

Residential Tenancies Policy Manual

Policy Number: 05-001
Subject: Service of Application
Chapter: Service of Documents

Purpose The purpose of this policy is to provide information and guidance about:

- how to properly serve an application for dispute resolution;
- how to verify that the address for service has been provided by the person being served and that the application for dispute resolution and the initial notice of hearing had been sent to that address; and
- how to properly complete the affidavit of service.

Policy An important principle of natural justice is notice. Notice refers to respondent's right to be provided with information about the following so that the respondent may prepare a defence:

- the claims being made against the respondent;
- the date, time and place of the hearing; and
- the format of the hearing.

This principle is so important that should a hearing proceed without proper notice being given to all the parties, any resulting decision would be invalid.

10 Day Notice Period

Each respondent named in the application must be served individually by the applicant with a copy of the application and notice of hearing not less than ten clear days prior to the date of the hearing. In calculating time under these rules, the number of days between two events is counted by excluding the days on which those events happen.

The ten day rule for serving notice of the application on each respondent prior to the hearing may be waived only with the consent of the respondent.

If a hearing is rescheduled, the director will notify all parties of the rescheduled hearing date. However, if a party does not attend at the original hearing, the absent party will not be entitled to any further notice in the proceeding.

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Service Methods

Applications are to be served:

- personally to the other party;
- giving it to a person, 16 years of age or older, who apparently lives with the respondent;
- prepaid registered mail or express post to an address provided by the other party;
- electronically to an electronic address provided by the other party;
- courier service at an address provided by the other party;

If after reasonable efforts the applicant has been unable to service the other party, by the approved methods of service, the applicant may apply to the director for an order of substituted service.

Time Limit for Service

Where an Application for Dispute Resolution has not been served within three months after it was filed with the Residential Tenancies Office, it expires, but the applicant may file another application.

Procedure Overview

Personal Service

To serve a document by means of personal service means that the applicant or someone acting on behalf of the applicant, will hand the document directly to the respondent. The person serving the document must be satisfied that the person being handed the document is in fact the respondent. If the party refuses to take the document, the server may drop the documents at the feet of the respondent.

Give it to a Person, 16 Years of Age or Older, who Apparently Lives with the Respondent

The document may be served by leaving a copy in a sealed envelope addressed to the respondent at the place of residence with anyone who appears to be 16 years of age or older and appears to live in the same household.

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Registered Mail; Express Post

Registered Mail is a service offered by Canada Post to customers who require proof of mailing and/or proof of delivery. The service secures the signature of the addressee or the addressee's representative and provides the sender with a mailing receipt, a copy of the signature and the date upon delivery.

Express Post is a service also offered by Canada Post with next-day and 2-day shipping. All items are tracked, delivery times are guaranteed and the delivery status can be checked online or sent to your mobile device. Where the document(s) is sent by registered mail or express post, it will be considered served after the fifth day of mailing.

Electronic Address

An electronic address may be an email address, cellular telephone number or other electronic address provided to the applicant by the respondent. Where the document(s) is sent electronically before 4:00pm, the document will be considered served the same day. Where the document(s) is sent after 4:00pm, the document will be considered to be served the next day that is not a weekend or holiday.

Courier

Courier service is a private company offering fast delivery of high value goods or important documents. Couriers may also provide security and tracking of the item.

Respondent is a Company

Where the respondent is a company, a copy of the application may be served by giving it personally to a director, manager or other officer of that company or by leaving it at, or sending it to the registered office of that company by an authorized method of service.

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Substituted Service

An applicant who is unable to serve the required documents as permitted under the Act may apply to the director of Residential Tenancies for authorization to serve the documents through an alternate method. Applicants applying for substituted service must demonstrate their failed attempts to serve the documents through the methods permitted and identify why the proposed method of service will be successful.

