

Dalhousie Legal Aid Service

Legal Procedures & Dispute Resolution Guide

How to deal with Residential
Tenancies Hearings, Appeals and
Small Claims Court



Tenant Rights Series

DOES THIS BOOKLET APPLY TO YOU?

This booklet is a guide for tenant's rights in Nova Scotia. In Nova Scotia, **the Residential Tenancies Act and Regulations (the RTA) are the law for rental housing**. This means that your rights as a tenant are covered by the RTA.

Are You Covered by the RTA?

If you pay rent you are probably covered by the RTA, even if you didn't sign a lease. However, there are some exceptions.

In other words, the RTA **DOES** apply if you live in:

- Apartment, Flat or Rooming House
- House or Housing Co-operative (Co-op)
- Public / Metro Housing
- Manufactured home spaces

The RTA does **NOT** apply if you live in:

- University Residences
- Shelters
- Hospitals or Nursing Homes / Care Facilities
- Correctional Facilities
- Hotels / Motels

THIS GUIDE CONTAINS LEGAL INFORMATION, NOT LEGAL ADVICE AND IS NOT INTENDED TO REPLACE TALKING TO A LEGAL PROFESSIONAL

Everything depends on the individual circumstance. You should only rely on this as a guide. If you need further help, see the Resources page at the back of this guide. This guide is current as of: **June 11, 2019.**

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INTRODUCTION

Every province in Canada has its own laws for residential tenancies. In Nova Scotia the Residential Tenancies Act (RTA) is the law on residential tenancies. Similarly, the Department of Service Nova Scotia is in charge of administering Residential Tenancies disputes.

If either you or your landlord cannot work through a problem, there are formal ways to address the issue. Either you or your landlord can file an application to Residential Tenancies. The application is formally called an 'Application to the Director' because it is officially addressed to the Director of Residential Tenancies. This is the main way to settle a dispute. However, some disputes can also be settled in the Supreme Court of Nova Scotia (this is different from Small Claims Court).

NOTE: You cannot go directly to Small Claims Court to settle a tenancy dispute.

This guide deals with how to settle a dispute with your landlord through Residential Tenancies, and how to appeal a decision if needed.

IF YOUR LANDLORD FILES A CLAIM AGAINST YOU

If your landlord decides to take you to the Residential Tenancies to settle a dispute, they will have to serve you with a notice of the hearing. They will either have to serve you personally or by registered mail.

You should NOT try to avoid being served with a notice of a hearing. If you try to avoid being served (e.g. don't answer the door, don't get your mail, etc.) the landlord can ask the Tenancies Officer for permission to give you notice in another way (e.g. e-mail, letter, serving your relatives or friends, etc.). If you still avoid being served, the hearing can go on without you.

If you don't go to the hearing, the Residential Tenancies Officer can make a decision without you. It is more likely that you will lose if you do not go.

FILING A CLAIM AGAINST YOUR LANDLORD

Step 1. Plan:

Decide what you're asking for. Before you go to Residential Tenancies, it is important to decide what you are asking for – not just what the problem is.

You can ask the Residential Tenancies Officer to order your landlord do things like:

- Respect the lease and follow the rights and obligations set out in it.
- Make repairs to your unit or to the building.
- Pay you for damage to your personal property if it was caused by the landlord's negligence.
- Pay you any amount of money owing to you.
- Return all or part of your security deposit.
- Set aside a Notice to Quit.
- Let you move out and end the lease early.
- Pay you back for the cost of the application fee.
- Limit the amount the rent will be increased (in manufactured home spaces).

Step 2. Complete the Form J Application to the Director Form:

You can get the Form J application from any Access Nova Scotia office or you can download one at: <http://www.novascotia.ca/sns/pdf/ans-rtp-form-j-application-to-director.pdf>

NOTE: When filling out the application form explain what the problem is and what you want done about it.

