24. Review of a Decision or Order

In This Guideline:

24. Review of a Decision or Order

A. Takeaway

This policy guideline addresses:

- the review powers of the director of the Residential Tenancy Branch (RTB);
- the stages of the review process;
- grounds on which a review of a dispute resolution decision or order may be considered;
- when the RTB may initiate, accept, refuse, or dismiss an application for review; and
- the format for conducting the review, if an application for review is not refused or dismissed (in other words, if the application for review moves to the next stage in the process).

Keywords: review, decision, order, unable to attend, new evidence, procedural error, technical irregularity or error, fraud, determine an issue

B. Related Guidelines

Policy Guideline 25: Requests for Clarification or Correction of Orders or Decisions

Policy Guideline 36: Extending a Time Period

C. Legislative Framework

The following sections describe the director's review powers for decisions and orders:

Residential Tenancy Act (RTA)	*Manufactured Home Park Tenancy Act* (MHPTA)
• sections 79 to 82	• sections 72 to 75

D. The Director's Review Powers

24. Review of a Decision or Order

Decisions and orders of the director are final and binding. The director cannot normally reopen a decision or order except as expressly provided for in the legislation.

The RTA and MHPTA provide that a party to a dispute proceeding may apply to the director to review a decision or order if:

- a party was unable to attend the original hearing or part of the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
- a party has new and relevant evidence that was not available at the time of the original hearing and materially affects the decision;
- a party submitted material evidence before the original hearing but after the deadline due to circumstances that could not be anticipated and were beyond the party's control, and that evidence was not before the arbitrator at the original hearing;
- a person who performed administrative tasks for the director made a procedural error that materially affected the result of the original hearing;
- a technical irregularity or error occurred that materially affected the result of the original hearing;
- a party has evidence that the decision or order was obtained by fraud;
- in the original hearing, the arbitrator did not determine an issue that they were required to determine; or
- in the original hearing, the arbitrator determined an issue that they did not have jurisdiction to determine.

These are referred to as grounds for review.

Even when an application for review discloses sufficient evidence of a ground for review, the director may dismiss or refuse to consider an application if accepting that evidence as true would not result in the decision or order of the director being set aside or varied.

The director may also clarify or correct a decision, or deal with an obvious error or inadvertent omission, which is the topic of Policy Guideline 25: Requests for Clarification or Correction of Orders or Decisions.

E. Stages of the Review Process

Once an application for review is accepted, it will be assigned to a delegate of the director to determine whether it should be dismissed or refused to be considered under section 81 of the RTA or section 74 of the MHPTA.

At the first stage, only the applicant's submissions and evidence are considered. The delegate essentially determines whether the submissions and evidence are sufficient for the application to continue to the next stage of the review process. No final decision is made that a ground of review has been established. The decision will set out: (1) which ground(s) of review will be proceeding to the next stage and why, (2) in what format the review will be conducted (if one is being conducted), and (3) if any ground(s) of review is not proceeding, why it has been dismissed or refused.

If an application for review proceeds to the second stage, both parties are given notice. After receiving submissions from the parties, either orally or in writing, a final determination will be made on whether a ground that permits a review of the decision is established. If no ground of review is established, the original decision or order will be confirmed.

If a ground of review is established, the review will proceed to a determination of whether the original decision or order should be confirmed, varied, or set aside. This is a determination on the merits of matters in the dispute resolution application put in issue by the ground(s) of review.

F. Grounds for Review of a Decision or Order

Under the RTA and MHPTA, the director may only review a decision or order on one or more of the following eight grounds:

1. Unable to attend

A review may proceed on this ground if the applicant provides sufficient evidence to establish that:

- The party or their representative was unable to attend the hearing or part of the hearing,
- The circumstances that prevented them from attending the hearing could not be anticipated, and
- The circumstances were beyond the party's control.

For example, an applicant may have sufficient evidence that they were unable to attend the hearing because of circumstances they could not anticipate and were beyond their control if the applicant provides:

- a document from a regulated health professional confirming the applicant was hospitalized at the time of the hearing; or
- a record of a system-wide network failure causing their cell phone to be inoperable.

