

Chapter 9

Office of Residential Tenancies—Adjudicating Tenancy Disputes

1.0 MAIN POINTS

The Office of Residential Tenancies (ORT) is responsible for adjudicating disputes between landlords and tenants. When parties are unable to reach their own solution, either party can apply to the ORT to make rulings and settle the dispute. When asked, the ORT often adjudicates the dispute by holding hearings.

For the nine months ending December 2020, the ORT received over 2,500 applications (2019–20: 6,076) and held over 2,000 hearings. Typically, the majority of the applications are for urgent situations such as those involving eviction, where tenants have not paid rent or rent is in arrears, and where rental property is not properly repaired/maintained (e.g., mice or bug infestations).

At December 2020, the ORT had generally effective processes to provide timely adjudication of disputes to eligible landlords and tenants with improvements needed in the following two areas. The ORT needs to:

- Set out clear guidance (including examples) about what constitutes a conflict of interest for hearing officers. The ORT contracts over 20 lawyers to act as hearing officers and issue hearing decisions.

Clear guidance on conflict of interest will help hearing officers take a consistent approach to identifying and declaring conflicts, and reduce the risk of hearing officers not declaring conflicts of interest. It also reduces the risk of bias, either real or perceived, in hearing decisions issued.

- Promptly follow up when hearing officers have not submitted decisions within two days after the hearing, and document reasons for significant delays in issuing decisions. The ORT issued 17 percent of the 2,488 hearing decisions in 2020 later than its new target of two days. In one instance, it issued a decision 353 business days after the hearing was held.

Following up promptly, and documenting reasons for delays in issuing hearing decisions will help ensure tenancy disputes do not remain unresolved for long periods. Having tenants and landlords wait for a decision can potentially cause undue hardship for extensive periods of time.

Having an effective adjudication process helps ensure landlords and tenants have their disputes handled fairly and impartially. It also reduces the risk that tenants remain in unsafe living conditions or landlords enduring undue financial burden for long periods.



2.0 INTRODUCTION

This chapter reports the results of our audit of the Office of the Residential Tenancies' processes to provide timely adjudication of disputes to eligible landlords and tenants.

2.1 Background—Office of the Residential Tenancies

The Office of Residential Tenancies resides within the Ministry of Justice and Attorney General. Under *The Residential Tenancies Act, 2006*, it is responsible for administering the Act including:¹

- Providing information to landlords and tenants about their rights and obligations.
- Encouraging landlords and tenants to use information about their rights and responsibilities to resolve problems directly.
- Adjudicating disputes between landlords and tenants when they are unable to find their own solutions.² Eligible disputes may relate to issues such as eviction, unpaid rent, security deposit, and damage. Adjudicating disputes is similar to court proceedings but provides landlords and tenants with a faster, less formal, and less expensive dispute resolution process than seeking a solution through the courts.

The ORT has locations in both Regina and Saskatoon with staff in 18 full-time equivalent positions. Staff includes one Director, three Deputy Directors, and 10 dispute resolution facilitators.³ In addition, the ORT contracts over 20 lawyers to act as hearing officers. The Director is responsible for leading the ORT in delivering adjudication processes.

In 2019-20, the Ministry spent \$1.74 million on the combined operations of the ORT and Provincial Mediation Board (comprised of \$1.27 million of salaries and benefits, and \$0.47 million for goods and services) and plans to spend \$1.67 million in 2020-21.^{4,5,6}

Both landlords and tenants have the right to ask the ORT (e.g., through an application) to make rulings and settle the dispute.⁷ When asked, the ORT adjudicates the disputes by holding hearings.

As **Figure 1** shows, starting 2019-20, the ORT receives significantly fewer applications than previously. In 2019-20, the ORT adjusted its processes to focus more on educating and offering landlord and tenants alternate dispute resolution processes. These adjustments give landlords and tenants ways to resolve their problems directly, and reduce their need to ask the ORT to adjudicate their dispute by holding a hearing.⁸

¹ Ministry of Corrections and Policing, Ministry of Justice and Attorney General, *Annual Report for 2019-20*, p.32.

² Adjudicating is the process to resolve disputes. The Office of the Residential Tenancies refers to the adjudication process as a hearing.

³ Other positions include a quality control analyst, legal research analyst, financial analyst, and a financial assistant.

⁴ The Ministry combines the costs of the Provincial Mediation Board and the Office of the Residential Tenancies. The Provincial Mediation Board works with taxpayers with the goal of resolving disputes over tax arrears and avoiding court proceedings. (*Government of Saskatchewan Public Accounts, Volume 2*, p. 164.)

⁵ Government of Saskatchewan, *Public Accounts, Volume 2*, p. 165.

⁶ Government of Saskatchewan, *2020-21 Budget Estimates June*, p. 97.

⁷ Each party presents the facts of the dispute to an assigned hearing officer. Hearing officers issue written rulings (decisions) under *The Residential Tenancies Act, 2006*.

⁸ Ministry of Corrections and Policing, Ministry of Justice and Attorney General, *Annual Report for 2019-20*, p.33.

Figure 1—Number of Applications for Adjudication Hearings Received by ORT by Fiscal Year^A

	2015–16	2016–17	2017–18	2018–19	2019–20	April 1, 2020 to December 31, 2020 ^B
From Landlords	6,813	6,876	6,800	6,995	5,240	2,301
From Tenants	1,662	1,460	1,613	1,361	836	351
Total	8,475	8,336	8,413	8,356	6,076	2,652

Source: Adapted from the Ministry of Corrections and Policing, Ministry of Justice and Attorney General, *Annual Report for 2019-20*, p.33.

^A This includes applications for rulings under *The Condominium Property Act, 1993* and *The Co-operative Act, 1996*.

^B From March 26, 2020 to August 4, 2020, due to the COVID-19 pandemic, the ORT did not accept applications for non-urgent claims due to direction from the Ministry of Justice and Attorney General.

Since the ORT started tracking the number of hearings in April 2020, approximately 75 percent of applications result in hearings.

2.2 Risks Associated With Unfair Adjudication Processes

During adjudications, landlords and tenants expect a fair process, fair treatment, and a fair outcome.

