

## HOW TO PREPARE FOR A RENTAL BOARD HEARING

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### Introduction

You have filed an application at the *Régie du logement*, or you have received a copy of an application. Whether you are the applicant or the defendant, it is important to prepare yourself for the hearing and leave nothing to chance. The defendant has no written procedure to file at the Régie du logement, but it does not mean that he has nothing to do before the hearing. The present leaflet is a guide for the applicant and the defendant.

### Serving the application

The party against whom the action is being taken must know the grounds and the object of the application in order to be able to prepare his response at the hearing.

The **applicant must**, as soon as possible after filing the application, **serve a copy** on the other party (défendant). The applicant has the **responsibility to prove**, at the hearing and to the satisfaction of the commissioner, **that the other party received a copy of the application**.

The applicant may serve the application by :

- Registered mail,
- Bailiff,
- Hand (person to person) .

### Registered Mail

Since January 1st, 1999, there are three methods to prove the other party received a copy of the application.

1. **Internet**

On Canada Post Web site (<http://www.postescanada.ca>), you will obtain a confirmation of the sending and delivery dates.

2. **FAX**

By telephone request at Canada Post (1-800-267-1155) , you will obtain, by fax, a confirmation of the sending and delivery dates.

**It is important to note that these means are free, but they do not permit to know the name of the person who signed for the reception. Therefore, if at the hearing the proof of the reception is contested, the commissioner may require the proof of it by the signature confirmation.**

3. **SIGNATURE CONFIRMATION**

If the signature of the person who signed for the reception is required, it can be obtained by telephone request at Canada Post. Canada Post will send, within 3 working days, a photocopy of the **register on which the signature and the date of the reception of the sending are written down. That information will be sent collect on delivery (C.O.D.) at the cost of 5.00 \$ plus taxes.** (Those costs are subject to change; please contact Canada Post to verify if changes occurred.)

### BAILIFF

The bailiff's *Return of service* constitutes proof that it was received.

## **HAND (person to person)**

If the application is served by hand, the confirmation of receipt signed by the addressee, or the testimony of someone who was present when the copy was received by the addressee, may constitute proof that it was received

The applicant may also use any other methods that will allow him to prove that the application was received.

However, regardless of the method used, if the commissioner is not satisfied with the proof presented at the hearing by the applicant to the effect that the other party received a copy of the application, he may request that the proof be completed or order that it be served again.

If the applicant is unsuccessful in serving an application by any of these methods (e.g., the application is sent back to him by return mail), a commissioner may at any time and upon request, authorize another methods to serve it. If this occurs, you should contact one of the Régie's offices **immediately**.

## **COSTS OF SERVING**

If the applicant wants the defendant to be condemned to reimburse the costs of serving the application, he must give to the commissioner the receipt from Canada Post or the bill of the bailiff to prove he paid those costs. **However, the commissioner has discretion to grant or not those costs.**

## **AMENDMENTS**

The applicant may, without charge, complete or modify the application by an amendment. This amendment must be **filed** and **served** on the other party **before the hearing**. You must submit to the commissioner, at the beginning of the hearing, proof that your amendment was served.

If an amendment **adds a new party**, a **copy of the original application** must also be **served on the new party**.

Please note that **a commissioner may, during the hearing and in the presence of the other party, accept a verbal amendment.**

## **MANDATES**

If, for a serious reason, you are unable to attend the hearing, you may mandate someone else to represent you.

**Who may represent you?** A lawyer, your spouse, a relative, an in-law (e.g., brother-in-law, or sister-in-law) or, if need be, a friend.

A corporation or cooperative may be represented by an officer, a director, an employee exclusively employed by it, or a lawyer.

If the application only concerns a claim of \$7,000 <sup>1</sup> or less, a lawyer cannot represent you.

**How do you give a mandate?** Unless you are represented by a lawyer or your spouse, the mandate must be in writing, signed by you, and must indicate the reasons for your absence. The person to whom you give the mandate must agree to represent you

without being paid to do so.

Except for lawyers, the mandatary of a corporation or cooperative must be authorized to act by a resolution of the Board of Directors.

**The role of the mandatary.** At the hearing, your mandatary acts in your name. He must have first-hand knowledge of the facts or, barring that, be in a position to prove the facts through witnesses or otherwise, as you would have done.

## **POSTPONEMENTS**

You may obtain a postponement of the hearing to a later date by filing the written consent of the other party.

Barring that, you or your mandatary may request a postponement in writing, or verbally at the hearing. **In this instance, the request for postponement is not granted automatically. It is the commissioner's responsibility to decide whether it is justified given the circumstances of the case.**

However, to avoid unnecessary costs, you should give the other party a copy of your letter or inform him that you or your mandatary will ask for a postponement at the hearing.

## **AGREEMENTS BEFORE THE HEARING**

If, before the hearing takes place, you reach an agreement, the Régie will close the case upon the filing of a copy of the agreement signed by the parties. However, should the applicant require it in writing, the case will be suspended. Thereafter, the case will only be placed on the roll upon the written request of one of the parties.

## **PROOF**

Read carefully the application and its amendments, if any. In it, you will find all the elements you will have to prove or refute during the hearing.

