

## 36. Extending a Time Period

Apr-04

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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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The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> 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.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

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1 *Residential Tenancy Act*, section 66.

2 *Manufactured Home Park Tenancy Act*, section 59.

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### Notice to End

#### Application for Arbitration Filed After Effective Date

An arbitrator may not extend the time limit to apply for arbitration to dispute a Notice to End if that application for arbitration was filed after the effective date of the Notice to End.

For example, if a Notice to End has an effective date of 31 January and the tenant applies to dispute said Notice to End on 1 February, an arbitrator has no jurisdiction to hear the matter ***even where the tenant can establish grounds that there were exceptional circumstances.*** In other words, once the effective date of the Notice to End has passed, there can be no extension of time to file for arbitration.

#### Application to Extend the Time to Pay Rent

An arbitrator has no jurisdiction to extend the time within which a tenant may pay overdue rent unless one of the following has occurred:

1. The landlord specifically consents to the extension of time being considered and granted.
2. The tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an arbitrator's order.

A landlord has no legal obligation to agree to extend the time to pay the rent. Any such agreement must be voluntary.

The procedure which follows after the landlord has consented to the arbitrator's hearing an application to extend the time to pay the rent is a settlement procedure. The tenant provides information which will allow the landlord to determine whether or not this is an appropriate case for an extension of time. If the landlord and tenant come to a voluntary agreement, the arbitrator will make the appropriate orders.

If a tenant applies for an extension of time and the landlord consents to having the matter heard, the arbitrator will take evidence including information about the tenant's ability to pay the overdue rent and as to when the tenant will pay the overdue rent. If the landlord concurs in the tenant's proposal for a payment plan, the arbitrator may make an order extending the time to pay the rent in accordance with the agreement of the parties.

If the landlord has applied for an Order of Possession and a monetary order for the outstanding rent, the arbitrator may issue conditional orders if these are agreed to by the parties as part of their settlement agreement. These orders are final and binding and enforceable in Court.