

## 12. Service Provisions

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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 Guideline deals with the ways in which documents required or permitted to be given to or to be served on a person under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) must be served. Such documents may include the tenancy agreement, notices, applications, decisions, orders, statements, summons to testify, and certain types of evidence. As this guideline deals with sections of the Legislation<sup>1</sup>, landlords and tenants should also refer to Rule 3 of the Arbitration Rules of Procedure for more information on serving the Application and exchanging evidence.

The purpose of serving documents under the Legislation is to notify the person being served of matters relating to the Legislation, the tenancy agreement, an arbitration, or a review. Failure to serve documents properly may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

### 1. ADDRESS FOR SERVICE

Where the applicant does not disclose the applicant's address on the application, the applicant must provide an address for service of documents on the application for each applicant named.

### 2. SERVICE OF DOCUMENTS with respect to:

- An application for Arbitration (except for section 3 below)
- An arbitrator's Decision to proceed with a review of an arbitrator's decision

**There are only three methods of service that may be used with respect to these matters. These are:**<sup>2</sup>

#### Personal service

- Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord.
- Where a landlord is personally serving a tenant, the landlord must serve a document by leaving a copy with the tenant.

This requires actually handing a copy of the document to the person being served. If the person declines to take a copy of the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being

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1 *Residential Tenancy Act*, ss. 88 to 90; *Manufactured Home Park Tenancy Act*, ss. 81 to 83

2 RTA, s. 89(1); MHPTA, s. 82(1)

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left near them.

### Registered Mail

- Where a tenant is serving a landlord by registered mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord. (See section 5 and 6 below)
- Where a landlord is serving a tenant by registered mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant.

"Registered Mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

### An Arbitrator's Order Regarding Service<sup>3</sup>

- See sections 10 and 11 below for discussion of this subject.

### 3. SERVICE OF DOCUMENTS ON TENANT with respect to:

- An application by a landlord for an order of possession for the landlord.
- An application by a landlord for an order ending tenancy early.

**There are only four methods of service that may be used with respect to these matters.<sup>4</sup>**

**These are:**

#### Personal Service

- Where a landlord is personally serving a tenant, the landlord must serve by leaving a copy with the tenant, or by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.

This requires actually handing a copy of the document to the person being served. If the person declines to take a copy of the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

#### Registered Mail

- Where a landlord is serving a tenant by registered mail, the address for service must be where the tenant resides at the time of mailing.

"Registered Mail" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

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<sup>3</sup> Page 5

<sup>4</sup> Section 89(2) of RTA and section 82(2) of MHPTA

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### Posting

- By attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

### An Arbitrator's Order Regarding Service<sup>5</sup>

- See sections 10 and 11 below for discussion of this subject.

## 4. SERVICE OF DOCUMENTS GENERALLY

The Legislation provides a number of service methods which may be used where a landlord or tenant is serving documents which are not covered by the sections referred to above. These methods are:<sup>6</sup>

- **by personally leaving a copy of the document with the person to be served**  
If this method is used, the document must be given personally to the person. If the person refuses to take it, it should be left with or near the person while advising the person of the nature of the document being served.
- **by personally serving an agent of the landlord**  
The tenant should check the tenancy agreement for the name and address of the landlord's agent, who may be an individual, a firm, such as a sole proprietorship or a partnership, or an incorporated company or society, that is authorized to act on behalf of the landlord. Before leaving a document with an agent, the person serving or leaving the document should make sure that the agent is in fact the landlord's agent and obtain the name of the person accepting the document.
- **by sending a copy of the document by ordinary mail or registered mail to the address at which the person to be served resides at the time of mailing**  
If registered mail is used, it will generally provide a record of the mail being sent and received, which ordinary mail will not.
- **if serving a landlord, by sending a copy of the document by ordinary mail or registered mail to the address at which the person carries on business as a landlord**  
See sections 5 and 6 below for discussion of this subject
- **if serving a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant**
- **by leaving a copy of the document at the person's residence with an adult person who apparently resides with the person to be served**  
A person may be considered to apparently reside with someone, if, from what can be seen, observed, or is evident from all of the circumstances known to the person serving the document, the person appears to reside with the person to be served.

