



Policy Number: 11-003
Subject: Hearing Guidelines
Chapter: Hearings

Legislation	s. 45 & 46
Definitions	N/A
Purpose	The purpose of this policy is to outline some principles used by an adjudicator in reaching a decision and to provide guidelines on the conduct of a hearing.
Policy	<p>Hearings are conducted by an adjudicator, via teleconference, and based on the evidence and testimony submitted at the hearing, the adjudicator will make a decision on the matter under dispute, and will issue orders, based on what was requested in the Application for Dispute Resolution.</p> <p>Standard of Proof</p> <p>In general, the burden of proving that a particular event happened lies with the person making the assertion. The standard of proof applied to the collective testimony and evidence in these hearings is the “preponderance of evidence”, or the “balance of probabilities”. This means that the individual who has the burden of proof must submit evidence to establish that it is more likely than not that their account of the matter actually took place.</p> <p>Admissibility and Weighing of Evidence</p> <p>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 adjudicator's 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.</p> <p>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.</p> <p>Rules of Evidence</p> <p>Four principal criteria normally guide adjudicators in deciding whether or not to accept evidence:</p>



- **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 witness 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.

Types of Evidence

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

- Witnesses
- Affidavits
- Documentary
- Recordings

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



	<p>evidence may not be accepted by the adjudicator or considered in the decision-making process.</p> <p>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.</p> <p><u>Witnesses</u></p> <p>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.</p> <p><u>Affidavits</u></p> <p>If a witness is unable to attend a hearing to answer questions about their knowledge of an event, an affidavit from that witness may be submitted instead. An affidavit is a written sworn statement of a witness's first-hand knowledge about issues within the application. Affidavits are generally afforded less weight than witness testimony which is provided at a hearing, as the person who wrote the affidavit cannot answer follow-up questions or provide elaborations on what was written in the document.</p> <p><u>Documentary</u></p> <p>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.</p> <p><u>Recordings</u></p> <p>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.</p>
Procedure	Hearing Procedure



Overview

Introduction

At the commencement of the hearing,

- The adjudicator introduces themselves and introduces the participants.
- The participants will be advised that the hearing will be recorded.
- The date and time are read into the record, as well as the application numbers.
- The adjudicator will state that the hearing is a matter arising out of section 46 of the Residential Tenancies Act, 2018
- The adjudicator should also describe the hearing process to the participants.

Swearing in the Participants

Each individual will be required to take an oath or affirmation before they can give testimony or submit evidence. For the applicant and the respondent, this can be done at the beginning of the hearing. For any witnesses, they are to be sworn in when they are called to give testimony. The following is an example of a typical affirmation that may be administered to participants:

"Do you solemnly affirm that the testimony and evidence which you are about to give will be the truth, the whole truth, and nothing but the truth?"

Preliminary Matters

Before hearing any evidence, the following preliminary matters should be addressed:

- The adjudicator will determine if the all the named parties are present and if the respondents have been properly served with the application. Where a respondent has not been properly served with the application within the 10-day notice period, the hearing will be postponed unless the respondent waives their right to proper notice.
- If any parties are absent, the adjudicator will allow 15 minutes before the hearing will proceed and will attempt to contact the absent party by telephone.
- The adjudicator determines if all of the parties are in receipt of all of the evidence which will be presented at the hearing.
- The adjudicator confirms the details of the applicants' application. Any changes or proposed amendments to the application should be brought forward at this time.
- The adjudicator will confirm the spelling of the participants



- names and their addresses.
- The adjudicator should also confirm that the parties named on the application are the same as those listed in the rental agreement.
- If the applicant has consented to mediate the application, the adjudicator would enquire of the respondent whether they were willing to mediate as well. Where there is a willingness to mediate, the adjudicator will recess the hearing and have the case manager call into the conference line to facilitate mediation.
- Any jurisdictional matters should be addressed at this point.

Opening Statements

Once the above preliminary issues are dealt with, both the applicant and the respondent should be given the opportunity to present an opening statement. The opening statement should be limited to a brief statement of what the issues are, a summary of what evidence will be presented at the hearing, a summary of the testimony that will be heard by the witnesses, and a statement of the hoped-for outcome.

