

Residential Tenancies Board



Dispute Services & How They Work

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About this guide

This guide is for landlords, tenants and others who want to use the dispute resolution services of the Residential Tenancies Board (RTB). It tells you how to use our services.

The RTB was set up under the Residential Tenancies Act 2004. If you are a landlord, tenant or a third party such as a neighbour and you have a dispute relating to a private residential tenancy, you may bring that dispute to the RTB. If you are a neighbour, you must first talk with the landlord and tenant to try and resolve your complaint before you bring it to the RTB.

The RTB is a quasi-judicial body. This means that we have many of the powers that the courts have. However, the way we resolve disputes is less formal. For instance, you do not need a lawyer to make a complaint to the RTB nor do you need to have a lawyer with you at a hearing.

Our dispute resolution procedures are also quicker than those of the courts. This means that access to resolving a dispute should be relatively simple, inexpensive and straightforward.

Disputes

What is a dispute?

The RTB deals with different types of disputes. For example:

Disputes from landlords

- Rent arrears
- Over-holding
- Antisocial behaviour
- Failure by tenant to comply with the terms of the lease

Disputes from tenants

- Whether a notice of termination is valid
- Unlawful keeping of security deposit
- Failure by landlord to maintain or repair property
- Failure by landlord to comply with the terms of the lease

Other

- Disputes from third parties
- Usually about anti-social behaviour

How does the RTB deal with disputes?

There are two options initially.

Mediation. This is the simplest and most efficient option. The aim of mediation is to give both parties a shared understanding of the problem and to work towards reaching a mutually satisfactory resolution of the matter. The independent trained mediator helps both sides to the dispute to reach an agreement. If the mediation is not successful, one or both parties can apply to have the dispute dealt with by a Tribunal.

Or

Adjudication. At adjudication both parties present their evidence to an independent adjudicator who makes a determination on the issues in dispute where no agreement can be reached. The adjudicator's decision is binding unless there is an appeal.

A tribunal. If mediation is unsuccessful or if an agreement reached at mediation breaks down, you may apply to have the dispute heard by a Tribunal. You may also appeal to have the decision of an adjudicator re-heard by a Tenancy Tribunal.

How do I apply to the RTB?

You can apply online by filling out a form which is available at **www.RTB.ie**. Or, you can get an application form sent to you in the post by calling 01-702 8100 or 0818 30 30 37. The person who sends in the form is known as the applicant. The person you are taking a case against is known as the respondent. The respondent is entitled to defend the complaint made against them.

What is a counter application?

A respondent may wish to bring their own application about other issues in dispute. If they do bring a case, all the issues raised by an applicant and respondent will be heard together, where possible.

If the applicant does not:

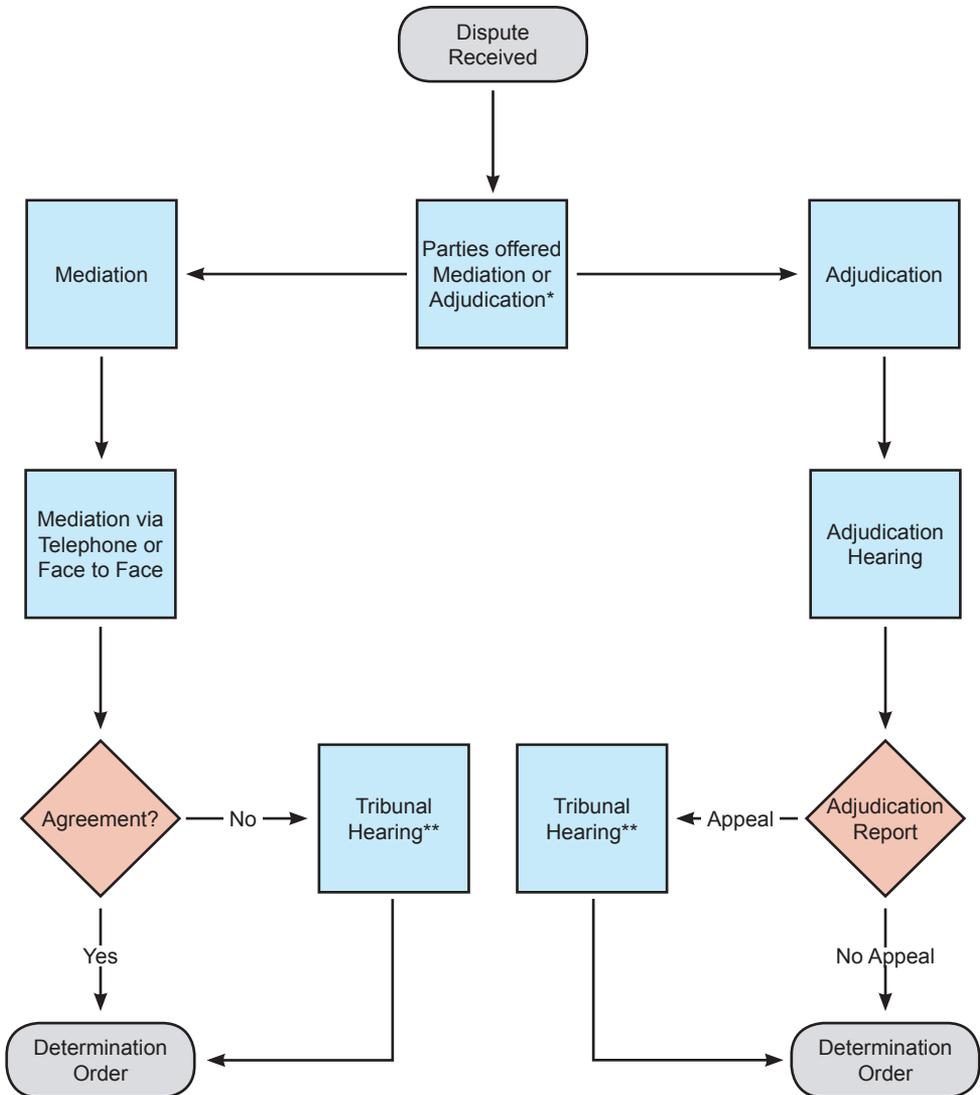
- attend the hearing,
- request the hearing to proceed in your absence, or
- withdraw the application,

