43. Naming Parties

Sep-22

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 naming parties to an Application for Dispute Resolution. If any party is not correctly named, the delegate of the Director of the Residential Tenancy Branch ("the director") may dismiss the matter with or without leave to reapply or may amend the Application for Dispute Resolution.

A. LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation)[1] require a tenancy agreement to include the correct legal names of the landlord(s) and tenant(s). Other documents, such as condition inspection reports and Notices to End Tenancy, also require correct legal names to be used.

The Legislation[2] also requires Applications for Dispute Resolution to include the full particulars of the dispute that is subject to the dispute resolution proceedings.

Parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named.

B. INDIVIDUALS AS PARTIES

To enforce Residential Tenancy Branch orders, the applicant must use the correct legal name of an individual respondent. In most instances, the applicant should be able to rely on the name a respondent has provided on a document requiring a legal name.

The individual's full legal name should be used on the Application for Dispute Resolution. Individual names that include initials or titles may not be enforceable.

For example, the Application for Dispute Resolution should name "John William Smith" or "John Smith," not "John W. Smith" or "Dr. Smith."

When an individual uses an alias, it is best to include the full legal name as well as the alias. For example, the Application for Dispute Resolution should name "Mei Chung also known as (AKA) May Chung."

It is up to the applicant to ensure that a party is properly named so that any order granted is enforceable. The director may be unaware that a party is not properly named and may issue the order using the name set out in the application. Where an individual

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[1] *Residential Tenancy Act* (RTA), s. 13 and s. 52(e); *Residential Tenancy Regulation*, s. 20(1)(a); *Manufactured Home Park Tenancy Act* (MHPTA), s. 13 and s. 45(e).

[2] RTA, s. 59(2); MHPTA, s. 52(2).

is not properly named, the director may dismiss the Application for Dispute Resolution with leave to reapply unless the other party is present. In that circumstance, the director may amend the Application for Dispute Resolution.

C. BUSINESSES AS PARTIES

To enforce Residential Tenancy Branch orders, the applicant must use the correct legal name of a respondent who is a limited liability company, corporation, or partnership.

If the party is a registered corporation or a limited liability company, then the full legal name of the corporation or company should be used on the Application for Dispute Resolution, including designations like Incorporated, Inc., Limited, Ltd., Corporation or Corp. (or the French language equivalents).

A sole proprietorship or a business that is not a registered corporation or limited liability company is not considered a legal person. Because of this, these types of businesses should not be listed on their own as a respondent. When a party is doing business as a particular named entity, the Application for Dispute Resolution can name just the proprietor, or it can name the proprietor and the business name used, for example: "John Smith DBA (or doing business as) Garden Apartments," or "John Smith COBA (or carrying on business as) Garden Apartments."

An Application for Dispute Resolution that names a partnership will be enforceable against the partnership. If an applicant is also seeking an order against the individual partners on the basis of the *Partnership Act*, the individual partners should be named, and each served with a copy of the Application for Dispute Resolution.

It is up to the applicant to ensure that a party is properly named so that any order granted is enforceable. The director may be unaware that a party is not properly named and may issue the order using the name set out in the application. Where a business is not properly named, for example, "Garden Apartments" instead of "Garden Apartments Ltd.," the director may dismiss the Application for Dispute Resolution with leave to reapply unless the other party is present. In that circumstance, the director may amend the Application for Dispute Resolution.

D. NAMING AN ESTATE OF A PERSON WHO HAS DIED

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate should be named. If the deceased is a respondent to an Application for Dispute Resolution, the personal representative should be served.

The personal representative may be the person named as executor in the deceased's will or the person who has been approved by the court to administer the estate by way of an estate grant.[3]

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[3] *Interpretation Act*, s. 29.

An estate can be named as follows: "John Smith as Personal Representative of the Estate of Mary Jones, Deceased."

If a personal representative has not yet been approved or an applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be used on the application with an indication that they are deceased (for example, "John Doe, deceased"). At the hearing, the director may amend the Application for Dispute Resolution to reflect the personal representative who is acting for the estate.

