

EVIDENCE

Residential Tenancy Dispute Resolution Service (RTDRS)

What is evidence?

“Evidence” is the legal word for things that prove what happened during the tenancy. Evidence may be what you and your witnesses say in the hearing (testimony). Evidence may also be documents, photographs and digital recordings.

The RTDRS does not follow the Alberta Rules of Court regarding evidence. Instead the Tenancy Dispute Officers follow the *RTDRS Rules of Practice and Procedure*.

What should I do with my evidence?

If you are the Applicant, you must prove everything that you claim in your application. If you fail to prove your claims to the satisfaction of the Tenancy Dispute Officer, they may be dismissed.

Applicants will provide their evidence to the RTDRS when filing the application. The evidence becomes part of the *application package* that will be served on the Respondent(s). Additional evidence that becomes available after the application package is served on the Respondent may be served on the RTDRS and the Respondent at least 24 hours prior to the hearing.

If you are the Respondent, you have a choice to make about your evidence:

- You can defend against the Applicant's application by serving your evidence on the Applicant and the RTDRS at least 24 hours before the hearing. If you do not serve the evidence in time, the Tenancy Dispute Officer may not allow you to use it at the hearing.
- You can file a counter-application to make claims of your own. See *Counter-application tips* for more information.

If you have a telephone hearing see the *Fax Filing tips* for more information.

What if I don't give my evidence to the other party prior to the hearing date?

A fair hearing requires that both parties have the evidence available to them in advance of the hearing. This allows the parties to review all of the evidence and properly prepare themselves for the hearing.

If the Tenancy Dispute Officer finds that evidence was not properly served, they may not allow the evidence to be used or they may adjourn the matter to allow the evidence to be reviewed.

What types of evidence can I submit?

The Tenancy Dispute Officer will only consider evidence that is relevant and reliable. This means that the Tenancy Dispute Officer decides if the evidence:

- will help them to make a decision on the application before them,
- is accurate and honestly describes what it is meant to prove and
- determines what weight (how much it will count) will be given to the evidence.

It is always best to provide original documents to the RTDRS. Although photocopies are accepted for filing an application, the Tenancy Dispute Officer may require the original to determine authenticity of the document.

The following are types of evidence to include in your application/ defence package:

Important documents: Lease agreements, letters / e-mails / texts exchanged between the parties, warning letters given to the tenant or written request letters given to the landlord, witness statements, inspection reports, termination notices or notices to vacate, statement of account/ledger, police and/or health authority reports/orders,

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magazine/flyer/internet ads showing replacement values or ads to re-rent premises, bank statements and bank notices to prove NSF or late mortgage fees to prove losses.

Receipts and estimates: Receipts are used to support monetary claim amounts. For example, a bill or invoice for repairs, rent receipts, utility bills, security deposit receipts, quotes and original purchase receipts to assist in calculating the depreciation of items such as carpets.

Photographs: Write a number on the back of each photograph along with a brief explanation of what is in the photograph, the photographer's name plus date and time that the photograph was taken. Cell phone photographs and videos will not be accepted at the hearing. These can be downloaded to a CD or DVD in formats compatible with Windows Media Player, such as JPEG, MP3, WAV and WMV.

If you have a telephone hearing, do not fax the RTDRS your photographs. The quality of faxed photographs is often extremely poor. The RTDRS recommends that you submit photographs by printing them in colour or downloading them to a CD or DVD.

Other physical evidence: The RTDRS will not accept physical or biological evidence. For example, a piece of carpet, broken lock, live or dead bugs, dog hair, mold samples, etc. Instead, you should submit photographs and a written description of the item.

Digital Evidence: This includes photographs, audio recordings, video recordings or other material provided in an electronic form that cannot be readily reproduced on paper. Examples of this are recordings of conversations and videos of inspections/damage including evidence from cell

phones. These can be downloaded to a CD or DVD in formats compatible with Windows Media Player, such as JPEG, MP3, WAV and WMV.

What if I have witnesses?

Witnesses are people who have first-hand knowledge of information that is related to the claims in the application. This means that they personally observed or heard something that may assist the Tenancy Dispute Officer to make a decision on your application. Witnesses cannot give opinions unless they are an expert witness (explained below).

Applicants must complete the witness section of the application form so that RTDRS staff can estimate how much time the hearing will require. It is not usually necessary to have multiple witnesses to give the same testimony.

Witnesses must be available in person or by telephone at the time of the hearing. RTDRS must be notified at least 24 hours in advance if a witness will attend the hearing by telephone. Witnesses must be available until called, excused by the Tenancy Dispute Officer or until the hearing ends.

During the hearing you will be responsible for questioning your witness to bring out what they know about the matter. You should prepare the questions for your witness before the hearing. Keep the questions short and simple. The other party has the right to cross-examine your witness by asking them questions to clarify inconsistencies in facts.

What is an expert witness?

An expert witness has education, training, skill, or experience in a particular subject area. This expertise allows them to assist the Tenancy Dispute Officer to understand technical or

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specialized areas of knowledge. Unlike other witnesses, an expert witness is allowed to give their opinion. An expert witness should not also be a witness to tenancy events that are involved in the application. Examples of expert witnesses are engineers, doctors and health inspectors.

What if my witness won't attend?

If you intend to call a witness but are not sure that they will attend the hearing, such as a police officer or a health inspector, you may make an application for the RTDRS to issue a *Notice to Attend*. A Tenancy Dispute Officer will issue a *Notice to Attend* if they find that the witness may provide relevant information about the application. This notice compels witnesses to attend and is similar to a subpoena. See the *Affidavit in Support of a Notice to Attend* on the RTDRS website.

Will my witnesses be able to attend the hearing with me?

At the beginning of the hearing, the Tenancy Dispute Officer will determine the role of the hearing participants. Witnesses are usually asked to leave the hearing room until it is their turn to testify. Representatives, agents, and observers will be allowed to stay in the hearing room for the full hearing. If a participant stays in the hearing room they will usually not be allowed to testify or, if this is allowed, it may affect the weight that the Tenancy Dispute Officer gives to their testimony.

What is hearsay evidence?

Witnesses should only testify to what they have personally observed and heard. If a witness repeats what they were told by someone else, that is called "hearsay evidence." This type of evidence may not be allowed or given much weight by the Tenancy Dispute Officer.

Can my witnesses provide written statements instead of attending the hearing?

Written statements by witnesses may not be allowed or given much weight by the Tenancy Dispute Officer. This is because there is no ability to cross-examine the witness if they are not present at the hearing.

Can additional evidence be submitted after the hearing?

Evidence cannot be submitted after the hearing is concluded and the order is filed at the RTDRS.

How can I get my original evidence back?

Original evidence may be returned to the party that supplied it after the 30 day appeal period has expired.

For further information on the RTDRS, please visit our website at www.rtdrs.alberta.ca. Click on *Rules of Practice and Procedure* for full details on how the RTDRS works.