then the hearing will proceed.

Is there a fee?

There is no fee for mediation. An application to the RTB for resolving a dispute via adjudication costs €15 if the application is made online and €25 if the application is sent in by post. An appeal costs €85 if the application is made online and €100 if the appeal is sent in by post.

Dispute Resolution Process



* In the case of an exceptionally serious dispute (e.g. Threat to life or property) the case may proceed directly to a Tribunal Hearing.

** One or more parties may apply/appeal the outcome of mediation or adjudication to a Tribunal. An appeal of an adjudicators decision must be submitted within 10 working days of the adjudication report being served on them.

Mediation

Telephone Mediation

In telephone mediations, an impartial, trained mediator will work with both sides to assist them in reaching a mutually satisfactory resolution of the issues under dispute. Both sides are contacted individually by telephone and, through a series of calls, the mediator facilitates the parties in coming to an agreed resolution within a short period of time. You will not have to speak with the other party to the dispute. If no agreement is reached via telephone mediation, parties can appeal the case to a tenancy tribunal hearing. An appeal to a tenancy tribunal hearing is €100 for paper applications and €85 for online applications.

The telephone mediation process is a lot quicker than the adjudication process and is less formal, less adversarial and requires far less paperwork. Parties may accept calls from the comfort and convenience of their own home.

Alternatively, parties may opt for a face to face mediation hearing. This will require that parties attend the mediation in person.

Face to Face Mediation

In face to face mediation, parties will attend a mediation hearing and a mediator, through using the same techniques as in telephone mediations, will attempt to facilitate an agreement between the parties in dispute.

The onus is on the parties to come to an agreement between themselves as the mediator will have no decision making or advisory role in resolving the dispute. If the mediation is successful, the parties will make a mediation agreement and the mediator will submit a report to the RTB which will form the basis for a legally binding Determination Order. Both parties must engage in the mediation process for a mediation to proceed. If the mediation does not reach a successful outcome, the applicant can refer the dispute to the tenancy tribunal for resolution and must do so within the 10 day 'cooling off' period which is 10 days for the date of completion of the mediation. The mediation process is confidential, and any resulting Determination Orders are not published on the RTB website.

Adjudication

Adjudication cases involve a hearing where each side presents its case to an adjudicator who then makes a determination on the issues in dispute. The RTB will write to each side with the date, time and venue for the hearing. It is up to both sides to be present. If one side does not attend, the hearing may still go ahead.

What happens if the applicant does not attend the hearing?

If the applicant does not attend the hearing or does not request that the hearing go ahead in their absence and the application does not have sufficient information to proceed, then the case may be deemed abandoned which means that it is considered that you no longer wish to take your case and a decision will not be made on it.

If a respondent has lodged their own counter application, then their case will go ahead.

What happens at the hearing?

The adjudicator will give both sides an opportunity to present their case and may ask you questions. These will only deal with matters that are relevant to the dispute.

