

Manitoba Residential  
Tenancies Commission

**Annual Report  
2014**



Her Honour the Honourable Janice C. Filmon, C.M., O.M.  
Lieutenant Governor of Manitoba  
Room 235, Legislative Building  
Winnipeg, Manitoba  
R3C 0V8

May It Please Your Honour:

I have the privilege of presenting, for the information of your Honour, the Annual Report of the Residential Tenancies Commission for the year ending December 31, 2014.

Respectfully submitted,

*“Original Signed By”*

Honourable Ron Lemieux  
Minister of Tourism, Culture, Sport, Heritage and Consumer Protection







**Tourism, Culture, Heritage, Sport and Consumer Protection**  
Residential Tenancies Commission  
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Honourable Ron Lemieux  
Minister of Tourism, Culture, Heritage, Sport and Consumer Protection  
Room 118, Legislative Building  
Winnipeg, Manitoba  
R3C 0V8

Dear Minister Lemieux:

Section 151(1) of *The Residential Tenancies Act* states that within six months after the end of each fiscal year, the Chief Commissioner shall submit an annual report to the Minister respecting the activities of the Commission and setting out the significant decisions of the Commission and the reasons for those decisions.

It is my pleasure to submit the 2014 Annual Report for the Residential Tenancies Commission.

Respectfully submitted,

*“Original Signed By”*

Jennifer Goldenberg  
Chief Commissioner  
Residential Tenancies Commission



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## INTRODUCTION

The Residential Tenancies Commission (the Commission) is a quasi-judicial, specialist tribunal that hears appeals from decisions and orders of the Director of the Residential Tenancies Branch under *The Residential Tenancies Act*.

### **The Residential Tenancies Commission consists of:**

- The Chief Commissioner - a full-time position; appointed for up to a five-year term, located in Winnipeg.
- Deputy Commissioners – one full-time position appointed for up to a four-year term and 20 part-time positions appointed for up to a four-year term, located in Winnipeg, Thompson and Brandon. The Deputy Commissioner may exercise the powers and perform the duties of the Chief Commissioner.
- Panel members – 42 panel members – approximately half representing the views of the landlords, the others the views of the tenants; from Winnipeg, The Pas, Thompson and Brandon.

The Commission may conduct hearings orally, in person or by telephone, in writing or partly orally and partly in writing. Hearings outside of Winnipeg are held at the nearest judicial district.

Some appeals are heard only by the Chief Commissioner or Deputy Chief Commission and some appeals are heard by a panel of three consisting of one landlord and one tenant representative and either the Chief Commissioner or a Deputy Chief Commissioner as the neutral Chairperson. If there is not a majority decision, the decision of the neutral Chairperson is the decision of the Commission.

The Residential Tenancies Commission decisions in Part 1 – 8 matters can be appealed to the Court of Appeal, but only on a question of law or jurisdiction. A Court of Appeal judge must grant leave or permission to appeal. Section 179 of *The Residential Tenancies Act*



dealing with rent regulation states that: *“No appeal lies from a decision or order of the commission made in a matter arising under Part 9.”* The Residential Tenancies Commission's decision in Part 9 matters is final.

*The Residential Tenancies Act* requires the Chief Commissioner to submit a report on the administration of the Act to the Minister within six months after the end of each fiscal year. The reporting period for this report is the year ending December 31, 2014. Figures for the year ending December 31, 2013, have also been provided for purposes of comparison. The statistics are broken down by activity, i.e. security deposits, repairs, utilities.

## **APPEAL ACTIVITY SUMMARY**

### **PARTS 1 – 8 OF *THE RESIDENTIAL TENANCIES ACT***

Parts 1 – 8 of *The Residential Tenancies Act* deal with all residential landlord and tenant matters, except for rent regulation. Table 1 provides a statistical summary of the activities of the Residential Tenancies Commission under Parts 1 – 8 of the legislation. During 2014 the Commission received 367 appeals under Parts 1 – 8 of *The Residential Tenancies Act*. The Commission received 293 appeals of orders resulting from Branch hearings and 52 appeals of claims for security deposit or less. The remaining 22 appeals were related to orders to repair and non-payment of utilities.

