



Social Justice Tribunals Ontario

Providing fair and accessible justice

Landlord and Tenant Board

Adjourning and Rescheduling Hearings Interpretation Guideline 1

Interpretation Guidelines are intended to assist the parties in understanding the Board's usual interpretation of the law, to provide guidance to Members and promote consistency in decision-making. However, a Member is not required to follow a Guideline and may make a different decision depending on the facts of the case.

Adjournments and rescheduling requests are also addressed in Rule of Procedure 21.

Section 184 of the *Residential Tenancies Act, 2006* (the RTA) provides that the *Statutory Powers Procedure Act* (the SPPA) applies to all proceedings before the Board; and the authority to adjourn hearings is found in section 21 of the SPPA which provides that:

A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.

This guideline addresses requests to reschedule or adjourn a Board hearing.

For the purposes of the Guideline, rescheduling and adjourning are defined in the following way:

Rescheduling involves staff setting a new date for the hearing in advance of the date originally set for it, usually confirmed by a new Notice of Hearing;

Adjourning involves the Board's decision regarding when the hearing of an application scheduled for a specific day will actually proceed and/or be completed.

General Approach of the Board

Section 183 of the RTA directs the Board to "adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter."

Parties should assume that the hearing will proceed on the date stated in the Notice of Hearing. This means that the parties should be prepared to present their evidence, call and question witnesses and make their submissions.

Failing to Attend the Hearing

Section 7 of the SPPA provides that a tribunal may proceed with a hearing in the absence of any party.

Where an applicant fails to appear, a notice of hearing has been sent to the parties and the matter has not been adjourned or rescheduled, the Member will proceed with the hearing, which means the applicant's case will be dismissed as abandoned, whether or not the respondent has attended.

Where the respondent fails to appear, a notice of hearing has been sent to the parties and the matter has not been adjourned or rescheduled, the Member will proceed with the hearing, and will make a decision based on the evidence provided by the applicant at the hearing.

Not preparing for a hearing based on the expectation that it will be rescheduled or adjourned has substantial risk. If the Member decides to proceed with the hearing on the date set, only the evidence presented at the hearing will be considered.

Rescheduling Hearings

Rescheduling Requests on Consent of the Parties

If a party cannot attend a hearing, will not be prepared to proceed on the date set out in the Notice of Hearing or believe that applications scheduled on different dates should be heard together they may ask the other parties if they consent to rescheduling the hearing to a different date. They should request rescheduling as soon as possible after they realize it is necessary.

The Board will only reschedule a hearing if the party seeking the rescheduling is able to obtain the agreement of the other party or parties (Rule 21.1). The request must be provided to the Board as soon as reasonably possible and not less than five full business days before the scheduled hearing.

If a tenant requests rescheduling, they should deal with the landlord's representative, if there is one, or with the landlord directly. If there are multiple landlords, the agreement of each must be obtained.

When a landlord requests rescheduling, they should deal with the tenant's representative, if one exists, or with the tenant directly. If there is more than one tenant, the agreement of each must be obtained.

Parties should respond promptly and reasonably to requests from another party to reschedule. If a party is found to be unreasonable in their response to a rescheduling request a Member may order the party to pay costs to the other party.

The party seeking the hearing's rescheduling should submit a written request to the Board at least five days before the scheduled hearing, preferably in the form provided by the Board. The written request must include:

- confirmation that the other party or parties have agreed to the rescheduling;
- the dates the parties, and, their representatives, if any, will not be available for the next three months (subject to the availability of a Member).

A copy of the request should also be sent to the other party(ies), or, their representatives.

The parties must contact the Board to learn whether the request has been granted.

If the request is granted, Board staff will reschedule the hearing and the parties, or their representatives, will be advised of the rescheduled hearing date by way of a new notice of hearing.

If the other party does not consent to rescheduling or the Board does not grant the request, the hearing will proceed on the originally scheduled date and the parties or their representatives must attend.

As discussed below, the party or their agent may request an adjournment at the beginning of the hearing which may be granted or denied.