Where the hearing is only dealing with 1 or 2 issues, or where the matter under dispute is relatively clear and known to the parties, an opening statement may be dispensed with.

Presentation of Evidence

Each item identified on the Application for Dispute Resolution is fully addressed by both the applicant and the respondent, one-by-one, before moving to the next item. The party that brought forward the application, or the party that has the burden of proof, will present their case first. This will include any testimony of the parties, and that party will also be able to submit any exhibits into evidence.

Where exhibits are submitted, the adjudicator will assign that exhibit a label which may be reference in the written decision.

After the applicant present its evidence for an item identified in the Application, the respondent will be given the opportunity to provide their own testimony on the matter and they will be given the opportunity to comment on any submitted evidence. The respondent should also be granted the opportunity to ask questions, or “cross-examine”, the applicant, and they will also be given the opportunity to submit exhibits as well.



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After the submission and rebuttal, the adjudicator will direct the parties to address the next matter in the Application.

Witnesses

Where a party wishes to call a witness to answer questions, they will provide a telephone number to the adjudicator where that witness may be reached. It is the responsibility of the party calling the witness to ensure that the witness is available to receive the telephone call.

Once a witness has been brought into the teleconference, the witness will be sworn in by the adjudicator. The party who called the witness will be given the opportunity to ask the witness questions first. Before questioning, the adjudicator will warn the party who called the witness that they are not to ask leading questions. Once that party has finished questioning the witness, the respondent is allowed to cross-examine. After the cross-examination, the application should be provided an opportunity to “re-direct”, or ask questions concerning any new matters that arose during the cross-examination. The adjudicator is permitted to ask questions of the witness as well after the re-direct.

Once the questioning of the witness is complete, the adjudicator will direct the witness to leave the teleconference.

Closing statements

When all of the items identified on the Application for Dispute Resolution have been addressed, and when the parties are finished submitting evidence and calling witnesses, the adjudicator should allow them to provide a closing statement, or summary of their case.

When closing statements are concluded, the adjudicator will thank the participants and advise them that a decision will be sent to them in writing. The adjudicator should also provide the parties with instructions about certification and enforcement at this time.

Interpreters

Where a participant has been assigned an interpreter, the adjudicator should be satisfied that the interpreter is qualified. Once satisfied, the adjudicator will issue an Interpreter’s Oath, like this example:

“Do you solemnly affirm that you will well and truly interpret and translate the evidence and proceedings from the English language to the [participant’s language] and from the



	<p>[participant's language] to the best of your skill and understanding."</p> <p>The adjudicator should explain the following process to the interpreter:</p> <ul style="list-style-type: none">- For each statement/question uttered at the hearing, or made by the adjudicator, the interpreter will translate that identical statement or question into the participant's language,- For each statement/question made by the participant, that question or statement will be translated into English by the interpreter. <p>There should be no conversation between the interpreter and the witness. If a witness does not understand a question, the interpreter should not try to explain it or give suggestions on how to answer it to the witness.</p> <p>Disruptions: If a party is causing a disruption, the adjudicator should remind that party that they are participating in a formal administrative hearing and that their behaviour is unacceptable. The adjudicator should also warn the disruptive party that if their behaviour continues, they may be liable for the paying the costs of the other party.</p> <p>If the behaviour continues, the adjudicator may adjourn the hearing for a short time, e.g., 15 minutes, to allow the disruptive party to cool down. At this point, they should be also warned that if their behaviour continues, they will be asked to leave the hearing.</p> <p>If these warnings and actions have no effect, and if the disruptive behaviour continues, the adjudicator may direct that party to leave the hearing and continue in their absence. If the disruptive party is the applicant, the adjudicator may dismiss that application.</p>
Forms & Form Letters	N/A
X-Reference	See Orders of the Division, Chapter 8 of this manual See Cost, Policy 12-001 of this manual
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Other Resources	N/A