

**Beattie, Michelle OHCS:EX**

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**From:** Moran, Jennifer MEM:EX  
**Sent:** Monday, October 17, 2011 3:02 PM  
**To:** Beattie, Michelle OHCS:EX  
**Subject:** FW: ACTION: NEW FOI REQUEST - HOU-2011-00041  
**Attachments:** Fee Calculation Form.doc; Call for Records.docx; Intake - Request - Redacted.pdf

**Importance:** High

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**From:** Phosy, Krisna SSBC:EX  
**Sent:** Monday, October 17, 2011 2:57 PM  
**To:** Lalonde, Jan MEM:EX  
**Cc:** Moran, Jennifer MEM:EX; Cho, Gayle MEM:EX  
**Subject:** FW: ACTION: NEW FOI REQUEST - HOU-2011-00041  
**Importance:** High

Jan and Jennifer,

I have not heard anything about the status of this request. Can you please me know if you have records or if there is a volume of records.

Thanks

Krisna Phosy

Information and Privacy Analyst  
Information Access Operations  
Shared Services BC  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't  
Victoria, BC V8W 9K1

Tel: 250-356-5847  
Fax: 250 387-9843  
E-mail: [Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

***Providing Services to:***

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Ministry of Environment  
Environmental Assessment Office  
Ministry of Forests, Lands and Natural Resource Operations

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**From:** Phosy, Krisna SSBC:EX  
**Sent:** Thursday, October 6, 2011 12:16 PM  
**To:** Cho, Gayle MEM:EX  
**Cc:** Lalonde, Jan MEM:EX; Moran, Jennifer MEM:EX  
**Subject:** ACTION: NEW FOI REQUEST - HOU-2011-00041  
**Importance:** High

Good Afternoon,

We have received a new FOI request for your Ministry. Refer to the following for details.

Please do not hesitate to contact me should you have any questions.

Thank you,

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**REQUEST:** Documents/records from the Residential Tenancy Branch pertaining to Dispute Resolution Officers training/professional development/education for the year 2011 [January 1, 2011 to October 3, 2011]; Documents/records from the Residential Tenancy Branch pertaining to Dispute Resolution Officers training/professional development/education, specific to second hand smoke and smoke-free housing policies, for each year 2008 - 2011 [January 1, 2008 to October 3, 2011].

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**Fee Estimate** – This form must be signed and should provided an estimate of hours required to locate and produce records.

**Due: October 12, 2011**

**Call for Records** – This form must be signed by a **manager, director, or section head.**

**Due: October 24, 2011**

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Environmental Assessment Office  
Ministry of Forests, Lands and Natural Resource Operations

# Information Access Operations

## Fee Estimate Calculation Table

<b>FOI Request Number:</b>	<b>HOU-2011-00041</b>
<b>IAO Analyst:</b>	<b>Krisna Phosy</b>

Section 75 of the *Freedom of Information and Protection of Privacy Act* provides that public bodies may charge fees for certain limited services that they provide in the processing of formal Freedom of Information (FOI) requests. In an effort to ensure consistent government practice in estimating fees and in order to comply with current policy, IAO requires that the ministry estimate the time required to complete certain tasks associated with the processing of formal FOI requests. To help guide this process, included below is a list of tasks that can be charged for. Please note that the time spent reviewing records for harms or exceptions is not chargeable. If you have questions or need assistance completing the fee estimate, please contact your Analyst.

Once the estimate is complete, please forward to the above-noted IAO analyst before locating and retrieving records. Where it is appropriate to charge a fee, IAO will provide the applicant with a fee estimate outlining the payment required. Once the required payment has been received, IAO will advise the ministry to proceed with the retrieval, preparation and scanning/copying of records.

*For Ministry Use - please ensure that all reasonable efforts are made to generate an accurate estimate.*

<b>1. Locating, Retrieving, and Producing Records</b>		
<b>Associated Tasks</b>	<b>Estimated Effort (in hours)</b>	<b>Actual Effort (in hours)</b>
<p>This is to include time spent:</p> <ul style="list-style-type: none"> <li>• reviewing file lists and off-site lists and generating a list of files;</li> <li>• calling to ask for the retrieval of boxes from off-site storage;</li> <li>• consulting with staff regarding the content of specific boxes of files;</li> <li>• compiling paper files from cabinets and compiling documents from those files;</li> <li>• reading through files to determine whether records are responsive – estimated time is 15 minutes per 1" file;</li> <li>• viewing videotapes and listening to audiotapes to determine whether they are responsive;</li> <li>• searching email, records databases, TRIM folders, etc &amp; if necessary printing responsive records; and,</li> <li>• completing other related tasks.</li> </ul>		
<ul style="list-style-type: none"> <li>• Please indicate the time, if any, spent producing records from machine readable records.</li> <li>• Please differentiate between time spent using a central mainframe processor and time spent developing computer programs to create the records.</li> </ul>		

**NOTES:**

Fee estimates & actual costs do not include the costs of retrieving/returning boxes from/to off-site storage facilities.

A machine readable record is anything upon which information is stored or recorded such that a computer or other mechanical device can render the information intelligible.

**2. Preparing Records for Disclosure**

Associated Tasks	Estimated Effort (in hours)	Actual Effort (in hours)
<p>This is to include time spent:</p> <ul style="list-style-type: none"> <li>• preparing records for photocopying/scanning – (remove staples, etc);</li> <li>• photocopying records;</li> <li>• putting files back together – (re-file, re-staple, put records back in cerlox coils, etc); and</li> <li>• assembling the package and ensuring the package is complete.</li> </ul>		

**NOTE:**

IAO's preferred method of receiving records is electronically (preferably in pdf format).

**3. Providing Copies of Records**

	Estimated Volume	Actual Volume
Please indicate the total number of pages that are responsive to the request.		

**NOTES:**

The average file folder is 1" and holds approximately 200 single-sided pages.

Where records are double-sided, please estimate the total number of sides.

One standard Records Centre Services Box (1 cubic foot) holds approximately:

- 2,200 pages if they are in letter sized folders; and
- 1,800 pages if they are in legal sized folders.

Ministry Program Area:	
Estimate Completed By:	
Date:	

*For IAO Use Only*

Total Fee to Applicant		
Task	Estimated Costs	Actual Costs
Locating, Retrieving and Producing Records		
Preparing Records for Disclosure		
Providing Copies of Records		
Shipping Costs		
<b>TOTAL:</b>		



# Information Access Operations

## Call for Records - General

<b>FOI Request Number:</b>	HOU-2011-00041	<b>Applicant Type:</b>	Individual
<b>IAO Analyst:</b>	Krisna Phosy	<b>Received Date:</b>	October 3, 2011
<b>Records Due at IAO:</b>	October 24, 2011	<b>Legislated Due Date:</b>	November 16, 2011

Section 7 of the *Freedom of Information and Protection of Privacy Act* places a duty on public bodies to respond to formal requests without delay and imposes a time limit of 30 working days from the date the FOI request is received, with certain specific exceptions. In an effort to ensure consistent government practice and in order to comply with current policy, ministries are required to locate and retrieve responsive records and identify potential harms that could result from their disclosure. This form will help guide this process and allow IAO staff to better understand the context of the records and make informed severing recommendations based on potential harms. Once this form has been completed, please forward to the above-noted IAO analyst. If you need assistance to complete this form, please contact your Analyst.

*For Ministry Use - please ensure that any issues associated with the possible disclosure of records responsive to this request have been communicated to your Ministry Executive and/or Public Affairs Bureau Communications Office.*

Search for Records	
Please describe your search for records including what records were searched (i.e. Files, email, databases, TRIM files, off-site records, etc), duration of search time, and who conducted the search for records.	
Program Area Recommendations	
Document potential harms* that could result from disclosure of records gathered and/or any other concerns with disclosure and provide disclosure recommendations.	
<p><b>*NOTE:</b></p> <p>Harms – E.g. disclosure of information in the records could significantly harm law enforcement matters, relations with other governments, the Ministry's financial or negotiating position, or a third party's interests on a given topic. Please specify the types of information of concern and the potential harms associated with each type</p>	
Publication of Records on the Open Information website	
Unless specific exemption criteria apply, records provided to the applicant in response to this request will be published on the Government's Open Information website. If you have any concerns about the publication of the responsive records please indicate here or discuss with your FOI Analyst.	
If you have recommendations for additional explanations or context to be included in the response to the applicant, please indicate here or discuss with your FOI Analyst.	

Ministry Program Area:	
Recommendations Completed By:	
Date:	
<b>Location of Records</b>	
Please indicate here, if you are aware of any other public bodies or locations that may have records responsive to this request.	
Ministry Program Area:	
Recommendations Completed By:	
Date:	

**NOTE:**

Records are to be forwarded to IAO as soon as possible, but no later than 12 business days from the date of this call for records, except where IAO has advised that the request is cross-government. For cross-government requests, records are to be forwarded to IAO as soon as possible, but no later than 20 business days from the date of this call for records.

**Ministry Support Guidelines for GENERAL FOI Requests**

**Preliminary Search for Records and Assessment of Fees:**

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- If records do not exist within the public body, **please advise IAO immediately**. The request will be closed or redirected by IAO.
- If some/all records reside within another public body, **please advise IAO immediately** specifying the other public body. The request will be transferred by IAO.
- Complete and submit the attached Fee Estimate Calculation form to assist IAO in determining if it is appropriate to issue a fee estimate for this request.

**Records Gathering Process:**

---

- Review records to ensure they are responsive to the request.
- To ensure IAO has a complete understanding of the records provided and their context, the ministry is required to identify any areas of concern regarding their disclosure. This will assist IAO analysts in assessing any harm contemplated by FOIPPA, and consider the recommendation of any applicable exceptions to disclosure.
- Issues management concerning the content of the responsive records is a responsibility of the ministry; therefore, issues associated with the possible disclosure of records responsive to this request should be communicated directly to your Ministry Executive and/or Public Affairs Bureau Communications Office.

**Providing Responsive Records to IAO:**

---

- Wherever possible, the ministry is required to send records electronically to the IAO analyst in either original electronic format or by scanning hard copy records and sending electronically. If volume is prohibitive for electronic submission, package or disc with scanned documents should be mailed to:

**Information Access Operations  
Ministry of Citizens Services  
PO Box 9569 Stn Prov Govt  
Victoria BC, V8W 9K1**

- Please ensure the responsive records have been reviewed and approved by the applicable program area.

**Sent:**  
**To:** FOI Requests SSBC:EX  
**Subject:** FOI Residential Tenancy Branch

I submit this order for documents/records from the Residential Tenancy Branch pertaining to Dispute Resolution Officers training/professional development/education, for the year 2011.

I submit this order for documents/records from the Residential Tenancy Branch pertaining to Dispute Resolution Officers training/professional development/education, specific to secondhand smoke, and smoke-free housing policies, for each year 2008 - 2011.

## Beattie, Michelle OHCS:EX

---

**From:** Moran, Jennifer MEM:EX  
**Sent:** Thursday, October 20, 2011 11:12 AM  
**To:** Beattie, Michelle OHCS:EX  
**Subject:** FW: HOU-2011-00036 Sign-off Package (Due Oct 21/11)  
**Attachments:** Sign - Form.DOCX; Call - Harm - Housing.DOCX; Redline.PDF

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Any update on the FOI 00041? I know you only just saw it the other day... just want to give Jan an answer. ☺

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**From:** Lalonde, Jan MEM:EX  
**Sent:** Thursday, October 20, 2011 10:40 AM  
**To:** Moran, Jennifer MEM:EX  
**Cc:** Kasendi, Susan MEM:EX  
**Subject:** FW: HOU-2011-00036 Sign-off Package (Due Oct 21/11)  
**Importance:** High

Hi Jennifer,

Any news?

Not Responsive

Also, if I could get an update on HOU-2011-00041 and | Not Responsive I am trying to get as much done today so that Susan, the lady doing my job while I am away, doesn't get overloaded.

Any info greatly appreciated.

Thanks,  
Jan

Jan Lalonde  
Manager, Information Resource Centre  
Ministry of Energy and Mines  
6th floor, 1810 Blanshard Street  
Victoria, BC V8T 4J1

Phone: 250-952-0293  
Fax: 250-952-0331

Not Responsive

Pages 10 through 11 redacted for the following reasons:

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Not Responsive



1. FOI - Review of Harms/Issues/Recommendations provided by Ministry

Request Received: September 14, 2011

Due Date: October 27, 2011

Requester type: Media

**Wording of the request:** All records pertaining to the ministry's announcement of the final component to Nanaimo's housing strategy including all records regarding when the announcement would be made for [address] and why previous dates were changed and also including e-mails, meeting minutes, text messages, or audio/video.

**Comments/Background:** The program area advised the Qs and As are in the public domain and the information in the Information Note is advice to Government.

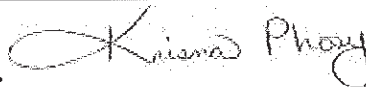
IAO reviewed the records and determined the proposed timelines and advice and recommended responses should be severed (page6).

**Recommendations:** Partial disclosure with severing under section 13 (policy advice, recommendations or draft regulations) and 17 (harm to financial or economic interests of public body).

**Publication Recommendations:** IAO recommends this request be published to the Open Government website as it contains no personal information about the applicant or any other items which would be exempt from disclosure.

FOI Analyst:  
Krisna Phosy

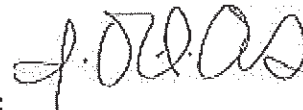
Signature:



Date:  
October 13, 2011

Team Lead:  
Jamie Onciul-Omelus

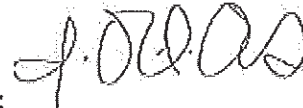
Signature:



Date:  
October 13, 2011

FOI Director/Manager Approval: Jamie  
Onciul-Omelus on behalf of Kris Ghag

Signature:



Date: October 13,  
2011

2. FOI and Ministry Executive - Approval to Release Package to applicant

FOI Approval Authority:  
Name:

Signature:

Date:

Ministry Executive:  
Name:

Signature:

Date:

Ministry Executive:  
Name:

Signature:

Date:

Comments:

3. FOI - Release to applicant

Package release prepared by:

FOI Analyst:

Date:

\*Note that all General FOI request records that are released to an applicant should be published on the Open Information website unless the exemption criteria apply. The exemption criteria can be found on page 11 of the Open Information and Open Data Policy.

**Exercise of Discretion:**

The *Freedom of Information and Protection of Privacy Act* (the Act) contains both mandatory and discretionary exceptions to disclosure. Sections 13 to 20 are the discretionary exceptions. Where Information Access Operations (IAO) has advised the head that a discretionary exception may apply, it is important that the head consider the possibility of releasing the information despite the fact that an exception may apply.

**Factors relevant to the exercise of discretion include:**

- the general purposes of the legislation: public bodies should make information available to the public; individuals should have access to personal information about themselves;
- the wording of the discretionary exception and the interests which the section attempts to balance;
- whether the individual's request could be satisfied by severing the record and by providing the applicant with as much information as is reasonably practicable;
- the historical practice of the public body with respect to the release of similar types of documents;
- the nature of the record and the extent to which the document is significant and/or sensitive to the public body;
- whether the disclosure of the information will increase public confidence in the operation of the public body;
- the age of the record;
- whether there is a sympathetic or compelling need to release materials;
- whether previous orders of the Commissioner have ruled that similar types of records or information should or should not be subject to disclosure; and
- when the policy advice exception is claimed, whether the decision to which the advice or recommendations relates has already been made.

# Information Access Operations

## Call for Records - General

<b>FOI Request Number:</b>	HOU-2011-00036	<b>Applicant Type:</b>	Media
<b>IAO Analyst:</b>	Krisna Phosy	<b>Received Date:</b>	September 14, 2011
<b>Records Due at IAO:</b>	October 5, 2011	<b>Legislated Due Date:</b>	October 27, 2011

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Program Area Recommendations	
Document potential harms* that could result from disclosure of records gathered and/or any other concerns with disclosure and provide disclosure recommendations.	The information in the Issues Note is advice to government and in any event does not provide the information requested. The News Release and Q and As are in the public domain.
<p><b>*NOTE:</b></p> <p><b>Harms – E.g. disclosure of information in the records could significantly harm law enforcement matters, relations with other governments, the Ministry's financial or negotiating position, or a third party's interests on a given topic. Please specify the types of information of concern and the potential harms associated with each type</b></p>	
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Ministry Program Area:	Housing Policy Branch, Office of Housing and Construction Standards, Ministry of Energy and Mines
Recommendations Completed By:	Simon Clews
Date:	September 22, 2011
<b>Location of Records</b>	
Please indicate here, if you are aware of any other public bodies or locations that may have records responsive to this request.	
Ministry Program Area:	
Recommendations Completed By:	
Date:	

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- Please ensure the responsive records have been reviewed and approved by the applicable program area.



**Beattie, Michelle OHCS:EX**

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**From:** Phosy, Krisna LCTZ:EX  
**Sent:** Wednesday, February 15, 2012 10:20 AM  
**To:** Beattie, Michelle OHCS:EX  
**Subject:** FW: Call - End - No records  
**Attachments:** Fee Calculation Form.doc; Call for Records.docx; Intake - Request - Redacted.pdf  
  
**Importance:** High

Krisna Phosy

Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
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Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
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Environmental Assessment Office

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**Sent:** Friday, October 21, 2011 3:23 PM  
**To:** Phosy, Krisna SSBC:EX  
**Cc:** Lalonde, Jan MEM:EX; Kasendi, Susan MEM:EX  
**Subject:** Call - End - No records  
**Importance:** High

RTB has confirmed no records.

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**From:** Phosy, Krisna SSBC:EX  
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**Cc:** Moran, Jennifer MEM:EX; Cho, Gayle MEM:EX  
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Tel: 250-356-5847

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Ministry of Environment

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Ministry of Forests, Lands and Natural Resource Operations

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**Due:** October 12, 2011

**Call for Records** – This form must be signed by a **manager, director, or section head.**

**Due:** October 24, 2011

## Krisna Phosy

Information and Privacy Analyst  
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Ministry of Labour, Citizens' Services and Open Government  
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Victoria, BC V8W 9K1

Tel: 250-356-5847

Fax: 250 387-9843

E-mail: [Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

### ***Providing Services to:***

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Ministry of Agriculture  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Ministry of Environment  
Environmental Assessment Office  
Ministry of Forests, Lands and Natural Resource Operations

# Information Access Operations

## Fee Estimate Calculation Table

<b>FOI Request Number:</b>	<b>HOU-2011-00041</b>
<b>IAO Analyst:</b>	<b>Krisna Phosy</b>

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A machine readable record is anything upon which information is stored or recorded such that a computer or other mechanical device can render the information intelligible.

**2. Preparing Records for Disclosure**

Associated Tasks	Estimated Effort (in hours)	Actual Effort (in hours)
<p>This is to include time spent:</p> <ul style="list-style-type: none"> <li>• preparing records for photocopying/scanning – (remove staples, etc);</li> <li>• photocopying records;</li> <li>• putting files back together – (re-file, re-staple, put records back in cerlox coils, etc); and</li> <li>• assembling the package and ensuring the package is complete.</li> </ul>		

**NOTE:**

IAO's preferred method of receiving records is electronically (preferably in pdf format).

**3. Providing Copies of Records**

	Estimated Volume	Actual Volume
Please indicate the total number of pages that are responsive to the request.		

**NOTES:**

The average file folder is 1" and holds approximately 200 single-sided pages.

Where records are double-sided, please estimate the total number of sides.

One standard Records Centre Services Box (1 cubic foot) holds approximately:

- 2,200 pages if they are in letter sized folders; and
- 1,800 pages if they are in legal sized folders.

Ministry Program Area:	
Estimate Completed By:	
Date:	

*For IAO Use Only*

Total Fee to Applicant		
Task	Estimated Costs	Actual Costs
Locating, Retrieving and Producing Records		
Preparing Records for Disclosure		
Providing Copies of Records		
Shipping Costs		
<b>TOTAL:</b>		

# Information Access Operations

## Call for Records - General

<b>FOI Request Number:</b>	HOU-2011-00041	<b>Applicant Type:</b>	Individual
<b>IAO Analyst:</b>	Krisna Phosy	<b>Received Date:</b>	October 3, 2011
<b>Records Due at IAO:</b>	October 24, 2011	<b>Legislated Due Date:</b>	November 16, 2011

Section 7 of the *Freedom of Information and Protection of Privacy Act* places a duty on public bodies to respond to formal requests without delay and imposes a time limit of 30 working days from the date the FOI request is received, with certain specific exceptions. In an effort to ensure consistent government practice and in order to comply with current policy, ministries are required to locate and retrieve responsive records and identify potential harms that could result from their disclosure. This form will help guide this process and allow IAO staff to better understand the context of the records and make informed severing recommendations based on potential harms. Once this form has been completed, please forward to the above-noted IAO analyst. If you need assistance to complete this form, please contact your Analyst.

*For Ministry Use - please ensure that any issues associated with the possible disclosure of records responsive to this request have been communicated to your Ministry Executive and/or Public Affairs Bureau Communications Office.*

Search for Records	
Please describe your search for records including what records were searched (i.e. Files, email, databases, TRIM files, off-site records, etc), duration of search time, and who conducted the search for records.	
Program Area Recommendations	
Document potential harms* that could result from disclosure of records gathered and/or any other concerns with disclosure and provide disclosure recommendations.	
<p><b>*NOTE:</b></p> <p><b>Harms – E.g. disclosure of information in the records could significantly harm law enforcement matters, relations with other governments, the Ministry’s financial or negotiating position, or a third party’s interests on a given topic. Please specify the types of information of concern and the potential harms associated with each type</b></p>	
Publication of Records on the Open Information website	
Unless specific exemption criteria apply, records provided to the applicant in response to this request will be published on the Government’s Open Information website. If you have any concerns about the publication of the responsive records please indicate here or discuss with your FOI Analyst.	
If you have recommendations for additional explanations or context to be included in the response to the applicant, please indicate here or discuss with your FOI Analyst.	

Ministry Program Area:	
Recommendations Completed By:	
Date:	
<b>Location of Records</b>	
Please indicate here, if you are aware of any other public bodies or locations that may have records responsive to this request.	
Ministry Program Area:	
Recommendations Completed By:	
Date:	

**NOTE:**

Records are to be forwarded to IAO as soon as possible, but no later than 12 business days from the date of this call for records, except where IAO has advised that the request is cross-government. For cross-government requests, records are to be forwarded to IAO as soon as possible, but no later than 20 business days from the date of this call for records.

**Ministry Support Guidelines for GENERAL FOI Requests**

**Preliminary Search for Records and Assessment of Fees:**

---

- If records do not exist within the public body, **please advise IAO immediately**. The request will be closed or redirected by IAO.
- If some/all records reside within another public body, **please advise IAO immediately** specifying the other public body. The request will be transferred by IAO.
- Complete and submit the attached Fee Estimate Calculation form to assist IAO in determining if it is appropriate to issue a fee estimate for this request.

**Records Gathering Process:**

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- Review records to ensure they are responsive to the request.
- To ensure IAO has a complete understanding of the records provided and their context, the ministry is required to identify any areas of concern regarding their disclosure. This will assist IAO analysts in assessing any harm contemplated by FOIPPA, and consider the recommendation of any applicable exceptions to disclosure.
- Issues management concerning the content of the responsive records is a responsibility of the ministry; therefore, issues associated with the possible disclosure of records responsive to this request should be communicated directly to your Ministry Executive and/or Public Affairs Bureau Communications Office.

**Providing Responsive Records to IAO:**

---



- Wherever possible, the ministry is required to send records electronically to the IAO analyst in either original electronic format or by scanning hard copy records and sending electronically. If volume is prohibitive for electronic submission, package or disc with scanned documents should be mailed to:

**Information Access Operations  
Ministry of Citizens Services  
PO Box 9569 Stn Prov Govt  
Victoria BC, V8W 9K1**

- Please ensure the responsive records have been reviewed and approved by the applicable program area.

**Sent:**  
**To:** FOI Requests SSBC:EX  
**Subject:** FOI Residential Tenancy Branch

I submit this order for documents/records from the Residential Tenancy Branch pertaining to Dispute Resolution Officers training/professional development/education, for the year 2011.

I submit this order for documents/records from the Residential Tenancy Branch pertaining to Dispute Resolution Officers training/professional development/education, specific to secondhand smoke, and smoke-free housing policies, for each year 2008 - 2011.

## Beattie, Michelle OHCS:EX

---

**From:** Beattie, Michelle MEM:EX  
**Sent:** Friday, October 7, 2011 9:29 AM  
**To:** Lalonde, Jan MEM:EX  
**Cc:** Moran, Jennifer MEM:EX  
**Subject:** FW: ACTION: NEW FOI REQUEST - HOU-2011-00042  
**Attachments:** Fee Calculation Form.doc; Call for Records.docx; Intake - Request - Redacted.pdf  
  
**Importance:** High

No records – Evaluation would be through the legal process – Judicial reviews through the Supreme Court of BC.

