

## 26. Advocates, Agents and Assistants

September 27, 2013

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*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.*

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This policy guideline addresses the role of advocates, agents and assistants within the context of a Residential Tenancy Branch (RTB) dispute resolution proceeding.

### LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*<sup>1</sup> (the Legislation) state that a party to a dispute may be represented by an agent or lawyer.

According to the Rules of Procedure<sup>2</sup>, a party to a dispute resolution proceeding may also be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

### ROLES

#### Advocates

An advocate is a person who advises a landlord or tenant, attends a hearing with them and assists that party in presenting his or her case. Generally, an advocate is not named as a party to the hearing, and an order is not made against the advocate.

Some advocates are *community based legal advocates* who have specialized training in residential tenancy laws and Residential Tenancy Branch procedures.

Prior to the hearing, an advocate may help a landlord or a tenant to fill out the application for dispute resolution and to gather, organize, serve and submit their evidence. An advocate may help a landlord or a tenant to prepare his or her case for a hearing by determining strategies and arguments, seeking additional information, identifying and arranging for witnesses, and deciding how the landlord or tenant can best participate in the hearing.

An advocate who assists a party to present his or her case at a hearing typically does so by:

- Giving opening remarks and making legal arguments and submissions on behalf of the party such as presenting the facts and evidence of the case clearly and conveying how the facts and evidence relate to the Legislation.

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<sup>1</sup> *Residential Tenancy Act*, s. 74(4); *Manufactured Home Park Tenancy Act*, s. 67(4)

<sup>2</sup> *Residential Tenancy Branch Rules of Procedure*, Rule 8

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- Guiding the party through his or her evidence. This may be done through asking questions of the party and assisting the party to present his or her oral evidence and explain his or her documentary evidence.
- Asking questions of the party's witnesses for the purpose of presenting evidence.
- Asking questions of the other party and their witnesses with respect to their evidence.

At times an advocate may attend a hearing in place of a party. The advocate may be required to provide written verification that they have authority to do so. Written verification is not required where an advocate is attending with a party.

### Agents

An agent acts on behalf of a landlord or tenant, speaks on behalf of, and often appears on behalf of the party. An agent may also be a person who has acted for a party during the course of a tenancy, such as a property manager who acts on behalf of a landlord, and as such may have evidence to present at the hearing. A tenant may appoint any trusted person as their agent. Where a party chooses to attend the hearing, they are entitled to remain with their agent throughout.

Unlike advocates, agents have full authority to settle the claims and may be named as a party to the dispute.

An agent may:

- Apply for dispute resolution on behalf of the landlord or tenant<sup>3</sup>
- Prepare, organize, serve and submit evidence
- Make submissions on behalf of the party
- Ask questions of the other party and witnesses with respect to their evidence
- Settle claims

Agents may be required to provide written verification that they have been appointed by the landlord or tenant to act or appear on their behalf at the dispute resolution proceeding and that they have full authority to settle a claim. This is particularly important when the agent has not had direct involvement during the tenancy. Written verification is not required where a party attends the hearing with his or her agent.

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<sup>3</sup> When an agent applies for dispute resolution on behalf of a landlord or tenant, such as a property manager applying for an Order of Possession through the Direct Request process, the agent should attach a letter to the application explaining their role and authority to act.

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### **Assistants**

An assistant may include a translator, interpreter, helper or family member who helps a party with the dispute resolution proceeding. An assistant may help a landlord or tenant fill out an application for dispute resolution, but does not sign on their behalf. An assistant may provide translation services, interpreting the proceedings into another language or for persons who are hard of hearing or have disabilities. In addition, an assistant may help a landlord or tenant understand what's going on in the dispute resolution hearing.

When an assistant speaks at a hearing, it is not on behalf of the landlord or tenant. Rather, the assistant repeats the proceedings in a way that the party can understand them, or repeats the statements of the party in a way that other participants in the hearing can understand. An assistant does not offer new, independent or additional information.

### **ADVOCATES, AGENTS AND ASSISTANTS APPEARING AS WITNESSES**

In some circumstances, an advocate, agent or assistant may need to give testimony as a witness. A party represented by an agent or advocate may also appear as a witness. Generally, anyone appearing in a hearing as a witness is not permitted to listen to the proceedings before or after giving their evidence. However, in this circumstance an exception may be made. Whenever possible, they should be called before other witnesses so that their evidence is not influenced by other testimony.