

## 41. Administrative Penalties

February 2012

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*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.*

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This policy guideline outlines considerations for levying an administrative penalty and if one is to be levied, how to determine the size of an Administrative Penalty as well as whether a penalty should be repeated on each day the contravention continues.

### LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*<sup>1</sup> (the Legislation) allows the Residential Tenancy Branch (RTB) to levy administrative penalties when a landlord or tenant has contravened a provision of the *Residential Tenancy Act*, the *Manufactured Home Park Tenancy Act*, regulations to these Acts, or the landlord or tenant has failed to comply with a decision or order of the Residential Tenancy Branch.

### DEFINITIONS

In this policy guideline:

- **Contravention** refers to either a violation of a section the Legislation or Regulations or a failure to comply with a decision or order of the RTB;
- **Respondent** refers to the person named in the administrative penalty proceeding.

### DECISION ON WHETHER AN ADMINISTRATIVE PENALTY SHOULD BE APPLIED

The Residential Tenancy Branch may decide that an administrative penalty should be applied when the evidence shows the respondent has:

- Contravened a provision of the Legislation or regulations; or
- Failed to comply with a decision or order of the RTB.

A decision is based on proof, on the balance of probabilities. Evidence must substantiate complaints.

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<sup>1</sup> *Residential Tenancy Act* Part 6, Division 2.1; *Manufactured Home Park Tenancy Act* Part 7, Division 2.1

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### DETERMINING THE AMOUNT OF AN ADMINISTRATIVE PENALTY

The Legislation identifies seven elements that must be considered when applying an administrative penalty:

- Previous enforcement actions for contraventions of a similar nature by the respondent;
- The gravity and magnitude of the contravention;
- The extent of harm to others;
- Whether the contravention was repeated or continuous;
- Whether the contravention was deliberate;
- Whether the respondent derived economic benefit from the contravention;
- The respondent's efforts to correct the contravention.

The amount of an administrative penalty may be determined by the sum of the values identified in the tables in the following section.

- If the sum of values is 1-7, the maximum penalty is \$250.00.
- If the sum of values is 8-14, the maximum penalty is \$500.00.
- If the sum of values is 15-19, the maximum penalty is \$1,000.00.
- If the sum of the values is 20-23, the maximum penalty is \$2,500.00.
- If the sum of the values is 24-26, the maximum penalty is \$3,500.00.
- If the sum of the values is 27-28, the maximum penalty is \$4,000.00.

If the highest value (five) is assigned in any of the categories, the penalty is \$5,000.

Despite the above maximum penalties, when there is a positive value for the contravention in:

- five categories, the maximum penalty is \$2,500.00
- six categories, the maximum penalty is \$3,500.00.
- all seven categories, the maximum penalty is \$5,000.

### WEIGHT GIVEN TO ELEMENTS CONSIDERED

The following tables describe how much weight to give the contravention in each of the seven required elements to be considered when levying an administrative penalty.

Elements described in each cell of the table are representative, not cumulative. For example, the gravity and magnitude of a contravention may impact on either health or safety, or both.

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### Previous Actions for Similar Contraventions

Value	Description
0	No similar contraventions
1	RTB issued one decision or order on the same topic against the respondent once in the past two years
2	RTB issued two decisions or orders on the same topic against the respondent in the past two years
3	RTB issued three or four decisions or orders on the same topic against the respondent in the past two years
4	RTB issued five or more decisions or orders on the same topic against the respondent in the past two years  Or  RTB levied an Administrative Penalty of \$1,000.00 or less for a similar contravention against the respondent in the past two years
5	RTB levied an Administrative Penalty of more than \$1,000.00 for a similar contravention against the respondent in the past two years

### Gravity and magnitude

Value	Description
0	<ul style="list-style-type: none"> <li>not impact health or safety</li> <li>not impact economic viability of continued investment in renting housing stock</li> <li>contravention results in expenditure that is quantified to be less than one per cent of annual rent</li> </ul>
1	<ul style="list-style-type: none"> <li>moderate impact on health</li> <li>moderate impact on safety</li> <li>contravention quantified at up to 15 per cent of annual rent of unit(s) in which contravention occurred</li> </ul>
2	<ul style="list-style-type: none"> <li>measurable impact on health</li> <li>measurable impact on safety</li> <li>contravention quantified at 16 to 45 per cent of annual rent of unit(s) in which contravention occurred</li> </ul>
3	<ul style="list-style-type: none"> <li>measurable impact on health or safety</li> <li>contravention quantified at 45-65 per cent of aggregate annual rent for more than 50% of rental units in building</li> </ul>
4	<ul style="list-style-type: none"> <li>significant impact on health</li> </ul>

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Value	Description
	<ul style="list-style-type: none"> <li>significant impact on safety</li> <li>contravention quantified at 65-79 per cent of aggregate annual rent for all rental units in building</li> <li>contravention of Act or Regulation that is not open to interpretation</li> </ul>
5	<ul style="list-style-type: none"> <li>lack of structural sufficiency in building</li> <li>contravention quantified at 80 per cent or more of aggregate annual rent for all rental units in building</li> <li>Another government agency or enforcement body deemed the rental unit to be not habitable</li> </ul>

### Extent of Harm to Others

Value	Description
0	<ul style="list-style-type: none"> <li>No harm</li> </ul>
1	<ul style="list-style-type: none"> <li>Economic harm quantified at up to 25% of annual rent</li> </ul>
2	<ul style="list-style-type: none"> <li>Economic harm quantified at 26% to 50% of annual rent</li> <li>Mild unreasonable disturbance experienced by another party to the tenancy or another occupant of the building</li> <li>Mild disruption of right to quiet enjoyment</li> </ul>
3	<ul style="list-style-type: none"> <li>Economic harm quantified at up to 75% of annual rent</li> <li>Contravention resulted in medical treatment</li> <li>Moderate unreasonable disturbance experienced by another party to the tenancy or another occupant of the building</li> <li>Moderate disruption of right to quiet enjoyment</li> </ul>
4	<ul style="list-style-type: none"> <li>Economic harm quantified at 76% to 100% of annual rent</li> <li>Contravention resulted in hospitalization of one person for more than one day</li> <li>Contravention resulted in hospitalization of more than one person for up to one day</li> <li>Significant unreasonable disturbance experienced by another party to the tenancy or another occupant of the building</li> <li>Significant disruption to right to quiet enjoyment</li> </ul>
5	<ul style="list-style-type: none"> <li>Contravention resulted in at least one death</li> </ul>