Situations where either party breaches the terms of a tenancy agreement, and landlords and tenants are unable to reach their own solution supports the need for an impartial, transparent, and effective adjudication process.⁹

Without an impartial adjudication process, the ORT may not be seen as credible or as handling disputes fairly.

Inefficiencies in the dispute resolution process may prolong decisions. Delays in resolving urgent disputes may compromise the health and safety of tenants. For example, tenants could remain in unsafe living conditions (e.g., bed bugs).

Moreover, without an effective adjudication process, landlords may endure undue financial burden (e.g., unpaid rent, damages to property).

3.0 AUDIT CONCLUSION

We concluded, for the 12-month period ended December 31, 2020, the Office of Residential Tenancies had, other than in the following areas, effective processes to provide timely adjudication of disputes to eligible landlords and tenants.

The Office of Residential Tenancies needs to:

- **Promptly and consistently follow up when hearing officers have not submitted decisions within two days after the hearing**

⁹ *The Residential Tenancies Act, 2006* (s.19 (1) (a)), and *The Residential Tenancies Regulations, 2007* set out standard conditions of any tenancy agreement in Saskatchewan.



- **Document reasons for significant delays in issuing decisions from hearings to landlords and tenants**
- **Set out clear guidance (including examples) about what constitutes a conflict of interest for hearing officers**

Figure 2—Audit Objective, Criteria, and Approach

Audit Objective: To assess the effectiveness of the Office of Residential Tenancies' processes, for the 12-month period ending December 31, 2020 to provide timely adjudication of disputes to eligible landlords and tenants.

Audit Criteria:

Processes to:

1. **Set adjudication framework**
 - Set policies and procedures for delivering appropriate adjudications that align with good practice and legislation
 - Provide ready access to information in clear language on adjudications (e.g., who qualifies, how to apply, standard forms, hearing process, appeal process)
 - Use qualified staff to handle applications
2. **Conduct impartial hearings**
 - Confirm completeness of applications
 - Prioritize the timing of hearings for complete applications (i.e., urgent, non-urgent)
 - Assign applications to unbiased hearing officers
 - Schedule appropriate hearings format (e.g., written, oral) based on priority
 - Provide notice of hearing to all relevant parties
 - Carry out hearings
 - Issue timely and comprehensive decisions (rulings)
3. **Monitor performance of the adjudication process**
 - Manage non-compliance with rulings
 - Respond to complaints
 - Analyze key performance information (e.g., timeliness of hearings, satisfaction with process, number of appeals)
 - Periodically report key performance information to senior management and the public

Audit Approach:

To conduct this audit, we followed the standards for assurance engagements published in the *CPA Canada Handbook—Assurance* (CSAE 3001). To evaluate the ORT's processes, we used the above criteria based on related work, reviews of literature, and consultations with management. The ORT agreed with the above criteria.

We examined the ORT's policies, procedures, IT system, reports, and other records relating to providing timely adjudication of disputes to eligible landlords and tenants. We interviewed key ORT staff responsible for adjudicating disputes. We tested a sample of applications received by the ORT, decisions issued by the ORT, appeals of decisions, and complaints. We also observed a hearing. In addition, we conducted data analytics on the data in the ORT's IT system. Our primary source of good practice was Ombudsman Saskatchewan, *Practice Essentials for Administrative Tribunals*.

4.0 KEY FINDINGS AND RECOMMENDATIONS

4.1 Well-Defined Rules and Procedures in Place

The ORT maintains up-to-date and clear written rules and procedures about handling applications and adjudicating disputes between landlords and tenants.

We found the ORT's *Business Process Manual* describes procedures about the adjudication process clearly and in sufficient detail. For example, it includes guidance about reviewing an application, handling incorrect/outdated application forms, seeking missing information from applications, entering applications into its IT system, uploading evidence,

scheduling hearings, and issuing hearing decisions. It makes this Manual readily accessible to staff involved in reviewing applications and scheduling hearings.

The ORT website makes the *ORT Rules of Procedure* available to staff and the public.^{10,11} We found this document describes procedures for resolving disputes between landlords and tenants in a clear and understandable manner. For example, it includes rules for filing an application, scheduling a hearing, serving a hearing notice and receiving evidence, conducting a hearing, issuing decisions following a hearing, appealing decisions, clarifying and enforcing decisions, and publishing hearing decisions.

The ORT keeps these rules and procedure documents up to date. We found both documents were updated within the last year.

We also found the rules and procedure documents consistent with legislation (i.e., *The Residential Tenancies Act, 2006* and regulations) and good practice.¹²

To remain aware of national practices, the ORT staff attend quarterly meetings with other provinces. We found it uses these meetings to share experiences and processes on adjudicating disputes (e.g., effectiveness of telephone hearings, impact of the COVID-19 pandemic eviction moratoriums).

In July 2020, the ORT compared its legislation and key adjudication processes to those of other provinces and territories. Its comparison included legislated timelines, front counter processes (e.g., accepting applications), decision issuance timelines, and timelines for accepting appeals.

We found the ORT's processes for adjudicating disputes between landlords and tenants are in line with other provinces. In addition, the ORT's target timelines (e.g., timelines for issuing decisions and accepting appeals on decisions) are in line with, or better than other provinces (see **Figure 13** in **Section 4.15**).

Having clearly written and up-to-date rules and procedures documents helps ensure the ORT staff responsible for handling applications and adjudicating disputes between landlords and tenants have a clear understanding of expected processes for providing fair adjudication.

4.2 Ready Access to Adjudication Information Provided

The ORT provides the public (e.g., tenants and landlords) with ready access to information on the adjudication process that is clear and easy to understand.

Good practice indicates accessibility as one of the most important parts of governing tribunals. Accessibility increases understandability of the adjudication process and the roles, increasing an individual's confidence in the process.¹³ Use of plain language also increases understandability.

¹⁰ The ORT has 18 staff and contracts with 23 hearing officers.

¹¹ www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/office-of-residential-tenancies/forms-and-publications (18 March 2021).

