

26. Agents

Jan-04

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.

NAMING AN AGENT OR A PRINCIPAL IN THE APPLICATION FOR ARBITRATION

Where one person ("A") is representing another person, ("B") who may or may not be named in the tenancy agreement, the first person ("A") may be an agent. The person the agent is representing ("B") is the principal. This situation usually occurs with a landlord.

The following situations arise:

- a) Where the principal is named in the tenancy agreement and identifies the agent as acting on its behalf.

This situation arises where the owner or landlord is clearly named in the agreement but the agreement is signed on behalf of that owner or landlord by another person or company named as agent. For example, the landlord may use a property management company to act on its behalf. That agent may also be the representative of the party to the agreement on the premises and conduct the business of the party on the premises. The agent of an owner or landlord may collect the rent and attend to repairs. In such situations both the principal and the agent may be named in the application and orders may be made against either the agent or the principal, or both.

- b) Where the principal of the agent is not named in the tenancy agreement.

In this situation, the tenancy agreement does not identify the principal and the agreement is signed by the agent. Three situations arise in this case:

- i) where the principal is known to all parties even though not named in the tenancy agreement,

In this situation, either the principal or the agent, or both, may be named in the application, and an order may be made against both or either parties.

- ii) where the principal is not known to the parties although the parties know that the agent is acting on behalf of a principal,

In this situation, the agent may be named in the application and, upon becoming aware of who the principal is, the principal may be added as a party or be named in another application. An order may be made against either the principal or the agent, or both.

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- iii) where the agent does not disclose that she or he is acting as an agent and purports to act as a principal.

The agent may be named in the application. Upon becoming aware of the existence of a principal the principal may be added as a party or named in another application. Again, an order may be made against either the principal or the agent, or both.

Guideline 26 applies to the proper naming of a party and adding a party to an application for arbitration.

AGENT APPEARING AT THE HEARING

A party to a hearing may be represented at the hearing by an agent. The party is entitled to remain in the hearing with his or her agent throughout the hearing

The agent at the hearing may speak for the party and present that party's documentary evidence and witnesses. An agent is distinct from a witness who gives evidence on behalf of a party. An agent may also give evidence at the hearing as a witness, but this is a separate role from that as agent.

A party who is represented by an agent may give evidence even though the arbitrator may have excluded other witnesses.

Under the *Residential Tenancy Act*¹, the *Manufactured Home Park Tenancy Act*² and the Rules of Procedure³ the arbitrator may decide the extent to which an agent will be permitted to give evidence and make submissions on behalf of a party.

If the party does not appear at the hearing and instead sends only his or her agent, it is recommended that the party send a letter with the agent addressed to the arbitrator confirming that the agent has the authority to represent the party.

1. *Residential Tenancy Act*, ss. 62 to 75

2. *Manufactured Home Park Tenancy Act*, ss. 55 to 68

3. Arbitration Rules of Procedure, Rule 8