The Commission processed 434 cases before year-end. The Commission confirmed or upheld the Residential Tenancies Branch's decisions in 198 instances. The Commission varied 152 of the Branch's decisions. These variations sometimes occurred because the Commission received information from the parties at the appeal hearing that the Branch did not have before issuing its decision. The Commission rescinded 23 decisions of the Branch. Another 28 appeals were either rejected by the Commission, withdrawn or cancelled by the appellant. Most rejections are caused by late appeals or appeals without a filing fee. Withdrawals are usually due to either: (1) the affected parties being able to reach a settlement; or (2) the appellant changing his or her mind and no longer wishing to continue with the appeal. Six hearings were cancelled and there were 25 motions to extend time to appeal denied. There were two appeals pending at the end of 2014.

Effective August 1, 2014, a person who did not attend or otherwise participate in the hearing before the director could not appeal an order granting an order of possession to a landlord for the termination of the tenancy for non-payment of rent or a tenant services charge, unless the Commission, on application, grants the person leave to appeal. The Commission received 18 applications for leave to appeal, 11 were granted leave and seven were denied.

In 2014, there were 14 applications to the Court of Appeal for leave to appeal. The Court of Appeal denied leave on 12 applications. Two applications for leave to appeal were withdrawn. 12 pending applications were granted.

**TABLE 1 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PARTS 1 - 8 OF THE RESIDENTIAL TENANCIES ACT**

	<b>January 1, 2013 - December 31, 2013</b>	<b>January 1, 2014 - December 31, 2014</b>
	(Cases)	(Cases)
<b><u>ABANDONMENT OF PERSONAL PROPERTY</u></b>		
Carried forward from previous year	0	0
Appeals Received	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>
Decisions Upheld	0	0
Decisions Varied	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>
<b>ACTIVE</b>	<b>0</b>	<b>0</b>
<b><u>CLAIM FOR SECURITY DEPOSIT OR LESS</u></b>		
Carried forward from previous year	4	12
Appeals Received	37	52
<b>TOTAL</b>	<b>41</b>	<b>64</b>
Decisions Confirmed	7	31
Decisions Varied	9	16
Decisions Rescinded	5	3
Appeals Withdrawn/Rejected	5	4
Cancelled	0	1
Motion to Extend Time Denied	2	4
Appeals Pending	1	0
<b>TOTAL APPEALS CLOSED</b>	<b>29</b>	<b>59</b>
<b>ACTIVE</b>	<b>12</b>	<b>5</b>
<b><u>DISPUTES</u></b>		
Carried forward from previous year	0	0
Appeals Received	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>
Decisions Varied	0	0
Decisions Rescinded	0	0
Appeals Withdrawn/Rejected	0	0
Cancelled	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>
<b>ACTIVE</b>	<b>0</b>	<b>0</b>

**TABLE 1 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PARTS 1 - 8 OF THE RESIDENTIAL TENANCIES ACT**

	<b>January 1, 2013 - December 31, 2013</b> (Cases)	<b>January 1, 2014 - December 31, 2014</b> (Cases)
<b><u>DISTRAINT AND LOCKOUT</u></b>		
Carried forward from previous year	0	0
Appeals Received	1	0
<b>TOTAL</b>	<b>1</b>	<b>0</b>
Decisions Confirmed	1	0
<b>TOTAL APPEALS CLOSED</b>	<b>1</b>	<b>0</b>
ACTIVE	0	0
<b><u>ENFORCEMENT</u></b>		
Carried forward from previous year	0	0
Appeals Received	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>
Decisions Confirmed	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>
ACTIVE	0	0
<b><u>HEARINGS</u></b>		
Carried forward from previous year	77	101
Appeals Received	360	293
<b>TOTAL</b>	<b>437</b>	<b>394</b>
Decisions Confirmed	115	159
Decisions Varied	143	129
Decisions Rescinded	34	20
Appeals Withdrawn/Rejected	26	19
Cancelled	2	5
Motion to Extend Time Denied	15	20
Appeals Pending	1	2
<b>TOTAL APPEALS CLOSED</b>	<b>336</b>	<b>354</b>
ACTIVE	101	40