¹² Our primary source of good practice was Ombudsman Saskatchewan, *Practice Essentials for Administrative Tribunals*. One of the Ombudsman roles is to educate the public about administrative fairness.

¹³ Ombudsman Saskatchewan, *Practice Essentials for Administrative Tribunals*, p. 20.



We found the ORT publishes key information about its adjudication process on its website. As shown in **Figure 3**, the ORT's website includes information to help individuals understand their rights and responsibilities, and the dispute process. We found the information clear, readily accessible, easily understandable, and contains sufficient information to understand the adjudication process.

Figure 3—Information Included on the ORT's Website

- Videos are available in 21 languages. Videos include an introduction to the ORT, information on security deposits, repairs and pests, landlords access to rental properties, landlord and tenant rights and responsibilities, preparing for a hearing, and how to settle disputes directly.
- Standard templates of forms to submit an application for the different types of claims (e.g., tenant application for return of security deposit, landlord application for possession of rental unit).
- *The Residential Tenancies Act, 2006* and annotated version of the act.
- Settling disputes and steps to a hearing (e.g., application process, serving documents to parties, gathering evidence).
- Preparing for a hearing (conduct of the hearing, presenting evidence, testifying in the hearing).
- Decisions following a hearing and enforcing a judgment.
- Dedicated topics to discuss rights and responsibilities regarding security deposits, tenancy agreements, rent increases and tenancy fees, requesting repairs, bed bugs, etc.

Source: Adapted from information provided on the Office of Residential Tenancies website (www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/office-of-residential-tenancies).

The ORT also holds virtual residential tenancies clinics twice a month for anyone to attend.¹⁴ Clinics inform the public of the rights and responsibilities of landlords and tenants. It also provides information on the adjudication process (e.g., preparing for a hearing, issuing decisions). There has been up to 26 people attending a clinic.

Providing the public with clear, accessible, and understandable information on the ORT helps all parties know their roles and responsibilities, and what to expect during the adjudication process. It may also increase the chance of landlords and tenants resolving disputes outside of the adjudication process, thereby reducing the cost of holding a hearing.

4.3 Qualified Personnel Work With Landlords and Tenants

The ORT has qualified personnel to handle applications and to adjudicate disputes between landlords and tenants.

The ORT uses job descriptions to set out qualifications and experience required for staff handling applications. The ORT requires its staff to hold bachelor's degrees (or masters) in any field. We found these job descriptions up-to-date and reflected key qualifications and experience suitable for the assigned responsibilities.

At October 2020, the ORT employed staff in 18 full-time equivalent positions. Of the 18 staff, the ORT employs 10 dispute resolution facilitators that evaluate applications for completeness and schedule hearings.¹⁵ Dispute resolution facilitators also provide information on rights and responsibilities to inquiring landlords and tenants.

¹⁴ Prior to April 2020, the ORT conducted the clinics in person. In August 2020, the ORT began holding the clinics virtually due to the COVID-19 pandemic.

¹⁵ Other key ORT positions include the director, deputy directors, quality control analyst, legal research officer, and financial analyst.

For nine ORT staff we tested, each had a relevant degree (e.g., Bachelor's Degree in Human Justice, Juris Doctor Degree).

The ORT contracts with 23 hearing officers to adjudicate disputes and conduct hearings.¹⁶ The ORT requires hearing officers to hold law degrees and have experience practicing law.

For the six hearing officers we tested, each held a law degree and had sufficient experience practicing law.

Upon hiring or contracting, the ORT provides staff and hearing officers with training materials (e.g., legislation, policies and procedures) augmented with on-the-job training. For example, hearing officers with experience with the ORT are assigned responsibility to mentor new hearing officers.

In addition, the ORT provides dispute resolution facilitators with training opportunities on resolving conflict constructively to better inform landlords and tenants on their rights and responsibilities before the application stage.

We found four current ORT staff participated in a Resolving Conflict Constructively workshop offered by the Government of Saskatchewan between 2017 and 2019. The course covers areas such as conflict resolution, communication, and an interest-based approach to problem solving. The ORT expects other staff to attend the workshop in 2021.

Having qualified staff handling applications and hearing officers adjudicating disputes helps ensure landlords and tenants receive a fair dispute resolution process.

4.4 Applications Accepted and Prioritized

The ORT accepts applications and appropriately prioritizes complete applications based on the urgency and nature of the claims made by the tenant or landlord.

The ORT has clearly assigned responsibilities and well-defined procedures for processing applications (see **Figure 4**). It has assigned these responsibilities to two dispute resolution facilitators.

Figure 4—Brief Description of Procedures to Process Applications for Dispute Resolution

- A tenant or landlord can submit an application in person at the ORT office, by mail, or electronically via email.^A
- Dispute resolution facilitators are to review applications for completeness (e.g., confirm application includes the proper form, contact information, claim type, payment option, case evidence, rental information) within 24 to 48 hours of receipt of the application.
- ORT makes it the responsibility of an applicant to submit the missing information to the ORT. It does not process incomplete applications. Where dispute resolution facilitators find an application is incomplete, they follow up with the applicant on incomplete applications once (e.g., send email requesting missing information).
- The ORT uses a case management IT system to manage the complete applications.
- Dispute resolution facilitators enter all complete applications into the case management IT system, which prioritizes applications based on claim type.

Source: Adapted from Office of Residential Tenancies information.

^A When an application is received via email, the ORT sends an automatic reply email stating the application has been received.

¹⁶ Hearing officers are contracted and paid on a per diem basis (per hearing day).



The ORT uses a case management IT system to track applications and automatically classify the priority of the application based on information included within the application. As shown in **Figure 5**, the ORT classifies claims as either urgent or non-urgent with priority levels.