The adjudicator may offer to help the parties to reach a decision by talking through the issues. Where an agreement is reached, the adjudicator may adopt that agreement as the decision on the dispute. Parties have a 10 day cooling-off period to change their minds. If there is no agreement or the agreement breaks down the adjudicator will make the decision.

Who pays any costs involved in the adjudication?

The RTB is an informal dispute resolution service and parties to a dispute do not need to have legal or other professional representation. However, if you decide to be represented or carry out various professional reports such as an engineer's report, you should be aware that costs are only granted in exceptional circumstances.

Can a hearing date be changed or adjourned?

The date of the hearing will only be changed in exceptional circumstances.

What happens after the adjudication?

The adjudicator will prepare a report and this will be sent to you and the other side. Both sides have 10 working days to appeal against the adjudicator's decision. If there is no appeal, the RTB will issue a Determination Order which is legally binding on both sides.

Tribunals

What is a tribunal?

If either side appeals the mediation or adjudication outcome (result), the dispute will be heard by a panel of three people known as a Tenancy Tribunal. The party who appeals is called the appellant. The other party is called the respondent. Both parties to a dispute have a right to appeal.

What happens at a Tenancy Tribunal?

There is a full re-hearing of the dispute unless the parties agree to limit it to certain issues. Even though you may have attended mediation or an adjudicator has heard your case, you and the other side will be given the opportunity to present the full case again. The tribunal will make a decision based on the information presented to it. It is up to you to convince the tribunal that your version of events is more probable than the other side's version.

In rare cases, a tribunal may hear a case directly without it first going to mediation or adjudication. This may happen if there appears to be an immediate risk of damage to the property or danger to one party or the other.

The tribunal sees all the documents and the adjudicator's report (if the case went to an adjudication hearing). However, the tribunal is not bound by the adjudicator's decision. The tribunal is not told what was said or what happened at mediation.

Is the tribunal held in private?

No. A tribunal is held in public. It is more formal than an adjudication hearing but less formal than a court hearing.

What powers does a tribunal have?

A tribunal has more powers than an adjudicator. It can summon witnesses, obtain documents and administer oaths.

Can I bring witnesses to the tribunal hearing?

You can bring as many relevant witnesses as you wish with you to the tribunal hearing.

If you need to have a witness summoned to appear on your behalf, you must ask the RTB at least 10 days before the day of the hearing. The tribunal will consider your request and, if it agrees, it will issue a subpoena (a summons or an order) ordering the witness to attend and give evidence at the hearing at a stated time. Witnesses have the same rights as if they were appearing before the High Court.

Can a tribunal hearing be adjourned?

Only in rare cases. If you cannot attend the hearing, you may nominate someone to attend in your place or you may submit a written statement to the tribunal for it to consider at the hearing. You may have to show written proof (for example, pre-booked airline tickets) to verify why you cannot attend on the scheduled date.

What happens if the appellant does not attend the hearing?

If the appellant does not attend the hearing, without giving any justifiable reason, or does not request the hearing to proceed in their absence, the tribunal will assume that the appeal has been abandoned. The RTB Board will then make a determination order based on the adjudicator's decision or mediation agreement, if any.

If a respondent party has lodged their own appeal, then their case will proceed.

Who pays the costs of attending a tribunal hearing?

The RTB is an informal dispute resolution service and parties to a dispute do not need to have legal or other professional representation. However, if you decide to be represented you should be aware that costs are only granted in exceptional circumstances, subject to the approval of the Board of the RTB.

If a witness is summoned to attend the hearing on your behalf, the tribunal may order that the witness's reasonable expenses in attending be paid by the RTB.

What happens after a tribunal hearing?

The tribunal will prepare a report which will include its decision on the dispute. The RTB will send you a copy of the report. We will also publish it at some stage on our website.

Documents and evidence

Any documents that you submit as evidence will be copied and given to the other side and to the adjudicator, mediator or tribunal.

Below are examples of documents that you may wish to submit before a hearing or mediation:

- Lease agreement;
- Notice of termination;
- Statement outlining why dwelling is no longer suitable for the needs of the tenants;
- Statutory Declaration declaring intention to sell dwelling;
- Statutory Declaration declaring that the landlord requires the dwelling for his or her family members occupation;
- Notice of rent arrears;
- Market rent quotes for three similar dwellings;
- Form of Notification of New Rent to Tenant;
- Signed statement by tenant confirming that they have been made aware of their rights;
- Bank statements;
- Evidence of payment of deposit or rent;
- Outstanding utility bills;
- Invoices and receipts for cleaning or repairs;
- Photographic evidence and video or audio recordings;
- Correspondence between you and the other side, including emails and text messages;
- Witness statements;
- Garda reports.