Step 3. Go to Access Nova Scotia:

Once you have filled out the Form J application form, **you need to submit it in person to Access Nova Scotia.** You can hand in the Form J at any Access Nova Scotia office. There is a \$31.15 application fee. You can apply to get this fee waived (step 4 explains how to do this).

NOTE: Even if some Access Nova Scotia offices are open after 4:30 pm on some days of the week, **you can only submit your Form J between 8:30am — 4:30 pm.**

If you can't go to Access Nova Scotia in person to submit the Form J, you can get someone else to hand it in for you. However, the person handing in the Form J for you needs to sign a **“Notice of Representation.”** The Notice of Representation needs to be signed by both you and the person who is handing in the Form J for you before they go to Access Nova Scotia. **A copy of the Notice of Representation is attached to this guide.** If you need another Notice of Representation you need to go to Access Nova Scotia to get one.

When you go to hand in the Form J at Access Nova Scotia you only have to bring the Form J with you, along with money or a fee waiver, and a notice of representation (if necessary). **You do not need to bring evidence in at this time.**

Once you or the person handing in the Form J for you hands it in to Access Nova Scotia, the clerk will give you 2 copies of all the completed forms. One copy for you and one for you to serve to the landlord. The clerk will also give you a form called an **“Affidavit of Service”** (see step 6 for more information).

Step 4. Apply for a Fee Waiver:

If you receive income assistance, or a guaranteed income supplement then you can ask to have the application fee waived. You will need to take your most recent pay statement with you to ask for the fee to be waived.

You may also be able to get the fee waived even if you are not on income assistance or on a guaranteed income supplement if you can prove that your maximum monthly income is less than the amounts stated in the table below.

Maximum Monthly Income per Number of Dependents

One Adult	\$1067.00	Two Adults	\$1424.00
And 1 child	\$1416.00	And 1 child	\$1708.00
And 2 children	\$1700.00	And 2 children	\$1932.00
And 3 children	\$1924.00	And 3 children	\$2156.00
And 4 children	\$2148.00	And 4 children	\$2380.00
And 5 children	\$2372.00	And 5 children	\$2604.00

If you have to pay the fee, **keep your receipt**, because if you win your case you can get your landlord to pay you back for the fee.

NOTE: Tick the box on the application that says “requesting the award of the application fee” to have the landlord pay you back for the application fee of \$31.15. You will only be paid back if you win the dispute.

Step 5. Serve the Landlord with Notice of the Hearing:

The clerk at Access Nova Scotia will receive your application. The clerk will then give you two copies of your application form. One is for you to keep for your records. The other is for you to give to your landlord.

There will be a date on the form that says how much time you have to serve your landlord. You must serve your landlord before this date or you will not have your hearing.

You can serve the landlord by one of two ways: **Personal Service or Registered Mail.**

Personal Service:

This means that you meet the landlord in person and hand them the copy of the form. You do not have to serve the owner of the building. If your landlord has one of the following you can serve one of them and it will count as serving your landlord:

- Property manager,
- Superintendent
- Staff person who works for their rental property,

If you are going to give your landlord personal service, Dal Legal Aid recommends you take another person with you (for example, a responsible friend or an advocate). If there is a problem, this person can act as a witness to prove that you served the landlord.

Once you have served the landlord, **take note of the date, time, and location** and if possible try to get the name of the person you gave the form to.

NOTE: You do not have to serve the landlord yourself. You can get someone else to do it for you, as long as they are at least 18 years old. **If you do get someone else to serve the landlord they need to sign the affidavit of service and they need to do this at an Access Nova Scotia office.**

Registered mail:

This is a service offered by Canada Post. If you serve the landlord by registered mail **you MUST keep the receipt** from the post office. Once you've mailed the application form to your landlord you need to go on to Canada Post's website to check that your landlord received it. **If your landlord does not sign and pick up the application you sent then it will not be considered served.** That is why you need to check the Canada Post website to see if your landlord has signed showing they received the package. To find this out check tracking on the Canada Post website, then look for where it says signature and click on that. This should open a PDF file with your landlord's signature. You will need to print this out to confirm that your landlord received the application.