Rescheduling of a Hearing in Exceptional Circumstances

On occasion, exceptional circumstances arise at the last moment (such as the death of a close family member) which prevents a party from following the procedures set out above. In such circumstances, the party should notify the Board by telephone as soon as they become aware of this, and inform the other party or their representative, as well. The application will remain on the list of hearings for the scheduled time, but the Member will be advised of the telephone message, where possible. If the Member is satisfied that the circumstances are exceptional, the Member may adjourn the hearing without the party being present.

Rescheduling of a Hearing by the Board on its Own Initiative

It may be necessary from time to time for the Board to reschedule a hearing on its own initiative. For example, the Board may determine that it is necessary to reschedule a hearing to a different date in order to ensure that a sign-language interpreter is available, or because a seized Member must hold the hearing. In such cases, the original hearing will be cancelled, and the parties and their representatives will be notified.

Adjournments

Parties are expected to make any necessary arrangement to proceed with a case management or merits hearing on the date set out in the Notice of Hearing. The granting of adjournments is at the discretion of the Member hearing the application or the Hearing Office conducting the case management. Pursuant to s. 21 of the *SPPA*, an adjournment will only be granted by the Board if it is required to permit an adequate hearing to be held.

Where the Member is satisfied that the party has received sufficient notice of the hearing and has been provided with an adequate opportunity to prepare their evidence and submissions, summons witnesses and obtain counsel ahead of the hearing date, an adjournment is not usually granted unless there are exceptional circumstances.

The specific factors the Member may consider in deciding whether to grant an adjournment include:

- a. the reason for the adjournment and position of the parties;
- b. the issues in the application;
- c. any prejudice that may result from granting or denying the request;
- d. the history of the proceeding including other adjournments or rescheduling;
- e. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

The Member may consider the conduct of the party opposing the adjournment. For example, if the party opposing the request has shown bad faith or refused to provide information about their case to the other party which would allow them to prepare quickly for the hearing, this may affect the Member's decision.

Procedural Issues

A request for an adjournment should be made at the beginning of the hearing.

If the Member grants the request, the hearing will be adjourned to a date set by the Board, although the parties will usually have an opportunity to offer some preferred dates.

If the matter is adjourned before evidence is heard on the merits of the application, the Member is not "seized" with the application, thus the same Member is not required to conduct the hearing on the adjourned date. However, if the request is made part way through a hearing, the Member may be seized because they heard evidence. In such a situation, the hearing will be adjourned to a time when the same Member can continue the hearing.

Adjournment to Allow Representation

Section 10 of the SPPA states that a party may be represented by a representative at a hearing. However, the right to representation is not absolute and an adjournment is not automatically granted when it is requested on this ground. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing date.

A short adjournment may be allowed where a representative has been retained but is unavailable on the date set for the hearing, or where the party can demonstrate that they have made reasonable efforts to retain a lawyer or paralegal before the hearing but have not yet been able to do so.

Adjournment to Hear Applications Together

If a respondent has filed their own application against the applicant and it has been scheduled to be heard on a different date, the respondent should ask to have both applications heard together before the hearing using the Board's rescheduling procedures discussed above.

If the respondent asks for adjournment for this reason at the beginning of the hearing this request will generally only be granted if the respondent's application will affect the outcome of the application being considered. The Board does not generally grant an adjournment on the ground that the respondent intends to file an application against the applicant.

Adjournment to Prepare Case

Both parties are expected to be prepared with their evidence, witnesses, and submissions on the scheduled hearing date, and adjournments are not generally granted because a party is not prepared to proceed.

If a party requests an adjournment to acquire necessary evidence or secure the attendance of a witness, the Member may consider whether the party attempted to acquire the evidence or

witness as soon as they became aware it would be required. The Member may also consider whether options other than adjournment are sufficient, such as taking a short recess, proceeding with the hearing and reconvening the hearing at a later date to consider the additional evidence or witness's testimony, or accepting the evidence on a post-hearing basis.

If the applicant's claims are unclear or not detailed enough to allow the respondent to know what evidence they must present at the hearing, the Member may consider whether the application should be dismissed or adjourned to permit the applicant to provide further details. In deciding whether the claim is sufficiently complete and clear, the Member will evaluate the application, documents filed with it and any information the respondent already has.

