

# Applying for damages

## Residential Tenancy Dispute Resolution Service

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### Overview

The Residential Tenancy Dispute Resolution Service (RTDRS) is authorized to hear and resolve residential landlord and tenant disputes.

One of the remedies for which landlords and tenants may apply to the RTDRS is an award of “damages”, which is money ordered to be paid by the respondent if they have not met their landlord or tenant obligations and the applicant suffered a loss as a result.

Landlord and tenant obligations are set out in the [Residential Tenancies Act](#) or the [Mobile Home Sites Tenancies Act](#) (depending on the type of premises being rented), and in individual rental agreements.

### Applications

Each application to the RTDRS will have its own unique set of facts, and often the parties have contrasting versions of the facts. An application to the RTDRS will result in a hearing at which the applicant and the respondent can each present their evidence.

In any application for damages, including tenant claims for reduction (abatement) of rent, the applicant must provide evidence that:

- They suffered a loss
- The loss is a direct result of the other party's failure to meet their obligations under the law or tenancy agreement
- The loss cost the applicant a specific amount of money they are now looking to recoup.

Refer to the [Evidence tip sheet](#) for the types of evidence that can be submitted to the RTDRS.

### Hearings

At the hearing, a Tenancy Dispute Officer will review the evidence from the parties, ask questions, make findings of fact where the facts are in dispute, objectively apply the law, determine responsibility for any loss, and set a value for the damages. The Tenancy Dispute Officer will also provide the reasons for their decision either verbally or in writing.

Tenancy Dispute Officers assess damages by applying the [Residential Tenancies Act](#) or the [Mobile Home Sites Tenancies Act](#) (depending on the context), the related regulations, and the common law of contracts including legal precedent set by the courts.

### Tenancy Dispute Officers

Section 14 of the [RTDRS Regulation](#) provides that a Tenancy Dispute Officer is not bound by formal rules of evidence (such as hearsay) or any other law applicable to court proceedings, and has the authority to determine the admissibility, relevance and weight of evidence given.

## Standard of proof

The standard of proof in RTDRS hearings is the same as the standard in civil law. Applicants must prove their case “on a balance of probabilities”, which means the applicant has shown their claims are more likely than not to be true and accurate.

However, in a tenant’s application for return of a security deposit, the landlord will be expected to prove they met their legislated obligations regarding security deposits. These obligations are stated in the [Residential Tenancies Act](#) – Section 19 and Part 4; and in the [Mobile Home Sites Tenancies Act](#) – Section 21 and Part 4.

## Awarding damages

### Types of damages

The most common damages Tenancy Dispute Officers award are for quantifiable, monetary losses (e.g. the amount of money paid to clean or paint the rental unit, and repair or replace fixtures).

Tenancy Dispute Officers can also award damages for losses where dollar values are difficult to establish, such as mental or emotional distress, or aggravation or inconvenience, but such awards are rare as the applicant must prove the loss is a direct result of the other party not meeting their obligations.

### Normal wear and tear

Alberta law states landlords cannot deduct money from a tenant’s security deposit for normal wear and tear caused by the tenant, and landlords cannot apply to the RTDRS to claim damages to fix normal wear and tear.

It is defined as the deterioration that occurs over time with the use of the premises even though the premises receive reasonable care and maintenance.

Normal wear and tear is assessed based on the duration of the tenancy, and could include scuffs on the floors and walls, and nail holes from hanging pictures.

## Fair and reasonable compensation

Both the common law and the RTDRS Regulation require Tenancy Dispute Officers to consider an amount for damages that is fair and reasonable to both parties, given the circumstances of the case.

An applicant may present evidence of what they paid to remedy a loss caused by the other party, but the Tenancy Dispute Officer may determine that it is not fair and reasonable to claim the full amount from the party at fault, given the facts and circumstances.

For example, an applicant who paid \$500 for the cleaning of a rental unit left dirty by the other party, when the unit could have been cleaned for \$250, cannot expect to obtain judgment for the full \$500.

An applicant who performed repairs themselves will need to prove why the dollar value they have claimed as compensation for the repairs is reasonable under the circumstances.

### Typical amounts

Following precedents set by court rulings, Tenancy Dispute Officers typically award between \$15 and \$35 per hour for cleaning expenses incurred as a result of the other party’s failure to provide, or leave, the rental premises in a reasonably clean condition.

The hourly rate assessed for cleaning, and the number of hours of cleaning determined to be necessary, will depend on the circumstances of each case.

If the applicant performed the necessary cleaning themselves, they may produce receipts for cleaning supplies and explain the basis for the hourly rate they are seeking as compensation. If the applicant paid for a cleaning service, the invoice as paid should be presented as evidence.

### Mitigating losses

Applicants are required by law to mitigate their losses, meaning they must take all reasonable steps to minimize the loss they have suffered as a result of the other party not meeting their obligations.

Mitigation of losses can include seeking out the most affordable means of repair by getting more than one quote. Mitigation can also mean making the most reasonable choice between repairing and replacing the damaged item(s).

Whenever possible, the party who is at fault for the loss should be given the opportunity to repair the damage, or otherwise remedy the loss, before a damages application is filed against them.

### **Being “made whole”**

Awards for damages can only go so far as to put the applicant back into the position they would have been in had the other party properly met their obligations. The law refers to this as being “made whole” in contrast to being made better.

For example, if a landlord proves their tenant destroyed the carpeting in the rental premises, the landlord would not be entitled to the full replacement value if the carpet was not new at the time it was damaged. A calculation of depreciation is applied to the replacement value of property, based on its age.

Refer to the [RTDRS Depreciation tip sheet](#), with the depreciation table applied by Tenancy Dispute Officers, as a guideline in assessing depreciation on specific items unless the circumstances of the particular case are unique.

## **Resources**

[Residential Tenancies Act](#)

[Mobile Home Sites Tenancies Act](#)

[Residential Tenancy Dispute Resolution Service Regulation](#)

[Evidence tip sheet](#)

[RTDRS Depreciation tip sheet](#)

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<https://www.alberta.ca/residential-tenancy-dispute-resolution-service.aspx>

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