



## Residential Tenancies Board

### Section 109

### Dispute Resolution Procedural Rules

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## Section 109 Rules

### Residential Tenancies Act 2004 (as amended) (the “Act”)

#### Dispute Resolution Procedure

These rules are made by the Residential Tenancies Board (the “RTB”) under section 109 of the Act (the “Rules”) and are supplementary and additional to the provisions of the Act. The Rules supersede any previous rules made pursuant to section 109 of the Act and may be amended at any time by the RTB, with the consent of the Minister for Housing, Local Government and Heritage (the “Minister”). The RTB will process dispute and appeal applications referred to it in accordance with the provisions contained in Part 6 of the Act, together with the Rules.

#### A. APPLYING FOR DISPUTE RESOLUTION

##### Dispute application

1. The referral of a dispute to the RTB may be made:
  - (i) electronically; or
  - (ii) by the completion of a paper application form.
2. The application form to be used for the referral of a dispute (either electronically or on paper) (the “application form”) shall be determined by the RTB. The application form may be amended by the RTB from time to time.

##### Fees

3. The fee that must accompany an application form is:

Application Type	Fee
Mediation	No fee
Adjudication	€30

4. The RTB may amend the fee to accompany an application from time to time, with the consent of the Minister.

##### Incomplete application forms and contact details

5. If a dispute application is incomplete, the RTB will take all reasonable steps to obtain the necessary information from the applicant. If the information is not provided within a reasonable timeframe, the RTB may not proceed with processing the case.
6. Where the respondent’s current address is not provided in the application form, the RTB will

take all reasonable steps available to it to obtain it. The respondent is the party (i.e. the landlord or tenant) against whom a dispute has been referred to the RTB for resolution. Where, after taking all reasonable steps, the respondent's address is still not ascertained, the RTB will be unable to proceed with the case.

## **B. INITIAL JURISDICTIONAL MATTERS**

### **RTB jurisdiction not to deal with a dispute**

7. Section 84 of the Act sets out circumstances where the RTB has the right not to deal with certain applications for dispute resolution.
8. In accordance with section 84(5) of the Act, a decision by the RTB to deal or not to deal with a dispute may be appealed to the Circuit Court by any party to the dispute. Such an appeal must be made within 21 days of the date of issue of the RTB's decision.

### **Extension of time for dispute referrals**

9. Certain dispute types must be referred to the RTB within a set time period, as set out in the Act. The RTB may, on application, extend the time limit for referral of a dispute to the RTB. The RTB shall not extend the time unless the applicant party shows "good grounds" for why the time should be extended (s.88 of the Act). The applicant's "good grounds" should explain the delay in submitting an application for dispute resolution and provide a justifiable reason for it. The RTB may have regard to all relevant circumstances when determining whether to grant an extension of time, including the length of time it has taken to bring the application.
10. In accordance with section 88(4) of the Act, a decision of the RTB to extend or to refuse to extend such a time limit may be appealed to the Circuit Court. Such an appeal must be made within 21 days of the date of issue of the RTB's decision to extend or to refuse to extend the time limit concerned.

## **C. PROCESSING OF CASES FOR HEARING**

11. A reference to a 'hearing' in these rules is a reference to a session before a mediator, a hearing before an adjudicator and tenancy tribunal, or as the context may admit, any one or more of them.
12. The RTB may prioritise mediation applications for processing, as well as categories of cases as may be appropriate in the circumstances (e.g. unlawful tenancy termination, significant rent arrears, overholding (unlawful occupation/possession of the rented dwelling post lawful tenancy termination) and serious anti-social behaviour).

