

45. Adjourning and Rescheduling a Dispute Resolution Hearing

Oct-15

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 considerations to take into account when addressing a request to adjourn and reschedule a dispute resolution hearing.

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.

Rules 5.1 and 5.2 of the Rules of Procedure address rescheduling of hearings. Under Rule 5.1 (Rescheduling of a dispute resolution hearing by agreement not less than 3 days before the hearing), the director's delegate ("the director") will reschedule a dispute resolution hearing if signed written consent from both the applicant and the respondent is received by the Residential Tenancy Branch not less than 3 days before the scheduled date for the dispute resolution hearing.

Under rule 5.2 (If agreement to reschedule the dispute resolution hearing cannot be obtained), if signed written agreement to reschedule the dispute resolution cannot be obtained from both the applicant and the respondent, either the applicant or the respondent or their agent may request at the hearing that it be adjourned under rule 7.8 (Adjournment after the dispute resolution hearing begins). The party should be prepared to proceed in the event that the director determines the circumstances do not warrant adjourning the hearing.

Rule 7.9 (Criteria for granting an adjournment) establishes the criteria the director will consider when determining a request for an adjournment.

B. CONSIDERATIONS

Considerations for a request to adjourn include:

1. the likelihood of the adjournment resulting in a resolution;
2. the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
3. whether the adjournment is required to provide a fair opportunity for a party to be heard; and
4. the possible prejudice to each party.

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

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1. Likelihood of settlement

If parties are actively involved in settlement activities that are not facilitated by the Residential Tenancy Branch, it may be appropriate to adjourn and reschedule the hearing.

Ways in which the parties might demonstrate that they are actively involved in settlement activities include:

- a log of negotiations, including times, dates and characteristics of settlement activities (e.g., offer made by email on January 5; responded to by registered letter on January 10). Please note the importance of activity by both parties in the settlement process. The involvement of only one party sometimes indicates that the other party wishes to proceed to dispute resolution; or
- a letter signed by both parties indicating they are trying to settle the matter without Residential Tenancy Branch involvement.

2. Intentional actions or neglect

A hearing should not be adjourned and rescheduled when an applicant is making the request because they did not exchange their evidence in a timely manner.

Similarly, if a party has scheduled another activity at the same time as the hearing, the director will consider if granting the request would prejudice the other party or if the other party's fair opportunity to be heard might be impacted.

The director may adjourn and reschedule a hearing when a party claims to require more time to review evidence.

3. Fair opportunity to be heard

The fair opportunity to be heard is one of the most significant principles of natural justice. It is central to the Canadian legal system.

Situations in which a fair opportunity to be heard might be satisfied by adjourning and rescheduling a hearing include:

- when a matter is complex, and a party requires the help of a lawyer or legal advocate; or
- when a party has a language or cognitive barrier or significant medical condition, and their assistant is not able to attend at the scheduled time.

In such situations, the party requesting the hearing be adjourned and rescheduled should provide details of the point at which the help was sought, as well as the availability of the assistant.

Parties who require an assistant or translator, must ensure they are available for the date and time of the dispute resolution hearing. The arbitrator will not necessarily

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adjourn and reschedule the hearing if a representative or translator is not in attendance. See Policy Guideline 26: Advocates, Agents and Assistants.

4. Possible prejudice to each party

A party might be prejudiced if they are likely to suffer financial loss as a result of the requested delay, or if possession of the rental unit is at issue. In such cases, the possibility of prejudice to one party must be weighed against the fairness of the opportunity to be heard.

C. CIRCUMSTANCES BEYOND A PARTY'S CONTROL

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.

D. DIRECTOR'S DECISION TO REFUSE AN ADJOURNMENT

Under rule 7.11 (Refusing a request for adjournment), the hearing will proceed if the director determines that an adjournment should not be granted. The director will provide reasons for refusing the request for an adjournment in the written decision.

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F. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	new	Drafted in response to revisions to the Rules of Procedure.	2015-10-26

Change notations

am = text amended or changed

del = text deleted

new = new section added