Figure 5—Classification and Number of Claims Received by the Office of Residential Tenancies

Claim Classification	Priority Level	Examples of Claim Types	Number of Claims Received from January 1, 2020 to December 31, 2020
Urgent	Priority 1	<ul style="list-style-type: none"> ➤ Eviction in serious circumstances ➤ Tenant(s) have not paid rent ➤ Utilities/Rent in arrears ➤ Landlord preventing tenant from getting into rental unit (e.g., changed locks) ➤ Failure to repair or maintain the rental property (e.g., mice or bug infestation) ➤ Landlord seized or disposed of tenant's property 	3,050
	Priority 2	<ul style="list-style-type: none"> ➤ Tenant misconduct (e.g., mischief or destructive behaviour) ➤ Notice for tenant to vacate for landlord to demolish/renovate/repair/convert a unit ➤ Breach to right of quiet enjoyment of the premises ➤ Unlawful entry by the landlord ➤ New or increased charges/unlawful termination of a service of facility ➤ Rent increase without proper notice 	196
	Priority 3	<ul style="list-style-type: none"> ➤ Monetary claim for damages/losses ➤ Excessive security deposit paid ➤ Return of a security deposit ➤ Landlord breached terms of tenancy agreement (e.g., imposed unreasonable rules) 	862
Total			4,108

Source: Adapted from information within case management IT system. From March 26, 2020 to August 4, 2020, due to the COVID-19 pandemic, the ORT did not accept applications for non-urgent claims due to direction from the Ministry of Justice and Attorney General.

Each of the 31 applications we tested were complete and appropriately prioritized and recorded in the case management IT system.

Having complete applications prioritized based on the urgency and nature of the claims helps ensure the ORT responds and schedules hearings based on the needs of the landlords and tenants.

4.5 Case Management Conferences Used As Alternate Way to Resolve Disputes

Since October 2020, the ORT uses case management conferences as an alternate way to help settle some or all of the issues in the dispute before proceeding to a hearing. It uses this process for claims that include damages greater than \$20,000 and/or having a legal representative.

A case management conference is a meeting between all parties with an objective to resolve some or all of the issues in the dispute before proceeding to a hearing. The conference is not a hearing, and the parties cannot use the discussions as evidence at the hearing. ORT requires all parties (i.e., tenants and landlords) attend the conference. One of the ORT's deputy directors presides over a conference and acts as a mediator for the disputing parties.

From October to December 2020, ORT held nine case management conferences. We found one claim was settled at the conference and hence, not requiring a hearing; one claim was adjourned to a later date at the request of the tenant's legal counsel; and three claims were settled prior to the hearing due to the case management conferences (the hearing officer held a hearing to issue a joint-resolution). The remaining four claims discussed at conferences continued to require a hearing. Since this is a relatively new process, the ORT may consider assessing, in the future, the effectiveness of the conferences to determine if the process is having the intended impact (e.g., shorter hearings).

Eight of nine claims tested met the criteria of the claim being for damages greater than \$20,000; and one of the nine claims tested did not. In this case, the Director initially requested a conference due to a party having legal representation. Upon further review by the ORT, it reclassified the application as urgent and held an immediate hearing instead of a conference.

Holding case management conferences for certain claims helps the ORT manage hearings, as hearings may be shorter and simpler due to settlements reached during the conference. As a result, the ORT may be able to schedule more hearings.

4.6 Conflicts of Interest Guidance for Hearing Officers Needed

The ORT does not give hearing officers any guidance on what constitutes a conflict of interest even though it asks them to declare conflicts of interest when being assigned a hearing.

During training provided upon hiring, the ORT informs hearing officers about the requirement to declare any potential conflicts of interest. In advance of all hearings, hearing officers receive a schedule of assigned hearings with the names of parties involved. The ORT expects hearing officers to declare potential conflicts of interest when they receive the schedule.

During the audit, we saw evidence of hearing officers declaring conflicts of interest prior to a hearing. We did not identify any cases of conflicts of interest.

Unlike other jurisdictions, the ORT does not provide hearing officers with any written guidance about, or examples of what constitutes, a conflict of interest. For example, in Ontario, Tribunals Ontario has conflict of interest rules which include detailed examples of what it considers a conflict of interest (e.g., financial interest, personal relationship, professional relationship) for hearing officers.¹⁷

¹⁷ www.tribunalsontario.ca/documents/sjto/Conflict%20of%20Interest%20Rules.html (23 February 2021).



Not having written guidance on what constitutes a conflict of interest increases the risk of hearing officers not declaring conflicts of interest, or taking a consistent approach to identifying and declaring conflicts. This in turn could impact the risk of bias, either real or perceived, in decisions issued.

1. We recommend the Office of Residential Tenancies provide clear written guidance (including examples) about what constitutes a conflict of interest to hearing officers.

4.7 Timely Hearings Scheduled and Held

Generally, the ORT consistently schedules and holds hearings within the targeted timeframes based on their urgency.

The ORT has clearly assigned responsibilities and well-defined procedures for scheduling hearings. It has assigned these responsibilities to two dispute resolution facilitators. They are to use the claim classification from the case management IT system to determine how fast and when to schedule a hearing.

As shown in **Figure 6**, each claim classification includes written target timeframes for scheduling hearings and setting hearing dates. In general, it places a higher priority on scheduling and booking urgent claims.

Figure 6—Written Target Timeframes for Scheduling and Holding Hearings

Action	Claim Classification	Target Timeframe
Hearing Scheduled	Urgent	Within one day of receiving complete application
	Non-Urgent	Within 30-45 days of receiving complete application
Hearing Date	Urgent	Within 30 days of receiving complete application
	Non-Urgent	No set timeline – hearings occur after urgent applications scheduled

Source: Adapted from Office of Residential Tenancies *Rules of Procedures Manual*.

Of the 4,108 claims received between January and December 2020, 74 percent were classified as urgent and 26 percent as non-urgent.

The ORT monitors the timeliness of its conducting of hearings. Between April and December 2020, the ORT held over 2,000 hearings.¹⁸ In 2020, it held urgent hearings within expected timeframes; it generally held non-urgent hearings within three months. See **Figure 7** for comparison of target and actual timeframes.

Figure 7—Comparison of Target and Actual Timeframe of Hearings Held between January 1, 2020 and December 31, 2020

	Target Timeframe	Actual (average)
Time from Application Submission to Hearing Date – Urgent Claims	30 days	16 days
Time from Application Submission to Hearing Date – Non-Urgent Claims	None	82 days

Source: Adapted from information received from the ORT.

¹⁸ The ORT began tracking hearings in April 2020.

