



Residential Tenancies Resolving Disputes

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<http://www.dal.ca/faculty/law/dlas/public-legal-education.html>

Applications

RTA section 13

Should a landlord and tenant come into conflict either party can make an Application to the Director of Residential Tenancies to resolve the issue – provided it is one covered by the RTA. An Application **must** be filed within **1 year** of the termination of the tenancy.

The Application form can be found here:

<http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-J-application-to-director.pdf>

Once completed the Application must be filed in person at your local Access Nova Scotia office. A list of Access Nova Scotia offices can be found here: <http://www.gov.ns.ca/snsmr/offices.asp>

If you are filing an Application on behalf of a client you must have them complete a Notice of Representation form authorizing you to file the Application on their behalf.

Application Process

RTA section 27 & RTA regulation 33

There is a fee for filing an Application. The fee can be waived for those in receipt of the the Guaranteed Income Supplement and income assistance recipients. Be sure your client has proof of income when filing their Application if they are seeking to have the filing fee waived.

Upon filing the Application the Applicant will receive a hearing date, and a Residential Tenancy Officer will be assigned to the matter. The Residential Tenancy Officer (RTO) is an employee of Access Nova Scotia tasked with resolving disputes under the RTA. RTO's are granted the power to make decisions on behalf of the Director of Residential Tenancies.

Service

RTA section 15

After filing an Application it must be served upon the landlord. Service is done either personally **or** via registered mail.

An affidavit of service must be completed, and returned to the Access Nova Scotia office where the Application was filed. The Affidavit of Service proves that the opposing party received a copy of the Application.

The affidavit of service form can be found here:

<http://www.gov.ns.ca/snsmr/pdf/ans-rtp-form-L-affadavit-of-service.pdf>

If a tenant is having difficulty serving a landlord the RTO assigned to the file should be contacted immediately so that the RTO can decide on an alternative method of notifying the landlord of the Application.

Mediation

RTA section 16

RTO's are authorized to attempt to reach a mediated settlement between the parties provided that both parties consent to mediation.

A mediated settlement is an agreement reached between the parties without the need for a hearing.

Sometimes an RTO will attempt to reach a mediated settlement between the parties prior to the hearing date. However, the more common scenario is that the RTO will ask both parties if they are willing to attempt to reach a mediated settlement in person immediately prior to the commencement of the hearing.

Should the parties reach a mediated settlement the RTO will put it in writing, and it will be signed by both parties.

A mediated settlement will contain an itemized list of what each party has agreed to do. The contents of a mediated settlement **cannot** be appealed to Small Claims Court.

Should either party not do what they agreed to do in the mediated settlement an Order from the Director of Residential Tenancies can be issued against that party.

If an Order is issued as a result of a party not doing what they agreed to in the mediated settlement that Order **can** be appealed to Small Claims Court.

Hearings

If mediation is unsuccessful a hearing will begin immediately.

The hearing will be presided over by the designated RTO. The RTO is in charge of the procedure for the hearing. Hearings will proceed by having the Applicant present their case followed by the Respondent.

Both parties will be allowed to call witnesses, and present relevant evidence (i.e. documents, pictures, etc...)

In addition to presenting their case both parties should be given the opportunity to ask the opposing party questions; however this will be up to the RTO presiding over the hearing.

Remember that there is no transcript of these hearings so keeping good notes is important!

Decisions

RTA section 17(1)

After the hearing the RTO will issue a written decision within **14 days**.

As agreed upon at the hearing the decision will either be mailed to the parties or be available to be picked up at the Access Nova Scotia location where the hearing took place.

Remedies

RTA section 17A

Under the *RTA* there are various remedies that can be granted in an Order issued by an RTO. The Application form contains a full list of remedies available to both tenants and landlords.

For tenants one of the most important remedies that can be granted is financial compensation. Financial compensation can be ordered to compensate a tenant for actual expenses incurred or in the form of what is often called 'rent abatement' (note that on the Application form it is called 'relief from rent owing').

Rent abatement is a reduction in the amount of rent a tenant otherwise owes to their landlord. It can be ordered to compensate a tenant for a landlord's breach of the *RTA*. It is commonly ordered in instances where a landlord has failed to carry out repairs. In those circumstances a tenant can request that a portion of their rent paid during the time the repairs were not carried out be returned to them.

Appealing an Order

RTA section 17C

An Order of the Director of Residential Tenancies can be appealed to Small Claims Court within **10 calendar days** of the date it was issued.

To start an Appeal at Small Claims Court an Appellant must file a Notice of Appeal at their local Small Claims Court. (*insert hyperlink to Notice of Appeal*)

If your client misses the 10 day appeal period it **can** be extended. An Application to extend the time to appeal can be obtained from the Small Claims Court. (*insert hyperlink to Application to extend time*)

A list of Small Claims Court locations can be found here:

http://www.courts.ns.ca/smallclaims/cl_location.htm

There is a filing fee for filing a Notice of Appeal. If an Appellant's income is sufficiently low the fee can be waived by completing a waiver of fees form:

http://www.courts.ns.ca/general/fee_docs/fee_waiver_form_june02.pdf

After filing a Notice of Appeal with the Small Claims Court it must be served personally upon the Respondent **and** the Director of Residential Tenancies.

