

5: Duty to Minimize Loss

May-20

This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised and new guidelines issued from time to time.

A. LEGISLATIVE FRAMEWORK

Under section 7 of the *Residential Tenancy Act* (RTA) and *Manufactured Home Park Tenancy Act* (MHPTA), if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for resulting damage or loss.

A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

Betterment

The purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred. Sometimes repairing damage or replacing damaged items puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred.

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This may happen as a matter of course – for example if arborite countertops from the 1960s must be replaced because of damage, this almost always requires installing brand new countertops. Similarly, if a circuit that was wired in the 1940s needs to be replaced, it should be brought up to code. The result is that the property is made better than it was before the damage or loss occurred.

See [Policy Guideline 40: Useful Life of Building Elements](#) for guidance on how this type of situation may be dealt with.

Sometimes damaged items are replaced with more extravagant, expensive or luxurious ones by choice. Some examples are:

- Replacing a damaged laminate floor with hardwood floors
- Replacing a damaged linoleum floor with marble
- Replacing damaged arborite countertops with granite
- Replacing a \$300 futon with a \$3,000 bed

A person can replace damaged items with more expensive ones if they choose, but not at the expense of the party responsible for the damage. The person responsible for the damage is only responsible for compensating their landlord or tenant in an amount that covers the loss. The extra cost of the more extravagant, expensive or luxurious item is not the responsibility of the person who caused the damage.

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

C. WHEN A NOTICE TO END TENANCY IS GIVEN

If a landlord issues a notice to end tenancy and is entitled to claim compensation for lost rental income, the landlord has a duty to minimize the loss by attempting to rent

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out the rental unit or site once the time limit for the tenant to dispute the notice expires.

If a tenant disputes the notice, the landlord is obligated to attempt to rent the unit or site after:

- the date the decision or order is received, and the time limits for a review application have passed; or,
- if the tenant applies for a review consideration of the decision or order, the date the landlord receives the review consideration decision.

If a landlord applies to end a tenancy early and receives an order of possession, the landlord is obligated to attempt to rent the unit or site after:

- the time limits for a review application have passed; or,
- if the tenant applies for a review consideration of the decision or order, the date the landlord receives the review consideration decision.

D. PROOF OF EFFORT TO MINIMIZE DAMAGE OR LOSS

The person claiming compensation has the burden of proving they minimized the damage or loss.

If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied. If a landlord is claiming a loss because they rented the rental unit for less money than under the previous tenancy, or they were unable to rent the unit, evidence like advertisements showing the price of rent for similar rental units, or evidence of the vacancy rate in the location of the rental unit may be relevant.

E. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	New	Section headings added	May-2020
All	am	Revised for clarity	May-2020

Change notations

am = text amended or changed

del = text deleted

new = new section added