This ground is not met if a party could have attended the hearing or had someone attend in their place with reasonable care and planning. The following examples would not be sufficient to allow a review:

- the party did not pick up or read a notice of a dispute resolution proceeding that was served in accordance with the statute (see for example: *Johal v. Damiano*, 2021 BCCA 197);
- the party did not arrange to have someone else attend the hearing on their behalf, either as a representative or to request an adjournment (see for example: *Powell v. British Columbia (Residential Tenancy Branch), 2015 BCSC 2046*);
- the party forgot to charge their cell phone and was unable to call into the hearing;
- the party was at home caring for a sick child, unless the party can demonstrate that this prevented them from telephoning into a hearing held by telephone conference call to request an adjournment (see for example: *Powell v. British Columbia (Residential Tenancy Branch), 2015 BCSC 2046*);
- the party intentionally hung up during a hearing held by telephone conference call;
- the party put the wrong date or time for the hearing into their calendar; or
- the party forgot to attend the hearing.

This ground of review applies where a party alleges that they were not properly served with notice of the hearing. If a party was deemed to have been served, they must provide sufficient evidence to demonstrate that the deemed service was ineffective due to no fault or neglect of their own.

2. New and relevant evidence

A review may proceed on this ground if the applicant provides sufficient evidence that the evidence:

- is new, meaning it did not exist at the time of the original hearing, or could not be discovered by the party before the original hearing if the party acted diligently;
- is credible; and
- could have materially affected the decision.

New evidence is evidence that did not exist prior to the original hearing or which the applicant was not aware of prior to the original hearing and could not have become aware of by taking reasonable steps. If the applicant knew about the evidence and could have obtained it before the original hearing, the evidence is not new. If a party knows about relevant evidence but cannot obtain it before the original hearing begins, the party should either seek an adjournment or request permission to submit the evidence after the hearing has ended but before the decision is made. If evidence was provided by a party for the original hearing, the evidence is not new.

Credible evidence is reasonably capable of belief. The evidence does not need to be completely irrefutable. When evidence can be independently verified it is more likely to be found credible.

Material affect means the evidence, if accepted, could have resulted in the arbitrator deciding a matter differently. If evidence is not relevant to a matter decided by the arbitrator, then it would not materially affect the decision.

3. Material evidence submitted late and not before the arbitrator

A review on this ground may proceed if the applicant provides sufficient evidence of each of the following:

- they submitted evidence late, but before the original hearing;
- they submitted the evidence late because of circumstances they could not anticipate and that were beyond their control;
- the evidence was not before the arbitrator at the original hearing; and
- the evidence was material to the determination of an issue in dispute.

If the evidence was submitted on time but was not before the original arbitrator, the appropriate ground of review would likely either be an administrative procedural

error or a technically irregularity or error (both explained below).

The Rules of Procedure generally require an applicant to submit evidence to the RTB and to serve it on the other party with their application for dispute resolution and, in any event, not later than 14 days before the hearing. The Rules of Procedure require a respondent to submit evidence in a single package as soon as possible and not less than 7 days before the hearing.

If a party does not meet a time limit for submitting or serving evidence and the arbitrator has the late evidence before them at the original hearing, the arbitrator will determine whether to consider the late evidence in accordance with Rule 3.17 of the Rules of Procedure. Evidence uploaded to the RTB's Dispute Access Site after the relevant time limit but prior to the original hearing will be accessible to the arbitrator.

When evidence is mailed to or submitted in person at a Service BC Office or the RTB Office after the required time limit, it may not make it to the arbitrator in time for the original hearing. When applying for a review in these circumstances, a party must provide evidence demonstrating that they were unable to submit their evidence within the applicable time period due to unanticipated circumstances beyond their control. For example, a party may not have provided evidence until the day before their hearing because they were hospitalized due to an accident prior to the deadline for submitting their evidence.

In determining whether unanticipated circumstances prevented a party from submitting evidence by the relevant deadline, arbitrators will consider when the unanticipated circumstances began, when the party was in possession of the evidence and, if there is a gap in time between the party being in possession of the evidence and the unanticipated circumstances arising, the reasons the party waited to submit the evidence.

When something unanticipated arises that will prevent a party from submitting evidence by the time limit established in the Rules of Procedure, it is expected that they will make all reasonable efforts to have someone else submit that evidence on their behalf.

If a party realizes during the hearing that the arbitrator is missing some of their evidence (whether it was submitted late or not), they should bring this to the arbitrator's attention and request an adjournment or permission to re-submit the

missing evidence after the hearing has ended but before a decision has been made.