Michelle Beattie  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

---

**From:** Moran, Jennifer MEM:EX  
**Sent:** Thursday, October 6, 2011 4:08 PM  
**To:** Beattie, Michelle MEM:EX  
**Subject:** FW: ACTION: NEW FOI REQUEST - HOU-2011-00042  
**Importance:** High

For your action

---

**From:** Lalonde, Jan MEM:EX  
**Sent:** Thursday, October 6, 2011 3:01 PM  
**To:** Moran, Jennifer MEM:EX  
**Subject:** FW: ACTION: NEW FOI REQUEST - HOU-2011-00042  
**Importance:** High

Hi Jennifer,

Please see the attached call for records request:

**REQUEST:** Documents/reports pertaining to the examination and evaluation of Dispute Resolution Officers decisions 2007- [October 3, 2011].

Please advise me with a "yes" or "no" as to whether you have records. You need to fill out the Call for Records form (below) if you have information and return it to me by **October 18**. If you have records and believe it will take longer than three hours to gather the material, please fill out the Fee Estimate document (below) and send to me by **October 12**.

Thanks,

Jan

Ministry of Energy and Mines  
6th floor, 1810 Blanshard Street  
Victoria, BC V8T 4J1

Phone: 250-952-0293  
Fax: 250-952-0331

---

**From:** Phosy, Krisna SSBC:EX  
**Sent:** Thursday, October 6, 2011 12:18 PM  
**To:** Cho, Gayle MEM:EX  
**Cc:** Lalonde, Jan MEM:EX; Moran, Jennifer MEM:EX  
**Subject:** ACTION: NEW FOI REQUEST - HOU-2011-00042  
**Importance:** High

Good Afternoon,

We have received a new FOI request for your Ministry. Refer to the following for details.

Please do not hesitate to contact me should you have any questions.

Thank you,

---

**REQUEST:** Documents/reports pertaining to the examination and evaluation of Dispute Resolution Officers decisions 2007- [October 3, 2011].

---

**Fee Estimate** – This form must be signed and should provided an estimate of hours required to locate and produce records.

**Due: October 12, 2011**

**Call for Records** – This form must be signed by a **manager, director, or section head.**

**Due: October 24, 2011**

Krisna Phosy

Information and Privacy Analyst  
Information Access Operations  
Shared Services BC  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't  
Victoria, BC V8W 9K1

Tel: 250-356-5847  
Fax: 250 387-9843  
E-mail: [Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

**Providing Services to:**  
Ministry of Aboriginal Relations and Reconciliation

Ministry of Agriculture  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Ministry of Environment  
Environmental Assessment Office  
Ministry of Forests, Lands and Natural Resource Operations

# Information Access Operations

## Fee Estimate Calculation Table

<b>FOI Request Number:</b>	<b>HOU-2011-00042</b>
<b>IAO Analyst:</b>	<b>Krisna Phosy</b>

Section 75 of the *Freedom of Information and Protection of Privacy Act* provides that public bodies may charge fees for certain limited services that they provide in the processing of formal Freedom of Information (FOI) requests. In an effort to ensure consistent government practice in estimating fees and in order to comply with current policy, IAO requires that the ministry estimate the time required to complete certain tasks associated with the processing of formal FOI requests. To help guide this process, included below is a list of tasks that can be charged for. Please note that the time spent reviewing records for harms or exceptions is not chargeable. If you have questions or need assistance completing the fee estimate, please contact your Analyst.

Once the estimate is complete, please forward to the above-noted IAO analyst before locating and retrieving records. Where it is appropriate to charge a fee, IAO will provide the applicant with a fee estimate outlining the payment required. Once the required payment has been received, IAO will advise the ministry to proceed with the retrieval, preparation and scanning/copying of records.

*For Ministry Use - please ensure that all reasonable efforts are made to generate an accurate estimate.*

<b>1. Locating, Retrieving, and Producing Records</b>		
<b>Associated Tasks</b>	<b>Estimated Effort (in hours)</b>	<b>Actual Effort (in hours)</b>
<p>This is to include time spent:</p> <ul style="list-style-type: none"> <li>• reviewing file lists and off-site lists and generating a list of files;</li> <li>• calling to ask for the retrieval of boxes from off-site storage;</li> <li>• consulting with staff regarding the content of specific boxes of files;</li> <li>• compiling paper files from cabinets and compiling documents from those files;</li> <li>• reading through files to determine whether records are responsive – estimated time is 15 minutes per 1" file;</li> <li>• viewing videotapes and listening to audiotapes to determine whether they are responsive;</li> <li>• searching email, records databases, TRIM folders, etc &amp; if necessary printing responsive records; and,</li> <li>• completing other related tasks.</li> </ul>		
<ul style="list-style-type: none"> <li>• Please indicate the time, if any, spent producing records from machine readable records.</li> <li>• Please differentiate between time spent using a central mainframe processor and time spent developing computer programs to create the records.</li> </ul>		



**Information Access Operations - Fee Estimate Calculation Table**

**NOTES:**

Fee estimates & actual costs do not include the costs of retrieving/returning boxes from/to off-site storage facilities.

A machine readable record is anything upon which information is stored or recorded such that a computer or other mechanical device can render the information intelligible.

**2. Preparing Records for Disclosure**

Associated Tasks	Estimated Effort (in hours)	Actual Effort (in hours)
<p>This is to include time spent:</p> <ul style="list-style-type: none"> <li>• preparing records for photocopying/scanning – (remove staples, etc);</li> <li>• photocopying records;</li> <li>• putting files back together – (re-file, re-staple, put records back in cerlox coils, etc); and</li> <li>• assembling the package and ensuring the package is complete.</li> </ul>		

**NOTE:**

IAO's preferred method of receiving records is electronically (preferably in pdf format).

**3. Providing Copies of Records**

	Estimated Volume	Actual Volume
Please indicate the total number of pages that are responsive to the request.		

**NOTES:**

The average file folder is 1" and holds approximately 200 single-sided pages.

Where records are double-sided, please estimate the total number of sides.

One standard Records Centre Services Box (1 cubic foot) holds approximately:

- 2,200 pages if they are in letter sized folders; and
- 1,800 pages if they are in legal sized folders.

Ministry Program Area:

Estimate Completed By:

Date:

**For IAO Use Only**

Total Fee to Applicant		
Task	Estimated Costs	Actual Costs
Locating, Retrieving and Producing Records		
Preparing Records for Disclosure		
Providing Copies of Records		
Shipping Costs		
<b>TOTAL:</b>		

# Information Access Operations

## Call for Records - General

<b>FOI Request Number:</b>	HOU-2011-00042	<b>Applicant Type:</b>	Individual
<b>IAO Analyst:</b>	Krisna Phosy	<b>Received Date:</b>	October 3, 2011
<b>Records Due at IAO:</b>	October 24, 2011	<b>Legislated Due Date:</b>	November 16, 2011

Section 7 of the *Freedom of Information and Protection of Privacy Act* places a duty on public bodies to respond to formal requests without delay and imposes a time limit of 30 working days from the date the FOI request is received, with certain specific exceptions. In an effort to ensure consistent government practice and in order to comply with current policy, ministries are required to locate and retrieve responsive records and identify potential harms that could result from their disclosure. This form will help guide this process and allow IAO staff to better understand the context of the records and make informed severing recommendations based on potential harms. Once this form has been completed, please forward to the above-noted IAO analyst. If you need assistance to complete this form, please contact your Analyst.

*For Ministry Use - please ensure that any issues associated with the possible disclosure of records responsive to this request have been communicated to your Ministry Executive and/or Public Affairs Bureau Communications Office.*

Search for Records	
Please describe your search for records including what records were searched (i.e. Files, email, databases, TRIM files, off-site records, etc), duration of search time, and who conducted the search for records.	
Program Area Recommendations	
Document potential harms* that could result from disclosure of records gathered and/or any other concerns with disclosure and provide disclosure recommendations.	
<p><b>*NOTE:</b></p> <p><b>Harms – E.g. disclosure of information in the records could significantly harm law enforcement matters, relations with other governments, the Ministry’s financial or negotiating position, or a third party’s interests on a given topic. Please specify the types of information of concern and the potential harms associated with each type</b></p>	
Publication of Records on the Open Information website	
Unless specific exemption criteria apply, records provided to the applicant in response to this request will be published on the Government’s Open Information website. If you have any concerns about the publication of the responsive records please indicate here or discuss with your FOI Analyst.	
If you have recommendations for additional explanations or context to be included in the response to the applicant, please indicate here or discuss with your FOI Analyst.	

Ministry Program Area:	
Recommendations Completed By:	
Date:	
<b>Location of Records</b>	
Please indicate here, if you are aware of any other public bodies or locations that may have records responsive to this request.	
Ministry Program Area:	
Recommendations Completed By:	
Date:	

**NOTE:**

Records are to be forwarded to IAO as soon as possible, but no later than 12 business days from the date of this call for records, except where IAO has advised that the request is cross-government. For cross-government requests, records are to be forwarded to IAO as soon as possible, but no later than 20 business days from the date of this call for records.

**Ministry Support Guidelines for GENERAL FOI Requests**

**Preliminary Search for Records and Assessment of Fees:**

- If records do not exist within the public body, **please advise IAO immediately**. The request will be closed or redirected by IAO.
- If some/all records reside within another public body, **please advise IAO immediately** specifying the other public body. The request will be transferred by IAO.
- Complete and submit the attached Fee Estimate Calculation form to assist IAO in determining if it is appropriate to issue a fee estimate for this request.

**Records Gathering Process:**

- Review records to ensure they are responsive to the request.
- To ensure IAO has a complete understanding of the records provided and their context, the ministry is required to identify any areas of concern regarding their disclosure. This will assist IAO analysts in assessing any harm contemplated by FOIPPA, and consider the recommendation of any applicable exceptions to disclosure.
- Issues management concerning the content of the responsive records is a responsibility of the ministry; therefore, issues associated with the possible disclosure of records responsive to this request should be communicated directly to your Ministry Executive and/or Public Affairs Bureau Communications Office.

**Providing Responsive Records to IAO:**

- Wherever possible, the ministry is required to send records electronically to the IAO analyst in either original electronic format or by scanning hard copy records and sending electronically. If volume is prohibitive for electronic submission, package or disc with scanned documents should be mailed to:

**Information Access Operations  
Ministry of Citizens Services  
PO Box 9569 Stn Prov Govt  
Victoria BC, V8W 9K1**

- Please ensure the responsive records have been reviewed and approved by the applicable program area.

**Phosy, Krisna SSBC:EX**

---

**Sent:**  
**To:** FOI Requests SSBC:EX  
**Subject:** FOI Residential Tenancy Branch

I submit this order for documents/reports pertaining to the examination and evaluation of Dispute Resolution Officers decisions 2007-2011.

## Beattie, Michelle OHCS:EX

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**From:** Beattie, Michelle OHCS:EX  
**Sent:** Tuesday, December 13, 2011 9:04 AM  
**To:** Moran, Jennifer OHCS:EX  
**Subject:** RE: HOU-2011-00048 Fee Waiver Request

This one was updated and I sent the new fee estimate to Krisna on Dec 2. Waiting to hear from her to proceed.

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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**From:** Moran, Jennifer OHCS:EX  
**Sent:** Monday, December 12, 2011 12:00 PM  
**To:** Beattie, Michelle OHCS:EX  
**Subject:** RE: HOU-2011-00048 Fee Waiver Request  
**Importance:** High

I need an answer on this one. ;)

---

**From:** Beattie, Michelle MEM:EX  
**Sent:** Tuesday, November 22, 2011 9:42 AM  
**To:** Moran, Jennifer MEM:EX  
**Subject:** RE: HOU-2011-00048 Fee Waiver Request

s.22

The fee waiver is due Nov 30

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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**From:** Moran, Jennifer MEM:EX  
**Sent:** Tuesday, November 22, 2011 8:36 AM  
**To:** Beattie, Michelle MEM:EX  
**Subject:** FW: HOU-2011-00048 Fee Waiver Request

Morning darling.. can you let me know where this one is at...

---

**From:** Lalonde, Jan MEM:EX  
**Sent:** Monday, November 21, 2011 4:25 PM  
**To:** Moran, Jennifer MEM:EX  
**Subject:** RE: HOU-2011-00048 Fee Waiver Request

Perfect!

Thanks,  
jan

Jan Lalonde  
Manager, Information Resource Centre  
Ministry of Energy and Mines  
6th floor, 1810 Blanshard Street  
Victoria, BC V8T 4J1

Phone: 250-952-0293  
Fax: 250-952-0331

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**From:** Moran, Jennifer MEM:EX  
**Sent:** Monday, November 21, 2011 3:55 PM  
**To:** Lalonde, Jan MEM:EX  
**Subject:** RE: HOU-2011-00048 Fee Waiver Request

s.22 i will check with her tomorrow and get right back to ya..that ok?

---

**From:** Lalonde, Jan MEM:EX  
**Sent:** Monday, November 21, 2011 3:54 PM  
**To:** Moran, Jennifer MEM:EX  
**Subject:** FW: HOU-2011-00048 Fee Waiver Request

Hi Jennifer,

Any news on the waiver?

Thanks,  
Jan

Jan Lalonde  
Manager, Information Resource Centre  
Ministry of Energy and Mines  
6th floor, 1810 Blanshard Street  
Victoria, BC V8T 4J1

Phone: 250-952-0293  
Fax: 250-952-0331

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**From:** Lalonde, Jan MEM:EX  
**Sent:** Thursday, November 17, 2011 2:48 PM  
**To:** Moran, Jennifer MEM:EX; Beattie, Michelle MEM:EX  
**Cc:** Cho, Gayle MEM:EX; Kasendi, Susan MEM:EX  
**Subject:** FW: HOU-2011-00048 Fee Waiver Request

Hi,

Attached please find a program area fee waiver request.

On this form please outline the 'summary of recommendations', also whether we should apply a 'full waiver', partial waiver' or 'waiver denied'.

Then finally the name, the date and the signature of approval (from program area).



Thanks,  
Jan

Jan Lalonde  
Manager, Information Resource Centre  
Ministry of Energy and Mines  
6th floor, 1810 Blanshard Street  
Victoria, BC V8T 4J1

Phone: 250-952-0293  
Fax: 250-952-0331

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**From:** Phosy, Krisna SSBC:EX  
**Sent:** Thursday, November 17, 2011 2:26 PM  
**To:** Lalonde, Jan MEM:EX; Cho, Gayle MEM:EX  
**Cc:** Beattie, Michelle MEM:EX  
**Subject:** HOU-2011-00048 Fee Waiver Request

Good Morning Jan and Michelle,

Our applicant for the request HOU-2011-00048 has made a request that the fee be waived. As part of our organization's policy, we need to obtain input from the program area(s) regarding the waiver of fees. I am attaching a one-page form for you to complete which will assist us to determine whether or not a fee should be waived

As our response to the applicant is due by December 15, 2011, I would appreciate receiving your completed form by **November 30, 2011.**

**SUMMARY OF APPLICANT'S REASON(S) FOR REQUESTING A FEE WAIVER**

The applicant has requested a fee waiver based on their inability to pay. They have provided their Notice of Assessment which shows they earn less than \$11,000 a year. The applicant is a person with disability receiving monthly financial assistance from the Province of BC which totals under \$1,000 a month.

**DESCRIPTION OF REQUESTED RECORDS**

Correspondence received by the Residential Tenancy Branch including letters, faxes, emails, call summaries, pertaining to complaints with the dispute resolution process, and complaints regarding dispute resolution officers conduct while conducting conference calls or in person meetings. Timeframe is January 1, 2011 to [October 31, 2011].

Krisna Phosy  
Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843  
[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

**Providing Services to:**  
Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture



**Beattie, Michelle OHCS:EX**

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**From:** Lalonde, Jan MEM:EX  
**Sent:** Thursday, November 24, 2011 4:45 PM  
**To:** Bell, Suzanne N MEM:EX  
**Cc:** Beattie, Michelle MEM:EX  
**Subject:** RE: FOI HOU21000-00048

Hi Suzanne,

I think you are right. I will pass this on to Krisna, the FOI analyst, and let her decide which direction this will take.

s.22 and will talk to you on Monday.

Thanks,  
Jan

Jan Lalonde  
Manager, Information Resource Centre  
Ministry of Energy and Mines  
6th floor, 1810 Blanshard Street  
Victoria, BC V8T 4J1

Phone: 250-952-0293  
Fax: 250-952-0331

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**From:** Bell, Suzanne N MEM:EX  
**Sent:** Thursday, November 24, 2011 4:42 PM  
**To:** Lalonde, Jan MEM:EX  
**Cc:** Beattie, Michelle MEM:EX  
**Subject:** FOI HOU21000-00048

Jan, I've had a look at this request. It's going to cost us at least 4 person days to do – we get an average of about 550 letters per year, and we'd have to read every one to determine if it met the criteria. They aren't small, they typically have many attachments. They are also covered by FOI, so there will need to be lots of severing.

I'd be more than happy to have a conversation with the applicant about what happens when someone is dissatisfied with a decision, and what happens when they aren't happy with the decision maker's conduct. It strikes me that it may need that kind of personal touch, and I'm more than willing.

What do you think?

**Suzanne N. Bell**  
Executive Director  
Residential Tenancy Branch

**From:** Phosy, Krisna SSBC:EX  
**Sent:** Wednesday, November 30, 2011 12:11 PM  
**To:** Bell, Suzanne N MEM:EX  
**Cc:** Lalonde, Jan MEM:EX; Beattie, Michelle MEM:EX  
**Subject:** RE: HOU-2011-00048 Fee Waiver

Suzanne,

The applicant was not interested in discussing the request in a conference call with the RTB. However, the applicant was amenable to narrowing the scope of the request. Please see the revised wording below.

- Copies of the correspondence received by the RTB pertaining to the complaints with the dispute resolution process for the month in 2011 that had the greatest volume of incoming correspondence on this topic.
- Copies of the correspondence received by the RTB regarding to the complaints with the dispute resolution officer's conduct for the month in 2011 that had the greatest volume of incoming correspondence on this topic.

Please prepare a revised fee estimate and return it to me by the end of the week.

Thanks.

Krisna Phosy

Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843  
[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

***Providing Services to:***

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office

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**From:** Bell, Suzanne N MEM:EX  
**Sent:** Tuesday, November 29, 2011 4:17 PM  
**To:** Phosy, Krisna SSBC:EX  
**Cc:** Lalonde, Jan MEM:EX; Beattie, Michelle MEM:EX  
**Subject:** HOU-2011-00048 Fee Waiver

Krisna, as promised when we talked, here are my concerns with the above. Our estimate is not sufficiently robust, so I'm sorry about that – we'd be talking of about 550 letters, but many of them are quite a bit longer than a page. There is usually evidentiary material supplied as well, so that would have to be gone through and copied. Then there is the matter of the responses to the clients, which are also often longer than a page.

My estimate is that we are talking about 4 person-days of effort to go through and copy all the material – and that is still very conservative.

Moreover, the material supplied is unlikely to answer any questions for the applicant. It looks to me as if we have a client who is unhappy with the service s/he received from us, and there is a desire to know what we do about that. It looks personal, and my concern is that a huge amount of work would be poured into the response, which wouldn't answer any issues. I

Because of that, I'd like to suggest that I contact the applicant and offer to speak directly with them about the concerns.

s.13, and will not produce a positive outcome. I might be able to be helpful if I could have some contact with the requestor, so I'm hoping you can see if s/he would be receptive to that.

Thanks Krisna.

**Suzanne N. Bell**  
Executive Director  
Residential Tenancy Branch

## **Beattie, Michelle OHCS:EX**

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**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, December 20, 2011 8:52 AM  
**To:** Beattie, Michelle OHCS:EX  
**Cc:** Thompson, Shelley B OHCS:EX  
**Subject:** RE: New FOI request - HOU-2011-00048

Yes please.

**Krisna Phosy**

Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843  
[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

***Providing Services to:***

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office

---

**From:** Beattie, Michelle OHCS:EX  
**Sent:** Wednesday, December 14, 2011 11:53 AM  
**To:** Phosy, Krisna SSBC:EX  
**Cc:** Thompson, Shelley B OHCS:EX  
**Subject:** FW: New FOI request - HOU-2011-00048

Hi Krisna, I have not heard back from you regarding this one. Are we going ahead collecting the files or ?

**Michelle Beattie**

Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

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**To:** Beattie, Michelle MEM:EX  
**Subject:** RE: New FOI request - HOU-2011-00048

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**Sent:** Tuesday, November 1, 2011 12:26 PM  
**To:** Cho, Gayle MEM:EX; Lalonde, Jan MEM:EX  
**Cc:** Moran, Jennifer MEM:EX; Beattie, Michelle MEM:EX  
**Subject:** New FOI request - HOU-2011-00048

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### **Providing Services to:**

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations



## Beattie, Michelle OHCS:EX

---

**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, December 20, 2011 10:57 AM  
**To:** Beattie, Michelle OHCS:EX  
**Cc:** Thompson, Shelley B OHCS:EX; Lalonde, Jan MEM:EX  
**Subject:** HOU-2011-00048 Fee Waiver Decision

Michelle ,Shelley and Jan

The Act requires IAO to respond and issue a decision on fee waiver requests within 20 business days. IAO was due to issue a decision on this file by December 15, 2011. Accordingly IAO requested the Ministry to make a decision by November 30, 2011. On November 30, 2011, IAO notified the Ministry that the applicant significantly narrowed the scope which resulted in a greatly reduced fee estimate (\$3,788.00 to \$225.50). On December 14, 2011 IAO received an email asking if the Ministry should begin gathering the records. However, IAO did not receive a decision from the Ministry by the legislated due date.

s.13

As the applicant has narrowed and no decision about the fee waiver has been provided to IAO, I recommend the fees be waived and a will issue a decision to the applicant today.

If you have any questions please do not hesitate to contact me.

Regards,

Krisna Phosy  
Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
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**Sent:** Wednesday, December 14, 2011 11:53 AM  
**To:** Phosy, Krisna SSBC:EX  
**Cc:** Thompson, Shelley B OHCS:EX  
**Subject:** TRIM: Fees Waiver - Qs from PA

Hi Krisna, I have not heard back from you regarding this one. Are we going ahead collecting the files or ?

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

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**Subject:** FW: New FOI request - HOU-2011-00048  
**Attachments:** 48 Fee Calculation Form.docx

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# Information Access Operations

## Fee Estimate Calculation Table

<b>FOI Request Number:</b>	<b>HOU-2011-00048</b>
<b>IAO Analyst:</b>	<b>Krisna Phosy</b>

Section 75 of the *Freedom of Information and Protection of Privacy Act* provides that public bodies may charge fees for certain limited services that they provide in the processing of formal Freedom of Information (FOI) requests. In an effort to ensure consistent government practice in estimating fees and in order to comply with current policy, IAO requires that the ministry estimate the time required to complete certain tasks associated with the processing of formal FOI requests. To help guide this process, included below is a list of tasks that can be charged for. Please note that the time spent reviewing records for harms or exceptions is not chargeable. If you have questions or need assistance completing the fee estimate, please contact your Analyst.

Once the estimate is complete, please forward to the above-noted IAO analyst before locating and retrieving records. Where it is appropriate to charge a fee, IAO will provide the applicant with a fee estimate outlining the payment required. Once the required payment has been received, IAO will advise the ministry to proceed with the retrieval, preparation and scanning/copying of records.

*For Ministry Use - please ensure that all reasonable efforts are made to generate an accurate estimate.*

<b>1. Locating, Retrieving, and Producing Records</b>		
<b>Associated Tasks</b>	<b>Estimated Effort (in hours)</b>	<b>Actual Effort (in hours)</b>
<p>This is to include time spent:</p> <ul style="list-style-type: none"> <li>• reviewing file lists and off-site lists and generating a list of files;</li> <li>• calling to ask for the retrieval of boxes from off-site storage;</li> <li>• consulting with staff regarding the content of specific boxes of files;</li> <li>• compiling paper files from cabinets and compiling documents from those files;</li> <li>• reading through files to determine whether records are responsive – estimated time is 15 minutes per 1" file;</li> <li>• viewing videotapes and listening to audiotapes to determine whether they are responsive;</li> <li>• searching email, records databases, TRIM folders, etc &amp; if necessary printing responsive records; and,</li> <li>• completing other related tasks.</li> </ul>	7 hours	
<ul style="list-style-type: none"> <li>• Please indicate the time, if any, spent producing records from machine readable records.</li> <li>• Please differentiate between time spent using a central mainframe processor and time spent developing computer programs to create the records.</li> </ul>	0	

**Information Access Operations - Fee Estimate Calculation Table**

**NOTES:**

Fee estimates & actual costs do not include the costs of retrieving/returning boxes from/to off-site storage facilities.

A machine readable record is anything upon which information is stored or recorded such that a computer or other mechanical device can render the information intelligible.