E. CORRECTING A DECISION OR ORDER WHERE A PARTY IS NAMED INCORRECTLY

Applicants are responsible for ensuring their Application for Dispute Resolution names the parties using their correct legal names. If parties are incorrectly named, any orders issued through the dispute resolution process may not be enforceable. The Provincial Court has found it does not have the authority to amend an order of the Residential Tenancy Branch to correct the name of a person.[4] The Provincial Court's only role in a residential tenancy matter is to enforce orders as they were made.

Under the Legislation[5], the director may deal with an obvious error in a decision or order by issuing a correction. However, the director must not correct an error unless it is just and reasonable to do so in all the circumstances.

An obvious error could include a decision or order that uses the incorrect legal name of a landlord or tenant, as the director would not have intended to make a decision or order that is unenforceable.

If an applicant relies on the name a respondent provided in a document requiring a legal name, and the name provided by the respondent was incorrect, the director may correct the decision or order to reflect the correct legal name. The director may also refer the matter to the Residential Tenancy Branch's Compliance and Enforcement Unit for an investigation into the party's contravention of the Legislation and to consider possible administrative monetary penalties.[6]

When an applicant incorrectly names a party and could have avoided the mistake by exercising due diligence, the director is less likely to issue a correction as it may not be just and reasonable in the circumstances. For example, the director may decide not to correct an order that is unenforceable because the applicant named a party as "Dave Johnson" on the Application for Dispute Resolution but the legal name on the tenancy agreement was "David Johnston." In this situation, the applicant could have avoided the error by confirming the party's legal name from the tenancy agreement and there may

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[4] *Anderson v. Re/Max Management Solutions* (unpublished), BC Provincial Court, February 4, 2020.
[5] RTA, s. 78(1)(c), (1.1), and (3); MHPTA, s. 71(1)(c), (1.1) and (3).
[6] RTA, s. 87.1 and 87.3; MHPTA, s. 80.1 and 80.3.

be prejudice to the respondent if the name is changed after the fact. If both the applicant and the respondent request the correction to a name, it is likely it will be made.

If a correction is not issued, the applicant can file a new application for dispute resolution, assuming they are still within the time limits for making an application. The matter will not be barred on the basis of *res judicata*. *Res judicata* means "a matter decided." It is a legal doctrine that prevents a person from litigating a matter a second time. One of the requirements is that the parties to both proceedings must be the same. This requirement would not be met where a correction is not issued because the parties are legally not the same.

For example, if an applicant named the respondent as "Dave Johnson" and they were issued an order that was not enforceable because "David Johnston" is the respondent's legal name, the applicant can file a new application for dispute resolution naming the respondent by their legal name. "Dave Johnson" and "David Johnston" are not legally the same party. In this context, "Dave Johnson" is not even a proper party to the dispute resolution matter. Therefore, a new application using the correct legal name would not be barred on the basis of *res judicata.*

However, there is the possibility the director may find such an application to be an abuse of the dispute resolution process, depending on the circumstances. This doctrine can be applied when a person seeks to re-litigate a matter even if all of the requirements for *res judicata* are not met. There are no specific legal requirements before a claim can be found to be an abuse of process. It is not necessary for an applicant to be acting maliciously or in bad faith before their claim can be dismissed. The onus is on the respondent to establish that the director should exercise their discretion to dismiss a claim on this basis.

F. PARTIES NOT SERVED

Where one or more parties named on an Application for Dispute Resolution have not been served with the original application and/or a Request to Amend an Application for Dispute Resolution form, the director's decision and order should indicate this. With the applicant's consent, the director may continue the hearing solely against the parties who were served or dismiss the matter with leave to reapply.

Attendance at the hearing by a party may be viewed as an admission of service.

G. UNCERTAINTY ABOUT HOW TO CORRECTLY NAME PARTIES

If an applicant is not certain how to correctly name the respondent(s), they may wish to obtain independent legal advice.

H. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	new	Portions of previous Policy Guideline 23: Amending an Application for Dispute Resolution related to naming parties created as new policy guideline	2015-10-26
B	new	Added for clarity	2015-10-26
D	am	Amended to reflect *Wills, Estates and Succession Act*	2015-10-26
G	new	Added for clarity	2015-10-26
A and D C E	am am new	Updated for clarity Updated information on sole proprietorships Added for clarity	2022-09-09

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