

Section 109 Rules

Residential Tenancies Board

Dispute Resolution Procedure

These rules are made by the Residential Tenancies Board (the RTB) under section 109 of the Residential Tenancies Act 2004 – (as amended) (the Act) and are subject to the provisions of the Act. They may be amended at any time by the Board with the consent of the Minister and they supersede any previous such rules pursuant to Section 109 as adopted by the Board. The Board will process disputes referred to it in accordance with the provisions contained in Part 6 of the Act. For the purposes of the Rules below, RTB management refers to the RTB Director or an Assistant Director.

Applying for Dispute Resolution

1. A referral of a dispute to the Board should be made on an application form, the format of which will be determined by the Board on the advice of the RTB management. This format may be amended from time to time as determined by the Board. The referral of a dispute may also be made on-line through the RTB's website.
2. The Board authorises RTB management to inform applicants that their dispute cannot be processed until the respondent's current address is available to the RTB, which information may be supplied by the dispute applicant. RTB staff may also take reasonable steps to obtain the respondent's address. If a party's application is incomplete, the Board may decide not to proceed with the case.
3. The Board shall not deal with a dispute if the specified fee has not been paid. For the avoidance of doubt, in order for the application to be valid, the referral of the dispute and payment of the relevant fee must be made within the relevant time periods as set out in the Act. Mediation can only take place where both parties agree to enter into the process. No fee is payable for mediation. A dispute referral on a paper application form requesting adjudication shall be accompanied by a fee of €25 and an on-line dispute referral shall be accompanied by a fee of €15, or such fees as are determined from time to time by the Board, with the consent of the Minister.

Type of Application	Type of Resolution	Fees
Online / Paper	Mediation	No fee
Online	Adjudication	€15
Paper	Adjudication	€25

4. The Board may, on application, extend a time limit for referral of a dispute to the Board. For an extension of time to be granted by the Board, the referring party must set out sufficient good grounds as to why an extension of time is warranted, for instance, cases of ill health supported by medical evidence. In accordance with section 88(4) of the Act, a decision of the Board 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 Board's decision to extend or to refuse to extend the time limit concerned.
5. In accordance with section 84(5) of the Act, a decision by the Board to deal or not to deal with a dispute, arising from a submission made to it in response to a section 84 notification 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 Board's decision in response to the submission.

Interim measures pending adjudication or mediation

6. Requests received for an application to be made to the Circuit Court for interim or interlocutory relief in accordance with section 189 of the Act may be referred to the Section 189 Committee of the Board for decision and if a decision to make an application is taken, the RTB will act as expeditiously as possible in so doing.
7. Applications by parties for the adjournment or deferral of adjudication, mediation or a Tribunal hearing to another date may only be considered in very limited and exceptional circumstances and in accordance with the principles of due process. The RTB must be notified as soon as possible of any such application. Parties may in all cases nominate a representative to attend a hearing in their place and/or submit a written statement for consideration by the adjudicator/mediator or Tribunal at the hearing. In consideration of any adjournment application, the applicant may also be required to provide vouching documentation to verify substantive reasons for their non-availability on the scheduled hearing date.
8. The Board may delegate authority to members of RTB management to prioritise certain categories of cases for early hearing.
9. The Board may delegate authority to RTB management to arrange for certain cases to be addressed by means of a paper based adjudication process instead of an oral hearing, or for mediations to be conducted by telephone.

Circulation of evidence

10. The RTB will, where possible, circulate in advance of a hearing, all evidence submitted by a party in relation to a Dispute to the other party / parties involved and to the adjudicator / mediator / Tribunal, in the interests of fair procedures. Parties are responsible for obscuring confidential personal information e.g. bank account numbers, by way of making appropriate redactions to documents prior to submitting them to the Board.