**2. Preparing Records for Disclosure**

Associated Tasks	Estimated Effort (in hours)	Actual Effort (in hours)
This is to include time spent: <ul style="list-style-type: none"> <li>• preparing records for photocopying/scanning – (remove staples, etc);</li> <li>• photocopying records;</li> <li>• putting files back together – (re-file, re-staple, put records back in cerlox coils, etc); and</li> <li>• assembling the package and ensuring the package is complete.</li> </ul>	2 hours	

**NOTE:**

IAO's preferred method of receiving records is electronically (preferably in pdf format).

**3. Providing Copies of Records**

	Estimated Volume	Actual Volume
Please indicate the total number of pages that are responsive to the request.	150	

**NOTES:**

The average file folder is 1" and holds approximately 200 single-sided pages.

Where records are double-sided, please estimate the total number of sides.

One standard Records Centre Services Box (1 cubic foot) holds approximately:

- 2,200 pages if they are in letter sized folders; and
- 1,800 pages if they are in legal sized folders.

Ministry Program Area:	RTB
Estimate Completed By:	Michelle Beattie
Date:	December 2, 2011

**For IAO Use Only**

Total Fee to Applicant		
Task	Estimated Costs	Actual Costs
Locating, Retrieving and Producing Records		
Preparing Records for Disclosure		
Providing Copies of Records		
Shipping Costs		
<b>TOTAL:</b>		



## Beattie, Michelle OHCS:EX

---

**From:** Phosy, Krisna SSBC:EX  
**Sent:** Thursday, November 17, 2011 2:26 PM  
**To:** Lalonde, Jan MEM:EX; Cho, Gayle MEM:EX  
**Cc:** Beattie, Michelle MEM:EX  
**Subject:** HOU-2011-00048 Fee Waiver Request  
**Attachments:** Program Area Fee Waiver Advice - Inability to Pay.doc

Good Morning Jan and Michelle,

Our applicant for the request HOU-2011-00048 has made a request that the fee be waived. As part of our organization's policy, we need to obtain input from the program area(s) regarding the waiver of fees. I am attaching a one-page form for you to complete which will assist us to determine whether or not a fee should be waived

As our response to the applicant is due by December 15, 2011, I would appreciate receiving your completed form by **November 30, 2011.**

### **SUMMARY OF APPLICANT'S REASON(S) FOR REQUESTING A FEE WAIVER**

The applicant has requested a fee waiver based on their inability to pay. They have provided their Notice of Assessment which shows they earn less than \$11,000 a year. The applicant is a person with disability receiving monthly financial assistance from the Province of BC which totals under \$1,000 a month.

### **DESCRIPTION OF REQUESTED RECORDS**

Correspondence received by the Residential Tenancy Branch including letters, faxes, emails, call summaries, pertaining to complaints with the dispute resolution process, and complaints regarding dispute resolution officers conduct while conducting conference calls or in person meetings. Timeframe is January 1, 2011 to [October 31, 2011].

Krisna Phosy

Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843

[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

#### ***Providing Services to:***

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office

## Program Area Fee Waiver Advice

292-30/HOU-2011-00048

Date: November 17, 2011

*Under section 75 (5) (a) The head of a public body may excuse an applicant from paying all or part of a fee if, in the head's opinion, the applicant cannot afford the payment or for any other reason it is fair to excuse payment.*

*Information Access Operations requests your input regarding the provision of records to the applicant. Please consider the following points when providing your recommendations:*

### Points To Consider:

1. Is the request reasonable in scope? If not, please suggest time/scope parameters that will reduce the response to a more manageable size.
2. Is the information routinely releasable or currently available to the public? If so, please identify the sources (ie. Web site address, office location):
3. Describe the sensitivity of the records in question. Would the release of these records create a potential issue for the ministry?
4. Do the records attract heavy severing for reasons of either legal advice or law enforcement?
5. Will the responsive records require consultation with another public body (records created by other ministries or public agencies, First Nations or Crown Corporations)?
6. Would dissemination of the information yield a public benefit by disclosing an environmental, public health, or safety concern?

### A. Summary of Recommendations

### B. Recommendations

☐ Full Waiver ☐ Waiver Denied ☐ Partial Waiver \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Program Area Authority

\_\_\_\_\_

Date

## **Beattie, Michelle OHCS:EX**

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**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, December 20, 2011 11:12 AM  
**To:** Thompson, Shelley B OHCS:EX  
**Cc:** Lalonde, Jan MEM:EX; Beattie, Michelle OHCS:EX  
**Subject:** RE: New FOI request - HOU-2011-00048  
**Attachments:** Call - Fees Form.pdf

Shelley,

Yes, the form was on the original email, which you probably don't have. I have attached a copy for you. When it has been signed, please forward it and the records to me.

Thanks.

Krisna Phosy

Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843

[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

***Providing Services to:***

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Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office

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**From:** Thompson, Shelley B OHCS:EX  
**Sent:** Tuesday, December 20, 2011 10:50 AM  
**To:** Phosy, Krisna SSBC:EX  
**Subject:** RE: New FOI request - HOU-2011-00048

Hi Krisna, s.22 so I have gathered the file copies. Can you tell me the next step? Is there a form where my Director signs off? Thanks, Shelley

---

**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, December 20, 2011 8:52 AM  
**To:** Beattie, Michelle OHCS:EX  
**Cc:** Thompson, Shelley B OHCS:EX  
**Subject:** RE: New FOI request - HOU-2011-00048

Yes please.

Krisna Phosy

Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843

[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

***Providing Services to:***

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office

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**From:** Beattie, Michelle OHCS:EX  
**Sent:** Wednesday, December 14, 2011 11:53 AM  
**To:** Phosy, Krisna SSBC:EX  
**Cc:** Thompson, Shelley B OHCS:EX  
**Subject:** FW: New FOI request - HOU-2011-00048

Hi Krisna, I have not heard back from you regarding this one. Are we going ahead collecting the files or ?

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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**From:** Beattie, Michelle MEM:EX  
**Sent:** Friday, December 2, 2011 3:00 PM  
**To:** Phosy, Krisna SSBC:EX  
**Cc:** Thompson, Shelley B MEM:EX  
**Subject:** FW: New FOI request - HOU-2011-00048

Hi Krisna, Here is the revised fee estimate form based on our greatest amount of correspondence in a month – 2011.

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

---

**From:** Beattie, Michelle MEM:EX  
**Sent:** Tuesday, November 15, 2011 3:13 PM  
**To:** Phosy, Krisna SSBC:EX  
**Subject:** RE: New FOI request - HOU-2011-00048

Here you are☺

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, November 15, 2011 11:51 AM  
**To:** Beattie, Michelle MEM:EX  
**Subject:** RE: New FOI request - HOU-2011-00048

Yes please. Just don't include any reviewing time in the numbers.  
Cheers,

Krisna Phosy  
Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843  
[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

**Providing Services to:**  
Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office

---

**From:** Beattie, Michelle MEM:EX  
**Sent:** Tuesday, November 15, 2011 11:51 AM  
**To:** Phosy, Krisna SSBC:EX  
**Subject:** RE: New FOI request - HOU-2011-00048

Do you want me to use an old form then?

---

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, November 15, 2011 11:50 AM  
**To:** Beattie, Michelle MEM:EX  
**Subject:** RE: New FOI request - HOU-2011-00048

No it has not. It should be ready shortly. In the mean time I need the revised fee estimate. The clock keeps ticking until I receive it and we are running out of time on this one.

Krisna Phosy  
Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

**Providing Services to:**

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office

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**From:** Beattie, Michelle MEM:EX  
**Sent:** Tuesday, November 15, 2011 10:08 AM  
**To:** Phosy, Krisna SSBC:EX  
**Subject:** FW: New FOI request - HOU-2011-00048

Hi Krisna, Has the call for records form been updated yet?

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

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**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, November 1, 2011 12:26 PM  
**To:** Cho, Gayle MEM:EX; Lalonde, Jan MEM:EX  
**Cc:** Moran, Jennifer MEM:EX; Beattie, Michelle MEM:EX  
**Subject:** New FOI request - HOU-2011-00048

Good morning,

## New FOI Request Received

Your Ministry has received a formal request made under the *Freedom of Information and Protection of Privacy Act* (FOIPPA). You'll note that the attached request has been redacted to remove information that would identify the applicant.

## What Do You Need to Do?

Please complete the attached Call for Records form.

- ❖ If search and retrieval time is anticipated to exceed 3 hours and/or the total volume of records exceeds 200 pages, complete **only** Sections 1 & 2 of the Call for Records Form as we may be in a position to issue a fee estimate. Then, return the form to Krisna.Phosy by November 18, 2011. Please await further instruction from IAO as the records will not be required until the fee estimate process has been completed. Once fees have been paid or waived, Krisna Phosy will contact you to continue the call for records process. IAO will advise you if the request is abandoned and closed.
- ❖ If **no fees apply** then proceed with the call for records process. If the request proceeds, please complete the attached Call for Records Form and return it to Krisna Phosy by November 18, 2011.
- ❖ Send records via email **in PDF format**. If email is not possible, please send the records in electronic format (CD, memory stick) via house mail with a copy of this note.

## Reminder

You should be aware that FOIPPA obligates us to assist the applicant and to respond without delay, openly, accurately, and completely. In the event that the ministry must defend the adequacy of its search to the Information and Privacy Commissioner at Inquiry, those involved in searching for records may be required to sign affidavits confirming they have conducted an adequate search for relevant records.

It should also be noted that there is an FOI Alert/Escalation process. If IAO does not hear back from you within the designated time period, IAO is required to raise an alert with you at the following intervals:

- 4 days before the records are due – IAO will send an email to you and cc **your** ADM;
- 2 days before the records are due – IAO Manager will send an email to **your** ADM;
- 1 day before the records are due – IAO Executive Director will send an email or call your DM.

## Questions and Concerns

Please do not hesitate to contact your analyst noted on the attached Call for Records form to discuss:

- whether the records may be routinely releasable;
- whether the information is being prepared for public release or is already publicly available;
- ways in which an applicant may want to narrow/focus their request to reduce potential fees; and/or
- any other questions or concerns relating to this request.

Thank you for your assistance,

**Krisna Phosy**

Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843

[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

### ***Providing Services to:***

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office





BRITISH  
COLUMBIA

Information Access Operations  
Ministry of Labour, Citizens' Services  
and Open Government  
PO Box 9569 Stn Prov Govt  
Tel: (250) 387-1321

## CALL FOR RECORDS - GENERAL FOI REQUEST

Request Details:	APPLICANT TYPE	FOI REQUEST NUMBER
	Individual	HOU-2011-00048
	DATE RECEIVED	ANALYST
	October 31, 2011	Krisna Phosy
	FEE ESTIMATE DUE	RECORDS DUE
	November 7, 2011	November 18, 2011

### Section 1: Initial Records Assessment

1. Do you hold any responsive records? ☒ Yes ☐ No

2. Are you aware of other records that maybe responsive to this request? ☐ Yes ☒ No

2a. Within your Ministry? ☐ Yes ☒ No If yes, please specify:

2b. Held by another public body? ☐ Yes ☒ No If yes, please specify:

### Section 2: Fee Estimate Section

Please ensure that all reasonable efforts are made to generate as accurate an estimate as possible

#### Section 2A: Time Locating, Retrieving and Reviewing Records

Locating files tasks may include:	Retrieving files task may include:	Reviewing files task may include:	Estimated Hours
• Consulting with staff	• Consulting with staff	• Consulting with staff	
• Searching for hard & electronic files	• Retrieving records from off site	• Reading through files to locate responsive records	
• Reviewing box content lists	• Retrieving email records		Actual Hours

#### Section 2B: Volume of Records (General Calculation Information)

Electronic files (in pages):	Estimated Pages	Actual Pages
Email without attachments:		
Email with attachments:		
*Other:		
*Other refers to PDF Word, Excel, Photos and any other electronic file relevant to the request		
Hardcopy files (in pages):	Estimated Pages	
• Average file folder = 1" and holds approximately 200 pages (single sided)		
• 1 Standard Records Centre Services Box:		
• If in legal sized folders - 1,800 pages		
• If in letter sized folders - 2,200 pages		Actual Pages

#### Section 2C: Time Preparing Records

Preparing records includes:

• Converting records into electronic format (PDF) for IAO

• Copying other types of media; if so please specify:

Estimated Hours

Actual Hours

### Section 3: Program Area Recommendations

3. Please describe the search for records: (where did you look and who did you talk to?)  
*CLIFF, Physical files, Admin Assistant*

4. What type of records need to be searched? (paper files, email, databases, TRIM files, off-site records etc.)  
*CLIFF database*

5. Could any/all of the of the responsive records potentially cause harm? ☒ Yes ☐ No If "no," skip to Section 4

\*Harm - Disclosure of the records would significantly harm the ministry's position, or a third party's interests on a given topic. The harms assessment allows FOI staff to better understand the context of the records and make informed severing recommendations based on potential harms. Issues associated with possible disclosure through the FOI process that are unrelated to the harms assessment, should be communicated to your ministry executive and/or Government Communications and Public Engagement office.

#### 6. If yes, which information if released may cause harm? (Please reference the harms and associated page numbers)

*Third party information in each letter*

### Section 4: Contact Information

Who completed this form? (First and Last Name)	Phone number:	Date:
<i>Shelley Thompson</i>	<i>356-7825</i>	<i>Dec 20-11</i>
Contact for Harms Assessment (First and Last Name)	Program Area	
<i>Cheryl May</i>	<i>Residential Tenancy Branch</i>	

IAO Use Only	Estimated	Actual	Comments
	Hours	Hours	
	Pages	Pages	

## Beattie, Michelle OHCS:EX

---

**From:** Beattie, Michelle MEM:EX  
**Sent:** Thursday, November 3, 2011 10:00 AM  
**To:** Phosy, Krisna LCTZ:EX  
**Cc:** Moran, Jennifer OHCS:EX; Thompson, Shelley B MEM:EX  
**Subject:** RE: New FOI request - HOU-2011-00048  
**Attachments:** Foi 48.pdf

Hi Krisna, Attached is the Call for Records – fee estimate.

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

---

**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, November 1, 2011 12:26 PM  
**To:** Cho, Gayle MEM:EX; Lalonde, Jan MEM:EX  
**Cc:** Moran, Jennifer MEM:EX; Beattie, Michelle MEM:EX  
**Subject:** New FOI request - HOU-2011-00048

Good morning,

### New FOI Request Received

Your Ministry has received a formal request made under the *Freedom of Information and Protection of Privacy Act* (FOIPPA). You'll note that the attached request has been redacted to remove information that would identify the applicant.

### What Do You Need to Do?

Please complete the attached Call for Records form.

- ❖ If search and retrieval time is anticipated to exceed 3 hours and/or the total volume of records exceeds 200 pages, complete **only** Sections 1 & 2 of the Call for Records Form as we may be in a position to issue a fee estimate. Then, return the form to Krisna Phosy by November 18, 2011. Please await further instruction from IAO as the records will not be required until the fee estimate process has been completed. Once fees have been paid or waived, Krisna Phosy will contact you to continue the call for records process. IAO will advise you if the request is abandoned and closed.
- ❖ If no fees apply then proceed with the call for records process. If the request proceeds, please complete the attached Call for Records Form and return it to Krisna Phosy by November 18, 2011.
- ❖ Send records via email in PDF format. If email is not possible, please send the records in electronic format (CD, memory stick) via house mail with a copy of this note.

### Reminder

You should be aware that FOIPPA obligates us to assist the applicant and to respond without delay, openly, accurately, and completely. In the event that the ministry must defend the adequacy of its search to the Information and Privacy Commissioner at Inquiry, those involved in searching for records may be required to sign affidavits confirming they have conducted an adequate search for relevant records.

It should also be noted that there is an FOI Alert/Escalation process. If IAO does not hear back from you within the designated time period, IAO is required to raise an alert with you at the following intervals:

- 4 days before the records are due – IAO will send an email to you and cc **your** ADM;
- 2 days before the records are due – IAO Manager will send an email to **your** ADM;
- 1 day before the records are due – IAO Executive Director will send an email or call your DM.

## Questions and Concerns

Please do not hesitate to contact your analyst noted on the attached Call for Records form to discuss:

- whether the records may be routinely releasable;
- whether the information is being prepared for public release or is already publicly available;
- ways in which an applicant may want to narrow/focus their request to reduce potential fees; and/or
- any other questions or concerns relating to this request.

Thank you for your assistance,

**Krisna Phosy**

Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843

[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

***Providing Services to:***

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office





**BRITISH COLUMBIA**

Information Access Operations  
Ministry of Labour, Citizens' Services  
and Open Government  
PO Box 9569 Stn Prov Govt  
Tel: (250) 387-1321

## CALL FOR RECORDS – GENERAL FOI REQUEST

Request Details:	APPLICANT TYPE	FOI REQUEST NUMBER
	Individual	HOU-2011-00048
	DATE RECEIVED	ANALYST
	October 31, 2011	Krisna Phosy
	FEE ESTIMATE DUE	RECORDS DUE
	November 7, 2011	November 18, 2011

### Section 1: Initial Records Assessment

1. Do you hold any responsive records? ☒ Yes ☐ No

2. Are you aware of other records that maybe responsive to this request? ☐ Yes ☒ No

2a. Within your Ministry? ☐ Yes ☐ No If yes, please specify: \_\_\_\_\_

2b. Held by another public body? ☐ Yes ☒ No If yes, please specify: \_\_\_\_\_

### Section 2: Fee Estimate Section

Please ensure that all reasonable efforts are made to generate as accurate an estimate as possible

#### Section 2A: Time Locating, Retrieving and Reviewing Records

Locating files tasks may include:	Retrieving files task may include:	Reviewing files task may include:	Estimated Hours
<ul style="list-style-type: none"> <li>Consulting with staff</li> <li>Searching for hard &amp; electronic files</li> <li>Reviewing box content lists</li> </ul>	<ul style="list-style-type: none"> <li>Consulting with staff</li> <li>Retrieving records from off site</li> <li>Retrieving email records</li> </ul>	<ul style="list-style-type: none"> <li>Consulting with staff</li> <li>Reading through files to locate responsive records</li> </ul>	49
			Actual Hours

#### Section 2B: Volume of Records (General Calculation Information)

Electronic files (in pages):	Estimated Pages	Actual Pages
Email without attachments:		
Email with attachments:	1200	
*Other:		
*Other refers to PDF Word, Excel, Photos and any other electronic file relevant to the request		
Hardcopy files (in pages):	Estimated Pages	
<ul style="list-style-type: none"> <li>Average file folder = 1" and holds approximately 200 pages (single sided)</li> <li>1 Standard Records Centre Services Box: <ul style="list-style-type: none"> <li>If in legal sized folders - 1,800 pages</li> <li>If in letter sized folders - 2,200 pages</li> </ul> </li> </ul>	0	
	Actual Pages	

#### Section 2C: Time Preparing Records

Preparing records includes:

- Converting records into electronic format (PDF) for IAO
- Copying other types of media; if so please specify: \_\_\_\_\_

Estimated Hours	70
Actual Hours	

#### Section 3: Program Area Recommendations

3. Please describe the search for records: (where did you look and who did you talk to?) \_\_\_\_\_

4. What type of records need to be searched?: (paper files, email, databases, TRIM files, off-site records etc.) \_\_\_\_\_

5. Could any/all of the of the responsive records potentially cause harm? ☐ Yes ☒ No If "no," skip to Section 4

\*Harm – Disclosure of the records would significantly harm the ministry's position, or a third party's interests on a given topic. The harms assessment allows FOI staff to better understand the context of the records and make informed severing recommendations based on potential harms. Issues associated with possible disclosure through the FOI process that are unrelated to the harms assessment, should be communicated to your ministry executive and/or Government Communications and Public Engagement office.

#### 6. If yes, which information if released may cause harm? (Please reference the harms and associated page numbers)

#### Section 4: Contact Information

Who completed this form? (First and Last Name)	Phone number:	Date:
Michelle Beattie/Shelley Thompson	250 366-5374	Nov 3/11
Contact for Harms Assessment (First and Last Name)	Program Area	
	RTB	

IAO Use Only	Estimated	Actual	Comments
	Hours	Hours	
	Pages	Pages	

**Beattie, Michelle OHCS:EX**

---

**From:** Thompson, Shelley B OHCS:EX  
**Sent:** Tuesday, December 20, 2011 3:01 PM  
**To:** Phosy, Krisna SSBC:EX  
**Cc:** Beattie, Michelle OHCS:EX  
**Subject:** RE: New FOI request - HOU-2011-00048

Hi Krisna, here is the form and the documents. Thank you, Shelley

**From:** [Shelley.B.Thompson@gov.bc.ca](mailto:Shelley.B.Thompson@gov.bc.ca) [<mailto:Shelley.B.Thompson@gov.bc.ca>]  
**Sent:** Tuesday, December 20, 2011 2:58 PM  
**To:** Thompson, Shelley B OHCS:EX  
**Subject:**



20111220145641.p  
df

## Beattie, Michelle OHCS:EX

---

**From:** Beattie, Michelle OHCS:EX  
**Sent:** Tuesday, January 17, 2012 3:14 PM  
**To:** Moran, Jennifer OHCS:EX  
**Subject:** RE: ACTION: SIGNOFF HOU-2011-00048 DUE: January 24, 2012 (6 business days)

Yes good to go.

**Michelle Beattie**  
Administrative Assistant  
Residential Tenancy Branch  
250 356-5374

RTB offices are now open from 9 am to 4 pm. Information and the E-Service for filing applications for dispute resolution are always available on our website at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

---

**From:** Moran, Jennifer OHCS:EX  
**Sent:** Tuesday, January 17, 2012 2:51 PM  
**To:** Beattie, Michelle OHCS:EX  
**Subject:** FW: ACTION: SIGNOFF HOU-2011-00048 DUE: January 24, 2012 (6 business days)

Can you pls confirm this is good to be signed off.

---

**From:** Lalonde, Jan MEM:EX  
**Sent:** Tuesday, January 17, 2012 2:17 PM  
**To:** Moran, Jennifer OHCS:EX  
**Cc:** Cho, Gayle MEM:EX  
**Subject:** FW: ACTION: SIGNOFF HOU-2011-00048 DUE: January 24, 2012 (6 business days)

Hi Jennifer,

Attached is a FOI request for the program area's review.

Thanks,  
Jan

Jan Lalonde  
Manager, Information Resource Centre  
Ministry of Energy and Mines  
6th floor, 1810 Blanshard Street  
Victoria, BC V8T 4J1

Phone: 250-952-0293  
Fax: 250-952-0331

---

**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, January 17, 2012 10:58 AM  
**To:** Lalonde, Jan MEM:EX  
**Cc:** Cho, Gayle MEM:EX  
**Subject:** ACTION: SIGNOFF HOU-2011-00048 DUE: January 24, 2012 (6 business days)

Jan and Gayle,

Attached please find the FOI sign-off sheet for the delegated head's review and decision.

For your information you will find the Ministry and program area signoff(s) and the red lined records.

**This signoff is required by:**      **January 24, 2012** (6 business days)  
**Legislated Due Date:**            **January 31, 2012**

Please respond electronically if possible.

To ensure timelines are met, we will be sending electronic alerts are per the next FOI improvement process. The standard alerts will be sent starting **4 days prior to the due date**.

Thank you,

Krisna Phosy  
Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843  
[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

***Providing Services to:***

Ministry of Aboriginal Relations and Reconciliation  
Ministry of Agriculture  
Ministry of Environment  
Ministry of Forests, Lands and Natural Resource Operations  
Ministry of Energy and Mines and  
Minister Responsible for Housing  
Environmental Assessment Office



**From:** Phosy, Krisna SSBC:EX  
**Sent:** Tuesday, November 1, 2011 12:26 PM  
**To:** Cho, Gayle MEM:EX; Lalonde, Jan MEM:EX  
**Cc:** Moran, Jennifer MEM:EX; Beattie, Michelle MEM:EX  
**Subject:** New FOI request - HOU-2011-00048  
**Attachments:** Intake - Request - Redacted.pdf; Call - Fees Form.pdf

Good morning,

## **New FOI Request Received**

Your Ministry has received a formal request made under the *Freedom of Information and Protection of Privacy Act* (FOIPPA). You'll note that the attached request has been redacted to remove information that would identify the applicant.

## **What Do You Need to Do?**

Please complete the attached Call for Records form.

- ❖ If search and retrieval time is anticipated to exceed 3 hours and/or the total volume of records exceeds 200 pages, complete **only** Sections 1 & 2 of the Call for Records Form as we may be in a position to issue a fee estimate. Then, return the form to Krisna Phosy by November 18, 2011. Please await further instruction from IAO as the records will not be required until the fee estimate process has been completed. Once fees have been paid or waived, Krisna Phosy will contact you to continue the call for records process. IAO will advise you if the request is abandoned and closed.
- ❖ If no fees apply then proceed with the call for records process. If the request proceeds, please complete the attached Call for Records Form and return it to Krisna Phosy by November 18, 2011.
- ❖ Send records via email in PDF format. If email is not possible, please send the records in electronic format (CD, memory stick) via house mail with a copy of this note.