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<sup>6</sup> RTA, s. 88; MHPTA, s. 81

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- **by leaving a copy of the document in a mailbox or mail slot for the address where the person to be served resides at the time of service**  
If this method of service is used, the person leaving the document needs to determine that the mailbox or mail slot belongs to the person to be served, particularly in a multi-unit building, such as an apartment, condo, or office building.
- **by leaving a copy of the document in a mailbox or mail slot for the address where the person to be served carries on business as a landlord.**  
(See sections 5 and 6 below)  
If this method of service is used, the person leaving the document needs to determine that the mailbox or mail slot belongs to the address at which the landlord carries on business as a landlord, particularly in a multi-unit building, such as an apartment, condo, or office building.
- **by attaching a copy of the document to a door or other conspicuous place at the address where the person to be served resides at the time of service**  
If this method is used, the person attaching the document should make sure that the door or conspicuous place belongs to the person's residence, and that the document will be readily seen by the person entering or leaving the residence.
- **by attaching a copy of the document to a door or other conspicuous place at the address at which the landlord carries on business as a landlord**  
(See sections 5 and 6 below)  
If this method is used, the person attaching the document should make sure that the door or conspicuous place belongs to the address where the person carries on business as a landlord, and that the document will be readily seen by the person entering or leaving the place of business.
- **by transmitting a copy of the document to the fax number provided as an address for service by the person to be served**  
If no fax number for service has been provided, then this method of service may not be used. If this method of service is used, then the person serving the document will need to provide proof that the document transmitted by fax was sent to the fax number provided, and that the transmission of all pages was completed. A fax transmission report may provide this information.
- **as ordered by an arbitrator (Substituted service – see section 10 and 11 below for discussion of this subject)**
- **by any other means of service prescribed in the regulations**

### 5. SERVICE OF DOCUMENTS ON AN INCORPORATED COMPANY OR SOCIETY

- As the Legislation does not provide for service of documents on a landlord that is an incorporated company or a society in the manner provided by the *Company Act*

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or the *Society Act*, service on a landlord that is an incorporated company or society should be in the manner provided in the Legislation, and not in the manner provided by the *Company Act* or *Society Act*. The registered office of a landlord that is an incorporated company or a society, such as a lawyer's office or accountant's office, may not necessarily be the address at which the landlord carries on business as a landlord. If it is not, service on the registered office may not be adequate service for the purposes of the Legislation. (See section 6 below)

### 6. SERVING DOCUMENTS AT THE ADDRESS AT WHICH THE LANDLORD CARRIES ON BUSINESS AS A LANDLORD

The Legislation permits a tenant to serve a document on a landlord at the address at which the landlord carries on business as a landlord, in one of the following ways:<sup>7</sup>

- by mail,
- by leaving a copy of the document in a mailbox or mail slot,
- by attaching a copy of the document to a door or other conspicuous place.

If a tenant intends to serve a document on the landlord in one of the above ways at the address at which he or she carries on business as a landlord, the tenant will need to determine the address at which the landlord carries on business as a landlord before serving. Such an address may include the following:

- The address of the landlord as set out in the written tenancy agreement.
- The address of the landlord's office or the landlord's manager's suite in an apartment or condominium building. Service on the strata corporation's office or strata corporation's manager's suite will usually not be effective, unless the strata corporation is also the landlord.
- The address where the landlord resides.
- A separate address where the landlord operates his or her business as landlord, such as an office in a office building or in a storefront operation, whether he or she carries on his or her business as landlord as the only business in the premises, or whether he or she carries on business as a landlord in conjunction with any other business of his or hers in premises shared with another business owned or operated by the landlord, or by someone else.
- A post office box where it is set out in the tenancy agreement as the address of the landlord, or it is the address where the landlord receives mail and notices, or is specified by the landlord to be his or her address for receiving mail or notices.

A landlord may operate a business as a landlord from one location and operate another business from a different location. The Legislation does not permit a tenant to serve a landlord in one of the ways set out above at the address where the landlord carries on that other business unless the landlord also carries on his or her business as a landlord at that same address.

If the landlord disputes that he or she has been served in one of the permitted ways at the

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<sup>7</sup> RTA, s. 88; MHPTA, s.81

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address where he or she carries on business as a landlord, or if the landlord does not attend at the hearing, the tenant will have to provide sufficient evidence to the arbitrator to prove that the address used is in fact the address at which the landlord carries on business as a landlord.

### 7. SERVICE OF DOCUMENTS ON INFANTS

Service of a document on a person who is under the age of 19 years and has entered into a residential tenancy agreement is to be effected in one of the ways required or permitted under the Legislation.

