

Time Line For Resolving An Application To Director

The Residential Tenancies Act:

- requires that an Application to Director be filed within one year of termination of a lease;
- is silent with respect to how long an application should remain active and actionable;
- provides a process for substituted service;
- allows an applicant to withdraw an application any time before an Order is made.

Reference:

Residential Tenancies Act: Sections 13, and 15; Regulations: Section 25

Details:

The *Residential Tenancies Act* requires that an Application to Director be filed within one year of termination of a lease. The Act does not prescribe a time frame within which an application must be dealt with once it has been filed. From an administrative perspective, retaining open-ended applications on file could pose many problems.

When presented with an Application to Director for which service has not been completed, the applicant must be presented with and select from among the following options:

- withdrawing the application;
- requesting substituted service; or,
- at the discretion of the Residential Tenancy Officer, requesting that the hearing be rescheduled so further attempts can be made to serve the parties.

If an applicant withdraws an application, it can only be refiled if such refiling falls within the one year filing requirement of Section 13 of the *Residential Tenancies Act*.

Procedure:

Every Application to Director must be filed within one year of termination of a lease. This does not mean that the resulting hearing must be held within the one-year time frame.

If the Residential Tenancy Officer is satisfied that reasonable but unsuccessful attempts to serve the respondent have been made, and

- determines that further attempts to serve the respondent may be successful, the Officer will reschedule the hearing to allow the applicant to make further attempts to serve the respondent; or
- determines that further attempts to serve the respondent will not meet with greater success, the Officer will present the applicant with the following two options only:
 - I withdraw the application
 - ii request substituted service

If an applicant chooses to withdraw their application, they must be made aware of the possible consequences. For instance, they must be advised of the Section 13 requirement of the *Residential Tenancies Act* to file an Application to Director within one year of termination of a lease. Withdrawal of an application does not result in a refund of the application fee.

If the applicant will not exercise one of the two options present, the Officer may dismiss the application.

If the Residential Tenancy Officer is not satisfied that reasonable attempts to serve the respondent have been made, the Officer shall:

- in the first instance, reschedule the hearing and advise the applicant that failing to make reasonable efforts to serve the respondent may result in the application being dismissed;
- in a subsequent occurrence, exercise their judgement and consider dismissing the application.