

How to Appeal a Residential Tenancies Director's Order

If you are appealing a director's order that you do not agree with, it is important to understand Director's Orders are made through four (4) different application types:

- Form J applications can be made by either Tenants or Landlords and usually deal with allegations of breach of the lease. They are predominantly heard by telephone.
- Form K (unpaid rent) applications are made by Landlords. They are heard by written submission.
- Form N (section 11A land lease community rent increase) are heard exclusively by written submissions.
- Form S (return of security deposit) applications are made by Tenants and are predominantly heard by written submission.

The Small Claims Court has jurisdiction to hear appeals of orders made by the Director of Residential Tenancies. The monetary limit established under the *Small Claims Court Act* of (\$25,000), does not apply to Residential Tenancy appeals.

If an order is not appealed within ten days of its issue, the order can be made an order of the Small Claims Court for enforcement purposes.

Deadline to file the appeal:

The Notice of Appeal must be filed at the court administration office within 10 days from the date of the Residential Tenancies Director's Order. If the tenth day falls on a weekend or statutory holiday, the Notice of Appeal must be filed by the next business day after the weekend or statutory holiday.

An appeal must be filed with the Small Claims Court that serves the area where the rental unit is located.

Court Locations: [Locations](#) | [The Courts of Nova Scotia](#)

Making a Residential Tenancies Appeal

Paper copies of the Residential Tenancies Appeal forms are available at most courthouses across Nova Scotia.

You can also complete the form online. However, the Court still requires a hard copy to be printed and filed with the Court.

When filing your appeal, you must submit a copy of the Residential Tenancies Director's Order along with your Notice of Appeal Form.

The fee for filing a Notice of Appeal in the Small Claims Court are:

- **\$33.00** — Amount claimed is **\$1,999.00 or less**
- **\$99.70** — Amount claimed is **\$1,999.00 or less and vacant possession is requested**
- **\$99.70** — Amount claimed is **\$2,000–\$4,999**, or vacant possession is requested
- **\$199.35** — Amount claimed is **\$5,000 or more**
- **\$199.35** — Mobile home park rental increases

Waiver of Fees:

A waiver of fees may be available to you. If you are on Income Assistance, Disability, CPP or otherwise have a low income, you can apply to have the fee waived. You can find more information through the link below.

[Costs & Fees | The Courts of Nova Scotia](#)

Receiving a Hearing Date:

Upon your appeal being filed with the Court, the court clerk will assign a court date for the appeal hearing and will record it on the Notice of Appeal.

Serving the Notice of Appeal:

Filing your appeal with the Court does not complete the filing process. The Appellant must **personally serve** the Notice of Appeal on:

- The Respondent(s), and
- The Director of Residential Tenancies

Method of Service:

Personal service is required. This means:

- **For the Respondent(s):**
You must hand the documents directly to the Respondent.
- If the Respondent is a business, you must personally serve the Recognized Agent of the business. This individual can be found by searching for the business under the Registry of Joint Stocks Companies under the novascotia.ca website and clicking “Relationships” to find the Recognized Agent.
- **For the Director:**
Serve the Director by taking the documents to an Access Nova Scotia Centre. Explain that you are there to serve the Director of Residential Tenancies with your appeal documents. A staff member will accept them on behalf of the Director.

Proof of Service (Affidavit of Service)

After serving the documents, you must complete an Affidavit of Service for each party served (Respondent and Director). This Affidavit is included with your appeal forms.

Affidavit Requirements

For the Respondent(s):

You must include:

- Date of service
- Time of service
- Name of the Respondent you served
- Location where the documents were served

For the Director:

Include:

- Date of service
- Time of service

Location of service (i.e., the Access Centre where the original application was made)

Swearing the Affidavit

- After you have served the Respondent and the Director, you must take the completed Affidavit(s) of Service to the Small Claims Court.
- A court clerk will swear or affirm the Affidavit.