Step 6. File the Affidavit of Service with Access Nova Scotia:

Once you have served the landlord, you need to go back to Access Nova Scotia to file a legal document called an "Affidavit of Service." An Affidavit of Service is a form that you sign in front of an Access Nova Scotia staff person in which you swear that you did actually serve the landlord. **You MUST submit the Affidavit of Service** before the day of the hearing or your hearing may be cancelled.

NOTE: The **deadline** to submit the affidavit of service is found on the top of the Form J.

If you had someone else serve the landlord for you, that person MUST go to Access Nova Scotia with you and they MUST sign the Affidavit of Service. If you did not serve the landlord yourself, then you cannot sign the Affidavit of Service.

If you served the landlord by registered mail, then you MUST take the full Canada Post receipt with you to Access Nova Scotia to file the Affidavit of Service.

What if I Can't Find My Landlord?

If you cannot find your landlord to serve them, or the registered mail comes back, because Canada Post couldn't find them, you can still move forward with your case. You must contact the Residential Tenancies Officer assigned to your case. The Officer's name and phone number is on the application form. Phone the Officer and let them know that you are having trouble serving the landlord. The Officer can let you notify the landlord in another way, and you can still go forward with the hearing.

THE HEARING

Step 1. Prepare for the Hearing:

Gather all evidence:

- Include pictures, papers, receipts, letters, and any other paperwork that you think will help to prove your point. Write down the dates and times of conversations with your landlord. Every piece of information you have may help you at your hearing.
- The **deadline** to get evidence in is at the top of the Form J. There will be deadlines for the applicant and respondent. Sometimes these deadlines are the same day, sometimes they are different.
- You can submit evidence either in person at Access Nova Scotia, or you can scan it and email it in, or mail it in.
- Once the Residential Tenancies Officer gets the evidence from the applicant they send it to the respondent and once the RTO gets the evidence from the respondent they send it to the applicant.
- RTOs generally send the evidence by email. If you do not have email you can ask them to either mail it to you, or arrange for you to pick it up in person. If you can't, or don't want to, receive the evidence by email then you need to contact the RTO and tell them this. **The RTO's contact information is at the top of the Form J.**
- If you need more time to get evidence in (for example, you need a doctor's note, but can't get it until after the deadline) you can contact the RTO and ask for permission to enter the evidence in late. **The RTO can then either decide to let you hand the evidence in late or not.** It is the RTO's decision.

Arrange for Witnesses:

- If there are any witnesses that would help your case, ask them to speak at the hearing. Witnesses can include people who saw some-

thing happen, or people who would say that you are a good neighbour. For example, if your landlord is accusing you of disturbing your neighbours, it might be helpful for you to bring a neighbour who can say that you behave properly. You can ask anyone who would support your case to be a witness.

- You need to provide the RTO with the name of the witness and a phone number where they can be contacted during the hearing. **You must submit this information on the same day you submit your evidence.**

Interpreter:

- If you aren't fluent in English **you may be able to get an interpreter.** You must let the Residential Tenancies Officer know ahead of time that you want an interpreter. The Residential Tenancies Officer then judges on a case by case basis whether or not Residential Tenancies is able to provide an interpreter. If Residential Tenancies can provide an interpreter they will pay the interpreter directly for their work. The interpreter must have professional qualifications to be used in a hearing. This means it can't just be your friend — unless your friend is a professional interpreter.

NOTE: If you need any French language services the province can typically provide them.

Step 2. The Phone Call:

- You can make the phone call from anywhere, but it is important that you are in a quiet place where you will not be disturbed.
- These hearings generally take up to an hour, but can take longer, so make sure you make the call somewhere where you won't be disturbed for over an hour.