The applicant must prove each allegation in the application by means of documents and testimony.

In the same way, the application informs the other party of the elements that he must admit, clarify or refute, through documents and testimony.

*However, the person claiming to have fulfilled his obligation must prove it (e.g., a tenant who claims that he paid his rent must prove this; the landlord who claims that he did repairs must prove it).*

The law establishes the rules about how evidence can be given before the Régie, and the commissioner must apply these rules.

## **Proof to present at the hearing**

Besides the proof of the serving, in all cases, you must produce :

- the lease and subsequent notices of modification ;
- the mandate, if any.

And, depending on the nature of the application, the following are additional pieces of evidence you may need.

## Documents

**N.B.** When you send documents to the other party, you must keep the proof that they were sent and received and bring you must produce this at the hearing.

- Notices required by law (e.g., *Notice of Modification to the conditions of the Lease*, *Notice of Repossession*);
- the formal notice;
- correspondance;
- the new tenant's lease after, for example, the former tenant abandoned the premises;
- proof of advertising (newspaper clippings and corresponding invoices);
- invoices and proof of payment;
- photographs;
- temperature and humidity-level readings;
- all other useful documents.

If there is something in writing that you want to use as proof, you must produce it at the hearing.

**N.B.** : Petitions are only admissible if the signatories are present at the hearing.

## Witnesses

To ensure the presence of a witness, you must, at your own expense, **have a bailiff serve him, at least 3 days before the date of the hearing**, with an *Order to Appear* issued by a commissioner of the *Régie du logement*. A commissioner may reduce this time limit.

The witness must have first-hand knowledge of the facts. Having been told that facts occurred or that something was said proves neither the facts nor what was said. Only the person having first-hand knowledge of the facts, or who participated in or was present during a conversation, may testify about it.

Depending on the nature of the application, you may require the testimony of an estimator, expert or inspector. **Such witnesses must be present at the hearing in order to present their estimation**, expertise or report. Do not forget to summon the person who signed the document (the signatory) with an *Order to Appear* as soon as you receive the Notice of hearing.

## Written testimony

If the other party agrees, a written declaration may replace personal testimony at the hearing.

If the other party does not agree, the commissioner may, in exceptional circumstances, accept the written testimony of a person who is not present. The party wishing to obtain such an authorization must so advise the other party or give him a copy as early as possible before the hearing unless the commissioner decides otherwise.

The commissioner will only accept the document if it is demonstrated that it is impossible

for the witness to appear or unreasonable to require it, and that the declaration was made under circumstances that reasonably guarantee its accuracy.

It must be absolutely impossible for a witness to appear (e.g., a deceased witness or one living out of the province). Simple difficulties, such as the witness not wishing to appear, the witness expressing fear or the witness having to work the day of the hearing, are not sufficient.

In certain cases, the law allows a report to be presented even if the author is not present. These cases involve reports from certain municipal and provincial inspectors.

Remember that these are exceptional cases and that, as a general rule, witnesses must appear.

## **THE HEARING**

As soon as you receive the Notice of Hearing from the Régie, make sure that you :

- read the application carefully;
- (for the applicant) have on hand proof that the application and amendments, if any, were served;
- gather all the documents you need to prove your case;
- clearly identify your documents and place them in chronological order, to avoid to search for them at the hearing. This way will avoid everybody losing time, not only to the persons attending the same hearing as you, but also to the persons waiting for their own hearing.
- identify the witnesses you will need at the hearing and, if necessary, have them summoned by order of the Régie.

You must arrive at the time stated on the Notice of Hearing.

The parties and those attending the hearing must behave respectfully and be suitably dressed.

In almost all cases, the hearing is recorded.

At the beginning of the hearing, the parties must identify themselves and take a solemn oath to tell the truth.

Then the applicant presents his proof first and subsequently the other party presents his. Each party has the right to question the witnesses.

Throughout the hearing, the commissioner assists each of the parties in a fair and impartial manner.

**The hearing must deal exclusively with the contents of the application and its amendments. The commissioner may refuse to hear a witness or accept a written document if he decides it is not pertinent to the case.**

**In rendering his decision , the commissioner may take into account only the evidence presented at the hearing.**

**N.B. If you have produced the originals of documents as proof at your hearing before the Régie du logement, it would be recommended to recover them when the decision is rendered.**

## **Warning**

The contents of this brochure are for information purposes only and not intended to substitute for the legislation.

## **The Decision**

Depending on the nature of the application, a decision may be appealed with the permission of a judge of the *Court of Québec* or be reviewed by the *Régie du logement*.

In certain cases, no appeal is possible (e.g., a decision regarding an application having as its sole object the recovery of a sum of money of \$7,000 <sup>1</sup> or less). Under certain circumstances, a revocation is possible. Consult the Régie if you need further information.

## **Where to go to have a decision of the Régie executed? :**

When executable, a decision of the Régie can be executed after having been registered at the office of the *Court of Québec* that will issue a writ of execution. You must bring to the office of the court a certified copy of the decision.

Once the writ of execution issued, a bailiff may proceed with the execution of the decision.

The procedures of execution are not performed by the Régie but by the applicant and at his own expenses.