

**Residential Tenancies Guides**

# Resolving Disputes

**Residential Tenancies Program**

[novascotia.ca/rta](http://novascotia.ca/rta)

1-800-670-4357

# Resolving Disputes

This document is intended as an information guide only. For specific information, refer to the Residential Tenancies Act and relevant regulations at [novascotia.ca/rta](http://novascotia.ca/rta). You may also wish to seek legal advice for your specific circumstance.

## The Landlord/Tenant Relationship

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The tenant/landlord relationship begins when 1 of the following 3 things occurs:

1. The tenant and landlord have made an agreement for the tenant to occupy the rental unit on the promise of payment
2. The tenant has paid or agreed to pay rent to the landlord
3. The tenant moves in the rental unit and has paid or agreed to pay rent to the landlord

Most of the time, there are very few problems between the landlord and tenant. The following can prevent any problems from happening:

- Read *Renting Guide* at [novascotia.ca/rta](http://novascotia.ca/rta)

- Use the Standard Form of Lease so you cover all the necessary issues. Find this on our website under forms.
- Check references for your potential landlord or tenant to find out what other people think of them.
- Inspect the rental unit together (landlord and tenant) before move-in day. If you note any problems, put them in writing. Use the Rental Unit Condition Report while you make the inspection. Find this on our website under forms.

## Resolving Disputes

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Landlords and tenants should work together to resolve disputes.

The lease and/or the Residential Tenancies Act and Regulations may contain the solution. Review these first.

Also, review and understand your rights and responsibilities, as well as the rights and responsibilities of the other party. Find this information at [novascotia.ca/rta](http://novascotia.ca/rta) or by calling the contact centre at 1-902-424-5200 (toll-free 1-800-670-4357).

Put your complaint in writing and deliver it to the other party. Follow up in person or by telephone. Many times, landlords and tenants can work out issues on their own.

## How to Get Help

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When landlords and tenants can't resolve disputes on their own, they can apply to the Director of the Residential Tenancies Program for mediation or a hearing.

### Before you apply, ask yourself

- have you made every effort to resolve the problem together?

- is it really a landlord/tenant problem?
- do you have enough evidence to back up your complaint?
- can you find and serve papers on the other party?

## How to make an Application to Director:

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### Step 1 – Complete and Submit a Form J: Application to Director

You can find this form at any Access Nova Scotia Centre, online at [novascotia.ca/rta](http://novascotia.ca/rta) under forms, or by calling 1-800-670-4357. Submit the form at any Access Nova Scotia Centre.

An application fee must be paid at that time to complete the application process.

You may be eligible to have the fee waived if

- you receive the Guaranteed Income Supplement, Income Assistance, or Family Benefits
- you believe your financial circumstance makes it difficult to pay the fee

For more information on the fee waiver process, visit [beta.novascotia.ca/apply-waive-fee-application-director-residential-tenancies](http://beta.novascotia.ca/apply-waive-fee-application-director-residential-tenancies).

Your Application to Director will be assigned to a Residential Tenancy Officer who will oversee the mediation and/or the hearing process.

### Step 2 – Serve the Other Party and Prove That You Did So

You must serve the other party (or parties) you filed against with a copy of the application, including the Notice of Hearing. You will be given copies of these when you apply.

You will also be given a Certificate of Service which you must complete after serving the other party or parties. This certificate certifies you served the other parties. Mediation can begin after the Certificate of Service has been completed and returned to the Residential Tenancies Program.

You must return the Certificate of Service to the Residential Tenancies Program within seven days of making the application. The application may be closed if the certificate is not returned within seven days.

### Notes for the respondent:

If you are served with an Application to Director, you must carefully review the documentation. The application you receive contains information about the problem and what the other party wants. There is also an information sheet that explains the hearing process.

If you do not participate in the hearing, the officer may proceed in your absence and issue an order. If you are unable to participate, you have two choices:

- Make a request in writing that the officer reschedule the hearing to a different day or time. Your request may or may not be granted.
- Appoint someone to participate in the hearing on your behalf. If you appoint someone, you must authorize them in writing to represent you. Your authorization must be forwarded to the Residential Tenancy Officer prior to the hearing.