11. RTB management may specify and the adjudicator, mediator or Tribunal may enforce certain deadlines to be complied with by parties in submitting documentation and other evidence e.g. photographic evidence for consideration at RTB hearings or at paper based adjudication. These deadlines are required to provide a reasonable time for the RTB to circulate the documentation to the other party / parties and the adjudicator / mediator / Tribunal for consideration in advance of a hearing. These submission deadlines will be specified in notification to the parties from RTB staff and documentation may not be accepted for circulation after these deadlines have passed. The current timeframe for submissions, other than in exceptional circumstances, is 5 days prior to the hearing. Documents received outside of the time limit will, where possible, be circulated to the other side; however, it will be at the discretion of the Adjudicator or Tribunal whether to allow the admission of such documentation into evidence, having regard to the views of both parties whilst ensuring due process and fair procedures. Original documentation and other original evidence should be retained by the Party and be made available at the adjudication or Tribunal hearing.
12. The circulation of material by the RTB is an administrative function. The admissibility of all evidence, its probative value and the weight given to such evidence are at the exclusive discretion of the adjudicator or Tribunal in accordance with the general rules of evidence and the requirements of due process.

Attendance at Hearings

13. Either party may be represented by an agent e.g. solicitor or letting agent during a dispute case. An agent must provide the RTB with the name and address of the party they represent.
14. An Adjudicator may proceed with an Adjudication hearing in the absence of the Applicant party in circumstances where express instructions to proceed with the hearing in his/her absence have been given by the Applicant party, or where the Adjudicator, in his or her absolute discretion, deems the Applicant's written application and/or submissions sufficient to determine the Dispute, up to and including a decision that the Applicant's claim is not upheld. If an Applicant party has not attended at the Adjudication hearing, and express instructions to proceed with the hearing in their absence have not been received by the Board, or the Adjudicator does not deem the Applicant's written application or submissions sufficient to determine the Dispute, the Adjudicator may deem the application to be abandoned. A party may appeal any such decision to a Tribunal. An Adjudication hearing may proceed in circumstances where the Respondent party is not in attendance.

Referral of Dispute from Mediation to Tribunal

15. A party to mediation that is not satisfied with the agreement reached may, within 10 days of an agreement being reached at a mediation referred to in section 95 and 96 of the Act, as amended, request in writing the referral of the dispute to a Tenancy

Tribunal. The accompanying fee for a paper referral is €100 and on-line is €85 (effective date subject to Ministerial approval) or such fee as is determined from time to time by the Board.

16. Where no agreement is reached at mediation, either party may, within 10 days of the final mediation session, request the referral of the dispute to a Tenancy Tribunal. The accompanying fee for a written request for referral is €100 and on-line is €85 (effective date subject to Ministerial approval) or such fees as are determined from time to time by the Board.

Appeal from Adjudication

17. A party to adjudication may, within 10 working days of the receipt of the report and the statement referred to in section 99(4) of the Act, appeal the decision of an adjudicator to a Tenancy Tribunal. The accompanying fee for an appeal in writing is €100 and for an on-line appeal is €85 (effective date subject to Ministerial approval) or such fees as are determined from time to time by the Board. Appeal forms are available to download on the RTB website and hard copies are available upon request from the RTB call centre at 0818 30 30 37. Completed appeal forms, whether written or on-line should set out the grounds for the appeal. The Board may, on application, extend the time limit for referral of an appeal to a Tribunal. For an extension of time to be granted by the Board, the referring party must set out sufficient good grounds as to why an extension of time is warranted.
18. The date the adjudication report is delivered to a party's address is deemed to be Day 1 of the 10 working day appeal period. An Appeal in writing of the adjudicator's decision must be signed, dated and either emailed, posted or hand delivered to the RTB on or within that 10 working day period. A Certificate of Postage, which is freely available from post offices at the time of posting, will be required in the event that the post date is unclear on the envelope in order to prove that the appeal was posted in time.
19. Where an agreement is reached at adjudication the 'cooling off' period is 10 days from the date the agreement was made. That 10 day period is also inclusive of Sundays and Bank Holidays. If the RTB is notified within that 10 day period that the agreement reached by the parties no longer stands, then the adjudicator will make a decision on the basis of the evidence submitted and presented. In those circumstances the adjudicator's report will issue to the parties and the time periods set out at 17 & 18 above will apply.
20. An Post's Track and Trace service will be used to determine the date the adjudication report has been delivered to parties. The onus is on parties to ensure the appeal application, including the fee, is received by the RTB within the permitted period. The Board may, on application, extend a time limit for referral of a dispute to the Board. For an extension of time to be granted by the Board, the referring party must set out sufficient "good grounds" as to why an extension of time is warranted.

