

16 Compensation for Damage or Loss

August 2016

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 Guideline may be revised and new Guidelines issued from time to time.

This Policy Guideline addresses the criteria for awarding compensation, and the limitation periods for filing claims.

A. LEGISLATIVE FRAMEWORK

Under section 7 of both the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*:

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the *Residential Tenancy Act* and section 60 of the *Manufactured Home Park Tenancy Act*, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:

- determine the amount of compensation that is due; and
- order that the responsible party pay compensation to the other party.

B. DAMAGE OR LOSS

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;

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- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the *Residential Tenancy Act* for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

E. LIMITATION PERIODS

Under section 60 of the *Residential Tenancy Act* and section 53 of the *Manufactured Home Park Tenancy Act* the limitation period for filing an application for dispute resolution is two years from the date the tenancy ends or is assigned unless the Act sets specifies a different limitation period for the type of claim in question. Additionally, a party to a claim can file a counterclaim

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outside of the limitation period, as long as they do so before the dispute resolution hearing takes place.

F. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	del, new	Substantially re-written for clarity in accordance with legal advice	August 31, 2016

Change notations

am = text amended or changed

del = text deleted

new = new section added