You also have the right to submit a counterclaim application to have your own issues addressed. This will be heard at the same time as the original hearing. To submit a counterclaim, you must file your own Application to Director within seven days of receiving your Notice of Hearing. The counterclaim must be processed and served before the scheduled hearing so it can be heard at the same time as the original application.

### **Step 3 – Mediation**

Mediation is a confidential process where the Residential Tenancy Officer acts as a neutral third party to help tenants and landlords come to an agreement with each other. Mediated solutions are usually preferable because both sides can potentially achieve their goals without having a hearing. Mediation is completely voluntary, so if one of the two parties is not interested in mediation, the process will go directly to a hearing.

#### **During the process, the mediator**

- focuses on helping the landlord and tenant solve the problem
- oversees the discussion, identifies common ground, and helps the landlord and tenant look at possible solutions
- makes sure the agreement is allowed under the Residential Tenancies Act
- keeps discussion going

#### **The mediator does not**

- decide who is right or wrong during mediation
- solve the problem
- offer legal advice
- judge guilt or innocence
- take sides

Mediation can take place in advance of the hearing, or just before the hearing. Both parties must have been served with a Notice of Hearing and be interested in mediation before it can take place. If one of the two parties is not interested in it, the dispute goes directly to a hearing.

Once a mediated agreement is reached, it is legally binding. If one of the parties defaults on the agreement, the terms of the agreement can be turned into an Order of the Director.

#### **To do this, the party**

- completes a Form DR3: Convert Mediated Settlement into Order of the Director (under forms at [novascotia.ca/rta](http://novascotia.ca/rta))
- files it with the director
- sends a copy to the other party

Once the mediated settlement is turned into an Order of the Director, it can then be converted into a small claims court order, which can be enforced as any other court order.

If a mediated settlement cannot be reached, the officer will hold a hearing.

### **Step 4 – Hearing**

A hearing is scheduled when the Application to Director is filed. A hearing will not go forward if the parties (landlord and tenant) resolve the dispute on their own or a mediated settlement is reached.

The Residential Tenancy Officer conducts hearings by telephone using a toll-free number. The toll-free number and conference code are assigned when the application is made and are listed on the Notice of Hearing. Hearings are less formal than regular court procedures.

### To prepare for a hearing:

- Arrange for any necessary witnesses to participate in the hearing.
- Gather important papers, documents, and other evidence, such as leases, letters, sworn statements, receipts, photographs, or invoices, etc., to submit.

### The evidence you submit should be relevant, reliable, and in a legible format.

- Relevant evidence relates directly to the issues identified in the Application to Director.
- Reliable evidence is an accurate representation of events that has not been distorted.
- Legible evidence should be readable, clear, and easy to understand.

You must submit your evidence to all parties named in the Application to Director and to the Residential Tenancies Program at least five days before the hearing. Evidence will not be accepted after the hearing.

Find more information about how to submit evidence, and what types of evidence are admissible, read the Evidence Policy found at [novascotia.ca/rta](http://novascotia.ca/rta).

Hearings are usually scheduled for an hour; therefore, it is important to introduce evidence thoroughly but briefly.

### Tips:

- Have notes ready about how you will make your case and the order in which you will present evidence.
- Don't repeat statements already made.
- Make all necessary points in the initial presentation of your evidence.
- Don't have multiple documents or photographs that are essentially the same.

### The hearing generally proceeds like this:

4. The parties presenting information are affirmed. All testimony is taken under oath or is affirmed to.
5. The person who filed the application (the applicant) normally presents their previously submitted evidence first.
6. The respondent is given the opportunity to ask questions about the applicant's information.
7. The respondent then presents their previously submitted evidence.
8. The applicant is given the opportunity to ask questions about the respondent's information.

The officer maintains control during the proceeding. You need to direct all information and questions to the officer. You can't speak directly to the other party.

If the respondent attends the hearing but the applicant does not attend or does not send someone to attend in their place, the Residential Tenancy Officer issues an order dismissing the application for want of prosecution.

