



**Policy Number:** 06-003  
**Subject:** Mitigation on Abandonment of Residential Premises  
**Chapter:** Abandonment

<b>Legislation</b>	s.10.(1) Statutory Condition 4: <u>Mitigation on Abandonment</u> - Where the tenant abandons the residential premises, the landlord shall mitigate damages that may be caused by the abandonment to the extent that a party to a contract is required by law to mitigate damages.
<b>Definitions</b>	<p><b>Abandonment of Residential Premises:</b> a tenant is considered to have abandoned residential premises when all 3 of the following conditions are met:</p> <ul style="list-style-type: none"> <li>• The tenant has vacated the residential premises,</li> <li>• The tenant’s rent is overdue, and</li> <li>• The rental agreement had not been terminated in accordance with the Residential Tenancies Act, 2018.</li> </ul> <p><b>The Principle of Mitigation of Damages:</b> Where a party seeks compensation for losses that result from a breach of contract, that party must take all reasonable steps to minimize, or “mitigate”, those losses as soon they become aware of the breach. A party cannot be compensated for any losses that result from that party’s failure to take steps to minimize the unreasonable accumulation of those losses.</p>
<b>Purpose</b>	The purpose of this policy is to outline what compensation a landlord may be entitled to when a tenant abandons residential premises, and to outline the reasonable steps a landlord must take in mitigating their damages.
<b>Policy</b>	<p><b><u>Damages</u></b></p> <p>Where a tenant abandons residential premises, the tenant is liable for any damages suffered by the landlord as result of the abandonment. The most obvious type of damage would be a loss of the rental income the landlord was expecting to receive from that tenant for the remainder of the tenancy.</p> <p>In these cases, the landlord may submit an Application for Dispute Resolution seeking an order for a payment in compensation for that lost rental income, in lieu of receiving a proper termination notice. In addition to any rent that was owing at the time the tenant abandoned the rental property, the amount of lost rental income the landlord may seek compensation for is dependent on the term of the tenancy and</p>



	<p>the termination notice requirements, as per section 18 of the Act, that the tenant was supposed to abide by.</p> <ul style="list-style-type: none"><li>(a) In a weekly tenancy, where the tenant is required to provide the landlord with a 7-day termination notice, the landlord may be entitled to an award for an amount equivalent to 7 days of rent, from the date the landlord became aware that the tenant abandoned the unit;</li><li>(b) In a monthly tenancy, where the notice period is 1 month, the landlord may be entitled to an award for an amount equivalent to the amount the tenant would have paid from the date the landlord became aware that the tenant had abandoned the unit to the end of the following month;</li><li>(c) In a fixed-term lease, where the tenant is required to give the landlord a termination notice at least 2 months before the expiry date of the lease, the landlord may be entitled to an award equivalent to the amount of rent that would have been paid out during the remainder of that lease.</li></ul> <p><b><u>Mitigation</u></b> A landlord has a legal duty to take all reasonable steps to mitigate their damages after a tenant abandons residential premises. As the most obvious sort of damage the landlord would suffer would be a loss of rental income, “mitigation” in these circumstances would entail the landlord taking immediate steps to find new tenants to move into the property so that the landlord could once again collect rent.</p> <p><b><u>Failure to Mitigate</u></b> Where a landlord fails to take steps to find new tenants, or where the landlord waits an unreasonable amount of time before taking those steps, the tenant may not be held liable for the loss of rental income suffered by the landlord.</p>
<b>Procedure Overview</b>	<p>In determining the amount of compensation a landlord is entitled to as a result of the tenant’s abandonment of the residential premises, the following considerations should be taken into account:</p> <p><b><u>Evidence of Mitigation</u></b> Although the onus is on the landlord to prove that they had suffered a loss of rental income because the tenant had abandoned the residential premises, the tenant has the burden of proving, on the balance of probabilities, that the landlord failed to take reasonable</p>



steps to mitigate her damages. There are 2 things the tenant would need to establish to meet this burden:

- (a) that the landlord had not taken reasonable steps to find a new tenant; and
- (b) that an acceptable new tenant could have been found had those steps been taken.

Reasonable steps to find a new tenant may include placing advertisements in newspapers, placing advertisements with online websites such as Kijiji, NL Classifieds, Facebook Market Place, etc., or hiring a leasing agent or property management company. If the landlord is a large property management company, it may have its own website where the advertisements could be placed. Landlords should be encouraged to submit evidence of mitigation with their application—this evidence may include copies of advertisements, a contract with a leasing agent, receipts from advertising companies, copies of e-mail inquiries from prospective tenants, etc.

### **Costs of Mitigation**

All reasonable costs incurred by a landlord in mitigating any loss of rental income are also recoverable from the tenant. These may include the costs incurred to place advertisements, or the costs of hiring a property management company or leasing agent. Where a landlord files an Application for Dispute Resolution seeking the costs of mitigation, the landlord should submit the associated receipts or invoices for these costs with the application.

### **Storage of Abandoned Personal Property**

A landlord has the option of storing a tenant's abandoned personal property at the rented premises after the unit has been abandoned. If the landlord chooses this option, and if the presence of these items makes the premises unrentable while they are being stored there, the landlord may only claim for the loss of rental income if it is less than what they would have been charged had they elected to store those items at a commercial self-storage facility, such as U-Haul, etc.

E.g., in a month-to-month rental agreement, the rate of rent is set at \$1000.00. If a tenant abandons the rental property in the middle of May, then the landlord may claim both May's rent, as well as the loss of rental income suffered for June, if the landlord is unable to find a new tenant for June. That would be a total award of \$2000.00. However, if the landlord elects to store the tenant's abandoned personal property at the unit, and if the landlord cannot rent the unit



	<p>while that property is being stored there, then the landlord is not entitled to compensation for the loss of rental income suffered for June. The landlord would only be entitled to an amount equivalent to what they would have been charged at a self-storage facility.</p> <p><b><u>Sale of Residential Premises or Occupancy for Landlord’s Use</u></b> After a tenant abandons residential premises, if a landlord decides to sell the premises, or if the landlord decides to move into and occupy those premises, the landlord has not met the duty to mitigate as they have ended their ability to re-rent the property. In these cases, the landlord may not make a claim for a loss of rental income.</p> <p><b><u>Future Rent</u></b> If a landlord makes a claim for rent or makes a claim for compensation for lost rental income, any award will only succeed up to the date of the hearing. A landlord will not be awarded future rent, or compensation for anticipated lost income at a future time.</p> <p>E.g., a tenant has entered into a 1-year, fixed-term lease, set to expire on 31 December. If the tenant abandons the unit on 15 August, the landlord may be entitled to any rent owing up to 15 August, and compensation for any loss of rental income from August to December, so long as the landlord mitigates their damages. But, if the landlord files an application and a hearing is held on 15 October, the landlord will only be awarded rent and compensation for lost income up to that date, calculated daily. If the landlord is still unable to find new tenants between October and December, the landlord would have to file a second application if the landlord wants to be compensated for that period.</p> <p>To avoid having to file multiple applications with this Division, it is advisable that landlords refrain from making a claim for lost rental income, as a result of abandonment, until the landlord has secured new tenants.</p>
<p><b>Forms &amp; Form Letters</b></p>	<p>Application for Dispute Resolution Worksheet – Compensation for Damages</p>
<p><b>X-Reference</b></p>	<p>See Abandonment of Residential Premises, section 6-1 and Abandoned Personal Property, section 6-2 of this manual.</p>
<p><b>Policy Developed</b></p>	<p>September, 2000</p>



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<b>Other Resources</b>	William & Rhodes Canadian Law of Landlord and Tenant