

This policy guideline is 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 policy guideline may be revised and new guidelines issued from time to time.

This policy guideline addresses digital evidence that is submitted to the Residential Tenancy Branch or served on other parties.

A. LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*¹ (the Legislation) allow the Director to establish Rules of Procedure (the Rules). Through the Rules, the Residential Tenancy Branch establishes requirements for the exchange and submission of evidence.

Under the Rules², landlords and tenants taking part in a dispute resolution proceeding should submit evidence to the Residential Tenancy Branch electronically through the Online Application for Dispute Resolution or Dispute Access Site. Where it is not possible to submit evidence electronically, parties to a dispute resolution proceeding may also provide paper evidence in person through any Service BC location or the Residential Tenancy Branch office in accordance to Rule 3.0.3.

The Rules³ provide the Residential Tenancy Branch with the authority to convert the format of evidence as well as place restrictions on the size, format, or amount of evidence submitted or exchanged during the dispute resolution process. If evidence is not submitted in an acceptable format or quality to support a fair and appropriate dispute resolution process, Rule 3.0.7 allows the arbitrator to require the person who submitted the evidence to resubmit it in a different format or resubmit exact copies.

Rule 3.0.4 requires parties submitting digital evidence to maintain an exact copy of the evidence for at least two years after the conclusion of the dispute resolution proceeding, including reviews. It is important for parties to maintain a copy of their evidence, as the Residential Tenancy Branch will not return copies according to Rule 3.0.5.

Electronically-submitted evidence is addressed in Rule 3.10 and its sub-rules, 3.10.1 to 3.10.5. These rules detail how evidence must be organized when parties submit digital evidence to the Residential Tenancy Branch or exchange it with the other party to the dispute resolution proceeding.

Digital evidence must be labelled and have a description⁴. When serving digital evidence to the other party or when submitting it directly to the Residential Tenancy Branch or through Service BC using a digital device, a *Digital Evidence Details* form

¹ *Residential Tenancy Act*, s. 9(3); *Manufactured Home Park Tenancy Act*, s. 9(3)

² Rules of Procedure, Rule 3.0.1

³ Rules of Procedure, Rule 3.0.2 and 3.0.6

⁴ Rules of Procedure, Rule 3.10.1 and 3.10.2

(RTB-43) must be used to describe and label the evidence⁵.

According to the Rules⁶, the party submitting the digital evidence must confirm before the hearing that the other party and the Residential Tenancy Branch are able to access the evidence.

B. FILE SIZE AND FORMAT RESTRICTIONS

The Residential Tenancy Branch may restrict the size and format of files that can be submitted through the Dispute Access Site or the Residential Tenancy Branch Online Application for Dispute Resolution.

The maximum file size that can be electronically submitted is 10MB (megabytes). Parties attempting to submit evidence files larger than 10MB may consider converting the file to a different format that uses less data or to divide the file into more than one document.

Digital evidence must be submitted in an acceptable file format. Most common file formats can be used to submit digital evidence to the Residential Tenancy Branch; however, there may be some exceptions. The following file formats are not accepted:

zip, gif, rar, chm, exe, pif, application, msi, msp, com, bat, jar, msc, cmd, vb, vbs, js, jse, ws, wsf, wsc, wsh, ps1, ps1xml, ps2, pswxml, psc1, psc2, scf, inf, lnk, reg, scr, drv, hta, ade, adp, app, asa, asp, dmg, gz, tbz, pkg

C. MAINTAINING COPIES OF EVIDENCE

The Residential Tenancy Branch will not return copies of evidence submitted during the dispute resolution process.

Parties submitting digital evidence to the Residential Tenancy Branch must maintain an exact copy for their records. There may be circumstances where the format of the evidence submission is not accepted or that the quality of the upload is inadequate to support a fair and appropriate dispute resolution process. In those instances, an arbitrator may require the party who submitted the evidence to resubmit it in an acceptable format or to resubmit a copy of better quality. After a hearing has taken place, copies of evidence must be kept for at least two years after the conclusion of a dispute resolution proceeding, including reviews.

D. RELIABILITY AND AUTHENTICITY

The Residential Tenancy Branch may consider the reliability and authenticity of the digital evidence.

The person submitting the digital evidence may be questioned about its authenticity. They may be asked to demonstrate that the digital evidence is what it claims to be and that it is identical in every material respect to the original copy of the document.

⁵ Rules of Procedure, Rule 3.10.4 and 3.10.3

⁶ Rules of Procedure, Rule 3.10.5

Digital evidence can be authenticated by agreement or with oral testimony by the author or a third party.

When reliability or authenticity is challenged, the standard of proof to be applied is the balance of probabilities. The person submitting digital evidence is required to prove reliability or authenticity on the balance of probabilities, meaning that it should more likely than not to be true.

E. DIGITAL COPIES OF WRITTEN DOCUMENTS

Written documents being used as evidence should be submitted as a digital copy, when possible. Parties may opt to convert the format of their written documents by scanning or taking photographs of the document. In the absence of a scanner, parties may consider using a scanner application to aid in digitizing their documents. Scanner applications are typically used on mobile phones or tablets and help improve the image quality of documents being scanned with the device's camera.