If the applicant attends the hearing but the respondent does not, the Residential Tenancy Officer checks to make sure the respondent has been served with a copy of the Application to Director. If the respondent has been served and does not attend the hearing, or has someone attend in their place, the officer continues with the hearing. The officer hears the evidence presented by the applicant and makes a decision.

If neither party shows up for the hearing, and the respondent was not served, the officer closes the application and does not issue a decision. If neither party shows and a Certificate of Service or an Affidavit of Service has been submitted by the applicant, the officer will issue an order dismissing the case for want of prosecution.

## Order of the Director

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The Residential Tenancy Officer who hears the Application to Director prepares an Order of the Director (decision) based on evidence presented at the hearing. The officer completes the order (decision) within 14 days of the date of the hearing.

This order can only address issues contained in the original Application to Director. For instance, an applicant cannot decide at the hearing that they are seeking a larger amount of money than is recorded on the Application to Director.

Decisions can be mailed, emailed, or picked up at an Access Nova Scotia location. After you have reviewed the decision you will have two choices.

### 1. If you were not successful, you can

- accept the decision and take any action you are ordered to take
- appeal the decision to small claims court within 10 days if you disagree with it (see below for more details)

### 2. If you were successful, you can

- enforce the decision after the appeal period has passed
- appeal to small claims court within 10 days if you feel the decision did not meet all your needs (see below for more details)

If you are willing to meet the requirements of an Order of the Director, you can contact the other party to carry out the terms of the order.

### How to Enforce the Decision

If no appeal has been filed within 10 days of the Order of the Director being issued, you may wish to have the order enforced. You can

- request the Order of the Director be made an Order of the Small Claims Court. This request goes to the Residential Tenancy Officer, and there is no charge for this.
- inform the small claims court what enforcement actions are necessary. You can do this by contacting small claims court directly.

Depending on the issue, you may need an Execution Order, a Certificate of Judgment, or an Order for Vacant Possession. These orders will be issued by the small claims court. There are fees for some services provided by the sheriff's office.

You can find information about small claims court online at [courts.ns.ca/Small\\_Claims\\_Court/NSSCC\\_home.htm](https://courts.ns.ca/Small_Claims_Court/NSSCC_home.htm)

## How to Appeal the Decision

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Each party has 10 days from the date of the Order of the Director to file an appeal with small claims court. An appeal results in a new hearing at small claims court.

You must file your appeal with the small claims court that serves the area where the rental unit is located. To find a small claims court office in your area, visit [courts.ns.ca/Courthouse\\_Locations/Courthouse\\_Locations\\_Map.htm](https://courts.ns.ca/Courthouse_Locations/Courthouse_Locations_Map.htm)

### Duty to Serve the Other Party and the Director on Appeal

The person filing the appeal must also serve the appeal form on both the other party and the Director of Residential Tenancies. Contact the small claims court for information on acceptable forms of service for the appeal. Serving a staff person at the Access Centre where the original Application to Director was heard is the most efficient way to meet the requirement of service on the director.

### **Evidence Can be Used Again**

Evidence that was submitted for the director's hearing may be resubmitted at the small claims court hearing. Both the applicant and the respondent may also submit new evidence.

### **What is the Cost?**

You must pay filing fees when you file an appeal, and the cost varies depending on the amount or type of claim. Low-income earners may be able to have this fee waived. Contact small claims court for details.

### **Lawyer Not Required**

Lawyers are not needed for small claims court, but you may wish to talk to a lawyer about the claim or court procedure. The Legal Information Society of Nova Scotia has a lawyer referral service and information about preparing for small claims court. For a referral, or to reach their information line, call 902-455-3135 within the Halifax Regional Municipality or 1-800-665-9779 outside HRM.

Nova Scotia Legal Aid offers a range of free services to tenants, including appealing Orders of the Director to the Small Claims Court. Services start with summary advice and, for tenants meeting financial and merit-based qualifications, may include full representation (subject to availability). You can apply to your local Nova Scotia Legal Aid office or online at [nslegalaid.ca](https://nslegalaid.ca).

The Residential Tenancies Program is here to help both tenants and landlords resolve disputes. More guides are available to help you at [novascotia.ca/rta](https://novascotia.ca/rta).