Determination of Mediator or Adjudicator

21. The Board shall, at the next meeting of the Board, or as soon as practicable thereafter, after the expiry of the time limit for appealing the adjudicator's determination or the cooling off period for the mediated agreement or an agreement reached during an adjudication (if no referral has been made or if any referral has been withdrawn) make a determination order under section 121 of the Act.
22. Agreements reached at Mediation and reports arising from Adjudication hearings are confidential between the parties in dispute and will not be published on the RTB's website. The Board will however publish the Determination Order arising from an adjudication hearing under Section 121 of the Act on its website and elsewhere as it sees fit.

Tribunal

23. Where the RTB approves an appeal from adjudication, or a referral from mediation, a Tenancy Tribunal shall, as soon as practicable after being established, set the date for a hearing of a dispute that is referred to it. This Tribunal will be a full re-hearing of all the matters in dispute (i.e. a hearing *de novo*). The parties may, by consent, agree to limit the hearing to specific matters in dispute between them. Matters that have arisen since the hearing/mediation 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 Tribunal.
24. The notice period for a Tribunal hearing shall be 21 days beginning on the date of the giving of the notice. The Board has discretion to reduce the duration of the notice from 21 days if one or more parties requests the Board to specify such a lesser period and the other party or parties consent, or on the grounds of alleged financial or other hardship, or on the grounds of an imminent danger of death, serious injury or imminent danger to the fabric of the dwelling.
25. All parties to the Tribunal will be issued with the Tribunal Procedures in advance of the hearing, the format of which will be determined by the Board on the advice of the RTB management. These Procedures may be amended from time to time as determined by the Board.
26. Where an appeal has been received and the appellant is no longer at the address provided and has failed to inform the Board of any new contact address, the Board may deem the appeal to be abandoned and make an Order in line with the adjudicator's determination.
27. Where an appellant fails to attend before the Tribunal in circumstances where the appeal has not been withdrawn and the Tribunal is satisfied that there appears to be

no material reason for such non-attendance, the Tribunal may deem the appeal to have been abandoned, by virtue of the non-attendance of the Appellant at the Tribunal hearing. Likewise, the Tribunal is entitled to proceed to hear and determine disputes notwithstanding that one of the parties may not be in attendance at the hearing. This will depend on the circumstances of each individual case and is a matter to be determined at the discretion of the Tribunal.

Decision of Tribunal

28. The Tribunal shall, as soon as practicable after completing its deliberations, make and notify to the Board its determination in relation to that dispute.
29. The Board shall, at the next meeting of the Board, or as soon as practicable thereafter, after receipt of the determination of a Tribunal, make a determination order under section 121 of the Act.
30. The Board will publish the Tribunal reports and determination orders under Section 121 on its website and elsewhere as it sees fit.

Enforcement

31. There is no legal obligation on the Board to enforce a Determination Order. It is a matter for the party in whose favour the Order was made to pursue enforcement in accordance with section 124 of the Act. Where a party is seeking to enforce an Order the Courts, the Board will provide the party with a Manual to assist them in taking enforcement proceedings. The Board will also provide a copy of all relevant notices served on the other party and the proof of service on the other party.
32. Where a party requests that the Board pursue compliance with the Determination Order on their behalf, the Board will consider each request on a case by case basis, in accordance with its published policy on enforcement. If the Board agrees to enforce on a parties' behalf, it will take all necessary steps up to and including registering the Court judgement. Where a tenant remains on in the rented dwelling despite an Order to vacate, the Board will take the necessary steps to have all parties removed from the dwelling by the Sheriff.

The requesting party will be required to complete:

- a formal Enforcement Request Form;
 - a Statement of Means;
 - a Form of Undertaking that they will co-operate with the enforcement case and if required, testify in Court in support of the non-compliance.
33. The requesting party is responsible for updating the Board on any changes regarding the facts of the case as initially referred to the Board.

If the party requesting enforcement withdraws co-operation and/or fails to testify in support of the proceedings in breach of their undertaking, the Board may seek to recover the costs of the proceedings incurred to that point from that party.

34. The RTB reserves the right to accept a realistic settlement proposal instead of proceedings to Court where the proposal is deemed to be a better option taking all the circumstances of the case into consideration.

Catriona Walsh

Chairperson

Residential Tenancies Board

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