## **Reminder**

You should be aware that FOIPPA obligates us to assist the applicant and to respond without delay, openly, accurately, and completely. In the event that the ministry must defend the adequacy of its search to the Information and Privacy Commissioner at Inquiry, those involved in searching for records may be required to sign affidavits confirming they have conducted an adequate search for relevant records.

It should also be noted that there is an FOI Alert/Escalation process. If IAO does not hear back from you within the designated time period, IAO is required to raise an alert with you at the following intervals:

- 4 days before the records are due – IAO will send an email to you and cc **your** ADM;
- 2 days before the records are due – IAO Manager will send an email to **your** ADM;
- 1 day before the records are due – IAO Executive Director will send an email or call your DM.

## **Questions and Concerns**

Please do not hesitate to contact your analyst noted on the attached Call for Records form to discuss:

- whether the records may be routinely releasable;
- whether the information is being prepared for public release or is already publicly available;
- ways in which an applicant may want to narrow/focus their request to reduce potential fees; and/or
- any other questions or concerns relating to this request.

Thank you for your assistance,

## Krisna Phosy

Information Access Analyst | Information Access Operations  
Ministry of Labour, Citizens' Services and Open Government  
PO Box 9569 Stn Prov Gov't Victoria, BC V8W 9K1

Tel: 250-356-5847 | Fax: 250 387-9843

[Krisna.Phosy@gov.bc.ca](mailto:Krisna.Phosy@gov.bc.ca)

### ***Providing Services to:***

Ministry of Aboriginal Relations and Reconciliation

Ministry of Agriculture

Ministry of Environment

Ministry of Forests, Lands and Natural Resource Operations

Ministry of Energy and Mines and

Minister Responsible for Housing

Environmental Assessment Office

**Phosy, Krisna SSBC:EX**

---

**From:**  
**Sent:** Friday, October 28, 2011 4:54 PM  
**To:** FOI Requests SSBC:EX  
**Subject:** FOI Residential Tenancy Branch

I submit this order for correspondence received by the Residential Tenancy Branch (letters, faxes, emails, call summaries) pertaining to complaints with the dispute resolution process, and complaints regarding dispute resolution officers conduct while conducting conference calls or in person meetings, for 2011; pdf format by email.



# Community Legal Assistance Society

providing specialized legal assistance to promote social justice since 1971

## COMMUNITY LAW PROGRAM

Please direct your reply to:

Jess Hadley  
[jhadley@clasbc.net](mailto:jhadley@clasbc.net)

November 30, 2011

Via Mail

Cheryl May  
Assistant Executive Director  
Residential Tenancy Branch  
PO Box 9844 Stn. Prov. Govt.  
Victoria, BC  
V8W 9T2

Dear Ms. May:

**Re: Residential Tenancy Branch decision-making**

Thank you for your letter dated November 7<sup>th</sup> (enclosed). I was glad to see that on October 6, 2011 a large number of decisions were posted on the RTB website, following a 5- or 6-month break during which no new decisions were posted.

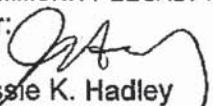
You enquire about my comment that 67% of all judicial reviews of DRO decisions have led to the decision being set aside and remitted for re-hearing. I reached this figure by searching Quicklaw (a legal database that contains all reported BC Supreme Court decisions) for judicial reviews of RTB decisions dating from January 2004 onward. I also took into account the small handful of unreported judicial review decisions that I am aware of from that time period. Out of the 57 judicial review decisions that I identified, a total of 38 (or 66.6%) led to a remittal back to the Branch.

If the Branch does not currently keep track of judicial reviews challenging its decisions, I would respectfully suggest that it consider implementing a system to do so. The Supreme Court's decision in a judicial review is legally binding on the Branch, not just in relation to that particular case, but generally.

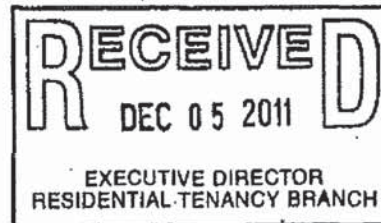
Yours truly,

COMMUNITY LEGAL ASSISTANCE SOCIETY

Per:

  
Jessie K. Hadley  
Barrister & Solicitor  
JH/ws

cc: Honourable Rich Coleman  
Dr. Margaret MacDiarmid



David Mossop, Q.C.  
James Sayre  
Brian Higgins  
Leslie Anne Wall  
Diane Nielsen  
Frances Kelly  
Allison Ward  
Aleem Bharmal  
Dan Solseth  
Rose Chin  
Manjeet Chana  
Lindsay Waddell  
Jessie Hadley  
Kevin Love  
Scott Hicks  
Kendra Milne  
Devyn Cousineau  
Kaity Cooper  
(Articling Student)



November 7, 2011

Re: 14631

Ms. Jessie Hadley  
Barrister and Solicitor  
Community Legal Assistance Society  
Suite 300 – 1140 West Pender Street  
Vancouver BC V6E 4G1

**COPY**

Dear Ms. Hadley:

The Honourable Rich Coleman, Minister Responsible for Housing, has asked me to respond to your October 4, 2011 letter requesting further information about Residential Tenancy Branch decision-making. I am also responding to your September 28, 2011 letter to Suzanne Bell, on the same topic. s.22 and I'm responding on her behalf.

In your September 28<sup>th</sup> letter to the Residential Tenancy Branch, you mention that you were unable to find decisions posted on our web site past April 2011. Decisions have been posted in a timely manner and currently decisions are posted up to and including October.

I'm curious about the judicial review figure you quote in your letter. I cannot replicate your finding that 67% of cases are directed back for re-hearing. An independent study by the Tenants Resource Advisory Centre shows the figure at 26 cases between 2006 and 2010.

I appreciate your on-going interest in residential tenancy matters.

Yours truly,

Cheryl May  
A/Executive Director  
Residential Tenancy Branch

pc: Honourable Rich Coleman  
Minister Responsible for Housing





December 22, 2011

Ref: 14974

Jessie K. Hadley  
Barrister and Solicitor  
Community Legal Assistance Society  
Suite 300 – 1140 West Pender Street  
Vancouver BC V6E 4G1

Dear Ms..Hadley:

Thank you for your November 30, 2011 letter concerning decision making at the Residential Tenancy Branch.

I wanted to let you know that we systematically monitor our judicial reviews and follow the Supreme Court's rulings.

I appreciate your on-going interest in residential tenancy matters.

Yours truly,

Barbara Jones  
A/Executive Director  
Residential Tenancy Branch



# Community Legal Assistance Society

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## COMMUNITY LAW PROGRAM

Please direct your reply to:  
Jess Hadley  
[jhadley@clasbc.net](mailto:jhadley@clasbc.net)

Our File No. 2350

July 29, 2011

Via Mail

Suzanne Bell  
Residential Tenancy Branch  
Suite 101, 3350 Douglas Street  
Victoria, V8Z 3L1



David Mossop, Q.C.  
James Sayre  
Brian Higgins  
Diane Nielsen  
Frances Kelly  
Alison Ward  
Aleem Bharmal  
Joni Worton  
Dan Solseth  
Rose Chin  
Lindsay Waddell  
Jessie Hadley  
Vanessa Emery  
Kevin Love  
Scott Hicks  
Kendra Milne  
Devyn Cousineau

Dear Ms. Bell:

**Re: Residential Tenancy Branch decision-making**

Please find enclosed a copy letter dated July 28, 2011 sent to Dr. Margaret MacDiarmid, MLA.

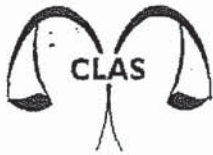
Yours truly,

Community Legal Assistance Society

Per:

  
Jessie K. Hadley  
Barrister & Solicitor  
JH/ws





# Community Legal Assistance Society

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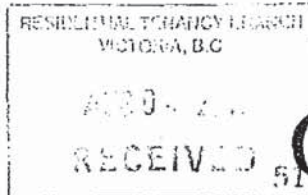
## COMMUNITY LAW PROGRAM

Please direct your reply to:  
Jess Hadley and Kendra Milne

July 28, 2011

Via e-mail

Dr. Margaret MacDiarmid, MLA  
104 - 1245 West Broadway  
Vancouver, BC  
V6H 1G7



COPY

David Mossop, Q.C.  
James Sayre  
Brian Higgins  
Diane Nielsen  
Frances Kelly  
Aleem Bharmal  
Joni Worton  
Dan Solseth  
Rose Chin  
Lindsay Waddell  
Jessie Hadley  
Kevin Love  
Scott Hicks  
Kendra Milne  
Devyn Cousineau  
Son Le  
(Articled Student)

Dear Dr. MacDiarmid:

**Re: Residential Tenancy Branch decision-making**

Thank you again for taking the time to meet with me on June 23, 2011 to discuss my concerns about access to justice in BC. This letter will respond to your request for more information about the consistently poor quality of decision-making that I have observed at the Residential Tenancy Branch (the "Branch") over the past several years.

My colleague Kendra Milne is working with me on this issue, so I have copied her on this letter. I am also copying the Registrar of the Branch, Suzanne Bell, because we have corresponded with her about this issue in the past few months and I would like to keep her in the loop.

### WHO WE ARE

Ms. Milne and I are staff lawyers at the Community Legal Assistance Society (CLAS), a law office funded by the Law Foundation of BC to provide legal services to low-income people, including on residential tenancy matters. We have a specialty in residential tenancy law; our lawyers review approximately 200 residential tenancy decisions per year for our clients. As far as we know, there is no other law office in BC that specializes in this area.

### A SUMMARY OF OUR CONCERNS

From our perspective, the Branch's decision-making stands out as significantly more problematic than that of any of the (numerous) other administrative tribunals we deal with, either provincially or federally.

The most severe and persistent problems we see in Branch decisions are:

- Failures by the Dispute Resolution Officer ("DRO") to apply the proper legal test; and
- Failures by the DRO to provide adequate reasons for their decision.

These errors are simple to articulate, but their significance cannot be overstated. They are basic, glaring errors that the Branch has made on a regular basis since at least 2006. We also see other problems, but these two are the most common and the most glaring.

#### **WHY GOOD DECISION-MAKING AT THE BRANCH IS IMPORTANT**

Quality of decision-making by DROs at the Branch is a major concern for the administration of justice in BC. Here are four reasons why.

1. **Numerous litigants are affected.** DROs decide very large numbers of cases (I understand the total is approximately 30,000 a year) that affect both landlords and tenants across the province.
2. **The cases deal with important issues.** Many residential tenancy cases affect people's rights in important ways. For example, DROs regularly decide:
  - monetary claims worth up to \$25,000;
  - cases that result in tenants being evicted on as little as 48 hours' notice regardless of their family situation, their health, their financial situation, and their length of tenure in their home; and
  - cases dealing with health and safety issues, such as the habitability and security of rental units.
3. **Hearings are done by teleconference.** Unlike any other administrative tribunal of which we are aware, the Branch does almost all of its hearings via teleconference. In such a context, it is absolutely essential that its decision-making meet a minimum standard of quality, to ensure that justice is seen to be done.
4. **There are very limited rights of review.** The tenancy legislation provides only a very limited internal review process for DRO decisions (see ss. 78-79 of the *Residential Tenancy Act* and ss. 71-72 of the *Manufactured Home Park Tenancy Act*). This means that where a landlord or tenant has a legitimate problem with a DRO decision, most often the only remedy is an expensive and time-consuming application for judicial review in BC Supreme Court.

To be clear, our concern is not that our particular clients (who are nearly all low-income people) lose too many cases at the Branch *per se*. Rather, we are concerned that regardless of the outcome, DRO decisions are too often poorly reasoned and poorly expressed. This does a significant disservice to both tenants and landlords, as I will discuss below.

#### **JUDICIAL REVIEWS**

The Branch has continued to repeat the same basic errors despite a large number of judicial reviews in which the BC Supreme Court has set aside DRO decisions and ordered new hearings.

Since January 2004 when the current residential tenancy legislation came into force, the BC Supreme Court has decided at least 55 judicial reviews of DRO decisions. In 65% of these cases, the DROs' decisions were found to be so problematic that the files were remitted back to the RTB

for re-hearing. This is an ongoing issue: just three days ago the Supreme Court issued its latest decision remitting a DRO decision back to the Branch due to a lack of procedural fairness.

It is important to remember that each Supreme Court decision on a judicial review represents many more petitions for judicial review that were filed in court but did not go to hearing. While there is no way to prove exactly how many judicial reviews have been filed in total, our office has assisted well over 70 clients to file judicial reviews challenging residential tenancy matters since 2004.

It is equally important to remember that for each Supreme Court decision on a judicial review there are many more cases where litigants would have had a good case to seek judicial review but do not pursue it because of a lack of knowledge, a lack of resources, an unwillingness to take any risk of court costs, or a lack of proportionality between the practical problem created by the decision and the effort required to remedy it in court. Even among the clients who come to our office and have a good case for judicial review, a very large proportion decline to pursue judicial review for these kinds of reasons.

Our concern is not just about the large number of judicial review decisions that seem to go against the Branch. It is also about the fact these judicial reviews seem to be having little impact on DRO decision-making going forward. As a whole, we have yet to see any improvement in the Branch's decision-making in the wake of these BC Supreme Court decisions. Where the BC Supreme Court has corrected errors - even basic ones - we continue to see the same errors being made time after time.

This pattern of the same error recurring over time can be seen, just for example, in the numerous decisions where DROs have failed to provide adequate reasons as required by s. 77 of the RTA and s. 70 of the *Manufactured Home Park Tenancy Act*. Our office has been involved in judicial reviews of four such decisions.<sup>1</sup> Despite a series of forceful statements from the BC Supreme Court articulating the requirement for adequate reasons, dispute resolution officers have continued to repeat the same errors in subsequent cases, and even in the re-hearing of the same case.<sup>2</sup>

#### WIDESPREAD NATURE OF THE PROBLEM

To assess whether poor decision-making by DROs is widespread, we chose a sample issue (additional rent increases) and carefully reviewed all of the decisions the Branch has posted on its website on that issue. We examined each and every decision to see if it supplied one very basic element of adequate decision making: *at least some meaningful analysis on each element of the statutory test.*

Shockingly, in 59% of the decisions posted on the Branch website on this issue, it appears to us that the DROs failed to provide any meaningful analysis on one or more elements of the statutory test. In other words, at least 59% of the decisions posted on the Branch's website on this particular issue appear to be judicially reviewable simply because they fail to meet the basic requirement that the DRO address each element of the test.

<sup>1</sup> *Ross v. British Columbia (Residential Tenancy Act, Dispute Resolution Officer)*, 2008 BCSC 1862; *Mochizuki v. Whitworth Holdings Ltd.*, 2008 BCSC 802; *Chartrand v. 0810867 B.C. Ltd.*, March 24, 2009, Nanaimo Registry, Docket 20090324; and *Wiebe v. B&D Stinn Enterprises Ltd.*, May 4, 2010, Vancouver Registry, Docket 100134.

<sup>2</sup> This occurred, for example, in the *Wiebe* case, cited in the previous footnote.

While we certainly hope the Branch's training may ameliorate some of the difficulties the Branch is having, we remain concerned. We understand the Branch has adjusted its training at various times over the past few years, and has even hired new DROs, but from our perspective these measures have had no perceptible effect on the quality of decision-making. We suspect that significant and perhaps systemic changes are needed to ensure that Branch decision-making does not remain at its current, unacceptable level. It is with that in mind that I have taken the step of contacting you.



With due respect to Ms. Bell and her organization, it appears to us that if DROs are to do a proper job of filling the Director's mandate, they require significantly more support. This is particularly true if the current teleconference model is to be maintained, since it presents unusual challenges for decision-makers. Some supports that I respectfully suggest the DROs might benefit from include:

- More training;
- Qualitatively better training;
- Significantly more time to conduct hearings and write decisions; and
- Better systems (e.g. checklists) to assist with proper decision-writing.

It would also be very beneficial if all DROs were required to have legal training or previous decision-writing experience.

#### CONCLUSION

I would be very grateful if you could pass along my concerns to Minister Coleman, as you had suggested you might. My hope is that this letter will shed some light on this important issue so that the Minister can assess the situation and ensure the Branch gets the support it needs to improve its decision-making.

Please let me know if there is anything Ms. Milne and I can do to help you, and the Minister responsible for Housing, to understand this issue.

Thank you again for your interest in our views. I know you are busy, and I very much appreciate it.

Yours truly,

COMMUNITY LEGAL ASSISTANCE SOCIETY

Per:



Jessie K. Hadley  
Barrister & Solicitor  
JH/ws

Cc: Kendra Milne, Community Legal Assistance Society (via e-mail)  
Suzanne Bell, Residential Tenancy Branch

Text Attachment: Log ID 14402

**Final Draft - #14402**

Jessie K. Hadley  
Barrister and Solicitor  
Community Legal Assistance Society  
Suite 300 – 1140 West Pender Street  
Vancouver BC V6E 4G1

Dear Jessie Hadley:

Dr. Margaret MacDiarmid, MLA, Vancouver-Fairview has forwarded me a copy of your July 28, 2011 letter regarding decision-making at the Residential Tenancy Branch (RTB).

You express concern about the quality of decisions that are rendered by Dispute Resolution Officers (DROs) at the RTB. I understand that you have contacted Suzanne Bell, Executive Director of the RTB, and have been corresponding and discussing the steps being taken to improve these decisions.

I agree that quality decision-making by DROs is very important. The ongoing training for DROs is part of the RTB's commitment to hold its decision making and writing to a high standard. The RTB handles approximately 21,000 applications for dispute resolution every year, so it is good to know that the number being returned for a re-hearing is as low as it is.

I thank you for taking the time to put your concerns in writing.

Sincerely yours,

Rich Coleman  
Minister Responsible for Housing

pc: Dr. Margaret MacDiarmid, MLA  
Vancouver-Fairview



# Community Legal Assistance Society

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## COMMUNITY LAW PROGRAM

Please direct your reply to:  
Jess Hadley  
[jhadley@clasbc.net](mailto:jhadley@clasbc.net)

March 4, 2011.

Via Mail

Suzanne Bell  
Executive Director  
Residential Tenancy Branch  
PO Box 9844 Stn. Prov. Govt.  
Victoria, BC  
V8W 9T2

Dear Ms. Bell:

Re: Residential Tenancy Branch decision-making

Thank you for our telephone conversation on March 2, 2011 in which I outlined my concerns, and those of my colleagues at Community Legal Assistance Society, about the persistent problems we have observed in decision-making by the Residential Tenancy Branch over the past several years.


You invited me to write you a letter sharing our concerns and giving specific examples. We will attempt to put such a letter together for you by the end of March.

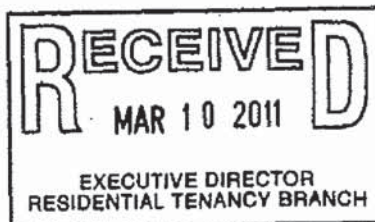
We appreciate your willingness to hear our views, and we hope you may find it helpful to have our input.

Yours truly,

COMMUNITY LEGAL ASSISTANCE SOCIETY

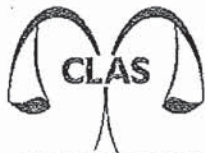
Per:

  
Jessie K. Hadley  
Barrister & Solicitor  
JH/ws



David Mossop, Q.C.  
James Sayre  
Brian Higgins  
Diane Nielsen  
Frances Kelly  
Allison Ward  
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Joni Worton  
Dan Soiseth  
Rose Chin  
Lindsay Waddell  
Jessie Hadley  
Vanessa Emery  
Kevin Love  
Scott Hicks  
Kendra Milne  
Devyn Cousineau  
Michael McCubbin  
(Articled Student)





# Community Legal Assistance Society

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## COMMUNITY LAW PROGRAM

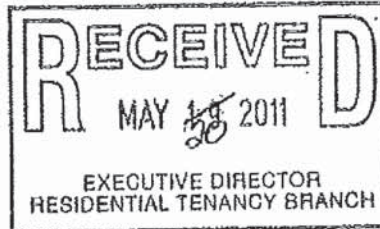
Please direct your reply to:

Jess Hadley  
jhadley@clasbc.net

May 17, 2011

Via Courier

Suzanne Bell  
Executive Director  
Residential Tenancy Branch  
PO Box 9844 Stn. Prov. Govt.  
Victoria, BC  
V8W 9T2



David Mossop, Q.C.  
James Sayre  
Brian Higgins  
Diane Nielsen  
Frances Kelly  
Alison Ward  
Aleem Bharmal  
Jonl Worton  
Dan Solseth  
Rose Chin  
Lindsay Waddell  
Jessie Hadley  
Vanessa Emery  
Kevin Love  
Scott Hicks  
Kendra Milne  
Devyn Cousineau  
Michael McCubbin  
(Articled Student)

Dear Ms. Bell:

**Re: Residential Tenancy Branch decision-making**

This will follow up on your conversation on March 2, 2011 with Jess Hadley, in which you invited us to write a letter sharing our concerns about the persistent problems we see with decision-making by Dispute Resolution Officers ("DROs") at the Residential Tenancy Branch.

### Who we are

The Community Legal Assistance Society (CLAS) is the oldest non-profit law office in BC. Our Community Law Program is funded by the Law Foundation of BC to provide legal advice and representation to low-income people, including on residential tenancy matters. We currently have 4 lawyers with a specialty in residential tenancy law. As far as we know, there is no other law office in BC that specializes in this area.

We typically help clients only *after* they have received a decision from the Branch. One of our most important services is advising clients whether they have a good case to seek judicial review of their Dispute Resolution decision.

Our records show that, over the past 2.5 years, our office has advised over 500 clients on such matters. This has meant reviewing approximately 200 decisions per year during that period. As a result we are very familiar with your office's decision-making under the *Residential Tenancy Act* (the "RTA") and the *Manufactured Home Park Tenancy Act* (the "MHPTA").

We do not, of course, have a complete overview of all the decisions issued by the Branch. We are aware that many thousands of decisions are made annually and that clients come to us when they are unsatisfied with a decision, not when they are satisfied. However, we do occupy a privileged vantage point from which to observe the quality of decision-making by your Branch over time. And with respect, it appears to us that DROs are, much of the time, failing the litigants that appear before them, and that this is a consistent pattern that has now lasted several years.



### ***Why we are concerned***

We are concerned about a consistent pattern we see of exceptionally poor decision-making by DROs at the Branch. Our practice involves helping clients with a wide range of administrative law matters, and the Branch's decision-making stands out as significantly more problematic than that of any of the other administrative tribunals we deal with, either provincially or federally.

This is of particular concern given that, as you know, DROs have jurisdiction to decide cases that will affect people's rights in important ways, including:

- cases that may result in tenants being evicted on as little as 48 hours' notice regardless of factors such as their family situation, their health, their financial situation, and their length of tenure in their home;
- monetary claims worth up to \$25,000; and
- cases dealing with health and safety issues, such as the habitability and security of rental units.

Poor decision-making by DROs is also particularly worrying because, unlike any other administrative tribunal of which we are aware, the Branch does almost all of its hearings via teleconference. In such a context, it is absolutely essential that its decision-making meet a minimum standard of quality, to ensure that justice is seen to be done.

Finally, poor-decision-making by DROs concerns us because there are only very limited internal review processes for DRO decisions (those provided by ss. 78-79 of the *RTA* and ss. 71-72 of the *MHPTA*). This means that when a landlord or tenant has a legitimate problem with a DRO decision, most often the only remedy is an expensive and time consuming application for judicial review in BC Supreme Court.

To be clear, we are not complaining that our particular clients (who are nearly all low-income people, and who are therefore tenants as opposed to landlords) lose too many cases at the Branch *per se*. Rather, we are concerned that regardless of the outcome, DRO decisions are too often poorly reasoned and poorly expressed. This does a significant disservice to both tenants and landlords, as we will discuss below.

### ***Judicial reviews***

By our count, since the *RTA* came into force in January 2004, the BC Supreme Court has decided at least 51 judicial reviews of DRO decisions. In 33 of these 51 judicial reviews (65% of them), the DROs' decisions were found to be so problematic that the files were remitted back to the RTB for re-hearing.

It is important to remember that each Supreme Court decision on a judicial review represents many more petitions for judicial review that were filed but never heard. Unfortunately, there is no way to search the BC Supreme Court registry to prove exactly how many judicial reviews have been filed in total, but we expect that you, and the Branch's legal counsel, must be aware of a large volume of petitions being served on your offices each year. We ourselves have assisted well over 70 clients to prepare petitions challenging residential tenancy matters since 2004.

It is equally important to remember that for each BC Supreme Court decision on a judicial review there are many more cases where the litigants would have had a good case to seek judicial review but did not pursue it because of a lack of knowledge, a lack of resources, an unwillingness to take any risk of court costs, or a lack of proportionality between the practical problem created by the decision and the effort required to remedy it in court. Even among the clients who come to us and have a good case for judicial review, a very large proportion decline to pursue judicial review for these kinds of reasons.

