

## Evidence

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Evidence is the basic element of a judicial or quasi-judicial proceeding. Several types of evidence are identified as follows:

- Witness
- Documentary
- Recorded

The parties before the adjudicator may also agree to accept something as fact without requiring either party to actually prove it or present evidence. This is called proof by admission.

Each party is responsible for providing the other party as well as the Residential Tenancies Office a copy of the information to be submitted into evidence. Information or exhibits submitted to the Residential Tenancies Office must be in a manner that can be retained with the file.

At the hearing, a person must be able to prove that they provided the other party with the exhibits to be submitted into evidence. If the evidence was not provided to the parties in the time specified, the evidence may not be accepted by the adjudicator or considered in the decision making process.

If an exhibit or information was submitted to the Residential Tenancies Office but not referenced or submitted as evidence in the hearing or accepted as evidence by the adjudicator, it may not be considered in the decision making process.

### **Witness**

Witness testimony is by far the most common type of evidence. This is simply having someone speak at the hearing and answer questions about the person's first hand knowledge about the case. Testimony is generally given under oath or affirmation, which are tools used to encourage witnesses to tell the truth. An affidavit is a written sworn statement of a witness's first hand knowledge about issues within the application.

### **Documentary**

Document evidence can be rental agreements, photos, letters, reports or other relevant printed information. Filing a document as evidence generally must be done by a person who has first hand knowledge of the document and its contents. For example, a photo can be filed by the person who took the photo, the person who appears in the photo or by someone who was present when the photo was taken. The same rule

applies for other documents. For example, a rental agreement can be filed by the person who prepared it or the person who signed it.

### **Recorded**

Audio and video recordings of conversations, incidents or events may also be submitted into evidence. Like documentary evidence, recordings generally must be submitted by a person who has first hand knowledge of the recorded event. This is necessary so that the person submitting the evidence is able to answer questions about the evidence posed by the adjudicator or the other party.

### **Rules of Evidence**

Four principal criteria normally guide adjudicators in deciding whether or not to accept evidence:

- **Relevance:** the evidence must have a link to the case.
- **Reliability:** the evidence must be worthy of belief. For example, the testimony from a person who did not witness an event would not be very reliable.
- **Necessity:** the use of this element of evidence rather than another must be necessary to reach a decision. For example, if 200 people witnesses the same event and one party wants to prove this event, it is not necessary to have all 200 people testify.
- **Fairness:** Allowing a piece of evidence must not create an injustice for the other party. For example, it would be unjust to allow evidence against a party if it was obtained illegally by the other party.

Evidence must normally meet all four of these criteria in order to be accepted by an adjudicator. If the evidence does not meet these criteria, the adjudicator has the authority to not accept it. In such cases, the evidence will not be considered in the adjudicator's decision making process.

### **Admissibility and Weighing of Evidence**

Adjudicators normally determine the admissibility of evidence during the hearing when the party presents the information or exhibits at the hearing. The decision on the weight of evidence is made during the adjudicators deliberation. In a written decision, adjudicators specify what evidence they relied upon in making their decision as well as explain why they decided not to take into account certain other evidence.

The admissibility or volume of evidence is not an indication of its usefulness or weight in proving or disproving a particular fact of the case. Evidence may be admissible but carry only little or no weight in proving a case.

### **Disclosure**

If the hearing is scheduled to take place in person, evidence may be submitted at the start of the hearing.

If the hearing is scheduled to take place by teleconference or written submission, all evidence should be received by the Residential Tenancies Office **least 3 days prior** to the hearing and provided to the other party.