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### Repeated or Continuous

Value	Description
0	<ul style="list-style-type: none"> <li>Not repeated or continuous</li> </ul>
1	<ul style="list-style-type: none"> <li>Some evidence that the landlord and tenant earlier resolved the problem without the involvement of the Residential Tenancy Branch Dispute Resolution Services</li> </ul>
2	<ul style="list-style-type: none"> <li>RTB decisions show same contravention occurred for same tenant once before</li> </ul>
3	<ul style="list-style-type: none"> <li>RTB decisions show same contravention occurred for fewer than five tenants fewer than five times</li> </ul>
4	<ul style="list-style-type: none"> <li>RTB decisions show same contravention occurred for more than five tenants fewer than five times</li> <li>RTB decisions show same contravention occurred for fewer than five tenants more than five times</li> </ul>
5	<ul style="list-style-type: none"> <li>Same contravention occurred for more than five tenants more than five times</li> <li>Contravention occurred for more than one year from time the respondent became aware of it</li> </ul>

### Deliberate

Value	Description
0	<ul style="list-style-type: none"> <li>Respondent not made aware of issue by the other party to the tenancy</li> </ul>
1	<ul style="list-style-type: none"> <li>Respondent verbally asked by the other party to the tenancy to stop or correct the contravention</li> </ul>
2	<ul style="list-style-type: none"> <li>Respondent asked in writing by the other party to the tenancy to stop or correct the contravention</li> </ul>
3	<ul style="list-style-type: none"> <li>Order from a governmental body (e.g., Fire Department, Bylaw Enforcement Branch) made within two months of Respondent received RTB notification that they are under investigation</li> </ul>
4	<ul style="list-style-type: none"> <li>Order from any government body (e.g., BC Safety Authority, Fire Department) made two to 12 months before Respondent received RTB notification that they are under investigation</li> </ul>
5	One year or more passed since RTB issued decision or order against Respondent on the contravention

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### Economic benefit derived from contravention

Value	Description
0	<ul style="list-style-type: none"> <li>No economic benefit</li> </ul>
1	<ul style="list-style-type: none"> <li>Respondent derived nominal economic benefit (less than \$100) from the contravention</li> </ul>
2	<ul style="list-style-type: none"> <li>Respondent derived economic benefit of up to \$500</li> </ul>
3	<ul style="list-style-type: none"> <li>Respondent derived economic benefit of \$501 to \$5,000</li> </ul>
4	<ul style="list-style-type: none"> <li>Respondent derived economic benefit of \$5,001 to \$20,000</li> </ul>
5	<ul style="list-style-type: none"> <li>Respondent derived economic benefit greater than \$20,000</li> </ul>

### Efforts to correct

Value	Description
0	<ul style="list-style-type: none"> <li>Contravention corrected or fully addressed</li> <li>Compliance with RTB decision or order</li> </ul>
1	<ul style="list-style-type: none"> <li>Substantial completion of activities required to correct contravention</li> </ul>
2	<ul style="list-style-type: none"> <li>Significant completion of activities required to correct contravention</li> </ul>
3	<ul style="list-style-type: none"> <li>Evidence of moderate activities required to correct contravention</li> </ul>
4	<ul style="list-style-type: none"> <li>Evidence of minimal activities required to correct the contravention</li> </ul>
5	<ul style="list-style-type: none"> <li>No documented efforts to correct contravention</li> </ul>


### ONE TIME OR CONTINUING PENALTY


The Legislation allows a monetary penalty of up to \$5,000. The Legislation also states that if a contravention occurs or continues over more than one day, the monetary penalty may be imposed for each day the contravention continues.

Administrative penalties are issued to promote compliance, and consideration is given to whether continuing application of the penalty will result in earlier compliance.

A decision may include a condition that reduces the penalty, or that suspends it for a specified number of days, if compliance is achieved or the contravention is corrected within a specified period. In such cases, the decision should include a description of the actions or measures that demonstrate compliance or a correction of the contravention. When such a condition exists, the onus is on the Respondent to prove to the RTB that compliance has been achieved or the contravention has been corrected.

The Respondent's compliance history and the seriousness of the contravention are also taken into account when determining a one-time or continuing penalty.

 **BRITISH COLUMBIA**



# Administrative Penalties

Dispute Resolution Officers  
Professional Development  
Feb. 8, 2012

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## Agenda

- Purpose of Admin Penalties
- General Principles
- Legislative Framework
- Operational Procedures
- The Decision

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## Purpose of Admin Penalties

- Promote compliance

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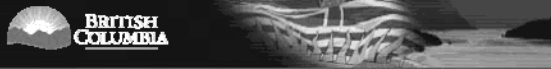
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**Additional essential elements**

- Administrative action authorized by law
- Imposed on people who undertake regulated activities
- Levied by a regulator, not by the courts

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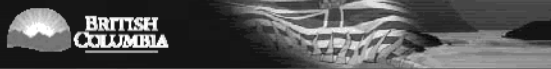
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**Legal principles**

- Unbiased application of law
- Notice of investigation & proceeding
- Opportunity to be heard
- Disinterested decision maker
- **Regulatory, not punitive**

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**Common tool**

- Body Armour Control Act
- Employment Standards Act
- Forest Practices Act
- Liquor Licensing Act
- Workers Compensation Act

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**Two approaches:**

- Administrative tribunal applies penalty after hearing (RTB; Employment Standards)
- Tickets – Respondent has opportunity to contest penalty (Forest & Range Practices)

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**RTB Legislative Framework**  
**Ways to address non-compliance**

- Dispute Resolution (most of our work)
- Admin Penalties under RTA s 94.1; MHPTA s. 86.1
- Penalties (Court-levied) under RTA s. 95; MHPTA s. 87

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<p><b>Admin Penalties</b></p> <ul style="list-style-type: none"> <li>• Decided by RTB</li> <li>• Contravened Act or Regulations</li> <li>• Failed to comply with decision or order</li> </ul>	<p><b>Offences &amp; Penalties</b></p> <ul style="list-style-type: none"> <li>• Decided by the Courts</li> <li>• 14 specific problems (e.g., subletting; seizing tenant's property)</li> </ul>
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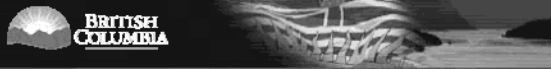
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### Process: Step 1 – Issue Raised

- Issue comes to our attention
  - Letter from client or stakeholder
  - DROs notice pattern
  - Minister’s Office or MLA

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### Step 2 – Initial Checklist

- HQ looks at whether criteria met, degree of seriousness

**Administrative Penalties Initial Checklist**

Person at centre of matter: \_\_\_\_\_

Address of matter: \_\_\_\_\_

☐ More than one address (Set on reverse or in separate sheet)

**First consideration: scope**

Administrative Penalties are defined through the RTIA or HRTIA to mean limited circumstances. The first consideration is whether Administrative Penalties apply to the matter being raised.