Adjournment to Prepare for Section 82

During a hearing for a landlord application for rent arrears (section 87 of the RTA) or for termination of the tenancy for rent arrears (section 69 of RTA), a tenant may raise any issue that could be raised in a tenant application under the RTA if they follow the requirements contained in Rule 19.3 (sections 82(1) and 87(2) of the RTA). That Rule states that the tenant must provide the landlord and the Board with a detailed description of each issue the tenant intends to raise and a copy of all documents, pictures and other evidence that the tenant intends to rely upon at least five business days before the hearing, unless the Board orders or directs otherwise.

The Board has a form that the tenants may use to help them comply with the disclosure requirements in Rule 19.3. This form is not required, but if the tenant does not use it they should ensure that they provide the landlord and the tenant with a written description of each issue they intend to raise, including any applicable dates. The description must be detailed enough to allow the landlord to understand the issues the tenant intends to raise at the hearing.

If the tenant has not provided the other parties and the Board with a detailed description of each issue the tenant intends to raise five business days before the hearing as required by Rule 19.3, the Board may still permit the tenant to raise issues under section 82 if there is a satisfactory explanation for why the tenant could not comply with the Rule. For example, a new issue arose the day before the hearing or the tenant received the notice of hearing less than five days before the hearing.

The tenant will not be entitled to rely upon any documents, pictures and other evidence relating to their section 82 issues that was not disclosed the other parties and the Board at least five business days before the hearing unless there is a satisfactory explanation for why the tenant could not comply with the disclosure requirements in Rule 19.3.

The Board provides tenants with information about the disclosure requirements in Rule 19.3 in the notice of hearing. Therefore, the Board will not generally allow a tenant to raise issues at the hearing under section 82 without having complied with the disclosure requirements in Rule 19.3 on the ground that the tenant was not aware of these requirements.

If the tenant has complied with the disclosure requirements in Rule 19.3, the tenant should be prepared to proceed with their claims under section 82 on the scheduled hearing date. The Board does not generally grant adjournments to allow a tenant to obtain evidence or prepare their claims under section 82.

If a tenant has complied with the disclosure requirements in Rule 19.3, the Board will not generally grant a landlord an adjournment to allow the landlord to prepare a response to the issues raised by tenant.

If the Board permits a tenant to raise issues under section 82 at the hearing without having complied with disclosure requirements in Rule 19.3 and the landlord could not reasonably have anticipated that the tenant would raise these issues and cannot address at the hearing with a short recess, the landlord may request an adjournment for the purpose of responding to the tenant's claims and obtaining relevant evidence.

Adjournment to Accommodate the needs of a party and French Language Services

A party who requires accommodation under the *Human Rights Code* or requires French Language Services should contact the LTB as soon as possible so that the necessary arrangements can be made for the hearing.

At the beginning of a hearing a party may request an adjournment on the ground that the Board is unable to accommodate their needs or their request for French Language Services. If the Member determines that it is not possible to accommodate the needs of the party at the hearing, an adjournment may be granted.

Further information respecting the Board's accommodation practices can be found in the Board's Human Rights Interpretation Guideline.

Further information respecting the Board's French Language Services can be found in the [Tribunals Ontario French Language Services Policy](#).

Conditions for an Adjournment

The Board may impose conditions if an adjournment is granted. Examples of conditions that may imposed:

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- the parties must disclose to each other their evidence or further information about their position by a specified deadline;
 - in a case involving a claim for rent arrears, the Member may decide that the tenant should pay some of the arrears either to the Landlord or into the Board's trust account or pay the new rent that becomes due prior to the next hearing;
 - the adjournment is granted on a "peremptory" basis, which means that no further adjournment requests will be granted to the party that requested the adjournment, or, to either party, except in the most exceptional circumstances or where the other party consents to the subsequent adjournment request; and
 - costs awarded to the party opposing the adjournment to compensate them for costs resulting from the adjournment. (See subsection 204(2) of the Residential Tenancies Act, 2006 (Act), Rule 23 of the Rules of Procedure, and Guideline 3.)

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