You should delete any confidential information in the documents such as bank account numbers, telephone numbers and addresses.

The RTB may not accept some documents. These include:

- mediation documents / settlement proposals;
- documents that were unlawfully obtained; and
- documents such as newspaper clippings which are not directly relevant to the dispute and which may damage the good name of the other side.

You should submit documents, photographs and other evidence, including evidence in electronic format, to the RTB **at least five days before** the hearing. If you bring them on the day of the hearing, the adjudicator or tribunal might not consider them, particularly if the other side has not seen

them before the hearing.

Any evidence you provide must be relevant to the dispute. If you want to have evidence in video, audio or DVD format taken into consideration, you must provide the equipment – such as a laptop computer – to show or hear that evidence. The RTB does not provide such equipment.

Witnesses

You should tell the RTB in advance if you want to bring witnesses to a hearing. Witnesses should be relevant to the dispute.

In general, witnesses give evidence on what they directly saw or heard. Rumour, hearsay or written statements by people who cannot attend the tribunal and be questioned by the other side or by the tribunal are much weaker forms of evidence than the direct oral evidence given at the tribunal by the person who witnessed the relevant events.

Can I reach a settlement with the other party?

The RTB encourages people to come to their own agreement at any stage of the dispute resolution process. If you want to put a settlement proposal to the other side, we will forward it to them or you can contact them directly yourself. We will ask them to exchange contact details with you. It is then up to the other side to either accept your proposal and withdraw the case, or proceed to a hearing.

If you reach an agreement, the applicant must notify the RTB that they wish to withdraw the case.

During a hearing a tribunal may adjourn (stop the hearing for a short time) to see if you and the other side can reach an agreement between yourselves. If you do reach an agreement, the tribunal may adopt it as the legally binding decision of the tribunal. If you do not reach an agreement, the hearing will resume and the tribunal will decide the outcome.

What happens if the other side does not comply with the agreement?

If the other party does not comply with a Determination Order made against them, you, or the RTB acting on your behalf, may take a case to the Circuit Court* for non-compliance. There is no legal obligation on the RTB to go to Court to enforce its orders but it may do in some cases.

Can I take the other side to Court for non-compliance?

Yes. You can take enforcement proceedings yourself in the Circuit Court*. We will give you a helpful step-by-step guide, a copy of the Determination Order and confirmation of delivery of letters sent to the non-compliant party. However, we cannot give you legal advice.

Does the RTB enforce its orders?

Yes, on a case-by-case basis and based on the criteria set out below. If you apply to the RTB to take enforcement on your behalf, as a first step, we will write to the other side, remind them of the terms of the Determination Order and tell them they must make arrangements to comply.

If this approach is unsuccessful, we will consider taking legal proceedings on your behalf. The RTB cannot take enforcement in every case.

However, we do take enforcement in a significant number of cases each year, based on budget and published criteria.

Our decision on taking proceedings in any particular case will be based on the following:

- Type of dispute;
- History of compliance with landlord/tenant legislation;
- Technical strength of the case and/or particular circumstances of the case;
- The steps you have taken to get the other side to comply with the order;
- The response from the non-compliant side to our reminder letter and if he or she made any reasonable efforts to pay you;
- Location of dispute (ensuring geographical spread);
- Value for money evaluation;
- If you are seeking enforcement on a final outcome of your dispute (for example, your tenant has not been paying you rent and you have asked him or her to leave your property, but the notice of termination served by you was invalid. If you only have a Determination Order for the rent owed and must serve a new, valid notice of termination then you should apply only when you have a Determination Order declaring this new notice of termination valid);

- If you are as able, or better, than the RTB to enforce;
- If, in all the circumstances, the RTB thinks it would not be appropriate to use its resources;
- If the Board agreed to take three cases on your behalf already within the past twelve months;
- All assistance is dependant on the RTB being in a financial position to fund the enforcement.

If you apply to the RTB, you will be required to sign an “Undertaking to Support Enforcement Proceedings” form which states that you will cooperate with the enforcement proceedings. If we commence Court proceedings on your behalf and you withdraw your cooperation without good cause, you may have to reimburse (payback) the RTB for costs expended.

What can the court do?

If your case is successful, you will be granted a Circuit Court Order. If there is still no compliance, the Order may be registered as a judgement in the Central Office of the High Court. Registering a judgement publicises the fact that there is a judgement against a non-compliant party. This will mean that their credit rating is affected and the person may have difficulty getting credit in the future. List of judgements are published by credit reference agencies (for example, in Stubbs Gazette and some newspapers).