**TABLE 1 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PARTS 1 - 8 OF *THE RESIDENTIAL TENANCIES ACT***

	<b>January 1, 2013 - December 31, 2013</b> (Cases)	<b>January 1, 2014 - December 31, 2014</b> (Cases)
<b><u>REPAIRS</u></b>		
Carried forward from previous year	4	5
Appeals Received	23	21
<b>TOTAL</b>	<b>27</b>	<b>26</b>
Decisions Confirmed	7	8
Decisions Varied	8	7
Decisions Rescinded	1	0
Cancelled	1	0
Appeals Withdrawn/Rejected	3	5
Motion to Extend Time Denied	2	1
Appeals Pending	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>22</b>	<b>21</b>
<b>ACTIVE</b>	<b>5</b>	<b>5</b>
<b><u>UTILITIES</u></b>		
Carried forward from previous year	0	0
Appeals Received	0	1
<b>TOTAL</b>	<b>0</b>	<b>1</b>
Decisions Confirmed	0	0
Decisions Varied	0	0
Decisions Rescinded	0	0
Appeals Withdrawn/Rejected	0	0
Cancelled	0	0
Motion to Extend Time Denied	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>
<b>ACTIVE</b>	<b>0</b>	<b>1</b>

**TABLE 1 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PARTS 1 - 8 OF *THE RESIDENTIAL TENANCIES ACT***

	<b><u>January 1, 2013 - December 31, 2013</u></b> (Cases)	<b><u>January 1, 2014 - December 31, 2014</u></b> (Cases)
<b><u>TOTAL APPEALS</u></b>		
Carried forward from previous year	85	118
Appeals Received	421	367
<b>TOTAL</b>	<b>506</b>	<b>485</b>
Decisions Confirmed	130	198
Decisions Varied	160	152
Decisions Rescinded	40	23
Appeals Withdrawn/Rejected	34	28
Cancelled	3	6
Motion to Extend Time Denied	19	25
Appeals Pending	2	2
<b>TOTAL APPEALS CLOSED</b>	<b>388</b>	<b>434</b>
<b>ACTIVE</b>	<b>118</b>	<b>51</b>

	<b><u>January 1, 2013 - December 31, 2013</u></b> (Cases)	<b><u>January 1, 2014 - December 31, 2014</u></b> (Cases)
<b><u>LEAVE TO APPEAL APPLICATIONS</u></b>		
Carried forward from previous year	n/a	n/a
Applications Received	n/a	18
<b>TOTAL</b>	<b>n/a</b>	<b>18</b>
Leave to Appeal Granted	n/a	11
Leave to Appeal Denied	n/a	7
<b>TOTAL APPEALS CLOSED</b>	<b>n/a</b>	<b>18</b>
<b>ACTIVE</b>	<b>n/a</b>	<b>0</b>

## **APPEAL ACTIVITY SUMMARY**

### **PART 9 OF *THE RESIDENTIAL TENANCIES ACT***

In 2014, the Commission received appeals for 116 buildings affecting 772 rental units on orders the Residential Tenancies Branch issued under Part 9 of *The Residential Tenancies Act*.

The Commission processed appeals on orders for 100 buildings affecting 409 rental units in the 2014 calendar year. The Commission upheld orders on 39 units in 25 buildings and varied orders on 126 units in 25 buildings. These variations sometimes occurred because the Commission received information at the appeal hearing that the Branch did not have before issuing its decision. Appeals in 50 other buildings affecting 244 units were either rejected by the Commission or withdrawn or cancelled by the appellant.

There is no appeal to the Court of Appeal on rent regulation matters.

**TABLE 2 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PART 9 OF *THE RESIDENTIAL TENANCIES ACT***

	January 1, 2013 – December 31, 2013		January 1, 2014 – December 31, 2014	
	Bldgs.	Units	Bldgs.	Units
<b>APPLICATION - LAUNDRY INCREASE</b>				
Carried forward from previous year	0	0	0	0
Appeals Received	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Decisions Confirmed	0	0	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
ACTIVE	0	0	0	0
<b>APPLICATION - REHABILITATION</b>				
Carried forward from previous year	0	0	2	30
Appeals Received	7	38	10	11
<b>TOTAL</b>	<b>7</b>	<b>38</b>	<b>12</b>	<b>41</b>
Decisions Confirmed	1	1	2	2
Decisions Varied	4	7	2	30
Appeals Withdrawn/Rejected	0	0	6	7
<b>TOTAL APPEALS CLOSED</b>	<b>5</b>	<b>8</b>	<b>10</b>	<b>39</b>
ACTIVE	2	30	2	2
<b>LIFE LEASE</b>				
Carried forward from previous year	0	0	0	0
Appeals Received	1	1	1	1
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>
Appeals Withdrawn/Rejected	1	1	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
ACTIVE	0	0	1	1