Material evidence is evidence that is relevant to the determination of an issue in dispute and, if believed, capable of impacting the decision made on that issue.

4. Administrative procedural error

A review on this ground may proceed if the applicant provides sufficient evidence that:

- RTB staff performing an administrative task made a procedural error on the dispute resolution application file in issue; and
- the procedural error materially affected the result of the original hearing.

RTB staff perform various administrative tasks related to dispute resolution proceedings, such as creating and sending Notices of Hearing, and filing materials submitted by parties, such as requests to amend an application for dispute resolution. Sometimes RTB staff make a procedural error, such as misfiling material in the wrong dispute resolution application file.

If the applicant provides sufficient evidence to show an administrative error likely occurred, it is anticipated that an arbitrator will review any internal documents that may provide further information about whether an error occurred.

Not all errors will result in an application for review proceeding. A procedural error will materially affect the result of the original hearing if there may have been a different result had the error not occurred. This will be considered in light of the entirety of the dispute resolution proceedings.

RTB staff performing administrative tasks do not include arbitrators who make decisions about process and procedure either prior to the dispute resolution hearing or in the course of the dispute resolution hearing. Review is not available where the arbitrator made a decision at the original hearing to exclude materials.

5. Technical irregularity or error

A review on this ground may proceed if the applicant provides sufficient evidence that:

- a technical irregularity or error occurred; and
- the irregularity or error materially affected the result of the original hearing.

RTB relies on technology such as the Dispute Access Site and telephone conference calls. On occasion an error or irregularity may occur with this technology. For instance, a party may have received a confirmation that their evidence was uploaded to the system but an error in the system caused it to become corrupted and unviewable by the arbitrator. Another example would be where the conference call is cutting in and out due to a problem with the connection.

If a party becomes aware of technical issues before or during the hearing, then where possible, they should bring this to the arbitrator's attention and request an adjournment or some other modification to address the issue.

If the applicant provides sufficient evidence to show a technical irregularity or error likely occurred with RTB's technology, it is anticipated an arbitrator will review any internal RTB material that may provide further information about whether an irregularity or error occurred. If the technical irregularity or error was not with RTB's technology, only the evidence submitted by the applicant will be considered in determining whether the applicant has established this ground on a balance of probabilities.

An application for review may be dismissed if the error occurs because the party failed to follow the instructions provided with respect to using the technology rather than there being a problem with RTB's technology. Similarly, an application for review may be dismissed because of problems with an individual's technical devices, including phones or computers, if the problem could be anticipated or is not uncommon and can be avoided.

Not all technological irregularities or errors will result in an application for review proceeding. An irregularity or error will materially affect the result of the original hearing, if there may have been a different result had the irregularity or error not occurred. This will be considered in light of the entirety of the dispute resolution proceedings.

6. Fraud

A review may proceed on this ground if the applicant provides sufficient evidence that:

- information presented at the original hearing was false or material information was withheld on the original hearing;

- there is a reasonable possibility the party submitting the information would have known that it was false or that the information withheld was material; and
- the false or withheld information could have affected the outcome to the benefit of the party who submitted or withheld it (that it probably or may reasonably have tipped the scale in the party's favour is sufficient).

Fraud is the intentional use of false information to obtain a desired outcome. Fraud must be intended. An unintended negligent act or omission (e.g., making a mistake) is not fraudulent.

Parties to a dispute often have different versions of events. When an arbitrator gives more weight to the evidence of one party over another party, the arbitrator is exercising their authority to weigh evidence and make a conclusion about the evidence. Parties may disagree about what happened and it is up to the arbitrator to make findings and reach conclusions based on the evidence.

Fraud is a serious allegation. If an applicant has provided sufficient evidence of fraud, the respondent will have an opportunity to respond to those allegations before any final conclusion about fraud is made. If no response is provided, an arbitrator may draw an adverse inference against that party that they did intend to use false information or withhold material information to obtain a desired outcome.

7. The director did not determine an issue they were required to determine

An arbitrator is not required to address every detail raised by the parties during the original hearing in their decision. They also do not have to respond to every argument or make an explicit finding on each element leading to their final conclusion on an issue. In some instances, an arbitrator may have made an implicit determination. For instance, if the arbitrator does not specifically address that admission of evidence but that evidence is referred to in the decision and no party objected to the admission of evidence, the arbitrator implicitly determined the evidence was admissible.