☐ Continued Residential Tenancy Act, section \_\_\_\_\_ Regulation, s. \_\_\_\_\_

☐ Continued HRT Tenancy Act, section \_\_\_\_\_ Regulation, s. \_\_\_\_\_

☐ Failed to comply with an Order, the RTA \_\_\_\_\_

☐ Other (Specify and why this is being raised by administrative penalties on a separate sheet)

**Second consideration: scope**

Documentation or observations should be provided on following issues, as applicable.

☐ Previous enforcement actions \_\_\_\_\_

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### Step 3 – Inform & Investigate

If mandatory criteria met and problem is significant, HQ

- Writes to person at centre of complaint (Respondent)
- Starts investigation
  - First-ever investigation done by a DRO

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**Step 4 – Hearing?**

- HQ decides whether to hold a hearing
- Informs Respondent
  - If there’s a hearing, states form (written), states deadlines

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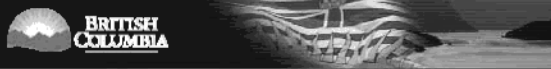
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**Step 5 – Hearing**

- Investigator’s Report is RTB’s evidence
- Copy given to Respondent
- A DRO is delegated authority to hear matter (if, as, when basis)

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**Step 6 – Decision**

- Options
  - No Administrative Penalty levied
  - Administrative Penalty levied

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**Policy Guideline**

- Provides guidance on decision-making criteria and size of penalty
- Scale developed to further define criteria in RTA (0-5 in each of 7 categories)

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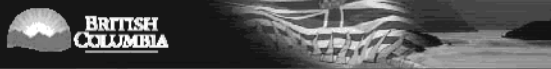
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**Mandatory Considerations**

- Previous enforcement actions
- Gravity and magnitude
- Extent of harm to others
- Repeated or continuous
- Deliberate
- Economic benefit
- Efforts to correct

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**Assessing the Penalty**

- How much?
- How often? (may be each day)

Goal: compliance ~~not~~ punishment

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**Decision**

- Mailed to Respondent
- Posted on-line (decision only, not investigative report)
- Subject to RTB Review (couldn't attend, new info, fraud), Judicial Review

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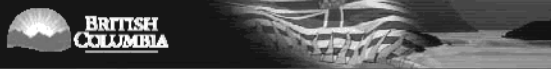
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**Settlement Agreement**

- Allowed by Legislation
- Allows RTB to:
  - Set deadlines for compliance
  - Reduce amount of penalty if conditions met
  - Collect full fine if still no compliance

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**Collection details**

- Penalty due in 60 days
- Goes into General Revenue
- If not paid, RTB goes to Court for Enforcement
- Turns matter over to government's Collections Services

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### Summary

- Goal: compliance
- Penalty not automatic
- Review, investigate, hear
- Strict criteria

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## Conducting Effective Hearings

Being Able to Continue to Drain the Swamp When the Alligators Show Up

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- The keys to conducting effective hearings are:
- Preparation
- Preparation
- Preparation, and
- More preparation

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- You must come to the hearing with an open mind, but that doesn't mean a blank mind.

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- Ask yourself why you are conducting this hearing.
- Be aware that your reason for conducting the hearing may well be different from the parties' reasons for requesting it.
- You may still need to accommodate their purpose as well as your own

### **Never Lose Sight of Purpose**

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- Assemble the file
- Review the documentation
- Identify the issue(s)
- Check for exhibits – have they been exchanged?
- Parties notified and ready?
- Witnesses?
- Anything else?

### **PRE-HEARING PREPARATION**

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- Before you start, you will need to know, at a minimum:
- The nature of the matter
- The Issue(s)
- The applicable law and policy

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- Welcome everyone
- State your name and the nature of the proceeding
- Have each party introduce themselves and state why they are there
- Ascertain whether there are any other persons present and their purpose
- Exclude anyone who needs to be excluded
- Confirm the remedy(s)
- Identify the issue(s)

### **Openings**

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- Explain the order of the hearing to the parties and remind them of any time limits
- Remind them that they will have a fair chance to speak when it's their turn to do so and that they should not interrupt each other
- Advise them that you may have questions and might ask them at any point
- Tell them whether they have the right to question the other party, and if so, when they may do so.

### **Establishing Procedures**

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- New exhibits to be tendered/entered
- Preliminary objections/concerns

### **Dispose of any preliminary matters**

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- Follow the procedure established for your Board
- If there is no procedure, you may have the option of swearing or affirming a person
- Remember that someone who lies under oath or affirmation is a perjurer. What will you do with them if you should determine that they lied?

### **Sworn vs. Unsworn Testimony**

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1. Plaintiff's evidence (witnesses too)
2. Cross examination
3. Panel Questions
4. Respondent's evidence (witnesses too)
5. Cross examination
6. Panel Questions
7. Plaintiff's arguments
8. Respondent's arguments
9. Plaintiff's rebuttal arguments
10. Respondent's rebuttal arguments
11. Close

### **Order of Proceeding**

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- How do I know what to admit and what to keep out?

### **Admitting Evidence**

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➤ "Evidence is the material which is submitted to establish the factual basis against which legal interpretation, policy and logical reasoning will operate."