For 31 applications tested, 21 were classified as urgent and 10 as non-urgent. Our testing of applications found the COVID-19 pandemic affected the timeliness of ORT scheduling and holding hearings for claims classified as non-urgent. From March 26, 2020 to August 4, 2020, ORT suspended scheduling non-urgent applications. We found other provinces had similar suspensions.¹⁹

For the 31 applications tested, the ORT scheduled 26 hearings within target timelines, and five later than expected target timelines. For those five applications, we found:

- Four urgent applications were scheduled slightly later than expected (three were only one day late, and one was scheduled five days late with a hearing date that was within 30 days of its receipt of the completed application)
- One non-urgent (priority 3) application was scheduled 101 days late as a result of the COVID-19 pandemic, which suspended scheduling non-urgent applications for hearings from March 26, 2020 to August 3, 2020

For each of the 21 applications classified as urgent tested, the ORT held hearings within the expected 30 days of its receipt of a complete application.

For the 10 applications classified as non-urgent tested, we found:

- For two applications, the ORT held hearings within an average of 30 days after its receipt of a complete application.
- For four applications, the ORT held hearings later than 30 days after its receipt of a complete application. It held hearings between 38 and 57 days after its receipt of a complete application.
- For one application, it held a hearing 201 days after its receipt of a complete application. This hearing was delayed because of ORT suspending the scheduling of hearing for non-urgent applications due to the COVID-19 pandemic.
- For two applications, the landlord or tenant requesting a rescheduled hearing date caused delays in hearings. It held hearings for these between 90 and 157 days of receipt of a complete application.
- For one application, it held a hearing 204 days after its receipt of a complete application. This hearing was delayed because the hearing officer adjourned the hearing (the hearing officer determined the tenant did not receive proper notice of hearing, therefore the hearing was adjourned to a later date so the tenant could attend).

The ORT gives hearing officers the authority to adjourn hearings based on their professional judgment. If they decide to adjourn a hearing, the ORT reschedules the hearing to a later date. Landlords or tenants can request to have a hearing rescheduled but must give the ORT evidence (e.g., travel itinerary, doctor appointment) showing their inability to attend a hearing on the scheduled date.

¹⁹ We found other jurisdictions had similar processes on hold (e.g., Alberta implemented a ban on evictions, Manitoba stopped scheduling non-urgent eviction hearings) during the COVID-19 pandemic.



For the applications tested, we found:

- For four applications, the hearing officers adjourned the hearing and had adequate support about reasons for adjournment.
- For another four applications, either the landlord or tenant requested the hearing be rescheduled. The ORT granted three requests (adequate support provided) and denied the other.

Timely scheduling and conducting of hearings helps ensure tenancy issues are resolved efficiently. Scheduling the timing of hearings based on urgency helps reduce undue financial burden, and can hasten the resolution of poor or unsafe living conditions.

4.8 Relevant Information Provided to Carry Out Hearing

Landlords and tenants consistently receive relevant information about the hearing and hearing process sufficiently before the hearing.

The ORT has well-defined procedures about issuing notices about hearings, and receiving evidence. As **Figure 8** describes, it has clearly set out who is responsible for each step (e.g., individual who submitted the application [claimant] must serve notice of hearing to other party), and by when the responsible party must complete each step (e.g., claimant must serve notice within two calendar days prior to the hearing for claims classified as urgent). It requires steps to be carried out faster for urgent claims than for non-urgent (e.g., two calendar days for urgent claims and up to 10 days for non-urgent claims). In addition, if the steps are not carried out as and when it expects, the ORT can cancel the hearing.

Figure 8—Brief Description of Hearing Notice and Receipt of Evidence Process

- The ORT sends (via email or mail, if necessary) a hearing notice package to claimant (i.e., the individual who submitted the application). The package includes a hearing notice (specific to the type of claim), general information about the hearing process (e.g., how the hearing will proceed, how to present evidence), and a Certificate of Service form.
- The ORT makes the claimant responsible for serving the other party (respondent) the hearing notice within deadlines detailed on the hearing notice. The deadline for applications classified as urgent is two calendar days prior to the hearing; and 10 days claims classified prior for non-urgent.
- The ORT allows the claimant to serve the hearing notice to the respondent personally, electronically, or by mail.
- The ORT requires the claimant to submit the completed Certificate of Service form to the ORT within a prescribed timeframe before the hearing (i.e., at least one day for urgent claims, and nine days for non-urgent claims). Completion of the Certificate of Service form certifies that the claimant served the respondent the notice of hearing and any evidence, as well as how (e.g., personal, email, mail, fax) and when (date) it was done. If the claimant fails to submit the Certificate of Service by the deadline, the ORT may cancel the hearing.
- The ORT requires evidence be submitted with the initial application, as well as any subsequent evidence two days in advance of hearing date for urgent claims and ten days in advance for non-urgent claims.

Source: Adapted from Office of Residential Tenancies information.

We found the information included in the standard hearing notice package provided sufficient information about the hearing and the hearing process. We found the hearing notice and submission of evidence processes to be in-line with good practice.

For each of the 31 applications tested, we found:

- The ORT sent the hearing notice package to claimants sufficiently in advance of the hearing date.
 - For the 21 urgent claims tested, it provided the packages 11 days, on average, in advance of the hearing
 - For the 10 non-urgent claims tested, it provided packages 32 days, on average, in advance of the hearing
- The ORT appropriately handled a situation in which for one application a claimant failed to serve the hearing notice to the respondent or submit the completed Certificate of Service form to the ORT by the specified deadlines. In this situation, the claimant claimed to be unaware of these responsibilities, and as a result, the ORT clarified the process, and rescheduled the hearing. Subsequently, the claimant properly served the hearing notice and submitted a completed Certificate of Service by the related deadlines.
- All parties submitted evidence within required timeframes.

Sending hearing notice packages and receiving all the required information (e.g., Certificate of Service form, evidence) within set timeframes allows the ORT to conduct hearings as scheduled and allows for a fair hearing.

4.9 Hearings Conducted Appropriately

The ORT appropriately conducts hearings in a format (i.e., in person, via phone) to meet the needs of the parties involved, and based on the urgency of claim.