Filing

- Once sworn, the Affidavit(s) of Service are added to the court file, and they are intended to serve as proof that the Notice of Appeal was properly served

Substituted Service

Under the *Small Claims Court Act*, an Adjudicator has the authority to dispense with personal service when it is not possible for the Appellant to personally serve the Respondent(s).

The request for substituted service may be made either before or at a prehearing.

If you wish to request substituted service before the hearing, you should contact the court clerk to schedule a substituted service application, which will occur on a prehearing docket. At that hearing you must explain:

- The steps you have taken to serve the respondent(s) personally; and
- The reasons why personal service could not be accomplished.

If the Adjudicator is satisfied that you have made significant and repeated reasonable efforts to locate and personally serve the respondent, which may serve to demonstrate that the respondent is avoiding service, an order for substituted service may be granted.

An Order for Substituted Service allows documents to be served by an alternative method approved by the Adjudicator. Such methods may include:

- Registered mail;
- Email;
- Posting the document(s) at the respondent's residence; or
- Any other method the Adjudicator believes is likely to bring the appeal documents to the respondent's attention.

You should be aware that the adjudicator will not grant substituted service without some evidence that the method proposed will bring the matter to the attention of the respondent.

Use of Evidence and Witnesses in a Residential Tenancies Appeal

Reusing and Presenting Evidence

An appeal of a Residential Tenancies Director's Order is a *trial de novo*, meaning the Small Claims Court conducts a completely new hearing of the case. The Court is not required to agree with decisions made by the Director and can consider both the original evidence provided to the Director, and any new evidence the parties provide.

- Both the Appellant and the Respondent may:
 - Present new evidence in addition to their initial evidence
 - Call their original witnesses and any new witnesses
- Evidence submitted to the Residential Tenancies Program does not automatically transfer into the appeal record.
- It is the responsibility of each party to file their evidence directly with the Court in accordance with its filing requirements.

Bringing a Witness to Court

Ideally, when agreeing to a date for a hearing, you should be aware of whether your witnesses will be free to attend on the day assigned.

To ensure a witness attends your hearing, you may need to issue a subpoena. A subpoena is a court order requiring a person to appear and give evidence. A subpoena can not only compel an individual to attend to give evidence but can also be used to have a witness bring documents specified in the subpoena.

- To obtain a subpoena
 1. Visit the Small Claims Court office
 2. Request a subpoena Form 3
 3. You must swear an affidavit that is part of the subpoena form that you personally served the subpoena on the witness

For detailed instructions, you can:

- Speak directly with the court clerk, or
- Review this guide:
Using a Subpoena in the Small Claims Court
https://www.courts.ns.ca/sites/default/files/courts/Small%20Claims%20Court/NSSCC_Using_a_Subpoena_2014%20.pdf

Information for the Respondent:

- If you are an individual, you should be handed a copy of the Notice of Appeal. If the Respondent is a business the Registered agent should be served.
- The hearing date and time of the hearing are on the form.
- If you do not attend, the Adjudicator may decide in favor of the Appellant. If you have a good reason for being unable to attend on the date given, you can ask the Court for an Adjournment, in which the adjudicator orders that the hearing be held on an alternative date.
- You may bring evidence, documents, and witnesses to the hearing to support your position.
- Additional information on evidence/filing deadlines is provided in your Notice of Court date.

Helpful Resources:

Dalhousie Legal Aid Service: Provided free legal information and assistance with residential tenancy appeals for qualifying low-income individuals.

Dalhousie Legal Aid Service
500-5991 Spring Garden Road

Halifax, NS B3H 1Y6

Phone: 902-423-8105, email: legalaids@dal.ca

Legal Information Society of Nova Scotia: Offers legal resources, guides on the Small Claims Court Process, and a lawyers referral service.

[Welcome to our Preparing for Small Claims Court App - Legal Information Society of Nova Scotia](#)