

Chapter 14

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 landlords and tenants cannot resolve their disputes, 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 and issuing decisions.

Between February 2022 and January 2023, ORT issued 3,708 dispute decisions (2020: 2,488).

By February 2023, ORT improved its processes to adjudicate tenancy disputes by implementing all three recommendations we made in 2021.

ORT provided hearing officers (lawyers) with clear written guidance, including examples, about what constitutes a conflict of interest. It also consistently followed up with hearing officers who had outstanding decisions, and documented reasons for significant delays in issuing decisions. ORT improved the timeliness of issuing decisions—with a maximum of 82 business days between February 2022 to January 2023 compared to a maximum of 353 days in 2020.

2.0 INTRODUCTION

2.1 Background

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 adjudicating disputes between landlords and tenants when they are unable to find their own solutions.¹

Eligible disputes between landlords and tenants may relate to issues such as eviction or 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.

ORT has locations in both Regina and Saskatoon with staff in about 24 full-time equivalent positions.² Staff include one Director, three Deputy Directors (adjudication), one Deputy Director (administration), and 10 dispute resolution facilitators.³ In addition, ORT contracts four lawyers to act as hearing officers. The Director is responsible for leading ORT in delivering adjudication processes.

¹ The Office of Residential Tenancies refers to the adjudication process used to resolve disputes as a hearing.

² ORT and the Provincial Mediation Board share a budget and staff.

³ Other positions include a quality control analyst, legal research analyst, an ORT online client service representative, and a financial analyst.



2.2 Focus of Follow-Up Audit

This chapter describes our first follow-up audit assessing the status of three recommendations we made in our *2021 Report – Volume 1*, Chapter 9, about the Office of Residential Tenancies' processes to adjudicate tenancy disputes.⁴ We concluded for the 12-month period ended December 31, 2020, ORT had, other than the areas identified in our three recommendations, effective processes to provide timely adjudication of disputes to eligible landlords and tenants.

To conduct this audit engagement, we followed the standards for assurance engagements published in the *CPA Canada Handbook—Assurance* (CSAE 3001). To evaluate ORT's progress toward meeting our recommendations, we used the relevant criteria from the original audit. ORT management agreed with the criteria in the original audit.

To complete this follow-up audit, we interviewed key ORT staff responsible for adjudicating tenancy disputes. We examined ORT's IT system and key documents such as its *Hearing Officer Onboarding Manual*. We also tested a sample of ORT decisions.

3.0 STATUS OF RECOMMENDATIONS

This section sets out each recommendation including the date on which the Standing Committee on Public Accounts agreed to the recommendation, the status of the recommendation at February 28, 2023, and ORT's actions up to that date.

3.1 Conflict of Interest Guidance Provided to Hearing Officers

We recommended the Office of Residential Tenancies provide clear written guidance (including examples) about what constitutes a conflict of interest to hearing officers. (*2021 Report – Volume 1*, p. 120, Recommendation 1; Public Accounts Committee agreement March 2, 2022)

Status—Implemented

The Office of Residential Tenancies provides clear written guidance to hearing officers about what constitutes a conflict of interest.

In January 2022, ORT revised its *Hearing Officer Onboarding Manual* to include information about conflicts of interest. We found the Manual informs hearing officers about the requirement to declare any known or perceived conflicts of interest regarding a client. ORT verbally communicated with hearing officers about revisions to the manual. We also found ORT maintains the revised Manual on an internal network available to all staff.

The Manual also includes a link to the Law Society of Saskatchewan for further information about conflicts of interest.⁵ We found this website provided hearing officers with a clear definition of a conflict of interest, as well as common examples of what constitutes a conflict of interest (e.g., personal relationship, business relationship).

⁴ *2021 Report – Volume 1*, Chapter 9, pp. 111–130.

⁵ www.lawsociety.sk.ca/for-the-public/common-client-concerns/conflict-of-interest/ (28 March 2023).

Having clear written guidance on what constitutes a conflict of interest decreases the risk of hearing officers not declaring a conflict of interest. It also helps hearing officers to take a consistent approach in identifying and declaring conflicts. This in turn reduces the risk of bias, either real or perceived, in decisions issued.

3.2 Outstanding Hearing Decisions Followed Up On and Reasons for Delays Documented

We recommended the Office of Residential Tenancies always follow up promptly with hearing officers when hearing decisions are not submitted when expected. (2021 Report – Volume 1, p. 126, Recommendation 3; Public Accounts Committee agreement March 2, 2022)

Status—Implemented

We recommended the Office of Residential Tenancies document reasons for significant delays in issuing hearing decisions. (2021 Report – Volume 1, p. 126, Recommendation 2; Public Accounts Committee agreement March 2, 2022)

Status—Implemented

The Office of Residential Tenancies follows up with hearing officers on outstanding decisions, and documents reasons for significant delays in issuing hearing decisions.

ORT expects hearing officers to submit hearing decisions to ORT the same day, or following day, after the conclusion of a hearing. However, ORT allows exceptions to this expectation, as ORT does receive complex claims requiring more time for hearing officers to make decisions.

In June 2021, ORT began tracking and following up with hearing officers when it did not receive hearing officers' decisions within the expected timeframe. ORT contacts hearing officers twice a week, via email, to follow up on outstanding decisions.

We tested 31 decisions where hearing officers submitted decisions after the expected timeframe and found ORT consistently followed up with hearing officers until they submitted their written decision.

ORT's IT system allows staff (e.g., adjudicators, hearing officers) to make notes on each claim as it progresses through each stage (i.e., hearing, submission, and issuance). During our testing of 31 submitted decisions, we found seven instances where hearing officers submitted decisions to ORT more than 20 days after the hearing.⁶ We also tested 30 issued decisions and found ORT issued one decision 40 days after the hearing officer submitted their decision. We found ORT documented reasonable explanations for each of these delays (e.g., complex claim, amended decision).

Our data analysis of the 3,708 decisions issued between February 2022 and January 2023 found hearing officers submitted, and ORT issued, decisions promptly. As shown in

⁶ To be consistent with our original audit, we considered 20 days as a significant delay for hearing officers to submit decisions to ORT.



Figure 1, on average, hearing officers submitted decisions to ORT in 1.61 business days after the hearing; and ORT issued decisions, on average 1.05 business days later.

We also found ORT improved the timeliness of issuing decisions after a hearing took place—with a maximum of 82 business days for decisions between February 2022 to January 2023, compared to a maximum of 353 days in 2020.

Figure 1—Average Business Days to Issue Decisions

Action	2020 Calendar Year			February 2022 to January 2023		
	Minimum Business Days	Maximum Business Days	Average Business Days	Minimum Business Days	Maximum Business Days	Average Business Days
Submit decision to the ORT	0	352	2.24	0	81	1.61
Issue decision to parties	0	129	1.19	0	40	1.05
Hearing to Issuance	0	353	3.40	0	82	2.68

Source: Adapted from information received from the Office of Residential Tenancies on decisions issued.

Following up with hearing officers who have not submitted decisions, and documenting reasons for delays, decreases 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.