The ORT recognizes it is often easier to schedule over-the-phone hearings, and these are often more convenient for landlords and tenants. As such, it only conducts over-the-phone hearings for urgent claims that are immediate possession or involve infestation of pests (e.g., bed bugs). Normally, for hearings of other types of claims, the ORT allows the parties to choose how they wish to attend the hearings—that is either to attend in-person or participate over the phone. The parties are to notify the ORT how they choose to attend the hearing. However, beginning March 26, 2020, due to the COVID-19 pandemic, the ORT conducts all hearings over the phone.²⁰

For the 31 hearings tested, we found all 20 hearings after March 26, 2020 were held over the phone as expected. For the other 11 hearings that the ORT held prior to March 26, 2020, we found all were conducted over the phone. These were comprised of:

- Four hearings for immediate possession claims required to be held over the phone
- Seven hearings conducted via phone as requested by the parties

Conducting hearings in formats that meet the needs of the parties involved increases the likelihood that parties will attend the hearing as scheduled and the ORT will not have to reschedule the hearings to a later date.

²⁰ From March 26, 2020 to August 4, 2020, due to the COVID-19 pandemic, the ORT did not accept applications for non-urgent claims.



4.10 Appropriate Handling of Attendance at Hearings

Attendance of parties is appropriately handled at hearings in line with good practice.

At the time of the hearing, the hearing officer contacts both parties. If claimant does not attend the hearing, the hearing officer dismisses the claim. Whereas if the respondent does not attend, the hearing proceeds as scheduled with the evidence presented, and the hearing officer issuing a decision. We found proceeding without the respondent present to be in line with good practice.

If the party who does not attend is not satisfied with the order (i.e., dismissal or decision), the party can appeal the decision to the Court of Queen's Bench.²¹ The Court of Queen's Bench may then direct the ORT to conduct another hearing on the disputed matter.

Parties are given sufficient notice of the hearing date and are expected to make arrangements to attend the hearings. The appeal process is available for parties who do not attend the hearing.

4.11 Hearing Decisions Not Always Meeting New Timelines and Delay Reasons Not Documented

The ORT does not always make sure hearing officers issue written decisions within a reasonable time, nor document reasons as to why it issues some decisions significantly later than expected.

Once a hearing officer concludes the hearing, the ORT expects the hearing officer to draft a written decision on the claim. All written decisions are to include reasoning behind the decision.

Beginning January 2020, the ORT expects hearing officers to submit to the ORT their written decisions one day after the conclusion of the hearing. The ORT targets to issue a decision to the parties to the claim two days after a hearing is held (prior to January 2020, ORT had target timelines to issue decisions three to four months after the hearing date). To facilitate this quick turnaround, the ORT schedules hearings in the morning to give hearing officers time to write decisions in the afternoon.

We found the ORT target timeframes for issuing hearing decisions within two days after a hearing date is considerably faster than four other provinces and one territory—that average to 34 days.²² The targets ranged between 10 days (Manitoba) and 90 days (Quebec).

Beginning in late March 2020, the ORT began tracking and following up on where it did not receive a decision from a hearing officer within the expected timeframe. Each Monday, the ORT asked, via email, each hearing officer that had not yet submitted decisions to advise it to when they expected to submit the decision, along with the reason why they needed extra time.

²¹ From April to October 2020, the ORT only had 31 out of 1,180 decisions appealed to Court of Queen's Bench. The Court assesses if it will allow or dismiss the appeal.

²² The five jurisdictions include Alberta, Manitoba, Quebec, Nova Scotia, and Nunavut.

Our data analysis of the 2,488 decisions issued in the 2020 calendar year found the ORT most often issues decisions promptly. Only 17 percent (430 decisions) were issued later than its target of two days (see **Figure 9**).

Figure 9—Summary of Decisions Issued from January 1 to December 31, 2020

Business Days Between Hearing and Issuance (# of Days)	Number of Decisions	% of Total Decisions	% of Total Late Decisions
Within 1 day (target)	2,058	82.72 %	
1 day later	153	6.15%	35.58%
2 days later	59	2.37%	13.72%
3 days later	43	1.73%	10.00%
4 days later	33	1.33%	7.67%
5–8 days later	55	2.21%	12.79%
9–20 days later	38	1.53%	8.84%
21–28 days later	9	0.36%	2.09%
29–98 days later	22	0.88%	5.12%
99–198 days later	16	0.64%	3.72%
215 days later	1	0.04%	0.23%
351 days later	1	0.04%	0.23%
Total	2,488	100%	
Total Later than Target	430		100%

Source: Adapted from information received from ORT on decisions issued.

On average, hearing officers submitted decisions in 2020 to the ORT in 2.24 business days after the hearing; and the ORT issued decisions, on average, in 1.19 business days later, for a combined average of 3.40 business days after the hearing (**Figure 10**).

Figure 10—Average Business Days to Issue Decisions in Calendar Year 2020^A

Action	Minimum Number of Business Days	Maximum Number of Business Days	Average Number of Business Days
Submit decision to the ORT	0	352	2.24
Issue decision to parties	0	129	1.19
Hearing to issuance	0	353	3.40

Source: Adapted from information received from ORT on decisions issued.

^A Average business days is total days from the hearing to issuance, including the two day target. **Figure 9** shows lateness after two day target.

However as shown in **Figure 9**, one decision was issued 351 business days later than target timelines (i.e., 353 business days after the hearing was held). The ORT promptly issued this decision one day after receipt of the decision from the hearing officer. The hearing officer did not provide reasonable rationale for the delay in issuing this decision.

We found hearing officers did not always provide ORT with reasons for not submitting a written decision within the target time. For each of the nine decisions we tested that were submitted to the ORT 20 days later than its one-day target, the hearing officers did not give ORT reasons for the delay.



We also found the ORT did not always ask, within a reasonable time, hearing officers to submit late decisions and explain why they needed additional time. For four decisions we tested that were submitted more than 20 days later than its one-day target, the ORT took between 43 and 77 days after the hearing date to follow up with the hearing officers.