Our concern is not just with the large volume of judicial review decisions that seem to go against your office. It is also about the fact these judicial reviews seem to be having little impact on DRO decision-making going forward.

You advised us that you diligently keep track of all judicial reviews of DRO decisions, and use them for DRO training. Unfortunately, as a whole, we have yet to see any improvement in the Branch's decision-making in the wake of these BC Supreme Court decisions. Where the BC Supreme Court has corrected errors - even basic ones - we continue to see the same errors being made time after time.

***Case examples – Judicial review for inadequate reasons (black binder)***

This pattern of the same error recurring over time can be seen, for example, in the numerous decisions where DROs have failed to provide adequate reasons as required by s. 77 of the RTA and s. 70 of the *Manufactured Home Park Tenancy Act*. Our office has been involved in judicial reviews of four such decisions.

While we expect you will be well aware of these cases, we enclose for your reference a black binder entitled "Case examples – Judicially reviewed cases – Inadequate reasons". The binder contains the RTB decision(s) along with the BC Supreme Court decision in each of the four cases where we have sought judicial review on the basis of a failure to provide adequate reasons.

**1. INADEQUATE REASONS CASE EXAMPLE #1: *Ross***

- Burnaby File No. 702644: The DRO issued a decision on September 24, 2007. The tenant had unable to attend the hearing due to a problem with the phone system, and sought review.
- Burnaby File No. 702644 (review): The DRO issued a decision on October 18, 2007, refusing to review the original decision. The client sought judicial review.
- *Ross v. British Columbia (Residential Tenancy Act, Dispute Resolution Officer)*, 2008 BCSC 1862: A February 12, 2008 decision of the BC Supreme Court quashed the DRO decisions on the basis that the reviewing DRO had, among numerous other things, failed to provide adequate reasons as required by s. 77 of the RTA. See especially paragraphs 21-22 of the BC Supreme Court decision on this point:

*[21] .... The analysis in this case constitutes one paragraph. The paragraph does nothing more than repeat the criteria set out in the legislation for the review.*

*[22] Dealing with the adequacy of reasons, it is not in my view sufficient for an adjudicating officer to simply set out the criteria on which they are to base their decision and then make their decision without going through any analysis. Reasons require an adjudicating officer to set out a test that has to be met. It requires an adjudicating officer to find some facts, to then apply the facts against the test that has to be met, weigh it and then come to some conclusion. This is another complete failure, in my view, of the decisions of Mrs. Simpson as a dispute resolution officer. Mrs. Simpson simply set out the test for analysis and did not go through the second, third or fourth stage of finding facts, applying the facts to the test, and making a conclusion.*

## 2. INADEQUATE REASONS CASE EXAMPLE #2: *Mochizuki*

- Burnaby File No. 705436: The DRO issued a decision on January 26, 2008 granting the landlord an additional rent increase pursuant to s. 23 of the Residential Tenancy Regulation. The tenants sought judicial review.
- *Mochizuki v. Whitworth Holdings Ltd.*, 2008 BCSC 802: A June 25, 2008 decision of the BC Supreme Court quashed the DRO decision on the basis that the DRO had failed to provide adequate reasons and had thus failed to comply with s. 77 of the RTA. See especially paragraphs 11-19 of the BC Supreme Court decision:

*[12] In dealing with this matter, in paragraph 5 of his decision, the DRO set out the submissions of the landlord, and the submissions of the tenants. He went on to say that one of the tenants provided a detailed submission concerning the location of the relevant units. Having set out those two positions, he stated: After hearing the evidence of the parties, I find that the comparables of the landlord are within the same geographic area for the purposes of the Act.*

*[13] I conclude that that statement of fact without any indication for the reason why, or of the analysis supporting, his decision to prefer the landlord's submissions over the tenant's submissions violates the s. 77 requirement that he "include the reasons for the decision".*

...

*[17] Here, on a critical point, there is a failure on the part of the DRO to give any reason for his decision to prefer the submissions of the landlord over that of the tenants.*

*[18] The Court of Appeal has recently confirmed this necessity in Gibson v. Insurance Corporation of British Columbia, 2008 BCCA 217. In Gibson, the Court...noted that the learned trial judge set out "nothing of the reasoning process in which the trial judge engaged" in arriving at principal facts. Further, concerning contentious issues, the Court found at para. 25: We have the benefit of the trial judge's conclusory findings on each of these issues, but we do not enjoy an indication of the reasoning process, the evidentiary analysis, or a discussion of the acceptance and rejection of the evidence of the numerous experts, in which the trial judge had to engage in arriving at these conclusions.*

*[19] In the case at bar, there is the same omission of any indication of the reasoning process or the analysis of the competing submissions.*

### 3. INADEQUATE REASONS CASE EXAMPLE #3: *Chartrand*

- Burnaby File No. 727799: The DRO issued a decision on October 27, 2008 upholding a notice to end tenancy for late payment of rent and issuing an order of possession. The tenant sought judicial review.
- *Chartrand v. 0810867 B.C. Ltd.*, March 24, 2009, Nanaimo Registry, Docket 20090324: A March 24, 2009 decision of the BC Supreme Court quashed the DRO decision on the basis that the DRO had failed to provide adequate reasons and had thus failed to comply with s. 77 of the RTA. See especially paragraphs 14-19 of the BC Supreme Court decision.

*[17] ... This clearly raised a credibility issue between the petitioner and Ms. Gadd. The dispute resolution officer, however, did not in any sense provide reasons as to how that issue was resolved. The bald statement that "the tenant has not met the burden of proving that the landlord agreed to late rent" falls far short of what the authorities require.*

*[18] As noted by Chief Justice McMurtry in Gray, the obligation to provide adequate reasons is not satisfied by merely reciting submissions and evidence of the parties and stating a conclusion. That is what occurred in this case.*

### 4. INADEQUATE REASONS CASE EXAMPLE #4 - *Wiebe*

- Burnaby File No. 735767: The DRO issued a decision on November 9, 2009 granting the landlord an additional rent increase pursuant to s. 33 of the Manufactured Home Park Tenancy Regulation. The tenants sought judicial review.
- *Wiebe v. B&D Stinn Enterprises Ltd.*, May 4, 2010, Vancouver Registry, Docket 100134: A May 4, 2010 decision of the BC Supreme Court quashed the DRO decision on the basis that the DRO had failed to provide adequate reasons and had thus failed to comply with s. 70 of the MHPTA. See especially paragraphs 24-37 of the BC Supreme Court decision.

*[31]... Whether the DRO treated the opinion expressed in the appraisal concerning market rent as essentially equivalent to "rent payable for other manufactured home sites that are similar to" (using the language in s. 33(1)(a) of the Regulations) the Park, and whether she considered Indices 3 and 5 referred to in the appraisal as "similar to" the Park but rejected the other indices as being "similar to" the Park – and, if so, for what reason – are all unknown. Because of these unknowns, it is difficult to scrutinize the decision effectively. As Madam Justice Koenigsberg points out in Hudson (at para. 55), this is one of the hallmarks of inadequate reasons.*

*[32] ... Again, whether the DRO selected only certain of the comparable sites and rejected others, and, if so, her reasons for doing this in order to conclude that the site rents at the Park were "significantly lower" is a mystery. If the DRO concluded*



that the appraiser's Indices 3 and 5 were the relevant comparables, she was required to explain how and why she came to that conclusion. However, she did not.

[33] The DRO failed in her reasons to address whether, after the annual rent increase, the rent for the Park was significantly lower than rent payable for other sites that are similar to and in the same geographic area as the Park. Section 33(1)(a) of the Regulation requires proof of such facts before a landlord can be entitled to an additional rent increase under s. 36(3) of the Act. However, the DRO made no findings at all.

[34] A finding on the "significantly lower" issue also required the DRO to make findings concerning what park or parks mentioned in the evidence were in fact similar to, and in the same geographic region as, the Park. However, the DRO failed in her reasons to address whether any of the manufactured home parks mentioned in the evidence were in fact similar to the Park, and she made no finding that any of the other parks was in fact similar to, and in the same geographical area as, the Park...

[35] ... The reasoning process followed by the decision-maker must be set out and must reflect the consideration of the main relevant factors. The DRO's reasons contain none of this.

[36] Fact finding required the DRO to explain the basis for her conclusions on the facts. However, there is no such explanation in her reasons. Instead, there is merely a statement of her conclusion. She says, "I have considered the various factors set out in the [Act] and I find that the landlord's application for this additional rent increase has been supported and proven." How the application has been supported and proven, and the reasoning process by which the DRO arrived at this conclusion remain a mystery.

- Burnaby File No. 735767 (re-hearing): The DRO issued a re-hearing decision on October 4, 2010. Unfortunately, the re-hearing decision repeats the mistakes of the original decision.

Like the original decision, the re-hearing decision contains no explanation of the DRO's finding that the rent in the subject sites was significantly lower than the rent payable for other sites that are similar to and in the same geographic area (see para. 33 of the BC Supreme Court decision).

Nor is there any explanation of the finding that the parks mentioned were in fact similar to, and in the same geographic region as, the subject park (see para. 34 of the BC Supreme Court decision).

And the following other paragraphs of the BC Supreme Court decision also apply to the re-hearing decision:

[36] The reasoning process followed by the decision-maker must be set out and must reflect the consideration of the main relevant factors. The DRO's reasons contain none of this.

*[36] Fact finding required the DRO to explain the basis for her conclusions on the facts. However, there is no such explanation in her reasons. Instead, there is merely a statement of her conclusion.*

To sum up, despite a series of forceful statements from the BC Supreme Court articulating the requirement for adequate reasons, dispute resolution officers have continued to repeat the same errors in subsequent cases and even in the re-hearing of the same case.

It is striking that any of the following four statements taken from the judicial review decisions in the case examples could be applied, equally validly, to any one of the DRO decisions discussed above:

- The DRO "simply set out the test for analysis and did not go through the second, third or fourth stage of finding facts, applying the facts to the test, and making a conclusion." (Ross, para. 22).
- The DRO failed to provide, on at least one key point, "any indication of the reasoning process or the analysis of the competing submissions" (Mochizuki, para. 18).
- The DRO's approach involved, on at least one key point, nothing more than "merely reciting submissions and evidence of the parties and stating a conclusion" (Chartrand, para. 18).
- "How the application has been supported and proven, and the reasoning process by which the DRO arrived at [his or her] conclusion remain a mystery" (Wiebe, para. 36).

It is particularly troubling that in *Wiebe*, when the BC Supreme Court had sent the case back to the Branch for re-hearing, the decision on re-hearing was itself plagued by the same errors that justified the judicial review.

#### ***Is this a broader problem? Case examples from the RTB (red blinder)***

Because we only become involved in cases where at least one of the parties is unhappy with the DRO decision, and because we know that judicial reviews reflect only a small proportion of the cases where at least one party is unhappy, we took an additional step to assess the prevalence of inadequate reasoning by DROs.

In order to get an idea of how widespread the problem is, we carefully reviewed **all** the decisions that were posted on the Branch website as of March 4, 2011, focusing on one particular issue: additional rent increases under s. 23(1)(a) of the *Residential Tenancy Regulation* and s. 33(1)(a) of the *Manufactured Home Park Tenancy Regulation*. We chose to focus on this particular issue because:

- It involves legislation that clearly sets out the criteria to be considered by the DROs;
- The RTB has provide an extensive guideline (Guideline #37) on additional rent increases; and
- The BC Supreme Court has issued two decisions setting out the requirements for adequate reasons in rent increase cases (*Mochizuki* and *Wiebe*), as well as two more decisions stressing the need to consider all of the statutory criteria in rent increase cases

*(Doughty v. Whitworth Holdings Ltd., 2008 BCSC 801, and Clements v. Gordon Nelson Investments Inc., 2010 BCSC 31 "Clements").*

We enclose a red binder entitled "Case examples – RTB decisions re: additional rent increases", containing the decisions we reviewed.

As we did not have access to the evidence that the parties submitted in these cases, we limited our review to the very basic question **whether the DROs had provided at least some meaningful analysis on each element of the statutory test.** We did not review the decisions for any legal or factual errors, or for errors relating to procedural fairness. This was, then, a review for nothing more than the very most fundamental requirement for adequate reasons: that the DRO's reasons address the elements of the test to be met.

Out of the 42 decisions we reviewed, 5 indicated the parties had reached an agreement, and 3 were duplicate postings. That left 34 decisions where the DRO actually made a determination on the additional rent increase application.

**In 20 out of these 34 decisions, it appears to us that the DROs failed to provide any meaningful analysis on one or more elements of the statutory test.** As a result, these 20 decisions all appear to be judicially reviewable for a failure to meet even the very basic requirement that the DRO address each element of the test.<sup>1</sup>

In other words, approximately **59%** of the posted DRO decisions on additional rent increases appear to be judicially reviewable simply due to this very basic error. This is, we are sure you will agree, an unacceptably high rate.

The red binder we have enclosed contains a table explaining what makes each decision potentially reviewable. If you have questions about this, we would be happy to discuss them with you.

To sum up, our review of all the posted decisions dealing with additional rent increases clearly illustrates our concern that DROs' failure to provide adequate reasons is a widespread problem that extends far beyond those DRO decisions that have been actually set aside by the BC Supreme Court. Also, because the decisions we reviewed dated between 2008 and 2010, it illustrates our concern that DROs do not appear to be responding to the Supreme Court's clear directions on the need for proper reasons.

#### ***Why poor decision-making by DROs is costly***

As we expect you are well aware, poor decision-making by administrative decision-makers can create a number of costs for the parties involved and for the public generally. Here are the costs that we are most concerned about in relation to poor decision-making by DROs:

- Poor decision-making by DROs can lead to faulty fact-finding and the misapplication of the law to the facts. In other words, it can lead to justice not being done, and to unfair outcomes for both landlords and tenants.

<sup>1</sup> Indeed, one rent increase decision from the Branch website (the April 2, 2009 decision at Tab 39 of the binder) was judicially reviewed successfully in *Clements*.



- Poor decision-making by DROs, and in particular DROs' recurring failure to provide adequate reasons, can create a perception that justice is not being done. Even in a case where the outcome may be fair, the lack of adequate reasons to explain that outcome erodes the public's confidence in the justice system.
- Poor decision-making by DROs can create delay for resolving their disputes. If a case is poorly decided and the parties decide to seek review or judicial review, this extends the time frame substantially, often by many months.
- Poor decision-making by DROs can lead to significant costs for both landlords and tenants. When a party receives a DRO decision that is poorly decided or not supported by adequate reasons, he or she must choose to accept the unfair result, or expend significant resources to seek judicial review.
- Poor decision-making by DROs can greatly increase the number of litigants who choose to seek judicial review, which uses up significant public resources in the form of court time.

#### *What we suggest*

We respectfully suggest that if DROs are to do a proper job of filling the Director's mandate, they require more resources. This might include, for example, more training, better training, more time to write decisions, and better systems (e.g. checklists) to assist with proper decision-writing.

We urge you to consider such measures. There is an urgent need to ensure that the Branch's decision-making process does not remain at its current, unacceptable level.

If such measures cannot be taken without increased funding, and if our input would be in any way useful to you in lobbying for such increased funding, please feel free to share the contents of this letter as you see fit.

#### **Conclusion**

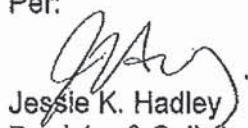
We hope this letter is of assistance in clarifying our concerns about the serious problems with your office's decision-making. We would appreciate hearing back from you in the next couple of weeks with your thoughts on the issues we have raised.


Thank you again for being willing to hear our views.

Yours truly,

COMMUNITY LEGAL ASSISTANCE SOCIETY

Per:

  
Jessie K. Hadley  
Barrister & Solicitor  
JH/ws

  
Kendra Milne  
Barrister & Solicitor



May 31, 2011

Ref: 14098

Jessie K. Hadley  
Community Legal Assistance Society  
Suite 300 – 1140 West Pender Street  
Vancouver BC V6E 4G1

Dear Ms. Hadley:

Thank you for your letter of May 17, 2011, in which you provided a thorough response to my invitation to provide examples of Residential Tenancy Branch dispute resolution decisions.

The Residential Tenancy Branch has increased the amount of training we give Dispute Resolution Officers. I was pleased to see that many of the examples you submitted were written before our recent training program was implemented.

As we continue with our training program, we will use some of the examples that you have put forward. Like you, the Residential Tenancy Branch believes it is important to provide a summary of evidence, the provisions of law that apply to the situation and show how the law, testimony and evidence were applied to reach the decision.

I appreciate the comprehensive analysis that you have provided. Thank you again.

Yours truly,

Suzanne N. Bell  
Executive Director  
Residential Tenancy Branch





COMMUNITY LAW PROGRAM

# Community Legal Assistance Society

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Please direct your reply to:

Jess Hadley  
[jhadley@clasbc.net](mailto:jhadley@clasbc.net)

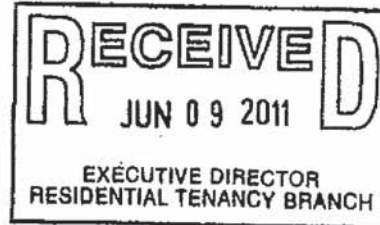
June 6, 2011

Via Mail

Suzanne Bell  
Executive Director  
Residential Tenancy Branch  
PO Box 9844 Stn. Prov. Govt.  
Victoria, BC V8W 9T2

Dear Ms. Bell:

**Re: Residential Tenancy Branch decision-making**



David Mossop, Q.C.  
James Sayre  
Brian Higgins  
Diane Nielsen  
Frances Kelly  
Alison Ward  
Aleem Bharmal  
Jonl Worton  
Dan Solseth  
Rose Chin  
Lindsay Waddell  
Jessie Hadley  
Vanessa Emery  
Kevin Love  
Scott Hicks  
Kendra Milne  
Devyn Cousineau  
Michael McCubbin  
(Articled Student)

Thank you for your letter dated May 31, 2011. We are glad that the Branch believes it is important for Dispute Resolution Officers (DROs) to provide adequate reasons.

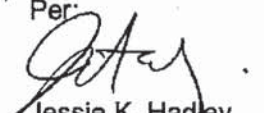
You mention that the Branch recently implemented a new training program for DROs. If we understand you correctly, you seem to be saying this training program will help to address the numerous and serious problems that we identified in Branch decision-making. With that in mind, we would be eager to hear more about the training program. When was it implemented, and what is the nature of the training? We will be delighted if increased training can help move DROs' decision-making closer to an acceptable standard.

In the hope of seeing an improvement in DROs' decision-making, we will continue to monitor the Branch's decisions as posted on the RTB website, and we will take the liberty of sending you an updated analysis in a few months.

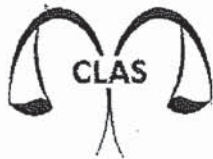
Yours truly,

COMMUNITY LEGAL ASSISTANCE SOCIETY

Per:

  
Jessie K. Hadley  
Barrister & Solicitor  
JH/ws

  
Kendra Milne  
Barrister & Solicitor



# Community Legal Assistance Society

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## COMMUNITY LAW PROGRAM

Please direct your reply to:

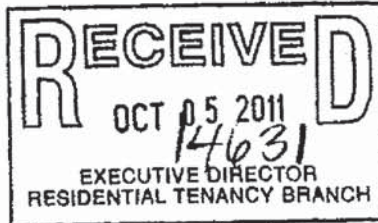
Jess Hadley  
jhadley@clasbc.net

Our File No. 2350

September 28, 2011

Via Mail

Suzanne Bell  
Residential Tenancy Branch  
Suite 101, 3350 Douglas Street  
Victoria, V8Z 3L1



David Mossop, Q.C.

James Sayre  
Brian Higgins  
Diane Nielsen  
Frances Kelly  
Alison Ward  
Aleem Bharmal  
Dan Soiseth  
Rose Chin  
Lindsay Waddell  
Jessie Hadley  
Kevin Love  
Scott Hicks  
Kendra Milne  
Devyn Cousineau

Dear Ms. Bell:

**Re: Residential Tenancy Branch decision-making**

In our letter dated June 6, 2011 we said we would review current Branch decisions again in a few months to see if the training program you mentioned has made any difference.

In the course of our law practice we have not noticed any improvement in Branch decisions, but we were hoping to do a comprehensive review of recent decisions posted by the Branch, to get a sense of the bigger picture.

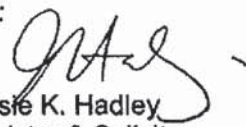
However, I reviewed the Branch website earlier this week, and as far as I can see the most recent posted decisions still date from April 2011. No decisions post-dating the training program you referred to in your letter seem to have been posted.

Could you please advise me when we can expect more current decisions to be posted?

Yours truly,

COMMUNITY LEGAL ASSISTANCE SOCIETY

Per:

  
Jessie K. Hadley  
Barrister & Solicitor  
JH/ws

cc. Kendra Milne

**Thompson, Shelley B MEM:EX**

---

**To:** Bell, Suzanne N MEM:EX  
**Cc:** Thompson, Shelley B MEM:EX  
**Subject:** May, Cheryl MEM:EX  
**Attachments:** Fw: Residential Tenancy Branch Decision-making  
Letter to R Coleman Oct 4 11.pdf

Pls Cliff and ask if CU wants a reply from the MO or us - thx.

---

**From:** Wendy [mailto:wendy@clasbc.net]  
**Sent:** Thursday, October 06, 2011 10:56 AM  
**To:** Bell, Suzanne N MEM:EX  
**Cc:** Jess Hadley <jhadley@clasbc.net>  
**Subject:** Residential Tenancy Branch Decision-making

Dear Ms. Bell,

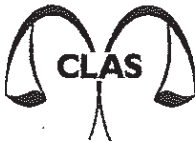
Please find attached a copy of a letter we have sent to Rich Coleman, Minister of Housing, regarding the decision-making of the Residential Tenancy Branch.

Kind regards

Wendy Stewart

Community Legal Assistance Society  
#300 1140 West Pender Street  
Vancouver, BC V6E 4G1  
tel: 604-685-3425  
fax: 604-685-7611





# Community Legal Assistance Society

providing specialized legal assistance to promote social justice since 1971

## COMMUNITY LAW PROGRAM

Please direct your reply to:  
Jess Hadley  
[jhadley@clasbc.net](mailto:jhadley@clasbc.net)

Our File No. 2350

October 4, 2011

Via Mail

Rich Coleman  
Minister Responsible for Housing  
PO Box 9060 Stn Prov Govt  
Victoria BC V8W 9E2

Dear Minister Coleman:

**Re: Residential Tenancy Branch decision-making**

David Mossop, Q.C.  
James Sayre  
Brian Higgins  
Diane Nielsen  
Frances Kelly  
Alison Ward  
Aleem Bharmal  
Dan Soiseth  
Rose Chin  
Lindsay Waddell  
Jessie Hadley  
Vanessa Emery  
Kevin Love  
Scott Hicks  
Kendra Milne  
Devyn Cousineau

Thank you for your letter dated September 20, 2011. It was good of you to review the letter I wrote to my MLA, Dr. Margaret MacDiarmid, about the poor quality of decision-making at the Residential Tenancy Branch.

With respect, though, it appears from your letter that I did not effectively communicate my concerns to you. Let me be clear:

- **Decision-making at the Branch has been consistently poor for the past several years.** My colleagues and I see this in our law practice week in, week out. We hear consistent reports of this from a wide network of legal advocates that we work with across BC.
- **There is no indication that the Branch is taking adequate steps to address the quality of decision-making.** You say the Branch has a commitment to "hold its decision-making and writing to a high standard," and you refer to "steps being taken to improve these decisions." In fact, however, the Branch's decisions have remained poor right up to the most recent decisions that are posted on the Branch's website. It is also a concern to me that the Branch seems to have stopped posting new decisions on its website as of June 16, 2011.
- **The relatively small number of decisions that have been quashed on judicial review cannot reasonably be interpreted as an indicator that the remainder of the Branch's decisions are of a "high standard."** As I am sure you can appreciate, the cost of retaining counsel to do a typical one-day judicial review is well over \$5000.00, which means that it is almost always economically unfeasible for landlords and tenants to seek judicial review when they have a problematic tenancy decision. With respect, it would be much more informative to consider the extremely high *proportion* of judicial reviews that lead to Branch decisions being set aside (67%).
- **Poor decision-making is compromising public confidence in the justice system.**



Minister Coleman, I am passionate about the need for adequate decision-making at the Residential Tenancy Branch. The Branch is not just a clearing-house for large numbers of minor disputes. It deals with a wide range of important and complex legal issues, and it has the authority to make orders that have a major impact on people's lives, such as monetary orders worth up to \$25,000, and orders of possession that evict tenants from their homes in as little as 48 hours. These are not decisions that should be made lightly.