This ground of review does not arise when the original arbitrator exercised their discretion, as set out in the Rules of Procedure, to dismiss an unrelated claim, with or without leave to reapply. In these circumstances, it is clear the original arbitrator did not fail to determine an issue and generally their finding that the claims were unrelated is not within the scope of this ground of review.

24. Review of a Decision or Order

There are two general circumstances in which this ground may arise: (1) the director completely missed determining an issue or (2) the director decided they had no authority or ability to determine an issue before them on its merits but their decision is fundamentally defective. Either circumstance means the director did not make a decision on a matter when they were required to do so. Section 58 of the RTA and section 51 of the MHPTA address generally the requirement of the director to determine disputes.

Missed determining an issue:

Sometimes an arbitrator may have accidentally missed deciding an issue before them on the dispute resolution application. The issue missed by the arbitrator must have been a key issue that was raised by the parties on the hearing or that arose in light of the parties' evidence. This could arise if the arbitrator failed to make a determination on an issue within their jurisdiction that was central to matters raised on the dispute.

Examples of this ground could include:

- A tenant's application for dispute resolution sought repairs of both a shower leak and a broken heater, and the arbitrator only addressed the broken heater;
- On a tenant's application disputing a notice to end tenancy for cause issued on the basis that the tenant had failed to comply with a material term of the tenancy agreement, the arbitrator did not determine whether the tenant had corrected the situation within a reasonable amount of time after being given notice, which was a statutory requirement that had to be met before the notice to end tenancy could be upheld. (See *Ali v. British Columbia (Residential Tenancy Branch)*, 2023 BCSC 1336);
- On a tenant's application for monetary compensation under section 51(2) of the RTA, a landlord puts forward evidence as to why they did not accomplish the purpose for which they gave the notice to end tenancy but the arbitrator did not determine whether the landlord should be excused under section 51(3) (see *Maasanen v. Furtado,* 2023 BCCA 193).

Fundamentally defective decision not to determine an issue on its merits:

An arbitrator may have concluded that they do not have legal authority to determine an issue on its merits. This ground of review does not allow the re-weighing of

evidence presented at the original hearing and, except as explained below, does not allow a reviewing arbitrator to substitute different findings of fact made or inferences drawn from the evidence by the original arbitrator. An applicant must establish that the original arbitrator's decision not to determine the merits was fundamentally defective. This means their decision could not have resulted when applying the relevant law to the original arbitrator's findings of fact, or there was no evidence before the original arbitrator that was capable of supporting the factual findings that led to that determination. For example, this ground could arise if:

- An arbitrator refused to determine the merits of an application because the damages sought were over $35,000, but the arbitrator failed to exclude the amount claimed under section 51(2) as required by section 58(2)(a) of the RTA;
- An arbitrator made an error when calculating the time limit for filing the dispute resolution application and dismissed it on this basis without considering the merits of the issues raised on the application; or
- An arbitrator decided that the issue of damages for failing to make repairs had already been adjudicated by the RTB and refused to consider the application on its merits when the prior decision only concerned three previous months of damages for failure to make repairs.

This ground does not permit a review where the original arbitrator considered the evidence and the parties' arguments on whether the RTA or MHPTA applied to their agreement or accommodation and concluded it did not, so long as there was some evidence on which that conclusion could be reached and the relevant legal test, if any, was applied in relation to those findings of fact.

For example, an original arbitrator may have made findings of fact supported by the evidence before them that a lake house was rented for two months for vacation purposes as the person renting the accommodation still retained another primary residence. On this basis, the original arbitrator concluded that the RTA did not apply because the accommodation was occupied as a vacation accommodation and so the original arbitrator did not determine any issue raised in the application on its merits. The application for review would be dismissed because the decision or order cannot be set aside or varied on the basis that the original arbitrator should have considered the evidence differently.

8. The director did not have jurisdiction to determine an issue

A review on this ground will proceed if the applicant can establish that the arbitrator

made a decision or order that was outside of the legal authority granted to them by the RTA and MHPTA.

This ground of review does not allow the re-weighing of evidence presented at the original hearing and, except as explained below, does not allow a reviewing arbitrator to substitute different findings of fact made or inferences drawn from the evidence by the original arbitrator. An applicant must establish that the original arbitrator's decision to determine the merits of the dispute resolution application or a particular issue was fundamentally defective. This means their decision could not have resulted when applying the relevant law to the original arbitrator's findings of fact, or there was no evidence before the original arbitrator that was capable of supporting the factual findings that led to that determination.