**TABLE 2 - APPEALS****STATISTICAL SUMMARY FOR MANITOBA  
PART 9 OF THE RESIDENTIAL TENANCIES ACT**

	January 1, 2013 – December 31, 2013		January 1, 2014 – December 31, 2014	
	Bldgs.	Units	Bldgs.	Units
<b>TENANT OBJECTIONS TO GUIDELINE OR LESS</b>				
Carried forward from previous year	0	0	0	0
Appeals Received	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Decisions Confirmed	0	0	0	0
Decisions Varied	0	0	0	0
<b>TOTAL APPEALS CLOSED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ACTIVE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>APPLICATION - WITHDRAWAL OF SERVICE</b>				
Carried forward from previous year	2	155	1	2
Appeals Received	1	2	3	5
<b>TOTAL</b>	<b>3</b>	<b>157</b>	<b>4</b>	<b>7</b>
Decisions Confirmed	0	0	0	0
Decisions Varied	1	2	1	2
Appeals Withdrawn/Rejected	1	153	2	2
Appeals Cancelled	0	0	1	3
<b>TOTAL APPEALS CLOSED</b>	<b>2</b>	<b>155</b>	<b>4</b>	<b>7</b>
<b>ACTIVE</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>
<b>COMPLIANCE</b>				
Carried forward from previous year	9	9	6	9
Appeals Received	9	16	8	8
<b>TOTAL</b>	<b>18</b>	<b>25</b>	<b>14</b>	<b>17</b>
Decisions Confirmed	7	7	3	3
Decisions Varied	2	6	3	6
Appeals Withdrawn/Rejected	3	3	2	2
Motion to Extend Time Denied	0	0	2	2
<b>TOTAL APPEALS CLOSED</b>	<b>12</b>	<b>16</b>	<b>10</b>	<b>13</b>
<b>ACTIVE</b>	<b>6</b>	<b>9</b>	<b>4</b>	<b>4</b>

**TABLE 2 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PART 9 OF *THE RESIDENTIAL TENANCIES ACT***

	January 1, 2013 – December 31, 2013		January 1, 2014 – December 31, 2014	
	Bldgs.	Units	Bldgs.	Units
<b>APPLICATION – RENT INCREASE ABOVE GUIDELINE</b>				
Carried forward from previous year	32	247	10	42
Appeals Received	66	466	94	747
<b>TOTAL</b>	<b>98</b>	<b>713</b>	<b>104</b>	<b>789</b>
Decisions Confirmed	10	24	20	34
Decisions Varied	31	519	19	88
Appeals Withdrawn/Rejected	42	104	33	221
Appeals Cancelled	4	16	2	5
Motion to Extend Denied	1	8	2	2
<b>TOTAL APPEALS CLOSED</b>	<b>88</b>	<b>671</b>	<b>76</b>	<b>350</b>
ACTIVE	10	42	28	439

**TABLE 2 - APPEALS**  
**STATISTICAL SUMMARY FOR MANITOBA**  
**PART 9 OF *THE RESIDENTIAL TENANCIES ACT***

	January 1, 2013 – December 31, 2013		January 1, 2014 – December 31, 2014	
	Bldgs.	Units	Bldgs.	Units
<b>TOTAL APPEALS</b>				
Carried forward from previous year	43	411	19	83
Appeals Received	84	523	116	772
<b>TOTAL</b>	<b>127</b>	<b>934</b>	<b>135</b>	<b>855</b>
Decisions Confirmed	18	32	25	39
Decisions Varied	38	534	25	126
Appeals Withdrawn/Rejected	47	261	43	232
Appeals Cancelled	4	16	3	8
Motion to Extend Denied	1	8	4	4
<b>TOTAL APPEALS CLOSED</b>	<b>108</b>	<b>851</b>	<b>100</b>	<b>409</b>
ACTIVE	19	83	35	446