In my five years practicing in this area, I have seen the negative impact that poor decision-making has on landlords and tenants. Even worse, I have seen the negative impact it has on public confidence in the justice system. Having seen no discernible improvement in the Branch's decision-making quality over a five-year period, I am committed to bringing this issue to your attention, and I would like to persuade you to take a real interest in ensuring that it is addressed.

I am hoping you will agree to meet with me in person so that I can explain my concerns to you and have a constructive discussion about how the situation can be improved. For example, here are some things I suggest would help:


- More training for DROs;
- Better training for DROs;
- More reasonable timelines for DROs to hold hearings and write decisions;
- Better systems (e.g. checklists) to assist with proper decision-writing; and
- A regular, effective process for auditing decision-making quality.

I look forward to hearing from you soon about a meeting.

Yours truly,

COMMUNITY LEGAL ASSISTANCE SOCIETY

Per:

  
Jessie K. Hadley  
Barrister & Solicitor  
JH/ws

cc Dr. Margaret MacDiarmid, MLA – Vancouver Fairview  
Shane Simpson, MLA – Vancouver-Hastings  
Suzanne Bell, Residential Tenancy Branch



November 7, 2011

Re: 14631

Ms. Jessie Hadley  
Barrister and Solicitor  
Community Legal Assistance Society  
Suite 300 – 1140 West Pender Street  
Vancouver BC V6E 4G1

Dear Ms. Hadley:

The Honourable Rich Coleman, Minister Responsible for Housing, has asked me to respond to your October 4, 2011 letter requesting further information about Residential Tenancy Branch decision-making. I am also responding to your September 28, 2011 letter to Suzanne Bell, on the same topic. s.22 and I'm responding on her behalf.

In your September 28<sup>th</sup> letter to the Residential Tenancy Branch, you mention that you were unable to find decisions posted on our web site past April 2011. Decisions have been posted in a timely manner and currently decisions are posted up to and including October.

I'm curious about the judicial review figure you quote in your letter. I cannot replicate your finding that 67% of cases are directed back for re-hearing. An independent study by the Tenants Resource Advisory Centre shows the figure at 26 cases between 2006 and 2010.

I appreciate your on-going interest in residential tenancy matters.

Yours truly,

Cheryl May  
A/Executive Director  
Residential Tenancy Branch

pc: Honourable Rich Coleman  
Minister Responsible for Housing



**Residential Tenancy Branch - Professional Development  
Marriott Vancouver Airport Hotel – 7571 Westminster Hwy, Richmond, BC  
Program**

**Monday, March 28, 2011**

- 9:15 Registration, Coffee "Plus"
- 10:00 Welcome and Introductions: Suzanne Bell, Executive Director, Residential Tenancy Branch
- 10:15 Review Last Year's Business: Elements of Residential Tenancy Branch Decision Making
- 11:00 The Direct Request Process – Now and Future
- 1:00 Lunch (provided)
- 1:45 Application for Review
- 3:30 Break
- 3:45 Application for Review con't
- 5:00 Finish for the day

**Tuesday, March 29, 2011**

- 7:30 Coffee "Plus"
- 8:00 Review of Day #1 – Questions and Answers
- 8:30 RTA Section 38 – Security Deposits
- 9:30 Break
- 9:45 Liquidated Damages
- 11:30 Lunch (provided)
- 12:15 RTA Section 32 - Landlord and Tenant Obligations
  - Guest Speaker: Sean Rollo – Bed Bugs
- 2:00 Break
- 3:30 Closing

Office of Housing and Construction Standards - Ministry of Energy and Mines

1

Session Introduction

2

Review of Where We Left Off Last Year

3

The Direct Request Process

4

Pending Changes

5

Application for Review of a Decision

6

Liquidated Damages

7

Section 32

8

Section 38

RTB Public Education 2010-2011		
		# of attendees
2010		
April		
	7 BCAOMA Annual Meeting	150
	8 Vancouver Crime Free Housing	50
	14 Surrey Crime Free Housing	18
	15 Surrey Crime Free Housing	50
	17 Abbotsford Crime Free Housing	30
	17 Victoria Law Day	33
	24 Chilliwack MHPT	50
May		
	6 New Westminster Continuing Education	30
	11 Vancouver Jewish Family Agency	18
June		
	3 Vancouver BC Persons with AIDS	12
	14 CFAA Conference	150
	21 Spectrum (Victoria)	12
	23 BC Association of Chiefs of Police	20
	24 BC Association of Chiefs of Police	20
July		
	27 Abbotsford MLA	10
August		
	18 Victoria/Saanich Police	15
	18 Kelowna BCAOMA	79
	20 Victoria/Saanich Police	12
	24 Victoria/Saanich Police	10
	30 Victoria/Saanich Police	13
	31 Coquitlam Healthy Babies	6
	31 Victoria Stepping Stones	18
Sept		
	2 Port Coquitlam Healthy Babies	15
	2 University of Victoria	75
	3 Coquitlam Healthy Babies	2
	17 Kelowna PAMA	20
	17 Chilliwack RCMP	15
	20 Maple Ridge Healthy Babies	12
	21 Abbotsford Police	12
	22 Spectrum (Victoria)	12
	29 Chilliwack RCMP	18
Oct		
	1 Abbotsford Police	16
	5 Tri City Youth Services (Coquitlam)	8
	5 Abbotsford Police	15
	6 BCAOMA Annual Meeting	60
	6 New Westminster Continuing Education	30



RTB Public Education 2010-2011		
		# of attendees
	7 Vancouver/Coastal Mental Health	7
	7 Ridge Meadows RCMP	12
	12 Abbotsford Police	18
	21 Surrey Crime Prevention	18
	22 Vancouver Crime Free Housing	35
	26 New Westminster Continuing Education	30
Nov		
	2 Simon Fraser University	10
	Squamish Sea to Sky Services Society	
	15 Squamish Helping Hands Society	20
	16 Whistler Community Services Society	20
	16 At Home, Daniel and Jon	12
	18 ROMS BC Trade Show	20
	24 BC Crime Prevention	25
	25 Ridge Meadows RCMP	15
	26 New Westminster Continuing Education	30
Dec		
	6 Ready to Rent	9
	7 Ready to Rent	12
	9 Capilano Property Mngt	25
2011		
Jan		
	18 RCMP - BC Crime Prevention	20
Feb		
	11 Wall Financial	25
	18 Literacy Victoria	8
	23 & 24 Buildex	100
	24 Okanagan College - Kelowna Campus	11
March		
	2 New West Continuing Studies	17
	8 Justice Institute - BC Crime Prevention	122
	9 BCAOMA AGM	66
	9 BCAOMA Trade show	100
	10 Ready to Rent - Tsawout Reserve	9
	10 SFU - International Program	5
	10 Okanagan College - Vernon Campus	11
	12 PLEI - TRAC	60
	21 Spectrum Youth	6
	21 Ready to Rent - Saanich Neighbourhood	14
	22 PLEI - TRAC #2	60
	28 James Bay Community Centre	12
	31 PLEI - TRAC #3	60
	<b>TOTAL ATTENDEES</b>	<b>2140</b>



Quarterly Activity Report: Residential Tenancy Branch, 2010-2011

SUMMARY - Client Contact																	
1st Quarter				1st Qtr	2nd Quarter			2nd Qtr	3rd Quarter			3rd Qtr	4th Quarter			4th Qtr	
Apr	May	June	Totals		July	Aug	Sep	Totals	Oct	Nov	Dec	Totals	Jan	Feb	Mar	Totals	
Email	1,213	905	1,107	3,225	1,078	1,156	1,114	3,348	1,017	1,336	977	3,330	1,160	1,222		2,382	12,285
Walk-in (includes applications)																	
Victoria	1,256	1,235	1,294	3,785	1,158	1,329	1,317	3,804	1,300	1,265	1,079	3,644	1,148	1,254		2,402	13,635
Burnaby	2,654	2,917	2,955	8,526	2,885	3,313	2,810	9,008	2,969	2,678	2,245	7,892	2,999	3,533		6,532	31,958
390 Main Street (Pathways, 4Corners)	89	84	103	276	95	114	155	364	110	127	102	339	127	144		271	1,250
Richards Street (Marble Arch)	80	97	72	249	92	100	115	307	73	61	45	179	41	68		109	844
Kelowna	620	638	645	1,903	698	710	701	2,109	622	643	469	1,734	615	587		1,202	6,948
(Subtotal Walk-in)	4,699	4,971	5,069	14,739	4,928	5,566	5,098	15,592	5,074	4,774	3,940	13,788	4,930	5,586	0	10,516	54,635
Website visits	116,257	118,182	117,527	351,966	116,119	120,692	117,194	354,005	110,942	106,340	92,143	309,426	114,784	104,627		219,411	1,234,807
Phone Calls (Call Centre Anywhere)	18,752	19,651	19,023	57,426	17,555	19,161	17,220	53,936	15,191	19,704	16,567	51,462	14,585	15,056		29,641	192,465
Total Contacts - all types	140,921	143,709	142,726	427,356	139,680	146,575	140,626	426,881	132,224	132,154	113,627	378,005	135,459	126,491	0	261,950	1,494,192

Applications for dispute resolution-1 <sup>st</sup> time, from client																	
In-person																	
Victoria	153	167	151	471	179	160	133	472	158	143	143	444	135	156		291	1,678
Burnaby	775	772	765	2,312	731	820	730	2,281	670	852	504	2,026	709	808		1,517	8,136
390 Main Street (Pathways, 4Corners)	14	13	20	47	18	9	21	48	12	13	17	42	15	20		35	172
Richards Street (Marble Arch)	6	12	3	21	10	5	5	20	2	1	1	4	0	5		5	50
Kelowna	90	93	98	281	108	99	82	289	78	80	70	228	90	87		177	975
(Subtotal In-person)	1,038	1,057	1,037	3,132	1,046	1,093	971	3,110	920	1,089	735	2,744	949	1,076	0	2,025	11,041
Online	304	343	334	981	361	381	285	1,027	324	399	397	1,120	417	344		761	3,889
GA	432	425	489	1,346	464	429	476	1,369	419	465	334	1,218	420	434		854	4,787
Total Applications for Dispute Resolution	1,774	1,825	1,860	5,459	1,871	1,903	1,732	5,506	1,663	1,953	1,466	5,082	1,786	1,854	0	3,640	19,687

Hearings Scheduled based on a 1 <sup>st</sup> application																	
Victoria	135	144	123	402	143	133	133	409	120	132	129	381	100	132		232	1,424
Burnaby	598	586	595	1,779	569	670	604	1,843	648	594	519	1,761	637	725		1,362	6,745
Kelowna	84	80	97	261	98	96	72	266	73	75	66	214	89	82		171	912
Online	304	343	334	981	361	381	285	1,027	324	399	397	1,120	417	344		761	3,889
GA	432	425	489	1,346	464	429	476	1,369	286	465	334	1,085	420	419		839	4,639
Main Street (Pathways, 4Corners)	14	13	20	47	18	9	21	48	12	13	17	42	15	20		35	172
Richards Street (Marble Arch)	6	12	3	21	10	5	3	18	2	1	1	4	0	5		5	48
Total Hearings Scheduled	1,573	1,603	1,661	4,837	1,663	1,723	1,594	4,980	1,465	1,679	1,463	4,607	1,678	1,727	0	3,405	17,829



# Quarterly Activity Report: Residential Tenancy Branch, 2010-2011

	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			YTD
	Apr	May	June	Totals	July	Aug	Sep	Totals	Oct	Nov	Dec	Totals	4th Qtr Totals
<b>DETAILED REPORT</b>													
<b>Review Applications</b>													
Victoria	1	9	10	20	3	6	7	16	5	2	8	15	8
Burnaby	52	113	95	260	81	74	80	235	80	100	84	264	148
Kelowna	4	8	2	14	4	4	5	13	5	4	8	17	9
<b>Total Review Applications Processed</b>	<b>57</b>	<b>130</b>	<b>107</b>	<b>294</b>	<b>88</b>	<b>84</b>	<b>92</b>	<b>264</b>	<b>90</b>	<b>106</b>	<b>100</b>	<b>296</b>	<b>165</b>
<b>Corrections/Clarifications</b>													
Adjudgments	34	40	48	122	41	28	31	100	33	58	48	139	
	60	60	77	197	44	42	81	167	65	123	43	231	116
													711

<b>Evidence Submissions</b>													
Victoria	346	313	380	1039	225	330	411	966	475	482	264	1221	747
Burnaby	1,720	2,592	2,644	6,956	2,736	3,184	3,445	9,365	3,097	3,221	1,943	8,261	6,017
Kelowna	209	171	178	558	190	251	276	717	237	216	162	615	371
<b>Total Evidence Submissions</b>	<b>2,275</b>	<b>3,076</b>	<b>3,202</b>	<b>8,553</b>	<b>3,151</b>	<b>3,765</b>	<b>4,132</b>	<b>11,048</b>	<b>3,809</b>	<b>3,919</b>	<b>2,369</b>	<b>10,097</b>	<b>7,135</b>
													36,833

<b>Scheduling Timelines</b>													
Application Type													
End Tenancy Early (weeks)	1	1.3	1	1.1	1	1	1	1	1	1	1	1	1.0
Order of Possession and													
Cancellation of Notice to End Tenancy (weeks)	6	5.2	6.8	6	7.7	7	4	6.2	3.8	3.5	2.5	3.3	2
Emergency Repairs, Return of													
Property and Access (weeks)	6	5.2	6.8	6	7.7	7	4	6.2	3.8	3.5	2.5	3.3	2
Monetary Order (weeks)	16.2	18.7	19	18	19.7	21	16	18.9	17.3	18	18.5	17.9	20
													5.2
													18.3

<b>Direct Requests</b>													
Carried over from previous month	98	66	94		94	87	103		91	58	67		78
Applications received	233	255	265	753	258	251	239	748	223	190	127	540	343
Orders of Possession granted	191	174	183	548	203	178	178	559	169	149	111	429	223
Dismissed	18	8	16	42	9	15	35	59	31	19	17	67	27
Sent to regular hearing system	30	15	20	65	23	25	6	54	11	8	22	41	17
Balance to carry forward to next month	66	94	94		87	103	91		58	67	44		78
													2,384
													1,759
													195
													177

# Quarterly Activity Report: Residential Tenancy Branch, 2010-2011

DETAILED REPORT (cont'd)													
1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		3rd Qtr		4th Quarter		4th Qtr	
Apr	May	June	Totals	July	Aug	Sep	Totals	Oct	Nov	Dec	Totals	Jan	Feb
Telephone Details													
Calls Abandoned													
7,206	5,785	5,023	18,014	6,499	5,516	7,589	19,604	7,338	7,250	5,036	19,624	6,255	6,427
18,752	19,651	19,023	57,426	17,555	19,161	17,220	53,936	15,191	19,704	16,567	51,462	14,585	15,056
Total Telephone Calls													
0:14:00	0:12:40	0:10:00	0:12:13	0:14:00	0:12:00	0:15:00	0:13:40	0:16:00	0:24:07	0:24:55	0:21:41	0:14:00	0:14:00
Average Wait Time on CCA (h:mm:ss)													
YTD													
12,682													
29,641													
192,465													

Website Details													
Visits to the website													
116,257	118,182	117,527	351,966	116,119	120,692	117,194	354,005	110,942	106,340	92,143	309,425	114,784	104,627
A	A	A	A	A	A	A	A	A	A	A	A	A	A
B	C	B	C	C	B	C	B	B	B	B	B	C	C
C	B	C	B	B	C	C	C	C	C	C	C	B	B
D	D	D	D	D	D	D	D	D	D	D	D	D	D
E	E	E	E	E	E	E	E	E	E	E	E	E	E
Top 5 most visited webpages (See legend below)													
219,411													
1,234,807													

\*\*Note: The online decisions search page is not encompassed by these WebTrends statistics.

\*As of December, formal process is followed for calculating Direct Request data, resulting in more accurate data.

Legend for Website Details	
Webpage	Letter
Main page	A
Main fees & forms page	B
RTB#-1 Residential Tenancy Agreement	C
Rights & Responsibilities - Ending a Tenancy	D
Rights & Responsibilities main page	E
Calculator	F
RTA Guide	G

Contributing Factors this Month													

## Direct Request Order of Possession for Unpaid Rent or Utilities

Residential Tenancy Branch



BRITISH COLUMBIA  
The Best Place on Earth

### Today we will Learn

- What a Direct Request is
- When a Direct Request will be accepted
- How a Direct Request is processed
- What the potential results are

### What is a Direct Request?

- Written request for Dispute Resolution with supporting documents
- Streamlined process
- Request made in person
- Same authority as Orders resulting from a participatory hearing



### What are the Requirements?

1. The application is for an Order of Possession for non-payment of rent or utilities only.
2. Five days have passed since the Notice to End Tenancy was deemed received by the tenant.
3. There are no other active applications for this unit.
4. The following materials have to be submitted at the same time as the Dispute Resolution Application:

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### Materials

- Copy of the Tenancy Agreement
- Copy of the Notice to End Tenancy
- Proof that the Notice to End Tenancy was served

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### What is the Process?

1/5

1. The landlord serves a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities*.
  - The tenant:
    - Pays the rent in the first five days which nullifies the notice and the process ends
  - or
    - Applies for Dispute Resolution and the option of a Direct Request is no longer valid.
  - or
    - Moves out by the 10<sup>th</sup> day

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## 3/5

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### What is the Process?

4/5

7. A Dispute Resolution Officer reviews the material and makes one of the following decisions:
  - Grants an Order of Possession
  - Grants an Order of Possession with Monetary Order
  - Refers the Application to the dispute resolution hearing process. A hearing will be scheduled in the traditional way, and both parties will have an opportunity to speak.
  - Dismisses the Application, denying the request for an Order of Possession.

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### What is the Process?

5/5

8. When an Order of Possession (with or without a monetary order) is granted, RTB mails the decision and the applicable Order(s) to the landlord.
9. The landlord serves a copy of the decision, and applicable orders, to the tenant
10. If necessary, the landlord may need to enforce the orders through the Provincial Court (Supreme or Small Claims)

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### Where to Find More Information

- RTB
  - [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)
  - [HSRTO@gov.bc.ca](mailto:HSRTO@gov.bc.ca)
  - Phone numbers
    - 604-660-1020
    - 250-387-1602
    - 1-800-665-8779
  - Locations
    - Suite 101 – 3350 Douglas Street, Victoria
    - 400 – 5021 Kingsway, Burnaby
    - 305 – 478 Bernard Ave, Kelowna

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### Agencies Assisting Tenants and Landlords

- BC Apartment Owners & Managers Association (BCAOMA)
  - [www.bcapartmentowners.com](http://www.bcapartmentowners.com)
  - [questions@bcaoma.com](mailto:questions@bcaoma.com)
  - 1-877-700-9440 (toll free)
- Rental Owners and Managers Society of BC (ROMS BC)
  - [www.romsbc.com](http://www.romsbc.com)
  - [info@romsbc.com](mailto:info@romsbc.com)
  - 1-888-330-6707 (toll free)
- Tenant Resource & Advisory Centre (TRAC)
  - [www.tenants.bc.ca](http://www.tenants.bc.ca)
  - [info@tenants.bc.ca](mailto:info@tenants.bc.ca)
  - 1-800-665-1185

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# Direct Request for an Order of Possession Due to Unpaid Rent or Utilities.

## Information for RTB staff

### What is a Direct Request?

A Direct Request is a procedure for processing a landlord's application for an order of possession for unpaid rent when the *10 Day Notice to End Tenancy* form has been served by registered mail, in person or posted on the door. A notice served in person or posted must be acknowledged in writing by the tenant or a third party witness.

The application for a Direct Request *Order of Possession Due to Unpaid Rent or Utilities* must be made **in person** at a Residential Tenancy Branch location or Service BC Centre.

A decision on whether the Order of Possession will be issued is based on written documentation only. A participatory hearing will not be held.

Because there is no participatory hearing, fraud is the *only* reason that may be considered for a review of the decision. To request a review of a direct request decision, the tenant must submit an application no later than two days after receiving the decision or the Order.

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### Documentation required

#### **Application for Dispute Resolution accompanied with the following documents:**

- Copy of the 10 Day Notice to End Tenancy #RTB-30(2008/09) which includes the direct request explanation.
- Copy of the Tenancy Agreement
- Proof of service of the 10 Day Notice to End Tenancy as either a **registered mail receipt** or **written receipt signed by the tenant or witnessed by a third party** confirming the notice was served

**NOTE:** Applications received without the required documents may be considered and scheduled for a participatory hearing.

### Possible outcomes

- The Order of Possession may be granted, or
- The Order of Possession and Monetary Order (related to the unpaid rent or utilities only) may be granted, or
- The Application may be re-routed to a standard dispute resolution hearing. A hearing will be scheduled in the traditional way, and both parties will have an opportunity to participate, or
- The application may be dismissed, denying the request for an Order of Possession.

### Process – Who Does What

Who	Action
Originating office	<p>Verify landlord is using the Direct Request process.</p> <p><b>If NO</b> – process the application as usual</p> <p><b>If YES</b> – verify</p> <ol style="list-style-type: none"> <li>that all required documents are attached to the application: <ul style="list-style-type: none"> <li>Copy of the Tenancy Agreement.</li> <li>Copy of the 10 Day notice</li> <li>Proof that the 10 Day notice has been served</li> </ul> </li> <li>No cross-applications have been filed. If there is a cross application, inform the landlord that the application will be processed as usual</li> </ol>
<b>Steps for the direct request process</b>	
Burnaby and Kelowna	<ul style="list-style-type: none"> <li>Ask the applicant to wait until RTB Victoria is contacted</li> <li>Fax the application and documents to Victoria at <b>250-356-7296</b>.</li> <li>Call the Victoria office at <b>250-387-6680</b> (office use only) to confirm <ul style="list-style-type: none"> <li>The application has been accepted</li> <li>Estimated time for receiving the proceedings package.</li> </ul> </li> </ul>
Victoria	Inform Burnaby/Kelowna of the turn around time
Originating office	Tell the applicant when their package will be ready for pick-up (should include Victoria time + time to prepare packages)
Victoria	Prepare and fax the <i>Notice of Direct Request + Proof of Service of the Notice of Direct Request</i> form to the originating office.
Originating office	<p>Prepare the necessary number of proceeding packages.</p> <p>The landlord's package must include the <i>Proof of Service of the Notice of Direct Request</i> form.</p> <p>All packages must include:</p> <ul style="list-style-type: none"> <li>The Notice of Direct Request</li> <li>Copy of the application for dispute resolution</li> <li>The Direct Request fact sheet</li> <li>The Tenancy agreement</li> <li>The 10 Day Notice</li> <li>The proof that the 10 day notice was served</li> <li>All additional evidence submitted</li> </ul>
Landlord	<ul style="list-style-type: none"> <li>Within three days, serve a copy of the package to the tenant</li> <li>Fax the <i>Proof of Service of the Notice of Direct Request</i> form to RTB Victoria</li> </ul> <p><b>NOTE:</b> Landlords can ask the Burnaby/Kelowna offices to fax the form to RTB Victoria.</p>
Victoria	<ul style="list-style-type: none"> <li>Make a decision.</li> <li>Mail the decision to the landlord and tenant.</li> <li>Mail the Order of Possession to the landlord.</li> <li>When requested, faxes the documents to a RTB or Service BC office for pick-up or other specified location.</li> <li>Update CMS.</li> </ul>



## Direct Request for an Order of Possession Due to Unpaid Rent or Utilities.

### Information for Service BC staff

For assistance please contact Julie Kelly at 250-741-3636 or  
[Julie.Kelly@gov.bc.ca](mailto:Julie.Kelly@gov.bc.ca).

#### What is a Direct Request?

A Direct Request is a procedure for processing a landlord's application for an order of possession for unpaid rent when the *10 Day Notice to End Tenancy* form has been served by registered mail, in person or posted on the door. A notice served in person or posted must be acknowledged in writing by the tenant or a third party witness.

The application for a Direct Request *Order of Possession Due to Unpaid Rent or Utilities* must be made **in person** at a Residential Tenancy Branch location or Service BC Centre.

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Because there is no participatory hearing, fraud is the *only* reason that may be considered for a review of the decision. To request a review of a direct request decision, the tenant must submit an application no later than two days after receiving the decision or the Order.

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#### Documentation required

##### Application for Dispute Resolution accompanied with the following documents:

- Copy of the 10 Day Notice to End Tenancy #RTB-30(2008/09) which includes the direct request explanation.
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- Proof of service of the 10 Day Notice to End Tenancy as either a **registered mail receipt** or **written receipt signed by the tenant or witness by a third party** confirming the notice was served

**NOTE:** Applications received without the required documents may be considered and scheduled for a participatory hearing.

#### Possible outcomes

- The Order of Possession may be granted, or
- The Order of Possession and Monetary Order (related to the unpaid rent or utilities only) may be granted, or
- The Application may be re-routed to a standard dispute resolution hearing. A hearing will be scheduled in the traditional way, and both parties will have an opportunity to participate, or
- The application may be dismissed, denying the request for an Order of Possession.