➤ J H Sprague

### What is Evidence?

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➤ Lord Denning, an English jurist says:

➤ *"A tribunal is master of its own procedure, provided that the rules of natural justice are applied. Tribunals are entitled to act on any material which is logically probative even though it is not evidence in a court of law."*

### What Can I Admit?

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- Establish a sound factual basis for decisions
- Ensure a proper balance between the value to be derived from accepting evidence and any harm which may be occasioned by accepting it

### Basic Principles for Admitting Evidence

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- Is the evidence, if believed, capable of creating a factual basis for the decision I must make?
- Will receiving the evidence lead to some greater harm than the good likely to be accomplished by accepting it?
- Will accepting the evidence likely impair or threaten the smooth operation of the hearing or undermine the fair and effective conduct of the hearing?

### **How To Apply These Principles**

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- Hearsay is not excluded
- The further removed from the source, the less evidentiary weight it is given
- Rule of thumb is to admit it unless the harm it is likely to cause is greater than the use it will likely be in deciding the matter.

### **Objection! Hearsay!**

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- Evidence is what happened
- Argument is what the parties want you to do with the evidence

### **Separate Evidence From Argument**

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- Leading questions destroy weight of evidence in chief
- Easily identifiable because they generally cause the witness to agree with the premise stated in the question.
- OK in non-crucial areas because they can speed up the proceedings
- OK in cross examination but don't overdo

### Leading Questions

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- Develop your own shorthand
- Draw margins/dividers on the page
- Coloured markers or highlighters
- Margin notes or symbols
- Identify key pieces of evidence in some way as you write them down
- Identify concurrence or conflict in testimony as it is being given
- Note questions that you may wish to ask later

### Learn to Take Good Notes

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### Maintaining Order

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- It's a matter of fairness
    - Don't allow one party to bully the other
    - Keep a rein on cross examination
    - Don't allow badgering
    - Do not tolerate interruptions of one party by the other
- Keep the parties to the order of the proceeding  
 Keep the parties on topic  
 Terminate lines of irrelevant questioning  
 Don't allow "fishing expeditions"  
 Watch the time  
 Insist on civility

### You Must Maintain Order

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- You are free to provide assistance procedurally so that they are able to better present and/or respond to the case
- You are not free to advise them concerning the substance of their case
- Sometimes it's best to simply swear them in right at the beginning and then let them tell their story and make their arguments all at once.

### Unsophisticated Participants

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- Don't tell them that **you** need them to stay quiet, or **you** want them to cooperate (they probably don't care what **you** want).
- Try reminding them that they have come to you for help in resolving a dispute and that anything that hinders your ability to properly hear their evidence and arguments could prevent you from understanding their position

### Handling Unruly Persons

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- Remember to keep your cool!
- There is no need to become excited or raise your voice (you hold the hammer)
- Don't engage in shouting matches or other angry/emotional exchanges with either or both of the parties
- Call a recess if you feel it is necessary
- Warn a party who refuses to behave and is disruptive that if they continue, they will be excluded from the remainder of the proceeding, and then exclude them if they still do not behave.

### **Never Enter The Fray**

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- Inform the parties that you are about to close the hearing
- Tell them that presentation of evidence and submissions is over and that you are now going to make your decision
- Thank them for their participation and tell them you will consider what they have said
- Give them a timeline in which they might expect your decision and the method whereby they will receive it.
- Say goodbye and terminate the call, or otherwise leave the hearing

### **Closing**

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- Remember that you are guided by fairness when conducting a hearing
- There will always be a tension between efficiency and fairness
- Use your common sense and your knowledge of the rules and policies under which you and the Board operate, along with your sense of fairness, to guide you through the challenges you may face

### **Things to Always Bear in Mind**

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•Conducting  
Effective  
Hearings

**Thank You**

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# **Decision Writing Tips**

## **The Basic Principles**

**GOAL: Keep it Clean and Lean**

- ♦ Identify the issue
- ♦ identify the relevant evidence
- ♦ Avoid clutter, jargon and Latin terms
- ♦ Make your decision easy to understand
- ♦ KISS - Keep it Simple and Short

## **Introduction**

1. List nature of application
2. Determine whether service requirements are met
3. Explain that all information has been reviewed
4. Say why some information will not be considered, if that is the case

## **Issue**

1. What is the issue? What did the person apply for?
2. Set out the crucial issues that must be decided

## **Background & Evidence**

Simplicity and accuracy is essential

1. Summarize the information and arguments or points of view
2. Describe the relevant evidence
3. Mention evidence that matters greatly to either party
4. Explain significant irregularities in the hearing

## **Analysis**

Keep it lean

- ✓ Avoid confusion - Avoid clutter
  - ✓ Don't use jargon and Latin terms
  - ✓ Don't repeat yourself
1. Analyze the evidence
  2. Support your findings of fact with reasons
  3. Explain the criteria or factors considered, and the case to be met

## **Conclusion**

Make it easy to understand

1. Avoid repetition
2. Keep it short; one or two sentences

# More Writing Tips

## Gender Neutral Language

- ✓ "They" instead of "he" or "she"
- ✓ "Their" instead of "his" or "hers"

## Phrasing

**Phrase things as actively and positively as possible:**

- Is the landlord entitled to an Order of Possession?  
  
Vs
- Has the tenant's failure to pay rent resulted in the conditions whereby the landlord is entitled to as Order of Possession?

## Visualize Reader

- ✓ Write for the parties who attended the hearing
- ✓ Write as though you are talking to your mother, your aunt, your favourite niece or nephew
- ✓ When in doubt, read it out loud