This ground does not permit a review where the original arbitrator considered the evidence and the parties' arguments on whether the RTA or MHPTA applied to their agreement or accommodation and concluded it did, so long as there was some evidence on which that conclusion could be reached and the relevant legal test, if any, was applied in relation to those findings of fact.

For instance, if the original arbitrator concluded there was a tenancy agreement rather than a licence to occupy under the MHPTA based on supported factual findings and in consideration of the legally relevant factors, then the application for review would be dismissed. A decision or order cannot be set aside or varied on the basis that the original arbitrator should have considered the evidence differently.

Conversely, if the original arbitrator found as a fact that the parties shared a bathroom (and this was not merely a temporary arrangement) but then went on to conclude the RTA applied, the review on this ground could be successful because section 4(c) of the RTA excludes these accommodations from the RTA.

The RTB does not have authority to determine certain issues. For instance, it does not have jurisdiction to apply the *Human Rights Code* or to decide constitutional questions (per sections 5.1 of the RTA and MHPTA, and sections 44 and 46.3 of the *Administrative Tribunals Act*).

Section 58 of the RTA and section 51 of the MHPTA provide that the director must not determine a dispute if the application for dispute resolution is not made within the required time period. Section 60 of the RTA and section 53 of the MHPTA set a time limit of 2 years from the date the tenancy ends or is assigned; however,

applications disputing a notice to end tenancy have much shorter time limits which can only be extended in exceptional circumstances. Under the RTA, the director also must not determine a dispute that concerns eligibility to end a fixed term tenancy under section 45.1 of the RTA (Tenant's notice: family violence or long-term care). Additionally, unless the BC Supreme Court orders otherwise, an arbitrator does not have jurisdiction to determine a dispute if the amount claimed for debt or damages is more than the monetary limit under the *Small Claims Act* (excluding amounts claimed under specified sections) or the dispute is linked substantially to a matter that is before the Supreme Court.

The RTA also does not apply to certain forms of housing, like living accommodation occupied as vacation accommodation or provided for emergency shelter (section 4) or to certain agreements, like a commercial tenancy agreement or a “rent-to-own” agreement. The MHPTA does not apply to a licence to occupy a pad site. If the parties do not have rights or obligations under the RTA or MHPTA and there is no residential tenancy agreement, the director has no authority to decide the dispute between the parties.

With limited exceptions, this ground of review can be relied on even if the issue of jurisdiction was not raised at the original hearing. This is because an arbitrator cannot act without jurisdiction (see *Wiebe v. Olsen,* 2019 BCSC 1740). One exception would be raising the issue of whether there is a tenancy under the RTA or MHPTA for the first time on review when the original arbitrator had before them evidence of exclusive possession and a fixed amount of rent. When this evidence is before an arbitrator, there is a presumption that a tenancy has been created. The burden is then on the party who says there is no tenancy to establish that (*Wiebe v. Olsen,* 2019 BCSC 1740). If a party did not provide evidence and make submissions at the original hearing to rebut the presumption of a tenancy, this ground of review does not provide the opportunity to do so (*Powell v. British Columbia (Director of Residential Tenancy Branch),* 2015 BCSC 2046).

G. Director-Initiated Reviews

The RTA and MHPTA allow the director, on their own initiative, to review an arbitrator’s decision or order.

The director may conduct a review when they become aware that a reviewable error has occurred. The director will only conduct a review when there is sufficient evidence of a ground of review. The director does not review every decision or

conduct random reviews of files for error.

Where procedural fairness requires it, the director will invite submissions from the parties before determining whether a review ought to proceed and, if so, how it should be conducted.

If the director determines that a review should proceed, the director will issue a decision notifying the parties of the basis for the review and how the review will be conducted.

H. Application for Review

A party may apply to the director for a review only once in respect of the proceeding.

Time Limits

An application for review must be made within the time limits set out in the RTA or MHPTA, as applicable, unless an extension of time for making the application is granted, which is the topic of Policy Guideline 36: Extending a Time Period.