### 8. SERVICE OF DOCUMENTS ON INCOMPETENT PERSONS

Service of documents on an incompetent person, that is, a person who is incapable by reason of age, illness, or mental infirmity of managing himself or herself or his or her affairs, is to be effected by serving a copy of the document in one of the ways required or permitted under the Legislation:

- on the person's Committee appointed under the *Patients Property Act*, or
- on the person's representative appointed under the *Representation Agreement Act*, or
- where there is no Committee, or representative,
  1. on the person with whom he or she resides or in whose care he or she is or with the person appointed by a court to be served in the incompetent person's place, (see note 1 below) and
  2. on the Public Trustee (see note 2 below).

**(Note 1)** Even though a hospital or care facility may "acknowledge receipt" of documents on behalf of incapable adults in their care, the person leaving the documents with a nurse, administrator, or other person at a hospital or care facility should not assume that the person "acknowledging receipt" of the documents has "accepted service" of the documents unless that person advises that he or she has authority to "accept service" on behalf of the incapable adult.

**(Note 2)** When the Public Trustee is served documents on behalf of an incapable adult, the Public Trustee will accept service on behalf of the Public Trustee only, not on behalf of the adult. In other words, the Public Trustee simply "acknowledges receipt" of the documents served. This arrangement allows the person serving the documents to comply with the statutory requirements for service, but does not compel the Public Trustee to appear for, or to take further steps on behalf of, the incapable adult. The Public Trustee will investigate the incapable adult's circumstances, and where appropriate, may seek authority to act on the adult's behalf. The Public Trustee will not, however, automatically act on behalf of the incapable adult.

### 9. DEEMED SERVICE

The Legislation deems that a document not served personally, has been served a

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specified number of days after service<sup>8</sup>

- if given or served by mail, on the fifth day after mailing it
- if given or served by fax, on the third day after faxing it
- if given or served by attaching a copy of the document to a door or other place, on the third day after attaching it
- if served by leaving a copy of the document in a mail box or mail slot, on the third day after leaving it

"Deemed" service means that the document is presumed to have been served unless there is clear evidence to the contrary.

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

### 10. ARBITRATOR'S ORDERS REGARDING SERVICE

The Legislation provides that an arbitrator may make the following orders:<sup>9</sup>

- That a notice, order, process or other document may be served by substituted service in accordance with the order.
- Where a document has not as yet been served, that a document must be served in a manner the arbitrator considers necessary, despite the other service provisions of the Legislation.
- Where a document has been served, that a document has been sufficiently served for the purposes of the Legislation on a day the arbitrator specifies.
- That a document not served in accordance with the service sections of the Legislation has been sufficiently given or served for the purposes of the Legislation.

### 11. ORDERS FOR SUBSTITUTIONAL SERVICE<sup>10</sup>

An application for substituted service may be made at the time of filing the application or at a time after filing. The party applying for substituted service must be able to demonstrate two things:

- that the party to be served cannot be served by any of the methods permitted under the Legislation, and
- that the substituted service is likely to result in the party being served having actual knowledge of what is being served

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8 RTA, s. 90; MHPTA, s. 83

9 RTA, s. 71; MHPTA, s. 64

10 RTA, s. 71; MHPTA, s. 64

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Where the respondent does not appear at an arbitration hearing, the applicant must be prepared to prove service under oath. The person who actually served the documents must either:

- be present at the hearing, or
- have sworn an affidavit of service or a statutory declaration which is sworn before either a Notary Public or a Lawyer, and which is given to the arbitrator at the hearing

A sworn affidavit of service or statutory declaration must have sworn exhibits attached to it which are copies of each of the actual document(s) served.

Proof of service personally should include the date and time of service, where the person was when served, and the name of the person served.

Proof of service by registered mail should include the original receipt given by the post office and should include the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service.

Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply. Adjournments to prove service are given only in unusual circumstances.

Proof of service by methods other than personal service or registered mail should include:

- the date and time of service,
- details of the method used to serve, including:
- the name of the adult served,
- if posted, the address where the documents were attached,
- the fax number to which the document was faxed and proof that the fax transmission was completed,
- the address of the mail box or mail slot used.

## 13. PARTIES NOT SERVED

Where one or more parties on an application for arbitration has not been served, the arbitrator's Order will indicate this and will dismiss, or dismiss with leave to reapply, the application involving the party not served.