- If you make the call from your cellphone make sure it is charged

Logging on to the conference call:

- At the top of the Form J there are 2 phone numbers: one local number for calls from within the HRM and one toll-free number for calls from the rest of the province.
- Call one of these numbers a few minutes before the scheduled meeting time to join the conference call. **DO NOT phone in late!**
- When you make the call, follow the instructions that will be said to you over the phone and type in the conference code on your phone. **The conference code is on the top of the Form J** as well.
- You might have to wait a few minutes on hold until the Residential Tenancies Officer comes on and starts the meeting.

Mediation:

Before the hearing officially starts the Residential Tenancy Officer will ask you and your landlord to try one more time to come to an agreement. This is formally called ‘mediation,’ because the Residential Tenancy Officer is trying to mediate between you and your landlord. The mediation period is the time for you or the landlord to put an offer on the table.

You do not have to accept the landlord’s offer and they do not have to accept your offer. But if you and the landlord can agree on how to move forward, you will both be held to those terms. **So do not agree to anything that you are not fully prepared to live with.**

If mediation works, the Residential Tenancies Officer will put the terms of the agreement in writing. Then the Officer will send you and the landlord each a copy of the written agreement to sign and return by a specified date. The Officer will also give you instructions on how to sign and return your copy of the agreement. Once both you and your landlord

have submitted your copies you will each get a copy of the signed agreement and the Officer will keep one for the file. **If you sign the mediation agreement then you will NOT have a hearing.** The hearing will be cancelled.

If mediation doesn't work, the Tenancy Officer will say, "Mediation has failed. We will now have a hearing." The hearing then starts right away with all the same people.

During the Hearing:

Swear to tell the truth or affirm:

- The Residential Tenancies Officer will ask you and the landlord if you want to swear on the Bible, or if you want to affirm. If you decide to swear you must put your hand on the Bible and swear to tell the truth, "so help you God." If you decide to affirm you simply swear to tell the truth without saying anything about God.

Tell your side of the story:

- The Residential Tenancies Officer will decide who speaks first — you or your landlord. The Officer may give you both a chance to ask each other questions. The Officer may also give you both a chance to ask any witnesses questions. The Officer may ask questions too.

Keep your cool:

- It is often very difficult to stay calm during a tenancy hearing. Your landlord may say things that upset you. However, your behaviour during the hearing can influence the Residential Tenancy Officer's decision. Do not yell, speak out of turn, or say nasty things — even if the landlord does these things. Listen carefully to what your landlord presents. Don't interrupt. You will have a chance to question what your landlord says, and to present what happened from your point of view after your landlord speaks.

Ask questions:

- Don't end the call if something was said that you didn't understand. Make sure to ask questions about anything that you might be confused about, or want clarified.

Arrange to get the decision:

- The Residential Tenancies Officer will make the decision within two weeks of the hearing. Some tenancy officer will send you the decision by email, while others will send the decision by regular mail. Make sure you know how the Residential Tenancies Officer will send you the decision and that they have your correct email and/or mailing address.

Keep the landlord's copy:

- Do not delete or throw out any of the paperwork you were given during this process. This includes the paperwork you submitted at the hearing and the paperwork your landlord and the Residential Tenancies Officer submitted. Make sure to keep as much information relevant to the hearing as possible. This includes keeping notices, affidavits, and anything else that you were given as part of the hearing.

Step 3. Get the Decision:

The Residential Tenancy Officer will review the evidence and issue a written decision called the 'Order of the Director' within 14 days of the hearing.

IMPORTANT: If you do not receive the decision within 2 weeks after the hearing, **phone the Residential Tenancies Officer** to let them know that you did not receive it.

Step 4. If you Win — Wait 10 Days:

Your landlord may appeal:

- If you won and the Residential Tenancies Officer found in your favour, **your landlord may decide to appeal**. Your landlord has 10 days from the date of the Residential Tenancies Officer's decision to appeal. If your landlord does appeal he will have to serve you with a notice to go to an appeal hearing. Appeal hearings take place at the Small Claims Court. The date, time and location of the Small Claims Court appeal will be on the appeal notice your landlord gives you. This is a brand-new hearing where both you and your landlord can bring up new evidence.