**TABLE 3**  
**APPEAL HEARINGS BY JUDICIAL DISTRICT**  
**RESIDENTIAL TENANCIES COMMISSION**

	<b><u>January 1, 2013 – December 31, 2013</u></b>	<b><u>January 1, 2014 – December 31, 2014</u></b>
<b>Winnipeg</b>	<b>516</b>	<b>477</b>
<b>Altona</b>	<b>0</b>	<b>0</b>
<b>Beausejour</b>	<b>1</b>	<b>0</b>
<b>Brandon</b>	<b>8</b>	<b>10</b>
<b>Carman</b>	<b>2</b>	<b>1</b>
<b>Dauphin</b>	<b>0</b>	<b>0</b>
<b>Flin Flon</b>	<b>0</b>	<b>0</b>
<b>Morden/Winkler</b>	<b>1</b>	<b>0</b>
<b>Portage la Prairie</b>	<b>3</b>	<b>3</b>
<b>Russell</b>	<b>0</b>	<b>0</b>
<b>Selkirk</b>	<b>5</b>	<b>1</b>
<b>Steinbach</b>	<b>6</b>	<b>1</b>
<b>The Pas</b>	<b>0</b>	<b>0</b>
<b>Thompson</b>	<b>1</b>	<b>2</b>
	<hr/>	<hr/>
<b>TOTAL</b>	<b><u>543</u></b>	<b><u>495</u></b>

**TABLE 4**  
**APPLICATIONS FOR LEAVE TO APPEAL TO THE COURT OF APPEAL**

	<b><u>January 1, 2013– December 31, 2013</u></b>	<b><u>January 1, 2014– December 31, 2014</u></b>
<b>Granted</b>	<b>0</b>	<b>12</b>
<b>Denied</b>	<b>10</b>	<b>12</b>
<b>Withdrawn/Abandoned</b>	<b>4</b>	<b>2</b>
<b>Pending</b>	<b><u>12</u></b>	<b><u>0</u></b>
	<hr/>	<hr/>
<b>TOTAL</b>	<b><u>26</u></b>	<b><u>26</u></b>

# **SIGNIFICANT DECISIONS**

## **Significant Decisions**

The following are summaries of significant decisions of the Commission and the reasons for the decisions that were issued in 2014.

### **1. Order of Possession Not Granted**

The following case provides an illustration of the issues faced by the Commission when determining if a landlord is entitled to terminate a tenancy because he or she intends to occupy the rental unit.

The landlord filed an application at the Residential Tenancies Branch (the Branch) seeking an Order of Possession. The landlord terminated the tenancy agreement on the basis that he intended to occupy the rental unit. After considering the evidence and submissions of the parties, the Commission panel decided not to grant the landlord an Order of Possession.

Section 98 of *The Residential Tenancies Act* (the *Act*) applies to this type of a notice of termination by a landlord. It states in part as follows:

#### **Termination on sale or for landlord's use**

**98(1)** A landlord may give a notice of termination to a tenant, other than a tenant under a life lease, if

...

- (b) the landlord intends in good faith that the landlord, the landlord's spouse, a parent of the landlord or the landlord's spouse or any of the adult children of the landlord or the landlord's spouse will occupy the rental unit.

For the landlord to succeed, the Commission must find, on a balance of probabilities, that the landlord intended in good faith to occupy the tenant's rental unit. Accordingly, the landlord's evidence must show that he intends to move into the suite himself as indicated in his Notice of Termination by Landlord.

In this case, the landlord's evidence before the Commission was not specific and not responsive. He refused to answer many of the questions put to him, claiming either that he did not have to answer them or that he had no comment. Overall, his evidence lacked specificity and credibility and was inconsistent with the prior statements he had made to the tenant and to the Branch.

On the other hand, the tenant gave very specific evidence, which was not challenged by the landlord on cross-examination, and which was consistent with the evidence he had previously provided to the Branch and in the documentation.

The landlord did agree that he owned several properties including another home but could not explain why he needed to move into the tenant's particular building. The tenant gave specific evidence regarding various suites available in the building which had been empty during various periods. He also provided copies of advertisements on Kijiji showing a one-bedroom unit available in the building from November 1, 2013. The landlord denied this availability for November 1<sup>st</sup>, indicating that it was for December 1<sup>st</sup>, but provided no evidence in support of this claim. He testified that he preferred a top floor suite, but could not explain why he chose the tenant's suite in particular.

As a result of the panel's review of all of the evidence, the panel preferred the evidence of the tenant and found that the landlord's claim that he intended to move into the tenant's suite for his own personal use lacked credibility. The panel found that the evidence did not establish, on a balance of probabilities, that the landlord intended in good faith to occupy the rental unit. Accordingly, the Order of Possession was not granted by the Commission.

## 2. Order of Possession Granted

The following case provides an illustration of the issues faced by the Commission when determining if a landlord is entitled to terminate a tenancy on short notice for nuisance and disturbance or impairment of safety.

