

## 51 EXPEDITED HEARINGS

May 2019

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 Expedited Hearings.

### A. LEGISLATIVE FRAMEWORK

Subsection 9(3) of the *Residential Tenancy Act* (RTA) and *Manufactured Home Park Tenancy Act* (MHPTA) allow the director of the Residential Tenancy Branch to establish and publish rules of procedure for the conduct of dispute resolution proceedings between landlords and tenants. Under Rule 10, the director has established an expedited hearing process for certain types of disputes.

### B. EXPEDITED HEARINGS

Ordinarily, the soonest an application for dispute resolution can be scheduled for a hearing is 22 days after the application is made. This helps ensure a fair process by giving the respondent ample time to review the applicant's case and to respond to it. However, there are circumstances where the director has determined it would be unfair for the applicant to wait 22 days for a hearing. These are circumstances where there is an imminent danger to the health, safety, or security of a landlord or tenant, or a tenant has been denied access to their rental unit. The director has established an expedited hearing process under Rule 10 to deal with these cases (see [RTB Rules of Procedure](#)).

The expedited hearing process is for emergency matters, where urgency and fairness necessitate shorter service and response time limits.

#### Applying for an Expedited Hearing

Expedited hearings are usually limited to applications for dispute resolution for:

- an early end to tenancy under section 56 of the RTA and section 49 of the MHPTA,
- an order of possession for a tenant under section 54 of the RTA and section 47 of the MHPTA, or
- emergency repairs under section 33 of the RTA and section 27 of the MHPTA.

The director automatically considers these applications for an expedited hearing. The director's delegate may contact the applicant to confirm dispute details before setting the matter down for an expedited hearing.

No other applications are usually considered for an expedited hearing, however there are rare circumstances where an application other than one of those listed above may be set down for an expedited hearing. For example, emergency repairs do not include an inoperable elevator that is preventing a tenant with mobility issues from accessing or

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leaving their rental unit. However, the director may determine it would be unfair to the tenant to wait 22 days for a hearing and set it down for an expedited hearing.

Applications that are for monetary claims or orders of possession for unpaid rent are not considered for expedited hearings. (There is already an expedited process for undisputed notices to end tenancy for unpaid rent called a Direct Request. See [Policy Guideline 39: Direct Requests](#).)

An application for an expedited hearing cannot be combined with another claim, such as a request for monetary compensation (except a request for repayment of the filing fee). For example, if a tenant applied in a single application for both emergency repairs and monetary compensation for damage to their personal property due to a plumbing leak, the matter will not be set down for an expedited hearing. To engage the expedited hearing process, the tenant would need to file one application for emergency repairs, which would be expedited, and a separate application for dispute resolution to pursue the monetary claim which would be scheduled regularly.

### **Amending an Application for an Expedited Hearing**

Except where required in the circumstances, an expedited hearing is not a way to bypass normal service and response time limits to get a quicker hearing. Therefore, once an application for an expedited hearing is made, it cannot be amended except at the hearing with the permission of the arbitrator.

This is to prevent applicants from “queue jumping”, for example, by applying for emergency repairs and then amending the application to request repairs for the replacement of a fridge or oven which is not considered an emergency. Another example is applying for an early end to the tenancy and then attempting to amend the application for an order of possession for unpaid rent and a monetary order for unpaid rent. These types of applications are not appropriate for the expedited hearing process.

At an expedited hearing, an attempt to amend an expedited hearing application from a request for emergency repairs to regular repairs or from an early end to tenancy to a request for an order of possession for unpaid rent will almost always result in the arbitrator dismissing the application and the applicant having to start the application process over from the beginning.

### **Scheduling an Expedited Hearing**

If the director is satisfied that an application meets the criteria for an expedited hearing, the hearing is scheduled in accordance with [Rule 10 of the rules of procedure](#). The director will usually try and schedule the application for a hearing within 12 days from the date it is received or as soon as possible if an expedited hearing slot is not available within 12 days.

In extremely urgent cases, the director may set the matter down to be heard as soon as six days after the application is made subject to an available hearing slot. The

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director has the discretion to decide what constitutes an extremely urgent case. In general, these are cases where there is a demonstrable immediate danger or threat. For example the director may determine a case is extremely urgent and set it down early if:

- a tenant has assaulted the landlord and there is sufficient evidence provided with the application (such as a video recording of the assault, witness statements, or a statement from a police officer), or
- a tenant has been rendered homeless by the landlord who has illegally locked out the tenant and there is sufficient evidence provided with the application (such as witness statements, or a statement from a social worker).

### Serving Documents Related to an Expedited Hearing

Section 71(2)(a) and (c) of the RTA and section 64(2)(a) and (c) of the MHPTA allow the director to order that documents must be served in a manner the director considers necessary, despite the methods of service provided for in sections 88 and 89 of the RTA and sections 81 and 82 of the MHPTA, and that a document not served in accordance with those sections is sufficiently given or served for purposes of the Act.