Your landlord may not appeal:

- If 10 days have passed since the date of the decision and your landlord has not appealed, then you have won your case. You may want to check with the Residential Tenancies Officer to be sure.

Step 5. If You Lose — Do You Want to Appeal?

If you did not win your hearing at Residential Tenancies, or if part of the decision still seems wrong to you, you have to decide if you want to appeal or just live with the decision. If you decide to live with the decision you have to follow the Residential Tenancies Officer's order.

If you decide to appeal, you MUST file for an appeal at the local Small Claims Court within 10 days of the Residential Tenancies Officer's decision.

NOTE: 10 days is 10 calendar days, not 10 business days. This means that the 10 days include weekends, and statutory holidays. But, if the 10th day falls on a Saturday, Sunday or a holiday, there is a grace period until the next business day. This

means that if the 10 day deadline ends on a Sunday it gets an automatic one day extension until Monday, but if it were to fall on a Monday it would not get an extension.

ENFORCEMENT

Once the Residential Tenancies Officer makes their decision and the loser of the decision does not appeal the decision then the winner has to enforce the decision. This could be either you or your landlord.

If you win and want to enforce the decision you can hire the Sheriff to enforce the decision. For more information on how to do this and the different enforcement options please see our “**Enforcement Guide.**”

SMALL CLAIMS COURT APPEAL

An appeal is when a higher court is asked to reverse the decision of a lower court. In this case a Small Claims Court appeal happens when the loser of the Residential Tenancies Hearing is not satisfied with the Residential Tenancies Officer's decision and applies to the Small Claims Court to have the decision appealed. The legal term for this type of appeal is a "hearing de novo." This means that a whole new trial is held and both you and the landlord can bring in new evidence and witnesses (along with old evidence and witnesses).

You have 10 days to appeal the Residential Tenancies Officer's decision to the Small Claims Court. To file an appeal you need to complete a 'Notice of Appeal' form and explain why you are appealing the decision. This form is called a "**Form A**." Once you have filled out the Form A you need to submit it to Small Claims Court along with a copy of the Residential Tenancies Officer's decision. **You must take a copy of the Residential Tenancies Officer's decision to the Small Claims Court when submitting your Form A.**

NOTE: You can appeal the Residential Tenancies Officer's decision for any reason.

Serving the Notice of Appeal:

Once you submit the Form A to the Small Claims Court, the Small Claims Court clerk will give you three copies of the notice of appeal. One copy is for you. Another is to serve the landlord and the third copy is to serve to Residential Tenancies.

Serving the Landlord:

- The process for serving the landlord for a Small Claims Court Appeal is the same as for serving the landlord for a Residential Tenancies Hearing.

Serving Residential Tenancies:

- To serve Residential Tenancies you need to take the Notice of Appeal to the Access Nova Scotia where your hearing was held and hand it in to the receptionist there. If you do not know which Access Nova Scotia your hearing was held at (because your hearing was over the phone) you should call your Residential Tenancies Officer and ask which Access Nova Scotia you should go to.

After serving your landlord and Residential Tenancies, make sure you take notes of when and where you served them. You also need to sign an Affidavit of Service after serving them.

NOTE: Small Claims hearings are different in some ways from Residential Tenancies hearings. They are more formal: they take place in the courthouse, and you will have to get up on a witness stand. The hearing times are different across the province, but are always held in the evening. In general, it is a very different atmosphere from the Residential Tenancies hearing.

Decision:

It should take about two weeks for the decision to be made. But, it can take longer than that sometimes.

If you Win the Appeal:

Your landlord must obey the decision of the Small Claims Court. If your landlord does not follow the decision you will have to enforce the decision. Please see the earlier section on enforcement, or our specialized Enforcement Guide for more information.

