

44. Format of Hearings

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 that the Residential Tenancy Branch applies when determining whether to schedule a hearing in a format other than by telephone conference call.

A. LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation)¹ gives the director the authority and discretion to hold a hearing in person, in writing, by telephone conference call, video conference or other electronic means, or by any combination of these methods.

The Legislation² empowers the director to establish and publish Rules of Procedure for the conduct of dispute resolution proceedings.

The Legislation³ gives the director's delegate ("the director") the authority to make a decision without holding a hearing, based on written submissions only, for applications for Orders of Possession and Monetary Orders concerning unpaid rent. This is referred to as the direct request process and is only available if the tenant does not dispute the 10 Day Notice to End Tenancy for Unpaid Rent and does not pay all rent owing within five days of receiving the Notice.

The director has the discretion to conduct a hearing in the manner the director considers appropriate. Most hearings are routinely scheduled as telephone conference calls although some matters are routinely determined through a written hearing.

B. WRITTEN HEARING

The director routinely schedules a written hearing:

- when considering an administrative penalty;
- when considering an Application for Review Consideration; and
- when parties are known to have an abusive and/or litigious relationship.

For the direct request process, the director makes a decision without holding a hearing, as noted below.

¹ *Residential Tenancy Act*, (RTA) s. 74(2); *Manufactured Home Park Tenancy Act* (MHPTA), s. 67(2).

² RTA, s. 9; MHPTA, s. 9.

³ RTA, s. 55(4); MHPTA, s. 48(4).

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C. DIRECT REQUEST PROCESS

The direct request process is limited to a landlord's application for an order of possession and a monetary order when a tenant has been given a 10 day notice to end tenancy for unpaid rent and has neither disputed the notice nor paid the rent in full within five days of receiving the notice. In this circumstance the director makes a decision based only on the landlord's written evidence.

D. REQUEST FOR A SPECIFIC HEARING FORMAT

Rule 6.4 (A party may request that the hearing be held in a specific format) of the Rules of Procedure allows a party to request that a hearing be held in a format other than the one routinely set by the director.

An applicant must submit such a request in writing to the Residential Tenancy Branch directly or through a Service BC office with supporting documentation within three days of the notice of hearing being made available by the Residential Tenancy Branch. A respondent must submit such a request in writing with supporting documentation within three days of receiving the notice of hearing or being deemed to have received the notice of hearing.

The director may consider requests for a hearing in an alternate format in limited circumstances including when:

1. there is a history of abusive interactions;
2. a party has a medical condition that creates a barrier to participation in an oral hearing;
3. there are physical, geographical or language barriers for which an oral hearing would result in prejudice to one or both parties;
4. there is evidence that both parties have legal representation; or
5. there are a large number of applicants and/or respondents, and they do not self-identify a lead spokesperson or agent.

When considering a request for a hearing in a format other than telephone conference call, the director will consider the reason for the request based on the supporting documentation provided and why the party is unable to participate in a telephone conference call or be represented by someone who could.

If one party requests a hearing in a specific format, the director will provide the other party an opportunity to make submissions on the hearing format to ensure procedural fairness.

1. History of abusive interactions:

The director may consider holding a written hearing where a party expresses abusive language and behaviours, or concern that the other party is excessively abusive when interacting with the party.

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Evidence of abusive interactions may include:

- a police report of assault between the parties;
- a notation in a previous decision that one or both parties used abusive language or behaviour in the hearing; or
- a protection order held by one party limiting contact with the other party.

2. *Medical condition:*

The director may consider holding a hearing in writing, in person or by video conference or other electronic means where a party provides evidence that they have a medical condition that will limit their ability to participate in a teleconference hearing. In most instances, the director anticipates that someone with a significant medical condition would be represented at an oral hearing.

Examples include:

- for a person whose speech has been impaired by a stroke or other significant event, a letter from their doctor, speech-language pathologist, specialist or other medical professional stating the party's medical condition and how it limits their ability to participate in an oral hearing; and
- for a person whose hearing is impaired, a letter from their doctor, audiologist, speech-language pathologist, specialist or other medical professional stating the party's medical condition and how it limits their ability to participate in an oral hearing.

3. *Physical, geographical or language barriers:*

The director may consider holding a written hearing where a party provides evidence that there is a physical, geographical or language barrier that will limit their ability to participate in a teleconference hearing.

Physical barrier examples include:

- a party is incarcerated and unable to access a telephone at the time of the hearing; and
- a party is outside of telephone service areas.

Geographic barrier examples include:

- a party is a member of the Armed Forces and is stationed in an active war zone; and
- a party is on a humanitarian mission in an active war zone.

Language barrier examples include:

- a situation where a party is not fluent in English and provides evidence of their unsuccessful attempts to obtain interpreter assistance for an oral hearing.

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4. Both parties have legal representation:

The director may schedule a matter as a written hearing or consider a written request to hold a written hearing where there is evidence that both parties have legal representation.

Examples include:

- the applicant provides evidence that both the applicant and the respondent have legal representation in the form of legal counsel or a legal advocate
- the respondent provides evidence that both the applicant and the respondent have legal representation in the form of legal counsel or a legal advocate

5. Large number of participants

The director may schedule a matter as a written hearing where there is a large number of participants. There are two situations where there are a large number of participants in a hearing:

- a landlord is seeking a common outcome involving a large number of tenants, such as an additional rent increase; or
- tenants have joined applications to seek a common outcome against a landlord, such as disputing a rent increase or seeking repairs to a building or waste management system in a Manufactured Home Park.

When there is a large number of participants, the director works with the tenants or landlords to identify a lead applicant or small group of applicants who are able to speak on behalf of all applicants. In such cases, the applicants should submit a document that records the consent to have a lead applicant or small group of applicants act on their behalf. Alternatively, the applicants may have the request to join applications record the consent.

- Tenants may use the *Tenant's Request to Join Applications for Dispute Resolution* (form RTB-19) for that purpose. Landlords may use the *Landlord's Request to Join Applications for Dispute Resolution* (form RTB-18) for this purpose.

Circumstances in which the director may consider holding a written hearing for a dispute involving a large number of tenants include:

- similar applications in the past two years; and/or
- demonstrated animosity between the landlord and tenants, evidenced by newspaper reports, police reports, correspondence.

E. DECISION

When an applicant or respondent requests a hearing in a format other than telephone conference, the request must be made in writing.

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The other party must be given an opportunity to respond to the request. The director will consider submissions from both parties on the hearing format and make a decision.

The director will record the decision in the form of a letter that becomes part of the Notice of Hearing Package.

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