## Connect the Dots

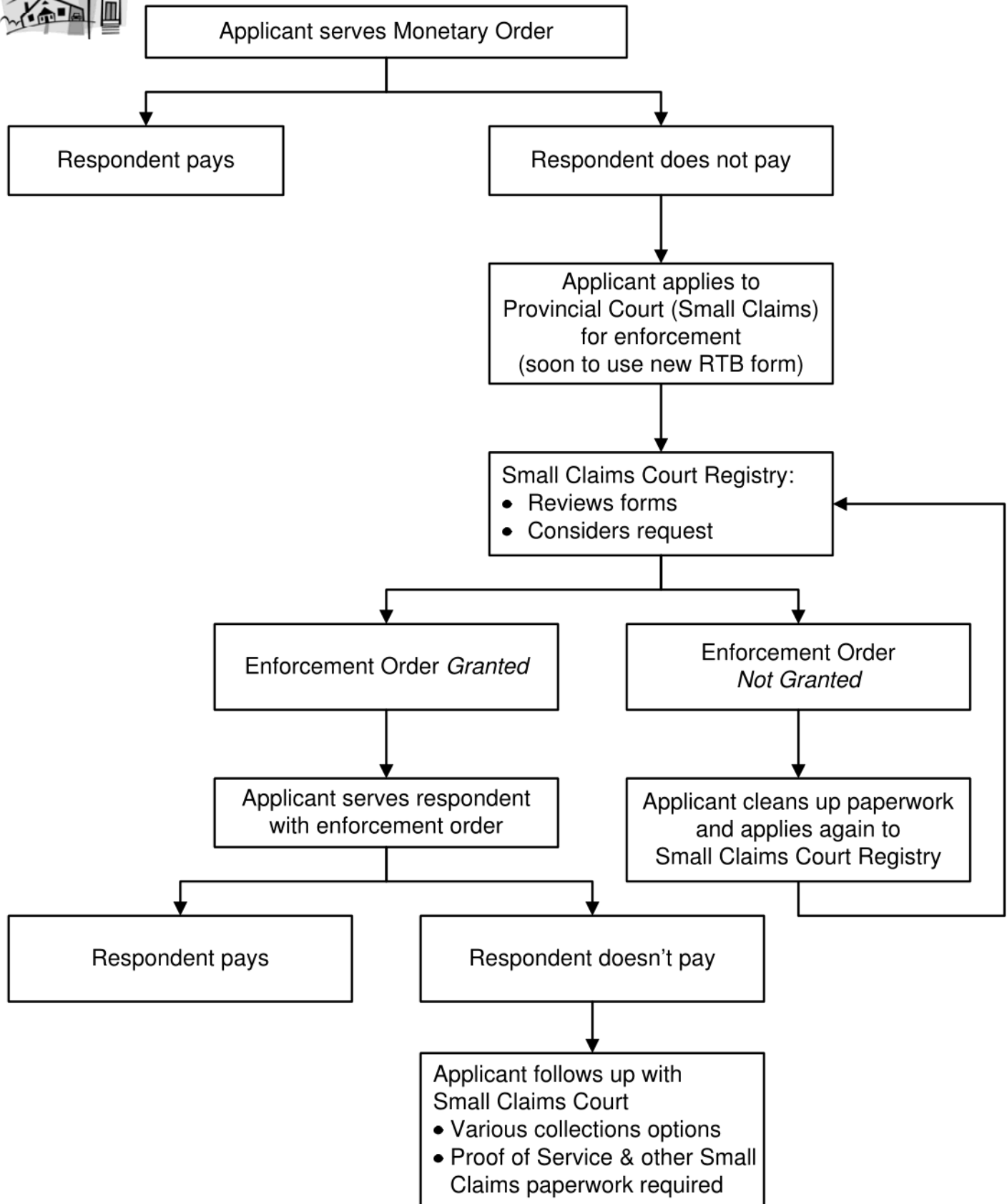
- Opening statement
- Who was involved
- Who took part in the hearing
- Issues statement
- Background & evidence
- Provisions of the law
- Analysis (the connector)
- Conclusion

## Summary

- ✓ Remember your audience
- ✓ Use the document generator
- ✓ Be clear, logical and thorough
- ✓ Connect the dots