Not following up with hearing officers that have not submitted decisions, and documenting reasons for delays increases the risk of significant delays in issuing decisions (e.g., greater than 20 days). Significant delays in issuing decisions increases the risk of tenant and landlord dissatisfaction with the adjudication process and having disputes remain unresolved for long periods of time. It also increases the risk that decisions may no longer be relevant once issued. Having tenants and landlords wait for a decision can potentially cause undue hardship for extensive periods of time.

2. **We recommend the Office of Residential Tenancies document reasons for significant delays in issuing hearing decisions.**
3. **We recommend the Office of Residential Tenancies always follow up promptly with hearing officers when hearing decisions are not submitted when expected.**

4.12 Reported Non-Compliance With Decisions Tracked

The ORT tracks reported non-compliance with hearing decisions issued, and reminds parties of non-compliance.

The ORT issued 2,488 decisions between January 1, 2020 and December 31, 2020.²³ At November 2020, the ORT had 95 landlords and 24 tenants on its non-compliance list.²⁴

The ORT does not proactively enforce its orders or monitor compliance with the decision.²⁵ Rather, to enforce orders, the claimant can register the decision with the Ministry of Justice and Attorney General (i.e., Sheriff's Office). The Sheriff's Office will enforce the order (e.g., remove an evicted party, place liens on property) upon the claimant's request.

To monitor compliance, the ORT relies on the party making a claim with an order to advise it of a non-compliant party, and then requires the non-compliant party to give it evidence (e.g., copy of cheque, e-transfer notification) showing their compliance with the order. In part to induce landlords and tenants to comply, the ORT does not allow non-complying parties to submit additional applications until they show compliance with the order.

The ORT tracks the names of parties (landlords or tenants) reported as not complying with orders issued on its non-compliance list. Only when compliance is proven, the ORT removes the non-compliant party from the list, and notifies them of compliance. That is, the non-compliant party stays on the list until they have shown compliance with the order.

²³ The ORT publishes issued decisions on Canadian Legal Information Institute (CanLII) to provide the public access to those decisions. www.canlii.org (14 April 2021).

²⁴ The non-compliance listing for landlords has non-compliance outstanding dating back to July 2013 and tenants have non-compliance dating back to June 2019.

²⁵ A party has 30 days after a decisions issuance to comply with a hearing decision. After which, the party that made the claim can notify the ORT if the other party has not complied with the decision. Upon receipt of such notification, the ORT reminds the non-complying party in writing and only once of the requirements of the order.

For each of six individuals on the non-compliant list tested, the related file sufficiently showed the party had not complied with the ORT order, and the ORT had properly notified the party of non-compliance.

For each of three individuals removed from the non-compliant list tested, the related file sufficiently showed the party's compliance with the order, and ORT had properly notified them of compliance.

Tracking reported non-compliance, keeping parties informed, and not allowing non-compliant parties to submit further applications helps increase compliance with the order.

4.13 Process to Track and Respond to Complaints Established

The ORT actively tracks and responds to complaints and inquiries about its processes and residential tenancy situations.

An individual wishing to lodge a complaint about an ORT process can contact the ORT via a general inquiries phone line or email, or lodge a complaint with the Ministry of Justice and Attorney General.

Since March 2020, the ORT tracks complaints and inquiries received either directly or by the Ministry of Justice and Attorney General.²⁶ For each complaint/inquiry, the ORT tracks the receipt date, name of individual submitting the complaint/inquiry, the nature, the outcome, and the response date.

To resolve complaints or inquiries, the ORT expects dispute resolution facilitators to contact individuals with complaints via phone or email. They discuss the details of the complaint and give related information to resolve the complaint. Dispute resolution facilitators are to escalate complaints to Deputy Directors and the Director (e.g., senior management), if necessary.

From March 15, 2020 to November 9, 2020 (the date of our testing), the ORT received 222 complaints and inquiries.

Our analysis of the complaints and inquiries found the ORT took, on average, two days to respond. Most complaints and inquiries related to specific residential tenancy situations (e.g., landlord not responding to property maintenance issues, tenants wanting security deposit back after eviction) and required explanation of tenant and landlord rights and responsibilities. Some were not relevant to the ORT, or within the ORT's jurisdiction (e.g., related to commercial properties, federal assistance programs and payments).

For 20 complaints tested, the ORT resolved 18 within four days (a reasonable timeframe). It resolved two of the 20 complaints tested within 11 and 13 days and had a reasonable rationale for the delay. For example, it had a backlog of complaints at the beginning of August 2020 when the Provincial Government lifted the eviction moratorium (i.e., suspension of eviction applications) causing slight delays in contacting individuals to resolve the complaint or inquiry.

²⁶ The Ministry of Justice and Attorney General forwards complaints and inquiries to the ORT. The ORT includes these complaints in its tracking document.



Tracking and resolving complaints and inquiries timely increases public confidence in the ORT, and helps show the ORT addresses queries from landlords and tenants quickly. It also helps the ORT identify common themes to take into consideration when adjusting adjudication processes.

4.14 Appeals Process in Place

The ORT has an appeal process available to tenants and landlords that are not satisfied with hearing decisions.

Similar to other jurisdictions, Saskatchewan's residential tenancy process includes the ability of parties to appeal to the courts any decision of the ORT. Also similar to other jurisdictions, the ORT gives parties 30 days to appeal decisions (see **Figure 11**).

The ORT tracks appeals on a monthly basis. It tracks the appeal number, claim number, type of claim, hearing officer, appeal hearing date, reason for appeal, and the outcome (i.e., allowed, dismissed, pending).

Figure 11—Brief Description of Appeal Process

- After the ORT issues a decision, parties have 30 days to make an appeal to the Court of Queen's Bench.
- The Court will notify the ORT that a party has appealed a decision.
- The ORT will send the Court all of the evidence from the original hearing.
- The Court will then assess if it will allow or dismiss the appeal. If the Court allows the appeal, the ORT must hold a new hearing.

Source: Adapted from Office of Residential Tenancies information.

