Dispute Resolution – Compiling Evidence

TRAC
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Evidence should be:

Relevant
Is it necessary, appropriate, or relevant to the issue the arbitrator is deciding on?

Organized
Ideally compiled into a single document with numbered pages and an index.[1]

Complete
Represents the events accurately and fairly, without important information missing.

Consistent
Make sure the arbitrator and landlord receive identical evidence.

What you can use as evidence:

Not all are required.

- **Live testimony** during the hearing.
- **Documents** related to the tenancy such as tenancy agreements, RTB forms, or other formal notices.
- Records of **communication with your landlord**, including texts, emails, notes from in-person or phone conversations, etc.
- **Digital evidence** such as photos, videos, audio recordings, etc.
- **Receipts and estimates** for monetary compensation claims, submitted with RTB-37 "Monetary Order Worksheet".
- **Case law and precedents** such as decisions from the Residential Tenancy Branch (RTB), Supreme Court of BC, and BC Court of Appeal.[2]

The **burden of proof** is generally on the applicant who is making the claim. HOWEVER, when a tenant challenges an eviction notice, the burden of proof is on the landlord.

When submitting digital evidence, remember to:

- ☐ Confirm your landlord can access the evidence.
- ☐ Submit RTB Form 43 "Digital Evidence Details."
- ☐ Share the evidence using a USB, CD, etc., and ensure the file isn't too large.[3]

Spoken and Written Testimony

You or a witness can provide live spoken testimony, in addition to your documentary evidence, during the hearing. This is generally considered to be strong evidence.

If your witness is unable to attend your hearing, you can ask them to give their testimony beforehand and submit it as evidence. This could be through a sworn affidavit or a signed statement with the witness' contact information.

Monetary Order Worksheet

If you're applying for a monetary order, you need to have enough evidence to prove:

- ☐ Your landlord did not follow the law or the tenancy agreement,
- ☐ You suffered loss as a result,
- ☐ The cost or value of the loss, and
- ☐ You acted reasonably to minimize your loss.[4]

For all monetary claims, you also need to complete and submit form RTB-37 "Monetary Order Worksheet."

Key Legal Principles

These principles are used by arbitrators to judge evidence and can impact the outcome of your RTB dispute.

Express Waiver: The tenant and landlord agree to give up a specific right.

For example, they both agree in writing to cancel an eviction notice.

Implied Waiver: The tenant or landlord gives up a right through their actions.

For example, if a landlord keeps accepting rent after giving an eviction notice, it may suggest they are allowing the tenant to stay.

Estoppel: A person can't go back on something they agreed to, either verbally or through their actions, if another person relied on that promise.

For example, if a landlord keeps accepting rent after an Arbitrator upheld their eviction notice, it may suggest that they are allowing the tenancy to continue.

TRAC receives ongoing support from:

Department of Justice Canada | Ministère de la Justice Canada

English

For More Information

1 See the "Index of Evidence Template" on TRAC's webpage, "Preparing for a Hearing."
2 Generally, the more similar the facts from the previous decision are to your case, the more useful.
3 See Rule 3.10.4 in the RTB Rules of Procedure.
4 See RTB Policy Guideline 16 for more information on compensation for loss.