### Process – Who Does What

Who	Action
Tenant	Does not pay the rent or utilities
Landlord	Serves a 10 day Notice to End Tenancy for Unpaid Rent or Utilities.
Tenant	a. Pays the rent in the first five days (nullifies the 10 day notice) <u>or</u> b. Applies for Dispute Resolution (nullifies the direct request option) <u>or</u> c. Does neither.
Landlord	If the tenant does neither and at least five days have passed since the 10 Day notice was deemed received, the landlord can file for dispute resolution for an Order of Possession.
Service BC	Verify landlord is using the Direct Request process. <b>If NO</b> – process the application as usual <b>If YES</b> – verify that all required documents are attached to the application: <ul style="list-style-type: none"> <li>• Copy of the Tenancy Agreement.</li> <li>• Copy of the 10 Day notice</li> <li>• Proof of service of the 10 Day notice</li> </ul> In any case, record the file number on the application and take payment.
Service BC	<ul style="list-style-type: none"> <li>• Ask the applicant to wait until RTB is contacted</li> <li>• Fax the application and documents to RTB at <b>250-356-7296</b>.</li> <li>• Call the RTB at <b>250-387-6680</b> (office use only) to confirm <ul style="list-style-type: none"> <li>◦ The application has been accepted</li> <li>◦ Estimated time for receiving the proceedings package.</li> </ul> </li> <li>• <b>NOTE: if the direct request is not accepted, RTB will advise and forward the application through the standard process and standard timelines apply.</b></li> </ul>
Service BC	Tell the applicant when their package will be ready for pick-up (should include RTB time + Service BC time to prepare packages)
RTB	Prepare and fax the <i>Notice of Direct Request + Proof of Service of the Notice of Direct Request</i> form to Service BC.
Service BC	Prepare the necessary number of proceeding packages. The landlord package must include the Proof of Service form. All packages must include: <ul style="list-style-type: none"> <li>• The Notice of Direct Request</li> <li>• Copy of the application for dispute resolution</li> <li>• The direct request fact sheet</li> <li>• Tenancy agreement</li> <li>• 10 Day Notice</li> <li>• Proof of service of the 10 day notice</li> <li>• All additional evidence submitted</li> </ul>
Landlord	<ul style="list-style-type: none"> <li>• Within three days, serve a copy of the package to the tenant.</li> <li>• Fax the <i>Proof of Service of the Notice of Direct Request</i> to RTB Victoria</li> </ul> <b>NOTE:</b> if a landlord doesn't have access to a fax machine, he/she can ask for Service BC assistance in faxing the information to RTB Victoria.
RTB	<ul style="list-style-type: none"> <li>• Make a decision.</li> <li>• Mail the decision to the landlord and tenant.</li> <li>• Mail the Order of Possession to the landlord.</li> <li>• When requested, fax the documents to Service BC for pick-up or other specified location.</li> </ul>



# Landlord and Tenant Fact Sheet

RTB-130

## Direct Request for an Order of Possession due to Unpaid Rent or Utilities.

### What is a Direct Request?

A Direct Request is a limited expedited procedure for obtaining an Order of Possession when the tenant has not paid the rent or utilities. In the application, the landlord may include a request for a Monetary Order limited to the amount of outstanding rent and utilities with justification and evidence to support the amount due.

Applicants may choose instead to apply through the participatory hearing procedure if they:

- Wish to recover the filing fee.
- Want permission to keep all or part of a security or pet damage deposit to offset a debt.

To be eligible for the Direct Request Procedure, the dispute resolution application must be made **in person** at a Residential Tenancy Branch (RTB) location or Service BC Centre.

Decisions will be made based on written documentation only. A participatory hearing will not be held as per the *Residential Tenancy Act Section 55 (4)*.

Applications processed through the Direct Request procedure must be completed correctly and must have all required supporting documentation attached.

- Incomplete and incorrect applications will automatically be scheduled for a participatory hearing.

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### Documentation required for the Direct Request procedure

#### Application for Dispute Resolution accompanied with the following documents:

- Copy of the 10 Day Notice to End Tenancy which includes the Direct Request explanation.
- Copy of the Tenancy Agreement.
- Proof of service of the 10 Day Notice to End Tenancy as either a **registered mail receipt** or **written receipt signed by the tenant or witnessed by a third party** confirming the notice was served. A proof of service example is attached.

#### Possible outcomes

- The Order of Possession may be granted
- The Order of Possession and Monetary Order related to the unpaid rent or utilities only may be granted
- The application may be diverted to the participatory hearing procedure
- The application may be dismissed

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### Residential Tenancy Branch

#RTB-130 (2011/03)

5



**The Beginning:**

1. The tenant does not pay the rent or utilities
2. The landlord serves the tenant a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities*
3. The tenant:
  - pays the rent/utilities in the first five days after receiving the notice which nullifies the notice, or
  - applies for Dispute Resolution. (if this occurs, the option of using the Direct Request procedure is eliminated) or
  - does neither.
4. If the tenant does neither and at least five days have passed from the date the notice is deemed received, the landlord can submit a dispute resolution application for an Order of Possession using the Direct Request procedure.

**Direct Request Procedure:**

1. The landlord must submit an application for dispute resolution **in person** and provide **all required** documentation.
2. RTB reviews the application and, where appropriate, prepares a Proceeding Package the same day (includes information for the tenant and a Proof of Service document for the landlord).
3. The landlord picks up the Proceedings Package and within three days, serves the Proceeding Package to the tenant.
4. The landlord completes the *Proof of Service of the Notice of Direct Request* form confirming when the Proceedings Package was served on the tenant.
5. The landlord brings or faxes the Proof of Service form to RTB.
6. RTB reviews the application and documentation and makes a decision.
7. RTB mails the decision and if applicable, Orders to the landlord. If requested, the material can also be faxed.
8. RTB mails the decision to the tenant.
9. If the landlord is to proceed with the eviction, the landlord must serve the Order of Possession and/or Monetary Order on the tenant.
10. If the Order(s) are served and the tenant does not comply, the landlord may enforce the Order(s) through the court system. The original documents are required for this step.

**For more information ...**

**Office Locations:**

Burnaby: 400-5021 Kingsway  
Victoria: Suite 101 - 3350 Douglas Street  
Kelowna: 305 - 478 Bernard Avenue  
Any Service BC-Government Agents Office  
Hours: 8:30 am - 4:30 pm, Monday - Friday  
(Closed on statutory holidays)

**Public Information Lines:**

1-800-665-8779 (Toll free)  
604-660-1020  
250-387-1602

Email: [HSRTO@gov.bc.ca](mailto:HSRTO@gov.bc.ca)

Website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

## 10 Day Notice to End Tenancy for Unpaid Rent or Utilities PROOF OF SERVICE

Date: \_\_\_\_\_

Landlord	Tenant
Name: _____	Name: _____
Address: _____	Address: _____
Dispute Address: _____	

**PROOF OF SERVICE**

I \_\_\_\_\_ served the Tenant with a 10 Day Notice to End Tenancy (\*copy attached)  
Landlord/Agent Serving the Notice

At: \_\_\_\_\_  
Address where service occurred

☒ By Registered Mail # \_\_\_\_\_ on \_\_\_\_\_  
(\*Receipt attached) (Date)

☒ By posting it on the Tenant's door on  
\_\_\_\_\_ & \_\_\_\_\_  
Date Time (a.m. or p.m.)

Witnessed by:  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Relationship to Landlord

☒ By leaving it personally with  
\_\_\_\_\_ on  
Name of Tenant  
\_\_\_\_\_ & \_\_\_\_\_  
Date Time (a.m. or p.m.)

Tenant's acknowledgement :  
\_\_\_\_\_  
Signature of Tenant  
\_\_\_\_\_  
Print Name  
  
**OR**  
Witnessed by:  
\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print Name  
\_\_\_\_\_  
Relationship to Landlord

Optional Details: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Landlord/ Agent Serving the Notice \_\_\_\_\_  
Signature

Print Name \_\_\_\_\_

Date: File Number:

### Notice of Direct Request

The RTB has received an application for an Order of Possession/ Monetary Order  
from your landlord regarding the rental unit at:

**LANDLORD:**  
Full Legal Name:

Address:

City:

Postal Code:

**TENANT:**  
Full Legal Name:

Address:

City:

Postal Code:

This application states that:

1. You have failed to pay the monthly rent as agreed.
2. You were served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord.
3. Within five days of receiving the notice, you did not pay the rent or apply for dispute resolution.

The RTB will review the material submitted by the landlord and make a decision about granting an Order of Possession/ Monetary Order. If an Order of Possession is granted, the landlord will have the right of possession for the rental unit. The decision is legally binding. A fact sheet detailing the process is attached.

The landlord is required to give the Residential Tenancy Branch proof that this notice and copies of all attachments were served to the tenant.

Residential Tenancy Branch

Attachments submitted by the landlord:

1. Application for Dispute Resolution
2. Tenancy Agreement
3. Copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities
4. Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities





Date:	File Number:
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**Proof of Service of the  
Notice of Direct Request**

**NOTE: This must be filled out and faxed to 250-356-7296  
to continue with the Direct Request Proceeding**

I \_\_\_\_\_ served \_\_\_\_\_ with the Notice of Direct Request  
(Name of Landlord/ Agent) (Name of Tenant)

Proceeding requesting an Order of Possession/ Monetary Order in the following manner on:

\_\_\_\_\_ at \_\_\_\_\_  
(Date) (Time)

**Service**

- ☐ With the tenant at: \_\_\_\_\_  
(Address or Location)
- ☐ Posted at: \_\_\_\_\_  
**Note: Do not use this method if requesting a Monetary Order** (Address or Location)
- ☐ Registered mail

Service Timelines in effect.  
See Section 89 of the  
*Residential Tenancy Act*  
and Section 82 of the  
*Manufactured Home Park  
Tenancy Act* for details.

Attach a completed Canada Post Registered  
Mail Receipt, including tracking number,  
here or on a separate page

- ☐ This matter was resolved and I wish to cancel the application.
- ☐ I would like a copy of the Decision and/or Order faxed to: \_\_\_\_\_
- ☐ I understand that I will receive the originals by mail for enforcement.

\_\_\_\_\_  
Landlord/ Agent Signature

**DIRECT REQUEST WORKSHEET**

**Proof of service of Direct Request Proceeding**

Date served on Tenant(s) \_\_\_\_\_

Method of service: registered mail-[ ], posted on door-[ ], personally-[ ]

Deemed served: \_\_\_\_\_ Service proven for all Resp's?: Yes / no

**Notice to End Tenancy** - both pages? Yes / no

Dated \_\_\_\_\_ Served \_\_\_\_\_

Method of serv.: reg.mail-receipt--[ ], posted-witnessed--[ ],  
personally-witnessed--[ ] personally-signed for--[ ]

Deemed served: \_\_\_\_\_ Service proven: yes / no

End the tenancy date \_\_\_\_\_ Corrected to: \_\_\_\_\_

Unpaid rent \$ \_\_\_\_\_

**Tenancy Agreement** - correct address? Yes / no -- correct tnts? Yes / no

Date signed \_\_\_\_\_ Monthly rent amount \$ \_\_\_\_\_ due on \_\_\_\_\_

Rent Increase proven? Yes / No Present Rent Amount \$ \_\_\_\_\_

Start date of tenancy \_\_\_\_\_

**Application**

Amount claimed: \$ \_\_\_\_\_

**Other Notes:**

Decision Mailed \_\_\_\_\_ Faxed-no / yes \_\_\_\_\_

Jan. 26, 2011

## EXAMPLE OF A DECISION

Dispute Codes OPR, MNR

### Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on \*, 2011, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail, posting on the door, personal service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five, three days later.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the Direct Request Proceeding documents.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55 and 67 of the Act.

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on \*, indicating a monthly rent of \$ due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on \* with a stated effective vacancy date of \*, for \$ in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay all rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery, posting on the door, registered mail sent on \*. Section 90 of the Act deems the tenant was served on \*.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

#### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Therefore, I find that the landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

#### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and this Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to section 67 in the amount of \$ comprised of \$ rent owed.

This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.



# 10 Day Notice to End Tenancy for Unpaid Rent or Utilities

## BECAUSE:

You have failed to pay rent  
in the amount of \$ \_\_\_\_\_  
that was due on \_\_\_\_\_

Day Month Year

You have failed to pay utilities  
in the amount of \$ \_\_\_\_\_ following  
written demand on \_\_\_\_\_

Day Month Year

## Tenant: You may be EVICTED if you Do Not Respond to this Notice.

You have five (5) days to pay the rent or utilities to the landlord  
or file an Application for Dispute Resolution with the Residential Tenancy Branch.

- ☐ This notice applies to a manufactured home site, *Manufactured Home Park Tenancy Act*, section 39  
☐ This notice applies to a rental unit, *Residential Tenancy Act*, section 46

### TO the TENANT(S) (full names are required)

If additional space is required to list all parties, use and attach "Schedule of Parties", form #RTB-26.

Last name		First and middle names	
_____		_____	
Last name		First and middle names	
_____		_____	

### Tenant Address (address for service of documents or notices – where material will be given personally, left for, faxed, or mailed)

Unit/site #	Street # and street name	City	Province	Postal Code
_____	_____	_____	_____	_____
Daytime phone number		Other phone number	Fax number for document service	
_____		_____	_____	

### FROM the LANDLORD (full names are required)

If additional space is required to list all parties, use and attach "Schedule of Parties", form #RTB-26.

Last name or full legal business name		First and middle names		
_____		_____		
Landlord Address (address for service of documents or notices – where material will be given personally, left for, faxed, or mailed)				
Unit/site #	Street # and street name	City	Province	Postal Code
_____	_____	_____	_____	_____
Daytime phone number		Other phone number	Fax number for document service	
_____		_____	_____	

## NOTICE: I am hereby giving you 10 days notice to move out of the rental unit or manufactured home site located at:

Unit/site #	Street # and street name	City	BC	Postal Code
_____	_____	_____	Province	_____

By: \_\_\_\_\_ (date when tenant must move out or vacate the site)

Day

Month

Year

Noticed served: In person ☐ On the door ☐ By registered mail ☐

Landlord's or Agent's signature

Print name

Date

This is page 1 of a 2-page Notice.

The landlord must sign page one of this notice and must give the tenant pages 1 & 2.



**If within 5 days you do not pay the rent or utilities or make an application for dispute resolution, the landlord can apply for an order of possession through the direct request process.**

**The direct request process is completed without either party attending a hearing. Instead:**

- The landlord makes an application for an order of possession and submits:
  - A copy of the tenancy agreement
  - A copy of this notice
  - Proof that this notice was served
  - An application for Dispute Resolution.
- The landlord will receive a proceeding package which must be served on the tenant within three days.
- The landlord sends the proof of service of the package to the Residential Tenancy Branch.
- A Dispute Resolution Officer will review all documentation and will make a decision.
- The decision is final and binding on both parties.
- Fraud is the *only* reason that will be considered for a review of the decision.

**The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities Can be Served:**

- Any day after the rent was due, for unpaid rent.
- 30 days after the tenant was given a written demand to pay the arrears, for unpaid utilities.

**The Notice is Deemed Received by the Tenant:**

- The day the landlord gives the notice to the tenant in person, or to an adult (19 years or older) who appears to live with the tenant, or
- Three (3) days after the landlord either; leaves the notice in the mailbox or in mail slot; posts it on the door or a noticeable place at the address where the tenant lives; or faxes it to a number provided by the tenant, or
- Five (5) days after the landlord sends the notice by registered mail to the address where the tenant lives.

**Disputing the Notice:**

- The tenant can make an application for dispute resolution within 5 (five) days of receiving the *10 day notice*.
- If the tenant disputes the notice a hearing will be held. Both parties will have an opportunity to participate.
- At the hearing, the landlord can ask for and receive an order of possession if the *10 day notice* is upheld by the dispute resolution officer.

**Tenants may dispute the notice for specific reasons such as:**

- They have proof the rent was paid.
- They have an order from a dispute resolution officer giving them permission to keep all or part of the rent.
- They held part or all of the rent with prior notice to the landlord, for the cost of emergency repairs.

**Important Facts:**

- The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer.
- The tenant who accepts the notice must move out by the date set out on page 1 of this notice or sooner.
- An error in this notice or an incorrect move-out date does not make it invalid.

**For More Information:**

- Visit RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca).
- Contact a RTB office.
- Refer to *A Guide for Landlords and Tenants in British Columbia* available on the RTB web site and offices.

***This is page 2 of a 2-page Notice.***

***The landlord must sign page one of this notice and must give the tenant pages 1 & 2.***

<b>RULE 8 – CONDUCT OF THE DISPUTE RESOLUTION PROCEEDING</b>
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**8.1 Conduct of the dispute resolution proceeding**

The Dispute Resolution Officer must conduct the dispute resolution proceeding in accordance with the Act and the Rules of Procedure.

**8.2 Party may present evidence**

Each party will be given an opportunity to present his or her relevant evidence, as may be determined by the Dispute Resolution Officer.

**8.3 Party may be represented or assisted**

A party to a dispute resolution proceeding may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

**8.4 Scope of dispute resolution proceeding and decision**

The Dispute Resolution Officer must accept evidence only on the matters stated on the Application for Dispute Resolution unless, at the request of a party made at the start of the dispute resolution proceeding, the Dispute Resolution Officer permits an amendment to the application to include other related matters that may be the subject of an Application for Dispute Resolution between the parties.

In considering whether to permit an amendment to an application at the start of a dispute resolution proceeding to include other related matters, the Dispute Resolution Officer will consider whether the amendment would prejudice the other party, or result in a breach of the principles of natural justice and the Dispute Resolution Officer must:

- a) allow the other party the opportunity to make argument that the dispute resolution proceeding of the combined matters or of the additional matter or matters be adjourned; and
- b) rule whether to adjourn in accordance with Rule 6.4 [criteria for granting an adjournment] and give a reason for granting or refusing the adjournment. The Dispute Resolution Office may give reasons in accordance with Rule 6.7 [written reasons for an adjournment].

**8.5 Form of dispute resolution proceeding**

A dispute resolution proceeding may include submissions:

- a) made orally in-person or by conference call; or
- b) made in writing;

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## Residential Tenancy Branch Rules of Procedure

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but another party to the dispute resolution proceeding must be given an opportunity to respond to the submission(s) at that the same time or at a later time and in the manner the Dispute Resolution Officer considers appropriate.

### **8.6 Communication with the Dispute Resolution Officer**

Unless a specific instruction has been given by the Dispute Resolution Officer, all communication with the Dispute Resolution Officer before and after the dispute resolution proceeding must be in writing and a copy must be given to the other party.

### **8.7 Interruptions and inappropriate behaviour at the dispute resolution proceeding**

Disrupting the other party's presentation with questions or comments will not be permitted. The Dispute Resolution Officer may give directions to a party, to a party's agent or representative, a witness, or any other person in attendance at a dispute resolution proceeding who presents rude, antagonistic or inappropriate behaviour. A person who does not comply with the Dispute Resolution Officer's direction may be excluded from the dispute resolution proceeding and the Dispute Resolution Officer may proceed with the dispute resolution proceeding in the absence of the excluded party.



**RULE 16 – THE DISPUTE RESOLUTION OFFICER’S DECISION AND ORDER**

**16.1 Dispute resolution proceeding concluded by agreement of the parties**

After the conclusion of a dispute resolution proceeding in which the parties have reached an agreement, the Dispute Resolution Officer must do the following, promptly and in any event within the 30-day time limit provided generally for written reasons under the Act:

- a) record the terms of the agreement in a decision; and
- b) if appropriate, prepare an order.

**16.2 Enforceability of an order prepared under Rule 16.1**

An order prepared by a Dispute Resolution Office under Rule 16.1 [dispute resolution proceeding concluded by agreement of the parties] has the same force and effect as if the Dispute Resolution Officer made the decision without the agreement of the parties, including but not limited to the enforceability of the order by a court.

**16.3 Dispute resolution proceeding concluded without the parties reaching agreement**

After the conclusion of a dispute resolution proceeding in which the parties have not reached an agreement, the Dispute Resolution Officer must do the following:

- a) in the case of a non-manufactured home pad rent review, provide an oral decision immediately and provide a written decision and order within ten (10) days;
- b) in all other cases, provide an oral decision immediately and provide a written decision, and order; or
- c) reserve the decision and provide a written decision, and order if appropriate, promptly and in any event within the thirty (30) day time limit provided generally for written reasons under the Act.

**16.4 Service of order**

If the Dispute Resolution Officer sets conditions for service of a decision or order, the decision or order must set out any requirement for timing or method of service.

**16.5 Original decisions**

The Dispute Resolution Officer must provide original signed decisions to all parties to a dispute resolution proceeding, unless a current address for a party is not available, place a signed original decision in the dispute resolution file, and upload an electronic copy of the decision to the Residential Tenancy Branch’s Case Management System. If the Dispute Resolution Office directs one party to serve a

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## Residential Tenancy Branch Rules of Procedure

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copy of the decision on the other party, an additional original decision will be provided for that purpose.

### 16.6

#### **Original orders**

The Dispute Resolution Officer must provide a sufficient number of signed original orders to the recipient of the order to permit service and enforcement in the court, place a signed original order in the dispute resolution file, and upload an electronic copy of the order to the Residential Tenancy Branch's Case Management System.



## Residential Tenancy Branch – Glossary of Terms

**Adjournment** the determination by a Dispute Resolution Officer that a dispute resolution proceeding will be reconvened at a later date, either at the request of one or both of the parties, or on the Dispute Resolution Officer's own initiative.

**Advocate** a person who provides assistance to a party.

**Agent** a person appointed by a party to act on that party's behalf.

**Applicant** a landlord or tenant who applies for dispute resolution by completing an Application for Dispute Resolution, having it accepted by the Residential Tenancy Branch and paying any required fee.

**Cross application** an Application for Dispute Resolution made to counter an existing application or made in response to a related Application for Dispute Resolution.

**Days** in the calculation of time expressed as "at least" a number of days, the first and last days must be excluded. If the date the document, notice or evidence must be served or given falls on a weekend or holiday, and it must be served on a business, or filed in an office, then it must be served or filed on the previous business day. If the document or notice must be provided to the Residential Tenancy Branch, weekends and holidays are not included in the calculation of days.

**Decision** a conclusion or determination of the Dispute Resolution Officer which legally resolves the matters outlined in the Application for Dispute Resolution, including orders, if necessary to implement the decision.

**Dispute resolution proceeding** a legal process initiated by a landlord or a tenant by filing by an Application for Dispute Resolution for the purpose of obtaining a legally binding decision from an independent decision-maker, including:

- a) a proceeding conducted by a Dispute Resolution Officer that resolves disputes without a formal dispute resolution proceeding, and after which the Dispute Resolution Officer makes a decision and/or order; and
- b) a formal dispute resolution proceeding at which a Dispute Resolution Officer will give the parties to the dispute an opportunity to present evidence and argument and to question the other party, and after which the Dispute Resolution Officer makes a decision and/or order.

At the discretion of the Director, a dispute resolution proceeding may be conducted in-person, or conference call, or by written submissions

**Evidence** any type of proof presented by the parties at a dispute resolution proceeding in support of the case, including:

- Written documents, such as the tenancy agreement, letters, printed copies of emails, receipts, pictures and the sworn or unsworn statements of the witnesses;
- Photographs, videotape, audiotape, and other physical evidence;
- Oral statements of the parties or witnesses given under oath or affirmation.

**In writing** except where an original document is required by the Dispute Resolution Officer, printed documents or documents to be submitted in writing and may be submitted by fax or by email.

**Party** the applicant or respondent named on the Application for Dispute Resolution or added to the application by a Dispute Resolution Officer, and an officer representing a business named in the application, but does not include witnesses, family members, and other persons not named on the application. "Party" may include multiple applicants or respondents.

**Personal information** recorded information about an identifiable individual including:

- Name, address or telephone number;
- Race, national or ethnic origin, colour, or religious or political beliefs or associations;
- Age, sex, sexual orientation, marital status or family status;
- Identifying number, symbol or other particular assigned to the individual;
- Fingerprints, blood type or inheritable characteristics;
- Health care history, including physical or mental disability, [NOTE: this will be modified when RTA provisions relating to assisted living or supported living come into effect.];
- Educational or criminal history; or
- Financial or employment history, except as required in disputes about eligibility for subsidized housing;
- Anyone else's opinion about the individual [NOTE: this will be modified when RTA provisions relating to assisted living and supported living come into effect.].

**Reasons** the grounds and conclusions on which a Dispute Resolution Officer has based a decision, including both factual evidence and law.

**Relevant** evidence is relevant if it relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact. Argument is relevant if it relates to or bears upon the matter at hand.

**Reschedule** the act of the Residential Tenancy Branch that re-designates a time, date, and place for the dispute resolution proceeding to commence or be reconvened, including a

determination whether the rescheduled dispute resolution proceeding will be conducted in-person, or by conference call, or by written submissions.