The Small Claims Court clerk will provide a service deadline on the Notice of Appeal form when it is filed.

The Director of Residential Tenancies is served by serving **any** employee of the Access Nova Scotia office where the hearing took place.

After serving both the Respondent and the Director the affidavits must be sworn, and returned to the Court. The affidavits can be sworn by a clerk of the Small Claims Court. Swearing an affidavit simply means that the person who prepared it swears that its contents are true before a Commissioner of Oaths who signs the affidavit.

Small Claims Court Hearing

The 'appeal' before Small Claims court is actually an entirely **new hearing** (sometimes referred to as a 'trial de novo'). This means that any evidence presented, arguments made, etc...before the RTO at the first hearing **must** be all done again at Small Claims Court.

New evidence not presented to the RTO can be introduced at the Small Claims Court hearing as long as it is relevant.

The Small Claims Court hearing will be presided over by an Adjudicator who is a lawyer.

The hearing will be much more like court, but still less formal than an actual court appearance.

The Appellant will present their case first followed by the Respondent. Each party may call witnesses and present relevant evidence, and will be given an opportunity to cross examine the opposing party and their witnesses.

Just like before the RTO there is no transcript of a Small Claims Court hearing so it is important to take good notes!

Following the hearing the Adjudicator has **14 days** to issue their decision.

Appeal to Supreme Court

RTA section 17(E)

A party to a decision from the Small Claims Court may appeal it to the Supreme Court of Nova Scotia within **30 days** of the date of the Adjudicator's decision.

There are only limited bases upon which an appeal to the Supreme Court can be made:

- i. Jurisdictional error;
- ii. Error of law; or
- iii. Failure to follow the requirements of natural justice.

Should your client wish to appeal a Small Claims Court decision you **must** consult a lawyer.

Enforcing Orders

RTA section 17(B)

After the 10 day appeal period has expired, a decision of the Director of Residential Tenancies can be made into an enforceable Small Claims Court Order.

To request that an Order of the Director be made into a Small Claims Court Order you must contact the RTO who held the hearing.

After making your request the Small Claims Court will send the requisite forms. At this point you have several options for enforcing the judgment against the landlord.

Alternatively if you are seeking to obtain an Order following a Small Claims Court hearing you must contact the Court where the hearing was held, explain what it is you wish to obtain and the Court will send the necessary forms.

Options

Basically there are three options for a party attempting to enforce a Small Claims Court Order:

- i. **Execution Order** – this allows the Sherriff to seize wages, money from bank accounts, property which can be sold, etc... This option requires information about the debtor, and there is a fee payable to the Sherriff which will be added to the amount recoverable. Before the Sherriff will accept an Execution Order it must be registered with the Personal Property Registry. The Personal Property Registry is an electronic registry which allows creditors to register their financial interest in personal property. Individuals may register a judgment at the self-serve kiosk at any Land Registration Office, or hire a service provider to register it for them for a fee. Further information on registering a judgment can be found here: <http://www.novascotia.ca/snsmr/access/land/personal-property-registry/registry-in-personal-property-registry.asp>
- ii. **Certificate of Judgment** – registering a Certificate of Judgment with the Land Registry Office limits the debtor’s ability to mortgage or sell property they currently own, or may own in the future, without first satisfying the Court Order. It creates what is known as a ‘lien’ against the debtor’s real property. There is a fee to register the Certificate of Judgment, and the lien on the debtor’s property will expire after 5 years. An interactive map with Land Registry Office locations can be found here: <http://www.novascotia.ca/snsmr/offices.asp>
- iii. **Recovery Order** – this allows the Sherriff to seize property that was ordered to be returned to a party. A party seeking to enforce a Recovery Order must provide the Sherriff with as much detail as possible about the property in question (i.e. a description, its location, etc...). There is also a fee payable to the Sherriff.

All of the preceding options are available to either Tenants or Landlords who obtain a Small Claims Court Order.

Retaliation

RTA section 20

A decision maker under the *RTA* (an RTO or Small Claims Court Adjudicator) **may** refuse to make a decision in favour of a landlord (including setting aside a Notice to Quit) if they think the landlord is retaliating against a tenant attempting to enforce their rights under the *RTA*.

The onus of proving retaliation rests upon the tenant alleging it. In order to successfully claim a landlord is acting in retaliation a tenant must prove the following:

- i. That a right exists under the *RTA*;
- ii. That the tenant was attempting to exercise that right; **and**
- iii. That the landlord acted in retaliation for that attempt.

Acknowledgement

Dalhousie Legal Aid Service would like to gratefully acknowledge and thank the [Law Foundation of Ontario](#) for its financial support of LEAP.

Disclaimer

This document contains general legal information and not legal advice. **If you need advice about a specific legal problem then you should contact a lawyer.** If you will have difficulty affording a lawyer then you should contact [Nova Scotia Legal Aid](#) or [the Legal Information Society of Nova Scotia's lawyer referral service](#).

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