The landlord terminated the tenancy on the basis that the tenants breached their duty not to disturb others and breached their duty not to impair the safety of others.

Section 96(1) of *The Residential Tenancies Act* (the *Act*) states in part as follows:

### **Termination for causes other than failure to pay**

96(1) A landlord may give the tenant a notice of termination if

(a) the tenant contravenes or fails to comply with any of the following provisions of this Act:

...

(vi) section 73 (duty not to disturb others),

(vii) section 74 (duty not to impair safety or interfere with rights),

...

and the tenant fails to remedy the contravention within a reasonable time after receiving written notice to do so by the landlord; ...

### **Length of notice**

96(2) Except as provided in subsection (3), a notice of termination under subsection (1) must not be less than 1 rental payment period effective on the last day of a rental payment period.

### **Early termination for cause**

96(3) The landlord may give a notice of termination that is effective not earlier than five days after the notice is given if there has been

(a) a contravention of

...

(ii) section 74 (duty not to impair safety or interfere with rights),

...

that posed an immediate risk to the health or safety of — or substantially interfered with a right of — the landlord, another tenant or occupant of the residential complex, or a person permitted in the residential complex by any of those persons;

...

(c) a contravention of section 73 (duty not to disturb others) that amounted to or resulted in an extraordinary disturbance.

### **Notice to remedy not required**

96(4) A landlord may give a tenant notice of termination arising from a contravention referred to in subsection (3) without first giving the tenant written notice to remedy the contravention within a reasonable time.



The landlord claimed that the tenants breached their duty not to disturb others (Section 73 of the *Act*) and/or their duty not to impair the safety or interfere with rights (section 74 of the *Act*). The landlord provided written notice to remedy the contravention on May 9, 2014. The landlord testified that the tenants were still in breach of Section 73 and/or Section 74, and as such, she provided a Notice of Termination to the tenants on May 15, 2014, which required the tenants to vacate the premises on May 21, 2014.

Ordinarily, the *Act* requires a Notice of Termination for cause to be not less than one rental payment period. However, Section 96(3)(a) allows for a landlord to give Notice of Termination that is effective not earlier than five days after the Notice is given under certain circumstances including:

- A contravention of Section 74 (duty not to impair safety or interfere with rights) that poses an immediate risk to the health or substantially interferes with the rights of the landlord.
- A contravention of section 73 (duty not to disturb others) that amounted to or resulted in an extraordinary disturbance.

Therefore, the landlord must prove that the nuisance and disturbance of the tenants was extraordinary or that the tenants posed an immediate risk to the health or safety of the landlord or substantially interfered with the rights of the landlord.

The panel found in favour of the landlord. It accepted the evidence of the landlord and found that the behaviour alleged occurred in that the actions of the tenants created a climate of intimidation to the point where the safety of the landlord and her son was immediately impaired. The panel preferred the evidence of the landlord who testified in a forthright and straightforward manner. Her evidence was not prone to exaggeration, and she was responsive to specific questions. The panel found the tenants to be unbelievable. Their versions of evidence changed and they were evasive in their testimony and continually kept referring to irrelevant accusations.

The panel found as a fact that a threat was made to kill the landlord's dog. The panel also found as a fact that the tenant gave the landlord's son the middle finger and that

that behaviour would have been aggressive and threatening to an eight year old child. During the relatively short period of time of the tenants' residency, police were called twice and the panel found that the tenant engaged in offensive and threatening behaviour towards the landlord and her son. There was a fear that was created by the tenants and it is was not unreasonable for the landlord to fear for her own safety or the safety of her son.

As such, the panel found that the tenants had substantially impaired the safety of the landlord and substantially interfered with the rights of the landlord, and that their conduct as a whole had resulted in an extraordinary disturbance. The panel therefore found the early termination for cause to be valid. Accordingly, an Order of Possession was granted to the landlord.

### 3. Application – Rent Increase Above Guideline

The following case provides an illustration of some of the issues that the Commission needs to address when determining a landlord's application for a rent increase above guideline. According to subsection 123(2) of *The Residential Tenancies Act* (the *Act*), a landlord who desires to increase the rent for a rental unit by more than the maximum increase permitted by the regulations shall apply to the director for an order permitting the increase. In this case, the director of the Branch approved an increase and the tenant appealed to the Commission.