13. Mediation will be the default dispute resolution service offered for free by the RTB. However, a party may if they wish, request that a dispute be dealt with at first instance by an adjudicator, for which the applicant will be charged the appropriate fee.
14. Mediations will be conducted primarily by telephone. They may also be conducted in person or online virtually. The mediator, through a series of separate phone calls / virtual meetings, will help both parties to find a mutually acceptable solution to resolve the matters in dispute.
15. The RTB may arrange for adjudications and tenancy tribunals to be conducted in person or online virtually. All dispute applications submitted to the RTB will be considered suitable for a virtual online hearing, unless the RTB of its own volition or following representations from a party, is of the opinion that a virtual online hearing would be unfair to a party (or parties) or otherwise, contrary to the interests of justice, in which case the hearing shall take place in person. A mediator, adjudicator or tenancy tribunal may also request that a hearing take place in person, if it is of the opinion that a virtual online hearing would be unfair to a party (or parties) or otherwise, contrary to the interests of justice.
16. The RTB may also arrange for paper-based adjudication hearings (i.e. with no need for physical/online attendance by the parties), unless the RTB of its own volition or following representations from a party, is of the opinion that a paper based hearing would be unfair to a party (or parties) or otherwise, contrary to the interests of justice. A mediator, adjudicator or tenancy tribunal or any party to the case may request the RTB to arrange for a paper-based hearing.

#### **D. VIRTUAL ONLINE HEARINGS**

17. Where an agreement is reached at a virtual online hearing, the mediator, adjudicator or tenancy tribunal (as appropriate) will email the terms of the agreement to the parties. The parties may confirm that they agree to the terms of the agreement, by email or other electronic means (e.g. text message or webchat). The date of the agreement will be the date the last of the relevant parties confirms that they agree to the terms of the agreement.

#### **E. ADJOURNMENTS**

18. Applications by parties for the adjournment or deferral of a mediation, adjudication or tenancy tribunal hearing to another date may only be considered in very limited and exceptional circumstances and in accordance with the principles of fair procedures and due process. The RTB must be notified as soon as possible of any such application.
19. The party who is seeking an adjournment will be asked to provide substantive reasons and documentation, as may be appropriate, to support their application for an adjournment (for example, a medical certificate confirming an up-coming hospital procedure).

20. A mediator, adjudicator or tenancy tribunal may also adjourn a hearing to another date specified by it, if it considers it necessary to do so in the interests of justice and fair procedures.

## **F. EVIDENCE**

### **Circulation of evidence**

21. A party may submit documents relevant to the matters set out in the dispute application as evidence in support of their case, as well as written submissions if they choose to do so (together the "Dispute Documents"). Evidence is anything that proves or disproves the disputed facts in a case. The term 'documents' includes all forms of hard copy and electronic documents such as letters, lease agreements, emails, text messages, photographs, audio and video recordings.
22. The RTB will, where possible and as soon as practicable, circulate in advance of an adjudication or tenancy tribunal hearing, all Dispute Documents submitted by a party in relation to a dispute to the other party/parties involved and to the adjudicator or tenancy tribunal, in accordance with the principles of fair procedures.
23. The circulation of Dispute Documents by the RTB is an administrative function. The admissibility of all Dispute Documents, their probative value and the weight given to such evidence are at the exclusive discretion of the adjudicator or tenancy tribunal in accordance with the principles of fair procedures.
24. Dispute Documents must be provided to the RTB no later than 5 days prior to the hearing. These deadlines are imposed to ensure a reasonable time for the RTB to circulate the Dispute Documents to the other party or parties and the adjudicator or tenancy tribunal as appropriate for consideration in advance of a hearing. Dispute Documents received outside of the 5 day time limit will be circulated to the other party or parties on a best endeavours basis. It will however be at the discretion of the adjudicator or tenancy tribunal whether to allow the Dispute Documents to be admitted, having heard any submissions the parties wish to make in this respect and having regard to the principles of fair procedures.
25. The RTB, mediator, adjudicator or tenancy tribunal may specify, where necessary, other deadlines to be complied with by parties in submitting Dispute Documents in support of their case.
26. Originals of any evidence submitted by a party should be retained by him/her and if required, made available at the hearing.

## **Party responsibility for confidential information**

27. Parties are responsible for redacting (i.e. blacking out or obscuring so it cannot be read or viewed) all confidential and/or personal information referred to in Dispute Documents that they wish to submit (e.g. bank account or telephone numbers). This includes any confidential and/or personal information of another person. Redacting of all documents (including photographs, video and audio recordings) must be done by the parties themselves prior to submitting evidence to the RTB.