**Reserve** the act of a Dispute Resolution Officer deciding not to make a decision at the dispute resolution proceeding, but to take some time to provide the written decision/order and written reasons within the time limits specified under the Act.

**Respondent** the landlord or tenant against whom the Application for Dispute Resolution has been made; sometimes called the "other party".

**Schedule** the act of the Residential Tenancy Branch, at the time an application is filed, that designates a time, date, and place for the dispute resolution proceeding to be commenced, including a determination whether the dispute resolution proceeding will be conducted in-person, or conference call, or by written submissions.

**Serve** the formal legal manner of giving a party required documents and evidence as set out in the Act.

**Sever** to delete or strike-over information in such a way that the information is no longer legible.

**Substituted service** an alternative method of service authorized by a Dispute Resolution Officer where the party has made reasonable efforts to serve but has been unable to serve documents, notices, or decisions in accordance with the Act.





# Landlord and Tenant Fact Sheet

RTB-126

## Deadlines for Serving Evidence and Submitting It to the Residential Tenancy Branch

### Rules about evidence

The Residential Tenancy Branch (RTB) has Rules of Procedure (Rules) that include deadlines for serving copies of evidence for both the applicant and the respondent, and for submitting copies of your evidence to RTB. The Rules use the words "at least". These words have a special meaning when you are figuring out the deadlines for serving evidence (and other documents). The words "at least" are explained below in the sections about submitting evidence to RTB and serving it on the other party.

If you do not follow the Rules, a dispute resolution officer (DRO) may refuse to consider your evidence.

Rules of Procedure about evidence and the dispute resolution process are online at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca), or copies can be obtained from any RTB office or Service BC-Government Agents Office.

### Serving evidence or giving notice that you will bring it to the hearing

Sometimes it is impossible to serve evidence or submit it to the RTB (for example, a sample of a carpet or a broken lock). If you have that kind of evidence and you want to use it at the hearing, then you must give RTB and the other party a written description of the evidence "at least" five (5) days before the hearing. If the DRO believes that you could have served or submitted the evidence in advance, he or she may refuse to accept it or adjourn the hearing to give the other party a fair chance to consider it.

### Submitting evidence to RTB

To the extent that is possible, an applicant must submit copies of all available documents, photographs, video or audio tape evidence to RTB at the same time as the Application for Dispute Resolution is filed.

The respondent must also submit all available evidence to the RTB as soon as possible.

The Rules provide that copies of all evidence and a notice of evidence you intend to bring to the hearing, must be received by the RTB as soon as possible and "at least" five (5) days before the dispute resolution hearing. (Note that this is the date it is received by RTB which will not necessarily be the day you submit it if you are relying on mail or fax.)

When you are figuring out the deadline for submitting evidence to RTB, the words "at least" mean that you must completely exclude:

- the day RTB receives the evidence,
- the day of the hearing, and
- any weekend days or statutory holidays in between.

For example, if the hearing will be on a Tuesday, then the deadline for submitting evidence to RTB is the previous Monday (a week earlier).

### Serving evidence or giving notice of evidence to the other party

Both the applicant and the respondent must serve copies of evidence on each other as soon as possible and "at least" five (5) days before the dispute resolution hearing.

Residential Tenancy Branch

#RTB-126 (2011/03)



If an applicant or respondent has other evidence they want to use at the hearing that cannot be served or submitted in advance (for example: a sample of a carpet or a broken lock), then they must give the other party a written description of the evidence "at least" five (5) days before the hearing.

If the time between the filing of an Application (or being served with the Application) and the hearing date does not allow the five (5) day requirement to be met, then the evidence must be served "at least" two (2) days before the hearing.

**How to figure out the deadline for serving evidence or notice on a person.** Count backward from the hearing day. Do not count the hearing day or the day when you serve the evidence. For example, if your deadline is "at least" five (5) days and your hearing is on a Friday, then the deadline for serving the evidence (or notice of evidence) on a person is the previous Saturday.

**How to figure out the deadline for serving evidence or notice on a business or in an office.** The only difference between serving evidence on a business/office or on a person is this: if the deadline falls on a weekend or a holiday, then the evidence or notice must be served on the previous business day. For example, if your hearing is on a Friday, then the deadline for serving the evidence on a business that is closed on weekends will be the previous Thursday.

### **What if evidence isn't served or submitted by the deadlines?**

To be fair, the other party must have time to review your evidence before the hearing. Do not wait until the last minute to give them the evidence or they can ask the DRO to adjourn the hearing. If you miss the deadline for serving evidence on the other party, serve it as soon as possible so that the hearing may be able to go ahead at the scheduled time.

If you miss the deadline for submitting evidence to RTB, staff will not accept it. At the time of the hearing, you will have to ask the DRO whether or not he or she will accept it.

You must provide the other party to the dispute with your evidence even if RTB has refused it.

At the hearing you can then tell the DRO why you did not serve or submit the evidence on time and explain why it is important to your case. You can ask the DRO to accept the evidence at the hearing or to postpone the hearing so the evidence can be included at a later date. If the DRO agrees to postpone the hearing so that your evidence can be considered, submit the evidence to the RTB immediately. Do not rely on the 5-day rule. The longer you wait to serve and submit your evidence, the greater the likelihood the evidence will be rejected.

### **For more information ...**

#### **Office Locations:**

Burnaby: 400-5021 Kingsway

Victoria: Suite 101 – 3350 Douglas Street

Kelowna: 305-478 Bernard Avenue

Any Service BC-Government Agents Office

Hours: 8:30 am – 4:30 pm, Monday - Friday

(Closed on statutory holidays)

#### **Public Information Lines:**

1-800-665-8779 (Toll free)

604-660-1020

250-387-1602

Email: [HSRTO@gov.bc.ca](mailto:HSRTO@gov.bc.ca)

Website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)



**#RTB-2**

**FORM DIRECTIONS:** If you are accessing this agreement from the B.C. Government Web site, it can be filled out at a computer workstation. It can also be printed and completed by hand. If completing sections by hand, please *print clearly, using dark ink*. If you are completing this form at a computer, simply type in your response in the boxes. If you cannot complete all the sections at the computer right away, you can print off what you have completed, and fill in the remaining fields by hand. It's important to note that you **cannot save** the completed form to your computer, therefore, after you complete the form, make sure you review the form for accuracy and print the number of copies you require **before** you leave the document or shut down the program/computer.

**Notes:**

This information is collected under the Residential Tenancy Act ("RTA") and the Manufactured Home Park Tenancy Act ("MHPTA"). Information collected on this form may be disclosed to the public in accordance with the Freedom of Information and Protection of Privacy Act and will be used to process your application for review of the decision or order of an arbitrator. If you have any questions about the collection and use of this information, please contact the Residential Tenancy Office (RTO).

**IMPORTANT:** The RTA and the MHPTA allows, but does not require you to be represented by a lawyer or agent.

This form is to be used by either a Landlord or Tenant to request a review of an Arbitrator's Decision or Order.

**A. APPLICANT(S)** *(person[s] asking for the review):* (check one box) ☐ Tenant ☐ Landlord

**Full name(s) of Applicant(s):** *(if entry for landlord is a business name, use the 'last name' field box to enter the full legal business name)*

last name	first name	middle name(s)
last name	first name	middle name(s)

**Address of Applicant(s)** *(current address for service of documents):*

suite or site number	street number	street name	city	province	postal code
( )		( )		( )	
home phone		business phone		service fax	

**B. RESPONDENT(S)** *(other party(s) to the arbitration):* (check one box) ☐ Tenant ☐ Landlord

**Full name(s) of Respondent(s):** *(if entry for landlord is a business name, use the 'last name' field box to enter the full legal business name)*

last name	first name	middle name(s)
last name	first name	middle name(s)

**Address of Respondent(s)** *(current address for service of documents):*

suite or site number	street number	street name	city	province	postal code
( )		( )		( )	
home phone		business phone		service fax	

**FOR MORE INFORMATION . . . visit our Web site: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)**

**OR call the Residential Tenancy Branch at:**

**• In the Lower Mainland 604 660-1020 • elsewhere in B.C. call toll free: 1 800 665-8779**

### C. DECISION or ORDER TO BE REVIEWED

Complete **one** application form for **each** arbitrator's decision or order you wish to have reviewed. **Attach** a copy of the applicable decision or order to this completed application form.

Residential Tenancy Office File No. (see decision letter) :

Hearing Date:

day
  month
  year

Decision or Order Date:

day month year

Date You Received Decision or Order:

day
  month
  year

**Address Under Dispute:**

suite or site number  
  street number  
  street name  
  city  
 B.C.  province  
  postal code

#### D. REQUEST FOR EXTENSION OF TIME TO APPLY FOR REVIEW

If you are submitting this application late, the arbitrator will decide whether the time limit for application will be extended. Late means you are submitting this application:

- **more than 2 days** after the date you receive the decision or order where the decision or order relates to an early end of tenancy, an order of possession for a landlord or tenant, unreasonable withholding of consent by a landlord regarding assignment and subletting or a landlord's notice to end a tenancy for non-payment of rent.
- **more than 5 days** after the date you receive the decision or order, where the decision or order relates to a notice to end of a tenancy agreement, repairs or maintenance, or services or facilities.
- **more than 15 days** after the date you receive the decision or order, where the decision or order relates to *any* other part of the RTA or the MHPTA.

If you are filing this application beyond the time allowed by the RTA or the MHPTA you must complete the following:

☐ I am requesting an extension of time to make this application:

1. List the reason or reasons you were unable to apply for review within the required time frame.

--

2. How many days have passed since you received a copy of the arbitrator's decision or order?
3. You must **attach** evidence, such as the originals of any documents or legible copies you have, which will help to prove the accuracy of what you listed as your reason(s) for being unable to apply for review on time.

## E. REASONS FOR REQUESTING A REVIEW

You must have at least one of the following three reasons (outlined on pages 3 to 5 of this form) to have the original decision reviewed. Please check off the reason(s) that you are requesting a review and answer all of the relevant questions listed below that reason. Provide additional information or arguments on a separate page if necessary.

- ☐ 1) A party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control:

a. List the reason(s) for being unable to attend.

b. Explain why the circumstance(s) could not be anticipated and were beyond your control. Give details including dates, times and events that occurred, where applicable.

c. Indicate what evidence you would have presented had you attended the hearing.

d. Attach evidence supporting the reasons and/or circumstances which supports your inability to attend the hearing (e.g. medical report from doctor; invoice from towing company for disabled vehicle).

*page 3 of 6 pages*

**E. REASONS FOR REQUESTING A REVIEW (cont'd from page 3)**

☐ **2) A party has new and relevant evidence that was not available at the time of the original hearing.**

a. List each piece of new and relevant evidence which was not available at the time of the original hearing.

b. For each piece of evidence listed, state in what way it is relevant to the application. Give details.

c. For each piece of evidence listed, state in what way the decision and/or order of the arbitrator may have differed if the evidence was available and introduced at the time of the hearing.

d. For each piece of evidence listed, separately state why it was not available at the time of the hearing. Give details including dates and times where applicable.

e. Attach evidence which shows that the evidence is new and was unavailable at the time of the hearing (e.g. a letter from a municipality saying that a particular required report was not yet produced on the day the hearing was held).



E. REASONS FOR REQUESTING A REVIEW (cont'd from page 4)

☐ 3) A party has evidence that the arbitrator's decision or order was obtained by fraud.

a. Describe or list the evidence which is considered to be fraudulent.

--

b. Indicate the nature of the fraud for each item of evidence listed.

--

c. Indicate, for each item of evidence listed, who committed the fraud.

--

d. Indicate, for each item of evidence listed, how the decision and/or order of the arbitrator may have differed if the fraudulent evidence had not been considered.

--

e. Attach evidence supporting the claim that the arbitrator's decision or order was obtained by fraud.

page 5 of 6 pages



## F. SUBMITTING COMPLETED APPLICATION

### ATTACHMENTS:

All written evidence to support your application must be attached to this form, including a copy of the decision(s) and/or order(s) being reviewed.

Please check off what is attached to this form:

- ☐ copy of decision or order you wish to have reviewed requested in Section C of this form
- ☐ evidence as outlined in Section D3 of this form
- ☐ evidence as outlined in Section E1(d) of this form
- ☐ evidence as outlined in Section E2(e) of this form
- ☐ evidence as outlined in Section E3(e) of this form
- ☐ additional pages (identify the sections you have continued with on attached additional page(s) if this form did not have enough space):

### FEE:

There is a fee of \$25 to file this application, as established under the RTA and the MHPTA, which must be paid at the time of application. Fees submitted to the RTB may be paid by cash, debit card, credit card or money order. For applications submitted to a Service BC—Government Agents office fees may be paid by cash, debit card or certified cheque. (A \$20 fee will be charged on NSF cheques.) Make cheque payable to the Minister of Finance.

### WHERE TO SUBMIT:

Completed *Application to Review Arbitrator's Decision or Order*, with attachments and fee, must be filed, *in person*, at one of the following offices:

#### Residential Tenancy Branch

BURNABY: 400 - 5021 Kingsway

VICTORIA: Suite 101 - 3350 Douglas Street

INTERIOR: 305-478 Bernard Avenue, Kelowna

*If there is no Residential Tenancy Office in your area, you can file your application at any Service BC—Government Agent Office (To locate an office near you, call Enquiry BC 1 800 663-7867)*

### PROCESS:

- The Director of Residential Tenancy, or the Director's designate, may refuse to accept an application that is not properly completed.
- If an application for review is accepted, the Director will assign an arbitrator, generally the arbitrator who issued the decision and/or order, to determine, based on the contents of the review application, whether to conduct a review.
- The arbitrator may dismiss or refuse to consider this application if full details or sufficient grounds are not given.
- The arbitrator must also be satisfied that a basis to alter or set aside the decision exists, and that the matter could not be dealt with as a correction or clarification.

## G. Signature(s) (required to commence review)

I/We, the Applicant(s)/Agent for the Applicant(s), apply to the Director of the Residential Tenancy Office for a review of this decision and/or order of an arbitrator. I/we have read this application in full. The information provided is true and correct to the best of my/our knowledge.

**Name(s):** (if name entry for landlord is a business name, use the 'last name' field box to enter the full legal business name)

last name	first name	middle name(s)
last name	first name	middle name(s)

**Signature(s):** \_\_\_\_\_

**Date:** \_\_\_\_\_

day month year

**Date:** \_\_\_\_\_

day month year

page 6 of 6 pages



# Landlord and Tenant Fact Sheet

RTB-100

## Review of a Dispute Resolution Officer's Decision

*s. 79 Residential Tenancy Act and s. 72 Manufactured Home Park Tenancy Act*

A dispute resolution hearing is a formal legal process. In limited circumstances, the Residential Tenancy Act (RTA) and the Manufactured Home Park Tenancy Act (MHPTA) allow a dispute resolution officer (DRO) to review his or her decision. Only the Supreme Court of British Columbia has the authority to overturn a DRO decision or order.

DROs also have the authority to clarify decisions or make changes, such as correcting typographical or arithmetic errors or obvious errors or inadvertent omissions. The difference between a "review" and a "clarification or correction" is that a review may change the outcome of the dispute.

The other difference is that you must pay a fee to submit an Application to Review a Dispute Resolution Officer's Decision or Order but you do not have to pay a fee if you are just asking for a clarification or correction.

- See Fact Sheet #RTB-111 – Clarification or Correction of Orders and Decisions.

### When can a review by a DRO be requested?

There are only three reasons for requesting that a DRO review a decision that he or she has made. These are called the "grounds for review". A person who asks for a review must be able to prove one of the following reasons ("grounds"):

- that he or she was unable to attend the hearing due to circumstances that could not be anticipated and were beyond his or her control.
- that he or she has new and relevant evidence that was not available at the time of the original hearing.

- that he or she has evidence that the decision was obtained by fraud.

A review is not an opportunity to re-argue the case.

### Deadline for requesting a review

The deadline for submitting the request is two (2) days from the date when you received the decision or order, if it relates to:

- an early end of tenancy,
- an order of possession for a landlord or tenant,
- a landlord's withholding of consent for assigning or subletting,
- a landlord's notice to end a tenancy for non-payment of rent.

The deadline for submitting the request is five (5) days from the date when you received the decision or order, if it relates to:

- a dispute of notice to end tenancy agreement other than non-payment of rent
- repairs or maintenance
- terminating services or restricting facilities

The deadline for submitting the request is fifteen (15) days from the date when you received the decision or order for all other matters.

### Making an Application for Review

To request a review, you must submit an Application to Review a Dispute Resolution Officer's Decision or Order and pay the fee to the Residential Tenancy Branch before the deadline set out above.

Residential Tenancy Branch

#RTB-100 (2011/03)





**How to prove the reason ("grounds") for the review****Unable to attend**

A dispute resolution officer will only agree to review the decision or order if he or she accepts your proof that you did not attend the hearing because something happened that you couldn't control or that you could not have expected to happen.

Reasons such as "I forgot the time" or "I couldn't get a parking space" or "I was on the phone with someone else when the conference call hearing started" may not be enough to convince a DRO to change his or her decision or hold another hearing.

A reasons such as "I was at the hospital" may be enough but you may be expected to produce a letter from your doctor or some other document that proves where you were.

**New and relevant evidence**

A party is responsible for being fully prepared for the original hearing, including collecting and supplying all relevant evidence. "Evidence" refers to any oral statement, document, photograph, videotape or thing that proves a fact in a dispute resolution hearing. Evidence can include, but is not limited to, letters, affidavits, receipts, records, videotapes, audio tape recordings and photographs.

On an application for review, you must be able to show that:

- the evidence is new. "New" evidence includes evidence that came into existence since the hearing.
- there is evidence that was not available or did not exist at the time of the original hearing. If the evidence did exist but was not presented, you must be able to prove that you did not know about it or could not have known about it.
- the evidence is relevant to the matter before the DRO. "Relevant" means that evidence that relates to or has a bearing upon the disputed matter or evidence that may prove or disprove some evidence presented by the other party.

**The decision or order was obtained by fraud**

The person requesting the review must be able to prove that evidence presented by the other party was false and that it was a significant factor in the decision.

Fraud is the intentional false representation of a matter of fact that deceives and is intended to deceive. Fraud can be carried out by words or by conduct, by false or misleading allegations, or by concealment of information or evidence that should have been disclosed. Intentional false testimony would constitute fraud, as would making changes to a document either to add false information or to remove information that would tend to disprove one's case.

**Dispute Resolution Officer decides whether to proceed with review**

The DRO decides whether the review will proceed based solely on the application and the evidence that is submitted with it. At this point, the applicant for a review does not need to notify the other party.

The review might not proceed, or may be dismissed, if:

- the application does not provide a complete description (called "full particulars") of the reason for review;
- the application and evidence do not prove the reason ("grounds") for a review;
- the application discloses no basis on which the decision or order can be set aside or amended;
- the application is frivolous, vexatious, or trivial or was not initiated in good faith; or
- the applicant fails to pursue the application diligently or comply with an order made during the review.
- The DRO may also dismiss or refuse to proceed with a review if the matter can be resolved by:
  - correcting of a typographical, arithmetical or other similar error in the decision or order,
  - providing a clarification of the decision, order or reasons, or
  - dealing with an obvious error or inadvertent omission in the decision, order or reasons.

**The review decision**

If the review proceeds, the applicant receives a copy of the decision and must serve this decision and all the other information that was submitted for the review on the other party. The other party can then respond to any new evidence before the review is complete.

If the review does not proceed, the DRO will advise the applicant in writing and provide the reasons for the decision.

**For more information...****Office Locations:**

Burnaby: 400-5021 Kingsway

Victoria: Suite 101 – 3350 Douglas Street

Kelowna: 305-478 Bernard Avenue

Any Service BC-Government Agents Office

Hours: 8:30 am – 4:30 pm, Monday - Friday

(Closed on statutory holidays)

**Public Information Lines:**

1-800-665-8779 (Toll free)

604-660-1020

250-387-1602

Email: [HSRTO@gov.bc.ca](mailto:HSRTO@gov.bc.ca)

Website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)



## Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

### APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the ACT\_SHORT,ACT\_TYPE, as amended.*

On DATE, the Residential Tenancy Branch received an Application for Review from LANDLORD.

Subject:

File Number: FILE\_NUM, JOINT\_FILE\_NUMBER  
Decision dated: DECISION\_DATE  
Rental Unit: DISPUTE\_ADDRESS,  
DISPUTE\_CITY, BC

Other Party: TENANT

### Introduction

TEXT

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

### Issues

TEXT

### Facts and Analysis

The application contains information under Reasons Number XX



TEXT

Decision

TEXT

The decision made on DATE stands.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: DATED\_DT.

---

DRO\_NAME  
Residential Tenancy Branch

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This guideline deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent. Generally clauses of this nature will only be struck down as penalty clauses when they are oppressive to the party having to pay the stipulated sum. Further, if the clause is a penalty, it still functions as an upper limit on the damages payable resulting from the breach even though the actual damages may have exceeded the amount set out in the clause.

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

If a liquidated damages clause is struck down as being a penalty clause, it will still act as an upper limit on the amount that can be claimed for the damages it was intended to cover.

A clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment.

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

**GUEST SPEAKER**  
**SEAN ROLLO**

s.22

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].



(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

*This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.*

## SECURITY DEPOSIT

1. A landlord may require a security deposit when the landlord and tenant enter into a tenancy agreement.
  2. The tenancy agreement may not provide that the landlord automatically keeps all or part of the security deposit at the end of the tenancy.
  3. A landlord may issue and serve on the tenant a Notice to End a Residential Tenancy if the tenant fails to pay the required security deposit within thirty days of the date it is required to be paid by the tenancy agreement.
  4. A tenant may not apply all or part of the security deposit to rent without the written consent of the landlord.
  5. The tenant may agree in writing at the end of the tenancy that the landlord may retain all or part of the security deposit.
  6. The right of a tenant to the return of a security deposit is extinguished if the landlord has offered the tenant at least two opportunities for a condition inspection as required by the Act and the tenant has not participated on either occasion.
  7. The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:
    - the landlord does not offer the tenant at least two opportunities for inspection as required by the Act, and/or
    - having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.
  8. In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.
  9. A landlord who has lost the right to claim against the security deposit for damage to the rental unit, as set out in paragraph 7, retains the following rights:
    - to obtain the tenant's consent to deduct from the deposit any monies owing for other than damage to the rental unit;
    - to file a claim against the deposit for any monies owing for other than damage to the rental unit;
    - to deduct from the deposit an arbitrator's order outstanding at the end of the tenancy
    - to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.
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## 17. Security Deposit and Set off Jul-04

10. The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.

11. If the landlord does not return or file for arbitration to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit. Where the landlord has to pay double the security deposit to the tenant, interest is calculated only on the original security deposit amount and is not doubled.

12. The obligations of a landlord with respect to a security deposit run with the land or reversion. Thus, if the landlord changes, the new landlord retains these obligations.

### RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit;
- the tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

2. Where the tenant applies for return of the security deposit and the landlord later applies for arbitration for claims arising out of the tenancy and the arbitrations are not scheduled at the same time, the arbitrator will order the return of the security deposit to the tenant and the landlord's claims will be heard whenever scheduled after that, unless the parties and the arbitrator agree to having the landlord's claim heard at the same time.

3. Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

- If the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;
- If the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act;
- If the landlord has filed a claim against the deposit that is found to be frivolous or an abuse of the arbitration process;
- If the landlord has obtained the tenant's written agreement to deduct from the security deposit for damage to the rental unit after the landlord's right to obtain such agreement has been extinguished under the Act;
- whether or not the landlord may have a valid monetary claim.



4. In determining the amount of the deposit that will be doubled, the following are excluded:
- any arbitrator's monetary order outstanding at the end of the tenancy;
  - any amount the tenant has agreed, in writing, the landlord may retain from the deposit for monies owing for other than damage to the rental unit;
  - if the landlord's right to deduct from the security deposit for damage to the rental unit has not been extinguished, any amount the tenant has agreed in writing the landlord may retain for such damage.

#### SET-OFF

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single Order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the Order.

2. The *Residential Tenancy Act* provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the arbitration fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

3. If a landlord who does not apply for arbitration within the time required in order to retain the security deposit retains the right to apply for arbitration and subsequently applies in respect of monetary claims arising out of the tenancy and the landlord has not returned the security deposit, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

4. In cases where the tenant's right to the return of a security deposit has been extinguished under section 24 or section 36 of the Act, and the landlord has made a monetary claim against the tenant, the security deposit and interest, if any, will be set off against any amount awarded to the landlord notwithstanding that the tenant's right to the return of the deposit has been extinguished. In this situation, while the right to the return of the deposit has been extinguished, the deposit itself remains available for other lawful purposes under the Act.

If the amount awarded to the landlord does not exceed the amount of the deposit and interest, the balance may be retained by the landlord as the tenant has forfeited the right to its return.

For information with respect to pet damage deposits refer to Guideline 31.