A Circuit Court Order may also be sent to the relevant Sheriff in Dublin or Cork, or to the County Registrar in other counties, for enforcement. If the Order is for an amount of money, the Sheriff or County Registrar will try to secure goods or assets to the value of the amount owed. In the case where the non compliant party is not the owner of the house they live in, this may be problematic as some of the goods may be the property of the owner of the house.

If the Order directs that a tenant should leave the rented property, the Sheriff or County Registrar will seek possession of the property.

It should be noted that the Sheriff or the County Registrar will seek a fee for the sale of any goods seized or to obtain possession of the property.

Enforcement in the District Court: It is expected that soon enforcement of Determination Orders will be transferred from the Circuit Court to the District Court. This means that the enforcement procedure will change. This change has been introduced to assist with the time it takes to obtain a Court Order and to lower the costs involved to allow parties and the RTB to undertake more enforcement.

When the new procedure is in place, the RTB will prepare a guide to assist you in taking your own enforcement in the District Court. If you cannot afford to do it, you can apply to the RTB to fund enforcement for you.

RTB Enforcement Solicitor Panel: The RTB is now in the process of setting up a panel of solicitors around the country to provide legal assistance to parties. Applications for legal assistance will be decided on by the RTB in the same way as described above. However, if the RTB approves funding for your enforcement and within 30 days you do not engage a solicitor from the list provided to you by the RTB, the RTB will withdraw the decision to assist you unless there are exceptional circumstances.

The role of the RTB in the process will be to provide you with the documentation we hold on your file and to fund some of the legal costs. You will be responsible for: selecting a solicitor from the list given to you by the RTB, attending any meetings with your chosen solicitor, and providing the solicitor with any documentation from your case file he or she needs for the Court.

You can contact the Enforcement Section of the RTB on **0818 303037**, or check our website **www.rtb.ie**, for an update on the transfer of enforcement to the District Court and any questions you have on the future RTB legal enforcement assistance model.

Disclaimer

This booklet is a guide to the dispute resolution services of the RTB. It aims to help you understand how to use those services. It is not a legal interpretation of the Residential Tenancies Act 2004 and you should not rely on it for legal advice.

Words used in this Guide

The Act

Refers to the Residential Tenancies Act, 2004

Adjudication

The process through which an adjudicator inquires into and makes a decision on a dispute

Adjudicator

An independent person appointed by the RTB to conduct adjudications

Antisocial behaviour

This has a specific meaning under the Act. The more serious forms of antisocial behaviour relate to criminal or other behaviour involving violence, intimidation, threats or harassment of people living in, working in, visiting or near a rented property. Other types of antisocial behaviour include interfering with someone's enjoyment of a property or neighbourhood. For example, disturbing people's sleep by playing loud music regularly late at night would count as antisocial behaviour

'Cooling-off' period

A time to allow either side who have reached an agreement to indicate that they no longer accept that agreement

Determination Order

The written decision on a dispute. It is legally binding on the people named in the order

Hearing

This is when both sides to a dispute present their case to an adjudicator or tenancy tribunal

Hearsay evidence

Evidence based on what someone has heard from someone else rather than evidence based on the person's own knowledge or experience

Landlord

The person entitled to receive the rent paid by a tenant

Lease

A written agreement signed by both landlord and tenant setting out the terms on which a property is let to the tenant. Most, but not all, tenancies are covered by a lease, often for a set time

Mediation

The process through which a mediator helps people to reach agreement on how to settle their dispute

Mediator

An independent person appointed by the RTB to help resolve a dispute

Notice of termination

A written notice requiring a tenant to leave a property by a specified date. The notice must meet a number of legal requirements

Over-holding

A tenant who remains in a property after a valid notice of termination has expired is said to be over-holding

Party or third party

Landlords and tenants are called parties to a tenancy. Third party is someone who is not a landlord or a tenant, for example, a neighbour

RTB

The Residential Tenancies Board

Quasi-judicial body

An organisation with powers and functions similar to those of the courts. The RTB is a quasi-judicial body

Subpoena

A formal document that orders a named individual to appear before a Tenancy Tribunal at a specified time to give evidence

Tenancy

The arrangement under which a house or apartment is rented by a landlord to a tenant. This is often for a set term, for example 12 months. If there is no set term, the tenancy is known as 'periodic tenancy'

Tenancy Tribunal

A panel of three people who deal with appeals from the outcome of adjudication. They may also decide on disputes if mediation has not succeeded.

Tenant

The person entitled to live in a property under a tenancy

www.rtb.ie

