23. Amending an Application for Dispute Resolution

In This Guideline:

A. Takeaway

This policy guideline addresses how to amend an Application for Dispute Resolution before and during the hearing. The policy guideline also describes the process for correcting names on an application and adding or removing parties. Arbitrators will always consider whether the applicant has met the principles of administrative and procedural fairness when deciding whether to grant an amendment.

Keywords: amendment, application for dispute resolution, naming parties, related and unrelated claims, small claims limit

B. Legislative Framework

The following sections describe the director's authority to establish and publish Rules of Procedure for the conduct of dispute resolution proceedings.

Residential Tenancy Act (RTA)	*Manufactured Home Park Tenancy Act* (MHPTA)

• section 9	• section 9

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 of Procedure require an amendment to be related to the 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 if the amendment could reasonably have been predicted or the respondent consented to an amendment requested by the applicant.

C. Amending an Application for Dispute Resolution

The following sequence of events must be followed to amend 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 on the Dispute Access site or to the Residential Tenancy Branch (RTB) directly or through a Service BC office to allow service upon each other party as soon as possible, and in any event, not less than 14 days before the date of the hearing;

3. the RTB 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.

D. Naming Parties

Parties 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 absent, 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.

E. Adding or Removing a Party

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

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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 the RTB 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.

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 their 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.

F. Amending the Application Particulars

An application must contain sufficient details about the dispute; 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 or refuse the amendment.

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

G. Amending an Application at the Hearing

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In accordance with rule 4.2 (Amending an application at the hearing), an application can be amended at the hearing in two circumstances. First, an application can be amended at the hearing in circumstances that can reasonably be anticipated. These circumstances include, but are not limited to:

- when the amount of rent owing has increased since the time the application initially was filed, and
- when there is an obvious typographical error in the address or name on the application.

Amendments in circumstances that can reasonably be anticipated can be requested by the applicant or initiated by the arbitrator.

Second, an application can be amended at the hearing if the applicant requests an amendment to the application and the respondent consents to the amendment. For example, if an applicant requests that their application be amended to remove a claim, and the respondent consents to the amendment, the arbitrator's decision will record that the application was amended to remove the requested claim.

For clarity, unless otherwise agreed to by the parties, if an application is amended to remove a claim, the claim will be considered to be withdrawn, and the applicant can submit a new Application for Dispute Resolution to deal with the removed claim.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be filed or served.

Abandoning Part of a Claim that Exceeds Small Claims Limit

The legislation states that the director must not determine disputes involving claims for debts or damages if the monetary amount claimed exceeds the limit set out in the *Small Claims Act*, which is currently $35,000. Under rule 2.8, an applicant may abandon the part of their claim that exceeds $35,000, so the matter can be heard by the arbitrator.[1]

[1] See Policy Guideline 27: Jurisdiction for more information on the small claims limit: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/policy-guidelines/gl27.pdf

When a monetary claim exceeds the small claims limit, an applicant can request an amendment to their application to abandon the part of their claim that exceeds the limit at the hearing. If an applicant requests this type of amendment, the respondent does not need to consent for the arbitrator to grant it. However, a respondent can object to the amendment under rule 4.7 (see section J below).

H. 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.

I. 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: While the legislation[4] allows for both actions, 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.

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

When a party amends their application or submits evidence in accordance with the Rules of Procedure, it may not be reasonable for the other party to address all aspects of the amendment or evidence *and* submit responding evidence at least seven days before the scheduled hearing. Under rule 4.7, a party can object to an amendment on the grounds that the respondent has not had sufficient time to respond to the amended application or submit evidence in reply.

If a party objects to an amendment under rule 4.7, the arbitrator may consider whether the party had sufficient time to respond to the amendment. The arbitrator may refuse an amendment, dismiss the application with or without leave to reapply, or adjourn a hearing to allow sufficient time to respond if proceeding at the scheduled time:

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

- would prejudice either party,
- would not result in a fair opportunity for a party to be heard,
- arises out of the intentional actions or neglect of the party seeking the adjournment, or
- would otherwise result in a breach of the principles of natural justice.

K. Policy Guideline Intention

The Residential Tenancy Branch issues policy guidelines to help Residential Tenancy Branch staff and the public in addressing issues and resolving disputes under the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*. This policy guideline may be revised and new guidelines issued from time to time.

L. Changes to Policy Guideline

Section	Change	Notes	Date Guideline Changed
Del	Del	Removed content on naming parties and created new Policy Guideline 43: Naming Parties	October 26, 2015
All	Am	Amended to reflect changes to Rules of Procedure	October 26, 2015
B.2	Del	Deleted text referring to fees associated with amendments	January 8, 2016
B	Am	Amended to allow application on DMS	August 29, 2022
All	Am	Formatted to new template	October 3, 2023
G	Am	Added information about amending an application at a hearing	October 3, 2023

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G	Am	Created new subheading on small claims limit	October 3, 2023
J	Am	Amended section to improve readability	October 3, 2023
All	Am	Minor grammatical changes made throughout	October 3, 2023

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