Affidavit of Service

Validating Service

The Affidavit of Service must be submitted to Residential Tenancies Office prior to the hearing date. The person who served the document(s) must complete and submit to the Residential Tenancies Office an Affidavit of Service for each respondent served. The affidavit must state the name of the respondent as well as the name of the person served (if different from the name of the respondent), the address of service, the method of service, as well as the actual date and time of service.

Personal Service: Verification of personal service may be additionally supported by a witness statement or testimony or by submitting into evidence an audio or video file of the service that is date and time stamped.

Registered Mail / Express Post: Where service is achieved by registered mail or express post, the applicant must submit verification that the address was provided by the respondent, provide the tracking number and tracking report issued by the delivery service provider for the document(s). Verification of service may be additionally supported by submitting: (i) a copy of the most recent correspondence with the respondent using the address; or (ii) the rental agreement where the respondent provided the applicant with the address.

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Courier: Where service is achieved by courier, the applicant must submit verification that the address was provided by the respondent, provide the name and address of the courier, the bill of lading as well as a report issued by the courier detailing the delivery information (date and time of delivery; signature of recipient; name of recipient). Verification that the address was provided by the respondent may be supported by submitting: (i) a copy of the most recent correspondence with the respondent using the address; or (ii) the rental agreement where the respondent provided the applicant with the address.

Electronic Service: Where service is achieved electronically, the server must submit: (i) verification that the electronic address was provided by the respondent; and (ii) provide verification that the document(s) was sent to that address.

Verification that the electronic address was provided by the respondent may be supported by:

- submitting a copy of the signed rental agreement identifying the electronic address of the respondent (e.g. email address or cell phone number);
- submitting a copy of the most recent email correspondence from the respondent to the applicant clearly associating the email address with the respondent and indicating the date and time the correspondence was received;
- submitting a copy of the downloaded text message correspondence with the respondent clearly associating the email address with the respondent and indicating the date and time the correspondence was received. Screen shots of text message exchanges are not acceptable;
- submitting confirmation notices for electronic transfer or receipt of monies to or from the respondent where the electronic address of the respondent is provided to the applicant and the confirmation notice is date and time stamped.

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Verification that the document(s) was served to the proper electronic address may be verified by:

- submitting a copy of the sent email to the respondent's address showing the attached document and showing the date and time of the sent email;
- submitting a copy of the downloaded text message exchange indicating the cell phone number to which the message and documents were sent as well as the date and time of the sent message. Screen shots of the text message exchanges are not acceptable.

Service will be determined to be valid where the adjudicator is satisfied that:

- the application has been served by an authorized method; and
- the application came to the notice of the respondent; or would have come to the notice of the respondent, except for the respondent's own attempts to evade service.

Forms & Form Letters

Application for Dispute Resolution (RT-2018-00053)
 Affidavit of Service (RT-2018-00055)
 Application for Substituted Service

Legislation

Residential Tenancies Act, 2018 s. 42.(3), (4), (5), (6), (7)
 Commissioner for Oaths Act
 Public Inquiries Act
 Rules of the Supreme Court - s.6; s.29

Definitions

Affidavit of Service: A form completed to show how and when a document was served. The affidavit of service must be signed before a Commissioner for Oaths, a Justice of the Peace, etc.

Commissioner for Oaths: A person appointed by the Provincial Government who can take statements under oath and receive solemn declarations.

Notice: Informing the respondent about the application, what is being claimed, the date, time, place and format of the hearing.

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Tracking#: The number issued by the postal or courier service that allows the sender to track mail sent by the service provider.

Tracking Report: Documentation detailing the routing and delivery status of mail sent by the service provider.

X-Reference Policy 05-005 Substituted Service

Policy Developed September, 2000

Revision History January, 2002
March, 2019

Other Resources Administrative Law, Third Edition, David J. Mullan, Professor of Law, Queen's University, S. 268.

Rules of the Supreme Court, 1986 under the *Judicature Act*

- Rule 6 - Originating and other Documents: Service
- Rule 29 - Applications