



Preparing to Win: Effective Evidence for Court Applications

By Heidi Besuijen, RMRP

As a lawyer who does work for residential landlords, I am often asked to bring applications on behalf of clients. Most often clients bring their own applications to the Residential Tenancies Dispute Resolution Service (“RTDRS”) so the applications I make are in the Court of Queen’s Bench (or sometimes at the Provincial Court). There are important differences in how evidence is used in each of these venues, this article addresses that and comments on how landlords can improve the evidence presented to decision makers so that they can improve the chances of meeting with success when they seek the assistance of the law.

First, the RTDRS is not bound by the rules of evidence. This means the formal rules which lawyers work with don’t necessarily apply. However, as a best practice, landlords should still bring the best evidence possible to an RTDRS hearing because the “better” the evidence the persuasive the application. I will discuss what constitutes the best evidence available below.

Unless a matter has proceeded to a trial, which rarely occurs, an application is brought before the Court, and the evidence that supports it is in the form of an affidavit. An affidavit is simply a written form of sworn evidence – so rather than a witness coming to Court and giving testimony, the witness provides the same information in written form.

The strength of the application lies in the evidence that supports it. The Court takes that information and decides if it makes sense in that case to give the Order that is being asked of it. If the evidence is weak, inconclusive or otherwise unreliable then the Court might deny the application.

So what makes good evidence? It’s always best for the person that “saw it, heard it, felt it” to be the witness swearing the affidavit. It is much better to have “I saw the yard and this is what I saw...” than “the neighbors called and said it’s ugly”. The distinction here is “hearsay”, hearsay can be complicated even for those in the legal profession. The rule of thumb that landlords should follow is to ask themselves who “saw it, heard, felt it”. That person should be the “affiant” or person to swear the affidavit.

If you are a landlord bringing an application in the Court of Queen’s Bench then chances are, for a variety of reasons, that you have a lawyer acting on your behalf. Your lawyer will assist you in

assembling the evidence but your steps in preparing to ask a lawyer to bring an application for you can go a long way.

If you are gathering evidence for an application, make detailed notes so that you can pass those details along to the lawyer helping you with your application. Does one tenant consistently throw garbage over their balcony? If so, when does this happen? Who sees them do it? How are you sure that it's Unit 262 and not Unit 263? What does the garbage look like? Is it full bags of garbage or one or two items that the tenant is littering? What notices have you given to the tenant asking the tenant to stop that behaviour? Who posted the notice or spoke to the tenant about the issue? These are the sorts of things that you should be thinking about.

Taking pictures can be helpful but you should note where you were standing when you took the picture so that it can be described in your affidavit. Often, pictures don't make sense unless the viewer can understand the context of the picture. A series of pictures can be a jumble but that jumble can tell a story if you know, for example, that the first picture was taken from door of the apartment unit looking towards the living room and the second picture was taken from the living room looking down the hallway to the bedrooms. It helps to orient things to provide those details.

Finally, some statements assume a conclusion: Mrs. Smith's dog was on the loose. How do you know that it is Mrs. Smith's dog? This evidence is unhelpful unless you can also say for example, "I know it's Mrs. Smith's dog, I see her walking it often and it has a distinctive red collar".

These quick tips can provide you with an idea of how to gather effective evidence to help make your next application a successful one.

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