If you Lose the Appeal:

You can choose to follow the order, let the landlord enforce the order, or appeal the Small Claims Court decision at the Nova Scotia Supreme Court. You will have 30 business days from the date the decision is issued to appeal.

Appealing to the Nova Scotia Supreme Court is complicated, and there are only a few reasons for why you can make this kind of appeal. It is a different process from a Small Claims Court appeal.

It is a good idea to get legal help to appeal to the Nova Scotia Supreme Court. You can contact Nova Scotia Legal Aid, Dalhousie Legal Aid Service, or one of the other legal resources found at the back of this Guide for assistance.

SMALL CLAIMS COURT — SUING YOUR ROOMMATE

If you have a dispute with a roommate and want to take them to court you would go to Small Claims Court, not Residential Tenancies. You cannot take a dispute with your landlord directly to Small Claims Court, you have to go to Residential Tenancies first.

How to Start a Claim in Small Claims Court:

You have to file a **Notice of Claim** form with the court. This form can be found online at www.courts.ns.ca, under the Small Claims Court section. The notice of claim form must be filed with the court in person, and then personally served to the defendant within 10 business days of the claim being filed with the court.

NOTE: This is different from a Notice to Appeal a decision from the Residential Tenancies Board.

If you file a Small Claims Court claim then you need to serve your roommate (or whoever you are suing) personally. This means that you, or someone acting on your behalf, must physically hand the Notice of Claim form and **the Form of Defence** (found at the Small Claims Court) to your roommate.

If your roommate wants to respond to your claim they can file a **Notice to Defend** with the court, and serve you with a Notice to Defend through registered mail within 20 business days of being served.

You can serve your roommate in other ways besides personal service (for example, registered mail, or electronically), but you need to get the court's permission to do this.

If your roommate doesn't file a Notice of Defence after you have served them properly, then you can file for **quick judgement** in advance of the hearing. To file for quick judgement you must fill out the **Affidavit of Service** form and file it with the court to demonstrate that you properly served your roommate.

You will still have to demonstrate the merits of your case if you apply for quick judgement, but the adjudicator can make the decision in your roommate's absence.

How to Defend a Claim in Small Claims Court:

Your roommate can start a claim against you by filing a Notice of Claim against you and serving you with the Notice and the Form of Defence.

If your roommate does this you then have to file a Notice to Defend with the Small Claims Court. Then you have to serve your roommate with the Notice to Defend by registered mail within 20 days of being served.

RESOURCES

Dalhousie Legal Aid Service — Specialized Guides:

- Tenant Rights Guide
- Finding a Place & Being a Good Tenant Guide
- Public Housing Guide
- Manufactured Home Parks Guide
- Enforcement Guide

Residential Tenancies — Access Nova Scotia:

- Telephone: (902) 424-5200 or 1-800-670-4357 (toll free in North America)
- Online: <https://www.gov.ns.ca/snsmr/access/land/residential-tenancies.asp>
- Halifax: 300 Horseshoe Lake Drive, Bayers Lake Business Park
- Dartmouth: 250 Baker Drive, Suite 134

Halifax Regional Municipality (HRM):

- Telephone: 311 in HRM

Legal Information Society of Nova Scotia:

- Telephone: (902) 455-3135 or 1-800-665-9779 (toll free in Nova Scotia)
- Email: questions@legalinfo.org
- Web: <https://www.legalinfo.org>

Nova Scotia Human Rights Commission — Halifax:

- Telephone: (902) 424-4111 or 1-877-269-7699 (toll free in Nova Scotia)
- Email: hrcinquiries@gov.ns.ca

Nova Scotia Legal Aid:

- Representation and summary advice for people with low income. There are 19 locations throughout the province.
- Main Office (Halifax): (902) 420-3450 or 1-866-420-3450 (toll free)
- Web: <http://www.nslegalaid.ca/>