A party must make an application for review:

- within 2 days after a copy of the decision or order is received by the party, if the decision or order relates to:
    - the unreasonable withholding of consent by a landlord to assign or sublet;
    - a notice to end a tenancy for unpaid rent (i.e., the decision cancels a notice to end tenancy for unpaid rent);
    - the landlord or tenant being granted an order of possession.
- within 5 days after a copy of the decision or order is received by the party, if the decision or order relates to:
    - a requirement to conduct repairs or maintenance;
    - the termination or restriction of services or facilities;
    - a notice to end a tenancy other than for unpaid rent (i.e., cancellation of any type of notice to end tenancy other than for unpaid rent).
- within 15 days after a copy of the decision or order is received by the party for all other matters.

24. Review of a Decision or Order

Under section 80 (2) of the RTA and section 73 (2) of the MHPTA, if a decision or order attracts two different time limits, the application must be made within the shortest period that applies. For example, according to the legislation, a decision or order related to a notice to end tenancy for cause attracts a 5-day time limit to apply for review. However, if the decision dismissed an application disputing a notice to end tenancy for cause, the director must grant an order of possession to the landlord. In that case, the decision also relates to an order of possession which attracts a 2-day time limit. The director would apply the 2-day time limit.

In exceptional circumstances, the director may accept an application for review made after the applicable time limit (see Policy Guideline 36: Extending a Time Period).

Even where there are exceptional circumstances, the director may still decide not to exercise their discretion to accept the application late. The director may consider other factors such as whether the applicant:

- did not willfully fail to comply with the time limit, and that their conduct did not cause or contribute to their failure to meet the time limit;
- genuinely intended to comply with the time limit, and took reasonable and appropriate steps to comply with it; and
- made their application as soon as was practical, under the circumstances.

If the ground for review is new evidence or fraud, the director may also consider when the evidence relevant to the ground first came into existence or became available to the applicant, when the applicant first discovered or obtained it, and what steps the applicant took to discover and obtain the evidence in a timely manner.

Full particulars and evidence are required

A decision to proceed with a review is based solely on the submissions and evidence submitted in and with the application, except where RTB is the only one with access to relevant evidence. Applications will be dismissed if they do not disclose a basis on which the decision or order should be varied or set aside (see below). The grounds in the RTA and MHPTA set a high bar for conducting a review and the review applicant must submit all evidence relating to a ground that they wish considered with the application.

This means the application must set out:

1. the ground(s) for review;
2. the particulars of the ground(s) and issues on which the review is sought (see above for details of what an applicant must establish for each ground); and
3. the particulars of the evidence on which the applicant is relying to establish the ground(s) of review.

I. Decision on application for review

When an application for review is made, the RTA and the MHPTA require the director to review the decision or order unless the director has (1) refused to accept the application or (2) dismissed or refused to consider the application. The director may delegate the authority to make these decisions.

Director may refuse to accept an application

The director may refuse to accept an application that do es not include the full particulars of the ground(s) of review or the evidence the applicant intends to rely on. The director may also refuse an application if it is not in the approved form (#RTB-2) or made in the manner approved by the director, or if the filing fee is unpaid and not waived.

Where the director refuses to accept an application, a party is not considered to have made an application under section 79(7) of the RTA or section 72(7) of the MHPTA and they may still submit an application that meets the requirements of the RTA or MHPTA.

Director may dismiss or refuse to consider application

The director may also dismiss or refuse to consider an application at any time for any of the following reasons:

- The issue raised can be dealt with by a correction, clarification or otherwise dealt with because the decision or order contains an obvious error or inadvertent omission;
- The full particulars of the issues that are the basis for the review or of the evidence on which the applicant intends to rely were not included;
- There is not sufficient evidence of a ground for review;

- There is no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied;
- The application is frivolous or an abuse of process; or
- The applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

The director's decision to dismiss or refuse to consider an application may be based solely on the applicant's written submissions.

Director must conduct a review if application not dismissed

If the director does not dismiss or refuse to consider an application for review for one of the reasons described above, then the director must conduct a review. It is important to understand that in deciding to proceed with a review, no final determination has been made as to whether the ground for review is established, or whether the decision or order should be confirmed, varied or set aside.

A final decision will not occur until after the review is concluded. In conducting the review, the respondent to the review application will be given an opportunity to be heard and to make submissions and present evidence relating to the applicable ground(s) for review.

Director may suspend decisions or orders until review is complete

If the director decides to proceed with a review, they will usually order that the original decision or order be suspended, with or without conditions, until the review has been completed if not doing so would unfairly prejudice the applicant. For example, the director may suspend a monetary order made in favour of the tenant so that the tenant may not deduct that amount from their rent payment.