# Enforcing a Monetary Order

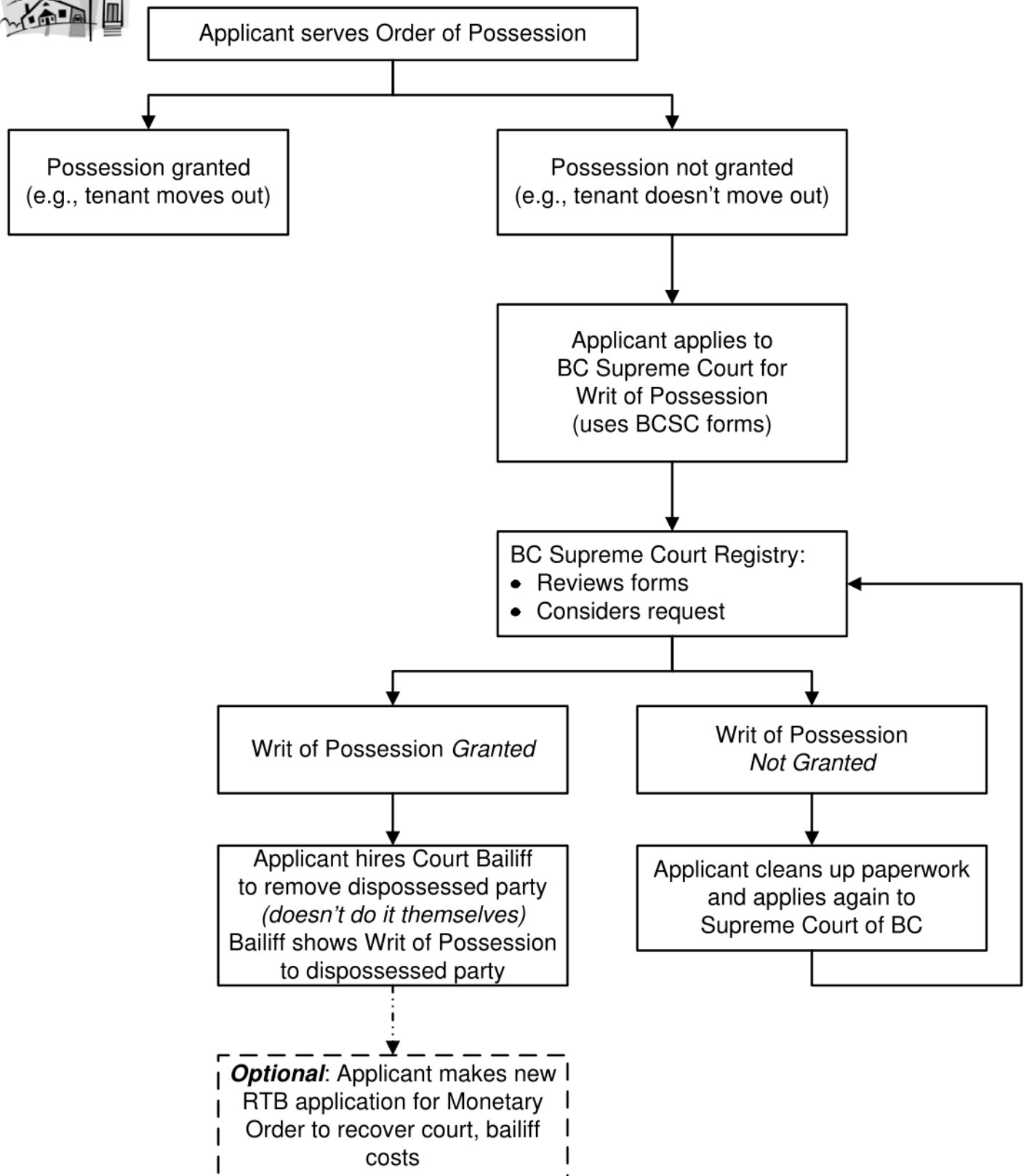


## Residential Tenancy Branch

Office of Housing and Construction Standards  
Ministry of Energy and Mines and Minister Responsible for Housing




# Enforcing an Order of Possession




## Residential Tenancy Branch

Office of Housing and Construction Standards  
Ministry of Energy and Mines and Minister Responsible for Housing



## Judicial Reviews



Dispute Resolution Officer  
Professional Development  
February 9, 2012

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## Agenda

- Statistics
- Factors affecting JR petitions
- JR process
- JR outcomes
- Strategies to address JR findings

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## RTB statistics at a glance

Things are looking up . . .

	2008	2009	2010	2011
Petitions served	57	51	61	54
RTB hearings	19,926	15,633	15,488	20,139
Percentage	0.29%	0.33%	0.39%	0.27%

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## Workers' Compensation Appeals Tribunal

	2008	2009	2010
Petitions served	62	40	44
WCAT hearings	4,616	4,767	3,946
Percentage	1.3%	0.8%	1.1%

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## RTB statistics at a glance

Decisions are holding their own

	2008	2009	2010	2011
Decisions set aside	10	11	7	1
Dismissed/refused	8	2	7	1
No results	39	38	47	52
Petitions served	57	51	61	49
Percentage set aside	17.5%	21.6%	11.5%	2.0%

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## What factors affect the timing of JR petitions?

- Legislative timelines
- External factors



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### JR process: before

- Once served, HQ reviews the petition and file
- HQ decides if legal counsel will appear

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### JR process: after

- Party must serve RTB with a court order and request a hearing
- JR decision is reviewed for policy implications
- Decision summary is forwarded to DROs

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### JR outcomes

- Insufficient reasons
- Patently unreasonable

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## Reasons

- Adequate, clear and intelligible reasons
- Explanation of why the losing party lost
- Disclose whether there are grounds to challenge decision
- Allow a reviewing body to test the validity of the decision

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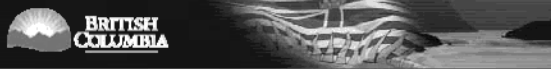
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## Patently unreasonable

- A decision that is “openly, clearly, or evidently unreasonable.”

*Speckling v. British Columbia (Workers' Compensation Board), 2005 BCCA 80*

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A discretionary decision is patently unreasonable if the decision

- a) is exercised arbitrarily or in bad faith,
- b) is exercised for an improper purpose
- c) is based entirely or predominantly on irrelevant factors, or
- d) fails to take statutory requirements into account

*Amacon Property Management Services Inc. v. Dutt, 2008 BCSC 889*

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**BRITISH  
COLUMBIA**



## Strategies to address JR findings

- Communicate results
- Change policies
- Provide education

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**BRITISH  
COLUMBIA**



## Conclusion

- RTB has an impressive record
- JRs offer an opportunity to improve:
  - Policy
  - Decision-making

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## Writing Decisions

**A Handbook for Dispute Resolution Officers**

Ministry of Energy and Mines  
And Minister Responsible for Housing  
Residential Tenancy Branch



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## Agenda

- Welcome
- Ice-Breaker
- Introduction
- Overview of good decision writing
- Elements of a Decision
- Wrap up



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## Welcome...

**Your facilitation team is:**

- Juliette Proom (Lead Facilitator)
- Lesley Pollard (Technical Facilitator)
- Ed Letain (Victoria Team Lead)



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And the ice-breaker question is...



What is your  
favourite  
**FOOD**  
and why?

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## Introduction

- Lecture with activities format
- Exercises will be handed out periodically throughout the day and reviewed as a group




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## Corporate Context: Delegation

- Legislation gives Director authority
- Dispute resolution delegated to DROs




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## Role of Decision Makers



- Speak on behalf of the Director
- Base decisions on the law, the evidence and the testimony

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## Role of Decision Makers (con't)

### Principles:

- Natural Justice
- Procedural Fairness




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## Role of Decision Makers (con't)

### Administration:

- Use document generator
- Distribute decisions
- Prepare for online posting




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## Corporate Context: Autonomy

- Independent decision based on facts and evidence
- Policy guidelines
- Paperwork and e-files




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Overview of  
Good  
Decision Writing

Set out the dots  
and connect  
them

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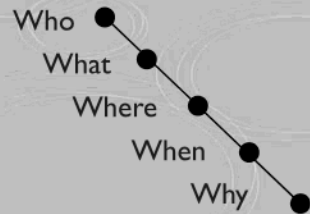
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## Overview of Good Decision Writing




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## What is **NOT** in a good decision?

- Unclear logical path
- Irrelevant facts
- Tangents




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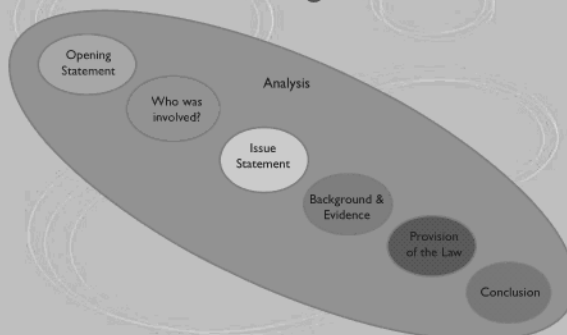
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## What **is** in a good decision?