Our data analysis found only a small percentage of the ORT decisions are appealed. For example, for the seven-month period ending October 31, 2020, approximately 1.7 percent of the ORT's decisions were appealed.²⁷ Of these 31 appeals, the Court of Queen's Bench allowed 6 appeals, dismissed 13, and had 12 pending (as of December 31, 2020).

Of the 30 decisions we tested, four were appealed—the Court of Queen's Bench allowed two appeals, dismissed one, and one was pending as of December 31, 2020. For each of the two appeals allowed, we found the parties and the ORT each followed the expected process. For example, parties appealed the decision within 30 days of the ORT issuing the decision; and the ORT scheduled new hearings as required, assigned different hearing officers, and issued new decisions.

Having an appeal process increases public confidence that individuals have access to a fair and robust process in tenancy disputes, and any errors in decisions will be rectified.

4.15 Key Trends Monitored

The ORT monitors trends in number of disputes settled outside of the adjudication process, and timeliness of key steps in the adjudicating disputes process.

On a monthly basis, the Director monitors the trend in the number of applications received by the ORT. As shown in **Figure 1**, the ORT received 2,280 fewer applications in 2019-20

²⁷ Approximately 1.6% and 2.9% of the ORT's decisions were appealed in the fiscal years 2018-19 and 2019-20 respectively.

compared to 2018–19. Management attributes the decrease in the number of applications received to the dispute resolution facilitators effectively explaining to potential applicants their rights and responsibilities, and suggesting alternate means to resolve disputes.

The Director also uses various reports to monitor the timeliness of issuing decisions after hearings, hearing adjournments, and appeals (see **Figure 12**). The Director looks for significant delays from target timelines and what may have contributed to the delays. The Director informally follows up with dispute resolution facilitators and hearing officers if there are significant delays.

Figure 12—Information Monitored Monthly by Management

Applications:
➤ Number of applications received
Hearing Decisions:
➤ Average business days from hearing to submitting decision broken down by hearing officer
➤ Average business days from submitting decision to issuing decision broken down by hearing officer
➤ Average business days from hearing to issuing decision broken down by hearing officer
➤ Number of hearings by hearing officer
➤ Summary of the above by claim type (e.g., immediate possession, monetary, breach of tenant rights)
➤ Average monetary amount sought and awarded
➤ Appearance data (how many landlords, tenants, and lawyers attended hearings)
Hearing Adjournments
➤ Hearing officer, location, and reason for adjournment
Appeals
➤ Appeal number, claim number, type of claim, hearing officer, appeal hearing date, reason for appeal, and the outcome (i.e., allowed, dismissed, pending)

Source: Adapted from information provided on the Office of Residential Tenancies.

Periodically to assess its timeliness, the ORT compares its processes for adjudicating disputes with other jurisdictions in Canada. For example, in July 2020, the ORT compared the target timelines and actual timelines with other jurisdictions. As shown in **Figures 13** and **14**, the ORT's target timelines and actual results of the adjudication process for the ORT are in line with, or better than other jurisdictions.

Figure 13—Comparison of Target Timelines to Other Jurisdictions

Adjudication step	ORT Target	Other Jurisdiction Target (Average)
Decision Issued by the ORT After Hearing	2 days	34 days
Appeal Time Limit	30 days from the decision issuance	18.6 days from decision issuance

Source: Adapted from jurisdictional comparison completed by the Office of Residential Tenancies in July 2020. Other jurisdictions include Alberta, Manitoba, Quebec, Nova Scotia, and Nunavut.

Figure 14—Comparison of Actual Hearing Timelines to Other Jurisdictions

Adjudication Step	ORT Actual (Average)	Other Jurisdiction Actual (Average)
Time from Application Submission to Hearing – Urgent Claims	16 days	20 days
Time from Application Submission to Hearing – Non-Urgent Claims	82 days	77.5 days
Time from Hearing to Issuing Decision	2.4 days	9.7 days

Source: Adapted from jurisdictional comparison completed by the Office of Residential Tenancies in July 2020 and ORT data for January 1, 2020 to December 31, 2020. Other jurisdictions include Alberta, British Columbia, Manitoba, Quebec, Prince Edward Island, Newfoundland and Labrador, Nova Scotia, Northwest Territories, and Yukon.



Monitoring trends and key steps in its disputes process helps ensure the ORT is meeting the needs of landlords and tenants. It also reduces the likelihood that landlords and tenants complain about the ORT's processes.

4.16 Sufficient Reporting to the Ministry of Justice and Attorney General and the Public

The ORT provides the Ministry of Justice and Attorney General, as well as the public, with sufficient information on the ORT's disputes processes.

The ORT periodically gives briefing notes to the Ministry of Justice and Attorney General on its operations. We found briefing notes included sufficient information on the results of key performance targets for issuing decisions, the number of applications received, the number of appeals, and the results of its jurisdictional comparison of processes.

In addition, to keep the public informed of its decisions, the ORT publishes issued decisions on the Canadian Legal Information Institute (CanLII) website.²⁸ CanLII gives the public access to those decisions. The ORT publishes decisions within 30 days of the issue date for the decision.

Periodic reporting to the Ministry of Justice and Attorney General, as well as the public, increases the transparency of the ORT's processes and decisions.

5.0 SELECTED REFERENCES

Office of the Legislative Auditor State of Minnesota. (2020). *Minnesota Department of Human Rights: Complaint Resolution Process*. St. Paul: Author.

Ombudsman Saskatchewan. (2007). *Hearing Back: Piecing Together Timeliness in Saskatchewan's Administrative Tribunals*. Regina: Author.

Ombudsman Saskatchewan. *Practice Essentials for Administrative Tribunals*. Regina: Author.

Provincial Auditor of Saskatchewan. (2007). *2007 Report – Volume 3, Chapter 15, Justice: Saskatchewan Financial Services Commission*. Regina: Author.

Provincial Auditor of Saskatchewan. (2016). *2016 Report – Volume 1, Chapter 16, Saskatchewan Legal Aid Commission—Providing Legal Aid Services*. Regina: Author.

²⁸ CanLII is a website that provides access to court judgements, tribunal decisions, statutes and regulations from all Canadian jurisdictions. www.canlii.org (14 April 2021).