When converting documents to a digital format, it is critical to maintain the image quality and integrity of the document to make sure that it is clear and understandable. If the evidence is unintelligible or unclear, an arbitrator may require the party who submitted the document to re-submit it or the evidence may not be considered.

F. DIGITAL EVIDENCE ON THE INTERNET

Internet information, such as a bylaw posted on a municipality's website, may be considered depending upon a variety of circumstances relating to reliability which include, but are not limited to:

- whether the information comes from an official website from a well-known organization;
- whether the information is capable of being verified; and/or
- whether the source is disclosed so that the objectivity of the person or organization posting the material can be assessed.

It is up to the Residential Tenancy Branch to determine what significance, if any, that information posted on the Internet would have on the issues to be decided. If the Internet-based evidence is not sufficiently reliable, it may not be considered or it may be given little weight by an arbitrator.

G. DIGITAL PHOTOGRAPHS

To be considered, the party submitting digital photographs must demonstrate that:

- the photograph fairly and accurately represents the facts; and
- there is no intention to mislead.

When a landlord or tenant submits a digital device that is full of images, they must satisfy the Residential Tenancy Branch that the above criteria are met with respect to each photograph.

As with any digital evidence, the party submitting the photographs must take steps to ensure that all parties can access or view them and that the photos are clear, legible and numbered. As with all digital evidence, a written description of the numbered photographs should be submitted with the printed evidence.

H. AUDIO RECORDINGS

For an audio recording to be considered, it must:

1. be properly authenticated by a witness capable of doing so;
2. be a complete, or reasonably complete, recording of the transaction or statement in respect of which it is offered;
3. not be misleading or confusing;
4. be of sufficient quality as to be intelligible; and
5. add valuable information that is not available in printed form.

Audio recordings that violate privacy laws⁷ or that are obtained illegally may not be considered.

Sometimes, an audio recording will start and stop, omitting parts of a sequence of events. These recordings are not complete in the sense that they omit parts an ongoing sequence of events or statements in a conversation. Audio recordings that have gaps are less likely to be found to be sufficiently reliable to be considered, since it may not be possible to determine whether they are misleading. Even if they are admitted, they may be accorded little weight by the arbitrator.

Use of transcripts of audio recordings

Transcripts of audio recordings may be submitted as evidence alongside the recording itself. Factors to be considered when deciding whether or not to permit the use of transcripts include:

1. the length of the audio recording;
2. the measure of its assistance to understanding the contents of the recorded statement; or
3. the ability to assist in deciding the matter.

I. VIDEO RECORDINGS

To be considered, the party submitting the evidence must demonstrate that:

- the video recording fairly and accurately represents the facts; and
- there is no intention to mislead.

Factors that can be used when considering video recordings as evidence are:

1. the authenticity of the video recording;

⁷ See the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act* at www.bclaws.ca.

2. the quality of the video and audio reproduction, and its reliability in relation to a matter on the application for dispute resolution;
3. the presence or absence of relevant material in the video; and
4. whether the information in the recording is available in other forms, and whether it adds significant value to the body of evidence.

Video recordings that violate privacy laws⁸ or that are obtained illegally may not be considered.

As is the case with all digital evidence, video recordings must be authenticated before being admitted into evidence. The evidence must be a fair and accurate representation of the events depicted on it. Authentication of video recordings can be provided by the person who actually created the video recording, by a person who was present when the video recording was created and who can attest to its authenticity, by the person who submitted the evidence or by evidence from other witnesses. The person or persons who authenticate the video recording must be in a position to give evidence about how the video recording was made, where and what it depicts, when it was made, and that the depiction it contains is a fair and accurate representation.

Video recordings must be of good quality and give a clear picture of events. Video recordings may be edited so long as the editing does not have the effect of making the recorded evidence misleading.

J. EMAILS AND TEXT MESSAGES

The party submitting digital copies of email or text messages must, by oath or affirmation, state it is:

1. authentic. Alternatively, the party may provide a witness capable of doing so;
2. a fair and complete copy of the original transmission; and
3. not misleading or confusing.

Proving that an intended recipient did receive an email relies on a statement from that person. It is important not to confuse the fact that the recipient's mail server may have received an email (e.g., by generating an auto-reply message) with the recipient themselves actually downloading the message, at which point they are considered to have received it. In the absence of a denial of receipt, the email may be considered to have been received by an arbitrator.

K. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	Am	Reformatted on September 14, 2017.	2017-09-23
All	New	Significant revisions made to reflect changes to Rules of	2017-09-23

⁸ See the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act* at www.bclaws.ca.

42. Digital Evidence

Sept-17

		Procedure and updates to the Online Application Process	
A	Am	Updated to reflect changes to Rules of Procedure.	2017-09-23

Change notations

am = text amended or changed

del = text deleted

new = new section added