**The director has issued a [standing order](#) on service establishing the methods of service that parties to an expedited hearing must use, unless ordered otherwise by the director.**

The director may require an applicant to confirm the method of service they will use to serve the application documents and evidence on the respondent before setting the application down for an expedited hearing. Once served, the applicant must complete an **#RTB – 9 Proof of Service: Notice of Expedited Hearing - Dispute Resolution Proceeding** form and submit it to the online intake system, the Residential Tenancy Branch, or a Service BC office at least two days before the hearing.

Failure to serve the respondent as required or as ordered by the director, or to submit the #RTB – 9 Proof of Service form, may result in the application being dismissed or the hearing being adjourned to a later date.

### Responding to an Application for an Expedited Hearing

Expedited hearings are for serious matters and are scheduled on short time lines and on short notice to the respondent. Short notice means the respondent has less time than usual to prepare for the hearing and serve and submit evidence. When a respondent is served with a notice of dispute resolution proceeding package for an expedited hearing, they must act promptly and without delay if they plan on responding. Unless ordered otherwise, **the respondent must respond using a method of service permitted in the director's [standing order](#) on service.**

A respondent's request for an adjournment of the expedited hearing on the grounds they did not have time to review the applicant's submissions, will usually be denied if the

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arbitrator determines the respondent did not act promptly and without delay in responding or the respondent disobeyed the director's standing order on service.

The respondent must not avoid service of the dispute resolution proceeding package. If the director determines that a respondent has avoided service, did not act promptly and without delay in responding, or disobeyed the director's standing order on service, the director may resolve the dispute solely on the applicant's submissions.

### C. TYPES OF EXPEDITED HEARINGS

#### Early End of Tenancy

Under section 56 of the RTA and section 49 of the MHPTA, a landlord may apply to end a tenancy early and obtain an order of possession if it would be unreasonable or unfair to the landlord or other occupants of the property or park to wait for a notice to end tenancy to take effect under section 47 the RTA or section 40 of the MHPTA [landlord's notice: cause], and a tenant or their guest has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or manufactured home park;
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- put the landlord's property at significant risk;
- engaged in illegal activity (see [Policy Guideline 32: Illegal Activities](#)) that:
  - has caused or is likely to cause damage to the landlord's property,
  - has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property or manufactured home park,
  - has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or
- caused extraordinary damage to the residential property or manufactured home park.

Applications to end a tenancy early are for very serious breaches only and require sufficient supporting evidence. An example of a serious breach is a tenant or their guest pepper spraying a landlord or caretaker.

The landlord must provide sufficient evidence to prove the tenant or their guest committed the serious breach, and the director must also be satisfied that it would be

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unreasonable or unfair to the landlord or other occupants of the property or park to wait for a Notice to End Tenancy for cause to take effect (at least one month).

Without sufficient evidence the arbitrator will dismiss the application. Evidence that could support an application to end a tenancy early includes photographs, witness statements, audio or video recordings, information from the police including testimony, and written communications. Examples include:

- A witness statement describing violent acts committed by a tenant against a landlord;
- Testimony from a police officer describing the actions of a tenant who has repeatedly and extensively vandalized the landlord's property;
- Photographs showing extraordinary damage caused by a tenant producing illegal narcotics in a rental unit; or
- Video and audio recordings that clearly identify a tenant physically, sexually or verbally harassing another tenant.

### Order for Emergency Repairs

Under section 33 of the RTA and section 27 of the MHPTA, emergency repairs are defined as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of property, and made for the purpose of repairing:

- major leaks in pipes,
- major leaks in the roof (RTA only),
- damaged or blocked water or sewer pipes,
- damaged or blocked plumbing fixtures (RTA only),
- the primary heating system (RTA only),
- damaged or defective locks that give access to a rental unit (RTA only), or
- the electrical systems.

Emergency repairs do not include things like repairs to a clothes dryer that has stopped working, mold removal, or pest control.

In some cases, tenants may perform emergency repairs themselves in accordance with section 33 of the RTA or section 27 of the MHPTA. If a tenant has performed emergency repairs and is seeking monetary compensation, they should apply for a monetary order, not emergency repairs.

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Tenants should first attempt at least twice by phone to notify their landlord if the rental unit or home site requires emergency repairs and give the landlord reasonable time to make repairs. Following up immediately with a written request for these repairs is advisable to show when the tenant notified the landlord of the need for emergency repairs in case an application to for emergency repairs is necessary.

**Order of Possession for Tenant**

Under section 54 of the RTA and section 47 of MHPTA, a tenant may apply for an order of possession for the rental unit or home site if they have a tenancy agreement with the landlord. These types of applications may arise when a tenant and landlord have signed a tenancy agreement and the landlord refuses to give the tenant access to the rental unit, or the landlord has locked the tenant out of their rental unit.

Tenants should be aware that the director may not be able to grant an order of possession to a tenant in circumstances where another renter is occupying the rental unit; however, the tenant may file a separate application for monetary compensation from the landlord for any damage or loss they may have suffered.

If a tenant applies for an order of possession, they must be able to prove that a tenancy agreement exists between the tenant and landlord.

**D. CHANGES TO POLICY GUIDELINE**

<b>Section</b>	<b>Change</b>	<b>Notes</b>	<b>Effective Date</b>
		New guideline	2019-05-24

## Change notations

am = text amended or changed

del = text deleted

new = new section added