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## Overview of good decision writing

- Length
- Voice
- Delivery
- Words




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## What happens when one of the parties doesn't accept their decision?



- Final and binding
- RTB Review
- Judicial Review

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## Punctuation

**DECISION**

Dispute Codes    FF, MND

This matter was set for a conference call hearing at 10:00 a.m. on this date. Both parties participated in the conference call. This was an application by the landlord seeking a monetary order for damages. The landlord was unable to submit his evidence to the tenant or the "Branch" within the time allowed; accordingly I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: August 09, 2011.

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## Punctuation (con't)




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## Exercise #1 - Punctuation



Please mute your phone

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## Elements of a Decision

### Introduction

- Sets the stage

Opening Statement

Who was involved?

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## Writing Tip: Gender Neutral Language

- ✓“They” instead of “he” or “she”
- ✓“Their” instead of “his” or “hers”




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## Exercise #2: Write Introduction



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**Elements of a Decision:**  
**Issue**

The issue statement is a succinct statement of what is sought:

- State what you are considering
- Keep it short
- In the form of questions

Issue Statement

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**Issue (con't)**

**Option A:**

- Is the landlord entitled to an Order of Possession for the rental unit?
- Is the landlord entitled to a Monetary Order for Unpaid Rent?
- Is the landlord authorized to retain any amount of the Security Deposit?

Issue Statement

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**Issue (con't)**

**Option B:**

Has the Tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Issue Statement

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## Issue (con't)

Issue  
Statement

### **Option C:**

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the Residential Tenancy Act (Act).

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## Wordiness

Copyright

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## Writing Tip: Phrasing

- Phrase things as actively and positively as possible:

✓ Is the landlord entitled to an Order of Possession?

 $V_s$ 

✓ Has the tenant's failure to pay rent resulted in the conditions whereby the landlord is entitled to as Order of Possession?



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### Exercise #3: Wordiness



Please mute your phone

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## Issue (con't)

Issue	Statement
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- ✓ Jurisdiction
- x Too much information
- x Citations



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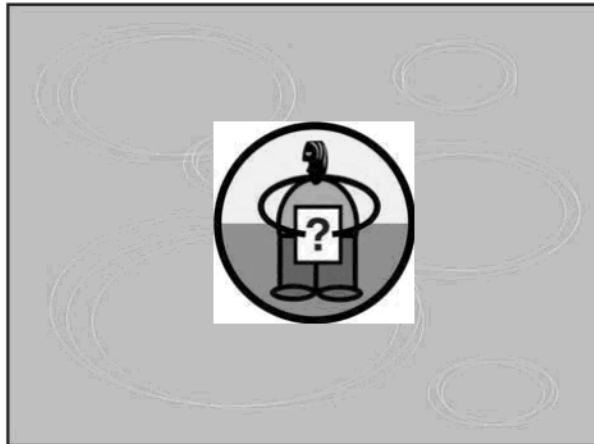
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### Elements of a Decision: Background & Evidence

- What you heard from each party
- Who said what
- What you considered relevant

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### Background & Evidence (con't)

- Short paragraphs
- Short sentences
- Simple language and structure

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## Writing Tip: Visualize Reader

- ✓ When in doubt, read it out loud
- ✓ Write as though you are talking to your mother, your aunt, your favourite niece or nephew




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## Exercise #4: Sentence Structure



Please mute your phone

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## Background & Evidence (con't)

Background & Evidence

- Lay out remaining dots
- Summarize
- Highlight significant differences

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Decision Writing Tips	
<b>The Basic Principles</b>	
<ul style="list-style-type: none"> <li>Identify the task</li> <li>Identify the relevant audience</li> <li>Identify the purpose and take notes</li> <li>Organise your decision into an introduction</li> <li>Use a conclusion</li> </ul>	<ul style="list-style-type: none"> <li>• <b>GOAL:</b> Keep it Clear and Concise</li> <li>• <b>GOAL:</b> Keep it Simple and Short</li> </ul>
<b>Introduction</b>	
<ol style="list-style-type: none"> <li>1. List nature of application</li> <li>2. Determine whether the decision requirements are met</li> <li>3. Explain that all information has been reviewed</li> <li>4. Say why some information will not be considered, if that is the case</li> </ol>	
<b>Reason</b>	
<ol style="list-style-type: none"> <li>1. What is the issue? What did the person write for?</li> <li>2. Set out the relevant issues that must be decided</li> </ol>	
<b>Background &amp; Evidence</b>	
<p>Simplicity and accuracy is essential</p> <ol style="list-style-type: none"> <li>1. Summarise the information and arguments or points of view</li> <li>2. Describe the relevant evidence</li> <li>3. Mention evidence that makes significant to either party</li> <li>4. Explain significant disagreement in the hearing</li> </ol>	
<b>Analysis</b>	
<p>Keep it clear</p> <ul style="list-style-type: none"> <li>✓ Avoid confusion - avoid clutter</li> <li>✓ Don't use jargon and Latin terms</li> <li>✓ Don't repeat yourself</li> </ul> <ol style="list-style-type: none"> <li>1. Analyse the evidence</li> <li>2. Support your findings of fact with reasons</li> <li>3. Explain the criteria or factors considered, and the issue to be met</li> </ol>	
<b>Conclusion</b>	
<p>Make it easy to understand</p> <ol style="list-style-type: none"> <li>1. Avoid repetition</li> <li>2. Keep it short and to the point</li> </ol>	

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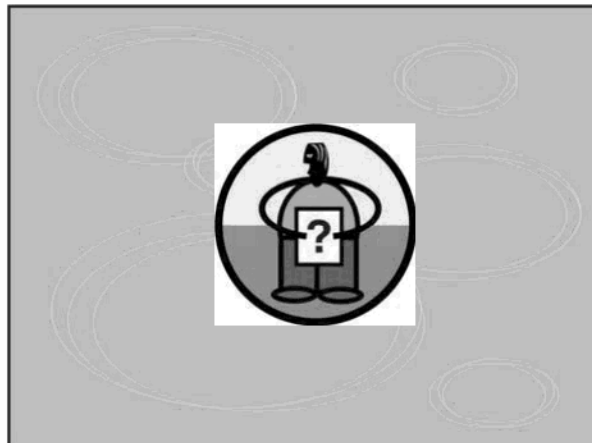
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## Exercise #5: Background & Evidence



A black and white illustration of a person performing a side bend exercise. The person is standing on a horizontal line, leaning their torso to the right, with their right arm extended upwards and their left arm bent. They are wearing a tank top and leggings.

