landlord to enforce his or her right to possess or occupy the rental unit that is occupied by the overholding tenant, the landlord may apply to add the overholding tenant as a party to the proceedings.

In determining whether to add or remove a party, the arbitrator must consider procedural fairness and the role of the person being added or removed in the circumstances that led to the request that they be added or removed as a party.

E. AMENDING THE APPLICATION PARTICULARS

An application must contain sufficient details about the dispute and where it does not, the arbitrator may dismiss the application with or without leave to reapply. If the respondent consents at the hearing, the arbitrator may allow the application to be amended to get further particulars.

Where an applicant requests an amendment of the application to give further and/or better details, the arbitrator may allow the amendment, or may refuse it.

In general, a request to amend an Application for Dispute Resolution should not be granted when the amendment results in prejudice to a party.

F. PREDICTABLE AMENDMENTS

In accordance with rule 4.2 (Amending an application at the hearing), when the amount of rent owing has increased since the time the application initially was filed, or in other circumstances that can reasonably be anticipated, the application may be amended through an oral request at the hearing. If such an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be filed or served.

G. RELATED CLAIMS

Matters identified on an application for dispute resolution must be related, in accordance with rule 2.3 (Related issues).

Examples of related claims include:

- an order of possession for unpaid rent and a monetary order for the unpaid rent; or
- an order for repairs and reduced rent because the tenant could not use all aspects of the rental unit; or
- cancellation of a notice to end tenancy for cause and a request for repairs, when there is evidence that the notice to end tenancy for cause was issued because the tenant unreasonably disturbed the landlord, and the notice was issued after the tenant made many requests for repairs.

H. UNRELATED CLAIMS

The director may determine that claims are unrelated if they fall into either of two categories: matters that have no connection, and matters that may be connected but have different statutory outcomes.

Examples of unrelated claims that have no obvious connection include:

- an order of possession because the landlord wants the property for another use and compensation for damage to the property; or
- cancellation of a notice to end tenancy because the landlord wants the property for another use and return of the tenant's personal property.

Examples of unrelated claims that may have different statutory outcomes:

- an order of possession for unpaid rent and a request to end the tenancy early. Under the legislation[2], an order of possession for unpaid rent may be granted if a tenant has not paid rent and either has not applied for dispute resolution or paid the overdue rent within five days of receiving the notice. At the same time, the legislation[3] allows a tenancy to be ended early if a tenant has acted in a way that endangers other occupants and it would be unreasonable or unfair for the landlord or other occupants to wait for a notice to end tenancy for cause to take effect
- cancellation of a notice to end tenancy for unpaid rent and a request to restrict a landlord's entry into a rental unit. The legislation[4] allows both actions. However, the recourse for cancellation of a notice to end tenancy is not related to the recourse for a request to restrict the landlord's entry into a rental unit.

I. SUFFICIENT TIME TO RESPOND TO AN AMENDED APPLICATION

Rules 3 (Serving the application and submitting and exchanging evidence) and 4.6 (Serving an amended Application for Dispute Resolution) of the Rules of Procedure

[2] RTA s. 55, MHPTA s. 48.
[3] RTA s. 56, MHPTA s. 49.
[4] RTA s. 55, MHPTA s. 48.

require that a respondent receive an applicant's evidence as soon as possible and not less than 14 days before a hearing in order to give them time to prepare a response.

When a party submits evidence in accordance with the Rules of Procedure, it may not be reasonable for the other party to address all aspects of the evidence *and* submit responding evidence at least seven days before the scheduled hearing due to the nature and quantity of the evidence. If a party raises an issue with a submission of evidence served within the timelines set out in the Rules of Procedure, the arbitrator may consider whether the party had sufficient time to respond to that evidence when determining whether to adjourn the hearing.

The arbitrator may refuse an amendment or may adjourn a hearing to allow sufficient time to respond if proceeding at the scheduled time:

- would prejudice either party;
- would not result in a fair opportunity for a party to be heard; or
- arises out of the intentional actions or neglect of the party seeking the adjournment.

J. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
B.2	Del	Deleted text referring to fees associated with amendments	2016-01-08
All	am	Amended to reflect changes to Rules of Procedure	2015-10-26
Del		Removed content on naming parties and created new Policy Guideline 43: Naming Parties	2015-10-26

Change notations
am = text amended or changed
del = text deleted
new = new section added