The landlord applied for a rent increase of \$327.84 per month. The tenant objected to the rent increase for two reasons. First, he questioned the validity of the invoices and expenses forming part of the landlord's application for rent increase. Second, he said that the rent increase was too high because no work had been done in his rental unit.

Dealing first with the tenant's concerns about the validity of the landlord's invoices and expenses, the panel noted that when the landlord spends money in the building, that the cost is spread over all units. The landlord decides what work to do in their building and the Branch, and Commission on appeal, reviews the invoices and ledgers provided by the landlord to ensure that they are correct and reasonable.

Some of the operating expenses reported by the landlord were reduced by the Branch, and the Commission upheld the reductions determined by the Branch. For example:

- Various expenses such as gas/car expenses and telephone expenses were disallowed in their entirety as the landlord had also claimed 5% of the revenue for management fees which is in place of automobile, office, stationary and other similar expenses paid for by the landlord and salaries paid by the landlord for management and accounting services as per *Residential Rent Regulation* 8(1)(f).
- Various expenses were reduced to reflect the invoices provided by the landlord.
- Some expenses were transferred from operating to capital as per *Residential Rent Regulation* 8(2)(b) and 9(1). That results in a decrease to the allowable portion of

the expenses because unlike operating expenses, capital expenses must be amortized.

Some of the capital expenses were also reduced to reflect the documentation submitted, including reductions where invoices did not clearly state the work completed or amount paid and where the landlord also could not provide proof of payment for the amounts set out on an invoice. As well, some of the capital expenses reported by the landlord were found to have been amortized incorrectly. The adjustments made by the Branch and upheld by the Commission resulted in decreases to the allowable portion of the landlord's capital expenditures. For example:

- The landlord amortized its baseboard expenses at  $\frac{1}{4}$ , which was adjusted to  $\frac{1}{8}$  as per *Residential Rent Regulation 9(1)(d)*.
- The landlord amortized all of its labour expenses at  $\frac{1}{6}$ . Some of the labour expenses were adjusted to  $\frac{1}{3}$  and  $\frac{1}{4}$  to match the amortization rate of the materials that the labour related to.

On appeal, the tenant submitted that more of the expenses ought to be reduced. As part of its review, the Commission contacted a number of the contractors for confirmation of work completed and payments made. There was no evidence of any wrongdoing.

As for the tenant's concern that no work had been done in his rental unit, the Branch inspected the property and noted that some of the replacement items for the tenant's unit had been stored in the building and not installed. The Commission upheld the Branch's finding that those items were part of the landlord's inventory and could not be included in the current application as per Section 13 of the *Branch's Policies and Procedures Guidebook*. This equated to a reduction in the landlord's expenses for the inventoried supplies for the tenant's unit.

Overall, the reductions made by the Branch which were upheld by the Commission, resulted in a finding that the landlord justified a rent increase above guideline in the amount of \$248.94 per unit per month, that is to say \$42.90 less than the increase applied for by the landlord.

**The Public Interest Disclosure (Whistleblower Protection) Act**

The Public Interest Disclosure (Whistleblower Protection) Act came into effect in April 2007. This law gives employees a clear process for disclosing concerns about significant and serious matters (wrongdoing) in the Manitoba public service, and strengthens protection from reprisal. The Act builds on protections already in place under other statutes, as well as collective bargaining rights, policies, practices and processes in the Manitoba public service.

Wrongdoing under the Act may be: contravention of federal or provincial legislation; an act or omission that endangers public safety, public health or the environment; gross mismanagement; or, knowingly directing or counseling a person to commit a wrongdoing. The Act is not intended to deal with routine operational or administrative matters.

A disclosure made by an employee in good faith, in accordance with the Act, and with a reasonable belief that wrongdoing has been or is about to be committed is considered to be a disclosure under the Act, whether or not the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under the Act, and must be reported in a department’s annual report in accordance with Section 18 of the Act. The Residential Tenancies Commission has received an exemption from the Ombudsman under Section 7 of the Act. As a result any disclosures received by the Chief Commissioner or a supervisor are referred to the Ombudsman in accordance with the exemption.

The following is a summary of disclosures received by the Residential Tenancies Commission for the 2014 calendar year:

<b>Information Required Annually (per Section 18 of the Act)</b>	<b>January 1, 2014 to December 31, 2014</b>
The number of disclosures received, and the number acted on and not acted on. <i>Subsection 18(2)(a)</i>	<b>NIL</b>