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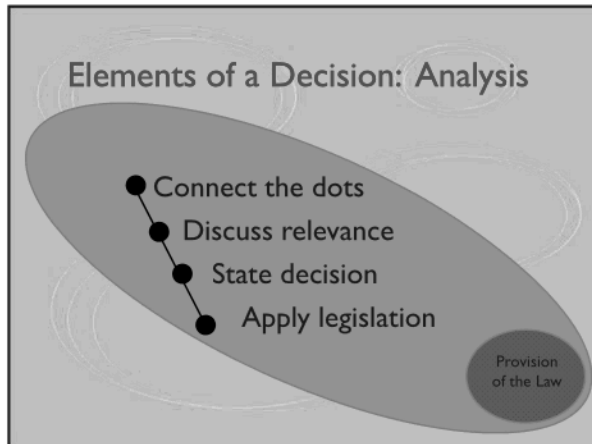
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### Analysis(con't)

#### The good, the bad and the ugly

" I have carefully considered all of the matters before me and have determined there is no basis for granting the applicant's request in these circumstances."

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### Analysis (con't)

"Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated July 2, 2011. The tenant did not pay the outstanding rent within 5 days of receiving the notice, did not apply to dispute the notice, and subsequently vacated the unit.

As for the monetary order, I find that the landlord has established a claim of \$1,890.00. This is comprised of \$920.00 combined in unpaid rent, parking and fee for late payment of rent for July 2011 (\$875.00 + \$20.00 + \$25.00), in addition to \$920.00 for these same items with respect to August 2011, and the \$50.00 filing fee. I order that the landlord retain the security deposit of \$437.50, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$1,452.50 (\$1,890.00 - \$437.50)."

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## Analysis (con't)

**Claim for unpaid rent** - The Landlord claims for unpaid rent for \$1,500.00 which consist of \$625.00 for May 2011 and \$875.00 for June 2011. This claim is made pursuant to section 26 of the Act which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I find the Landlord is owed **\$1,500.00** for unpaid rent.

**Filing Fee** The Landlord has succeeded with their application therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** - I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit as follows:

Unpaid Rent for May 2011 and June 2011	\$1,500.00
Filing fee	\$0.00
Sub total (Monetary Order in favor of the landlord)	\$1,550.00
Less Security Deposit of \$425.00 plus interest of \$0.00	-425.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,125.00</b>

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## Analysis (con't)

Analysis

- Be consistent
- Use plain language
- Use formatting tools




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## Analysis

Analysis

Avoid:

- xConclusion without explanation
- x Too many quotations
- x References to cases




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## Analysis (con't)

Analysis

State test, apply evidence:

- Monetary order test
- Security deposit test
- Any other tests?




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## Exercise #6: Analysis



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## Elements of a Decision: Conclusion

Conclusion

- Often the first thing read by the parties
- State what you found
- Double check that you connected the dots




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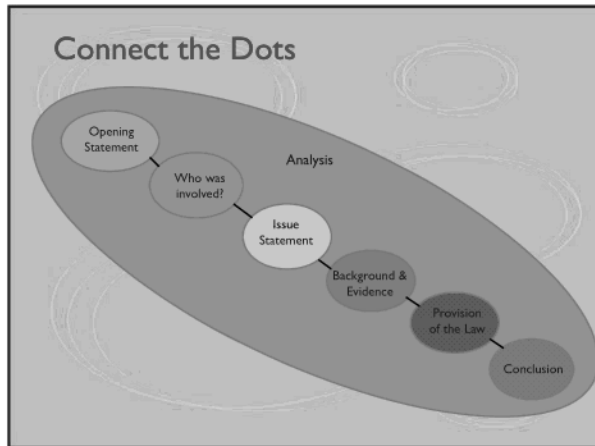
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### Special Circumstances

- No show
- Direct Request
- Written hearings



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### Exercise #7: Conclusion



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## Wrap up

- ✓ Remember your audience
- ✓ Use the document generator
- ✓ Be clear, logical and thorough
- ✓ Connect the dots

Decision Writing Tips	
<b>The Basic Template</b>	<b>Goal, Key Facts and Issues</b>
<ul style="list-style-type: none"> <li>Identify the issue</li> <li>Identify the relevant evidence</li> <li>Identify other parties and legal issues</li> <li>Identify the decision to be undertaken</li> <li>→ <b>Goal – Key Facts and Issues</b></li> </ul>	
<b>Introduction</b>	
<ul style="list-style-type: none"> <li>1. List values of application</li> <li>2. Show how the values requirements are met</li> <li>3. Explain that all information has been reviewed</li> <li>4. Say why some information will not be considered, if that is the case</li> </ul>	
<ul style="list-style-type: none"> <li>1. What is the issue? (the <b>ISSUE</b> the person asks?)</li> <li>2. Set out the <b>main</b> facts that should be decided?</li> </ul>	
<b>Background &amp; Evidence</b>	
<p><b>Analysis</b> and <b>conclusion</b> is essential</p> <ul style="list-style-type: none"> <li>1. Summarize the information and arguments to points of view</li> <li>2. Identify the main issues in dispute</li> <li>3. Monitor a solution that is most legally to the hearing party</li> <li>4. Explain significant impacts in the hearing party</li> </ul>	
<b>Conclusion</b>	
<p><b>Key Facts</b> to understand</p> <ul style="list-style-type: none"> <li>→ Avoid confusion – Avoid clutter</li> <li>→ Don't over-promise and under-deliver</li> <li>→ Don't appear "biased"</li> <li>→ Avoid the obvious</li> <li>→ Support your findings of fact with evidence</li> <li>→ Support the evidence/ factors considered, and the actions to be met</li> </ul>	
<b>Goal Statement</b>	
<p><b>Key Facts</b> to understand</p> <ul style="list-style-type: none"> <li>→ Avoid repetition</li> <li>→ Keep it brief and on point (relevant)</li> </ul>	

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Any final questions?



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Thank you for your participation!



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