A decision or order of the director may not be filed in court until the review has been concluded. Even if an order was already filed in court because the application for review was made after the time limit expired, the director can order the original decision or order be suspended. Enforcement proceedings through the courts cannot proceed until the review is completed or the suspension otherwise lifted, for instance if the conditions imposed on the suspension are not met.

J. Conducting a Review Hearing

If the director does not dismiss or refuse to consider the application for review, the

decision that the review will proceed will set out not only the relevant ground(s) of review, but also how the review is to be conducted, the issue(s) being reviewed, and whether additional evidence or written submissions are permitted. The director may conduct the review in one of three ways:

1. By reconvening the original hearing with the original arbitrator

Many reviews will be conducted by reconvening the original hearing with the original arbitrator. A review will not be conducted in this manner if procedural fairness requires a different arbitrator to hear the review, or if operational requirements of the RTB cannot accommodate this.

Depending on the ground(s) of review and the matter(s) to be determined, the reconvened hearing may be based solely on the evidence previously submitted or parties may be permitted to submit new evidence on the narrow issue(s) to be determined. The respondent to the review application will always have an opportunity to submit evidence that is relevant to the issue of whether the ground(s) for review are made out.

2. Based solely on the original record and any written submissions of the parties

The review may be conducted in writing on the original record, meaning only the evidence previously submitted for the original hearing will be considered on the review. Both parties will be given an opportunity to make written submissions to address the issue(s) arising on the review and the respondent to the review application will still have an opportunity to submit evidence that is relevant to whether the ground(s) for review are made out.

A review may be conducted in this manner when:

- the parties already had sufficient opportunity to submit evidence in relation to the issue(s) arising on review;
- oral testimony is not necessary or useful; and
- the issue(s) arising are primarily questions of law or how the existing evidence or findings of fact apply to those questions of law.

3. By holding a new hearing with a new arbitrator

A new hearing with a different arbitrator may be ordered if the director is satisfied that the content of the decision or what occurred at the original hearing

demonstrates a reasonable apprehension that the original arbitrator would be biased. This is most likely to arise where the original arbitrator made a finding that one party was or was not credible and the issue(s) on review raise questions of credibility.

Other reasons, including operational considerations, may also be the basis for the director to order a review be conducted via a new hearing with a different arbitrator.

If a review is being conducted by holding a new hearing in relation to the issue(s) under review, parties are able to submit new evidence relevant to those issue(s). The new hearing may be held in any of the formats permitted by the RTA and MHPTA and the requirements of procedural fairness. In some circumstances, that may mean the new hearing will be held in writing only.

K. Possible Outcomes After the Review

Following the review, the director makes a final determination on whether to confirm, vary or set aside the original decision or order.

Confirming a decision or order

A decision or order may be confirmed if the director determines the ground(s) for review have not been met, or if there is no basis to vary or set aside the original decision or order. This may happen even if the director has found sufficient evidence to proceed with conducting a review.

Varying a decision or order

Varying means the original decision or order is being changed as a result of the review. For example, after the review, the amount of a monetary order for damage or loss may be reduced from $4,000 to $3,000 if the director determined that $1,000 was obtained fraudulently.

Setting aside a decision or order

Setting aside means the original decision or order is cancelled and no longer enforceable. For example, an original decision may have dismissed a tenant's application disputing a notice to end tenancy so that an order of possession was issued to the landlord. After the review, the director determines the notice to end tenancy was given on fraudulent grounds. The director would set aside both the

original decision dismissing the tenant's application for dispute resolution (in effect granting their application) and the order of possession.

If a party establishes as a ground of review that the director did not have jurisdiction over any of the issues before them, then the original decision and order would be set aside.

L. 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* and the *Manufactured Home Park Tenancy Act*. This policy guideline may be revised and new guidelines issued from time to time.

M. Changes to Policy Guideline

Section	Change	Notes	Date Guideline Changed
All	New	Guideline rewritten	April 17, 2023
All	Am	Formatted to new template	September 28, 2023
All	Am	Added new review grounds, clarified existing review grounds and the process on review	September 28, 2023
H	Am	Updated to reflect amendment clarifying that if more than one review period applies, the application must be made within the shortest period that applies	November 30, 2023

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