## **G. ATTENDANCE AT HEARINGS**

28. A party may attend a hearing with a representative who may act on their behalf (e.g. solicitor or letting agent).
29. A party may also nominate a representative to attend a hearing in their place and/or submit a written statement for consideration by the mediator, adjudicator or tenancy tribunal.
30. The parties to a dispute (including their representatives and witnesses), should treat each other and the mediator, adjudicator or tenancy tribunal (as appropriate) with respect. If the behaviour of a party impacts on the conduct of a hearing and the party refuses to desist, the mediator, adjudicator or tenancy tribunal may take steps necessary to facilitate the orderly conduct of the hearing, having regard to the principles of fair procedures and natural justice. This may include adjourning the hearing to a later date.

## **H. MATTERS FOLLOWING MEDIATION**

### **Referral to tenancy tribunal**

31. Either party may request the RTB to refer a dispute to a tenancy tribunal where:
- a) no agreement is reached at mediation;
  - b) the dispute is not resolved, notwithstanding some matters have been agreed between the parties; or
  - c) the RTB and mediator is informed within 10 days of completion of the mediation concerned, that he or she no longer agrees with that agreement and does not wish to be bound by it.
32. In the circumstances described at paragraph 31(a) and (b), a party's request that a dispute be referred to a tenancy tribunal must be made in writing within 10 days of the final mediation session. In the circumstances described at paragraph 31(c), a party's request that a dispute be referred to a tenancy tribunal, must be made in writing within 10 days from the date the RTB issues a letter to the parties confirming or informing them that the agreement reached at mediation is no longer binding in accordance with s.95(5A) of the Act.



### **Referral from mediation**

33. The fee that must be paid by a party who wishes to refer a matter to a tenancy tribunal following a mediation is as follows:

Type of application	Fee
Referral following Mediation	€30

34. The RTB may amend the fee to accompany an application (i.e. referral of a dispute to tenancy tribunal following a mediation) from time to time, with the consent of the Minister.

## **I. MATTERS SPECIFIC TO ADJUDICATIONS**

### **Non-attendance by a party**

35. Where a party fails to attend at an adjudication hearing and the adjudicator is satisfied that the party was notified of the hearing date and there appears to be no material reason for their non-attendance, the adjudicator may proceed to determine the dispute on the evidence available to him/her, including where the party not in attendance is the applicant, on the basis of the application submitted. This will depend on the circumstances of each individual case and is a matter to be determined at the discretion of the adjudicator. The parties have a right to appeal the adjudicator's decision to a tenancy tribunal under s.100 of the Act.

### **Hearing**

36. Adjudicators have obligations of confidentiality under the Act. Subject to those obligations of confidentiality, an adjudication hearing may be conducted in private or public.

37. Any person who gives evidence at an adjudication (including a party to the dispute) may be cross-examined by or on behalf of any party.

38. Any person who gives evidence at an adjudication shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

### **Appeal from adjudication**

39. A party may appeal an adjudicator's determination to a tenancy tribunal in accordance with s.100 of the Act. The appeal must be made on an RTB appeal form and be accompanied by the relevant fee.

40. The appeal form may be submitted to the RTB:

- (i) electronically; or
- (ii) by the completion of a paper application form.

41. The appeal form to be used for the referral of an appeal (either electronically or on paper) shall be determined by the RTB. The appeal form may be amended by the RTB from time to time.
42. The appeal form is available on the RTB’s website [www.rtb.ie](http://www.rtb.ie) and hard copies are available upon request from the RTB call centre at 0818 30 30 37 or 01 7028100.
43. The appeal form must set out the grounds of appeal.
44. The fee that must accompany an appeal form is:

Type of application	Fee
Appeal	€85

45. The RTB may amend the fee to accompany an appeal from time to time, with the consent of the Minister.

### Calculation of appeal period

46. An appeal of an adjudicator’s determination under s.100 of the Act must be made within 10 working days from the date the RTB serves on the party, the adjudicator’s determination (contained in the adjudicator’s report) and the statement referred to in s.99(3) of the Act. The date that the adjudicator’s determination is delivered to a party’s address is deemed to be day 1 of the 10 working days appeal period. The RTB uses An Post’s track and trace to confirm date of delivery. The RTB may also email the adjudicator’s determination to a party where he/she requests this or consents to service by email. In that circumstance, day 1 of the 10 working days appeal period, is the day that the email is sent.
47. An appeal in writing of the adjudicator’s determination must be signed, dated and either emailed, posted or hand delivered to the RTB within the 10 working days period (i.e. including the 10<sup>th</sup> working day). In the case of an appeal sent by post, a certificate of postage (available from post offices) will be required in the event that the post date stamp is unclear, in order to prove that the appeal was posted in time.

### Extension of time for referring a dispute

48. The onus is on parties to ensure an application appealing the adjudicator’s determination, including the appeal fee, is made to the RTB within the 10 working days appeal period. The RTB may, on application, extend the time limit for referral of an appeal to a tenancy tribunal. The RTB shall not extend the time unless the applicant party shows “good grounds” for why the time should be extended (s.88 of the Act). The applicant’s “good grounds” should

explain the delay in submitting an appeal and provide a justifiable reason for it. The RTB may have regard to all relevant circumstances when determining whether to grant an extension of time, including the length of time it has taken to bring the application.

#### **Agreement reached at adjudication and cooling off period**

49. Where an agreement is reached at adjudication, the 'cooling off' period is 10 days from the date the parties first inform the adjudicator that an agreement has been reached. That 10 day period is a consecutive period including weekends and public holidays.

### **J. MATTERS SPECIFIC TO TENANCY TRIBUNALS**

#### **Nature of hearing and other matters**

50. The RTB shall, as soon as practicable, set the date for a hearing of a dispute before a tenancy tribunal on appeal from adjudication, on referral from mediation or where there is a direct referral to a tenancy tribunal.
51. A tenancy tribunal hearing will be a full hearing/re-hearing of all the matters in dispute (i.e. in respect of an appeal, a hearing *de novo*). The parties may, by consent, agree to limit the hearing to specific matters in dispute between them. In the case of re-hearings, matters that have arisen since the original hearing may in certain circumstances also be considered, for instance, where they are connected or relevant to the matters the subject of the original dispute. However, entirely new matters not related to the original dispute, which have not been the subject of adjudication or mediation, cannot be considered by the tenancy tribunal.
52. All parties will be issued with 'Tribunal Procedures' in advance of the tenancy tribunal hearing, the format of which will accord with section 104 of the Act and include any further information that a tenancy tribunal considers appropriate.

#### **Abandoning an appeal or non-attendance by a party**

53. Where an appeal has been received but the appellant is no longer at the address provided, has failed to inform the RTB of any new contact address and cannot be contacted by the RTB, the RTB may deem the appeal to be abandoned and make a determination order on the basis of the adjudicator's determination.
54. Where a party fails to attend at a tenancy tribunal hearing and the tenancy tribunal is satisfied that the party was notified of the hearing date and there appears to be no material reason for their non-attendance, the tenancy tribunal may proceed to determine the dispute on the evidence available to it. Where the party not in attendance is the appellant, the tenancy tribunal may determine that the appeal is abandoned and uphold the adjudicator's determination. This will depend on the circumstance of each individual case and is a matter to be determined at the discretion of the tenancy tribunal. A party may appeal a decision of

the tenancy tribunal to the High Court on a point of law (s.123(3) of the Act).

### **Decision of Tribunal**

55. The tenancy tribunal shall, as soon as practicable after a hearing, make and notify the RTB of its determination in relation to that dispute.

## **K. DETERMINATION ORDERS**

### **Issuing**

56. As soon as possible after each of the events referred to in s.121(1)(a) – (d), the Director shall proceed to prepare and issue a determination order.

### **Publication**

57. Agreements reached at mediation are confidential between the parties in dispute and will not be published by the RTB.

58. The RTB will publish on its website and elsewhere as it may consider appropriate, tenancy tribunal reports and adjudication and tenancy tribunal determination orders issued by the Director in accordance with s.121 of the Act.

Tom Dunne

Chairperson

Residential Tenancies Board

October 2022