

Manitoba Residential
Tenancies Commission

**Annual Report
2019-2020**



Manitoba Residential Tenancies Commission

1650 – 155 Carlton Street
Winnipeg, MB R3C 3H8
Phone: 204-945-2028
Fax: 204-945-5453
Email: rtc@gov.mb.ca

Electronic format: <http://www.gov.mb.ca/finance/publications/annual.html>

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

May It Please Your Honour:

I have the privilege of presenting, for the information of Your Honour, the Annual Report of the Manitoba Residential Tenancies Commission for the year ended March 31, 2020.

Respectfully submitted,

Honourable Scott Fielding
Minister of Finance



Residential Tenancies Commission
1650-155 Carlton Street, Winnipeg, Manitoba, Canada R3C 3H8
T 204-945-2028 F 204-945-5453 Toll-Free 1-800-782-8403

Honourable Scott Fielding
Minister of Finance
Room 103, Legislative Building
Winnipeg, MB R3C 0V8

Dear Minister:

I am pleased to present for your approval the 2019/2020 Annual Report of the Residential Tenancies Commission.

Respectfully submitted,

Karin Linnebach
Chief Commissioner
Residential Tenancies Commission

TABLE OF CONTENTS

	PAGE
<i>INTRODUCTION</i>	<i>1</i>
<i>APPEAL ACTIVITY SUMMARY: PARTS 1-8 OF THE RESIDENTIAL TENANCIES ACT</i>	<i>5</i>
<i>TABLE 1: PARTS 1-8 OF THE RESIDENTIAL TENANCIES ACT</i>	<i>8</i>
<i>APPEAL ACTIVITY SUMMARY: PART 9 OF THE RESIDENTIAL TENANCIES ACT</i>	<i>12</i>
<i>TABLE 2: PART 9 OF THE RESIDENTIAL TENANCIES ACT</i>	<i>14</i>
<i>TABLE 3: MOTION TO EXTEND THE TIME TO APPEAL</i>	<i>18</i>
<i>TABLE 4: APPEAL HEARINGS BY JUDICIAL DISTRICT</i>	<i>18</i>
<i>TABLE 5: APPLICATIONS FOR LEAVE TO APPEAL</i>	<i>19</i>
<i>SIGNIFICANT DECISIONS</i>	<i>20</i>
<i>THE PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT – SUMMARY OF DISCLOSURES</i>	<i>27</i>

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, one 0.6 full-time position appointed for up to a four-year term and 15 positions appointed for up to a four-year term, located in Winnipeg, Brandon and Virden. The Deputy Commissioners may exercise the powers and perform the duties of the Chief Commissioner.
- Panel members – 35 part-time panel members – approximately half representing the views of the landlords, the others the views of the tenants; from Winnipeg, Portage La Prairie, 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 a Deputy Chief Commissioner 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.

Effective June 3, 2019, all Commission decisions are final and binding. Prior to June 3, 2019, Part 1 – 8 matters could be appealed to the Court of Appeal, but only on a question of law or jurisdiction.

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 fiscal year ending March 31, 2020. Figures for the fiscal year ending March 31, 2019, have also been provided for purposes of comparison. The statistics are broken down by activity, i.e. security deposits, repairs, utilities.

INTRODUCTION

La Commission de la location à usage d'habitation (la Commission) est un tribunal quasi-judiciaire spécialisé chargé d'entendre les appels des décisions et des ordonnances que rend le directeur de la Direction de la location à usage d'habitation en vertu de la *Loi sur la location à usage d'habitation*.

La Commission de la location à usage d'habitation se compose :

- du commissaire en chef – poste à temps plein; nommé pour une période de cinq ans maximum et basé à Winnipeg;
- des commissaires adjoints – un poste à temps plein, occupé pour une période de quatre ans maximum, un 0.6 poste à temps plein, occupé pour une période de quatre ans maximum et 15 postes à temps partiel, occupés pour une période de quatre ans maximum; basés à Winnipeg, à Brandon et à Virden. Les commissaires adjoints peuvent exercer les pouvoirs et les fonctions du commissaire en chef;
- des membres des comités (35) – une moitié approximativement représente le point de vue des locateurs, l'autre moitié celui des locataires; basés à Winnipeg, Portage-la-Prairie, Thompson et Brandon.

La Commission peut tenir des audiences à l'oral (en personne ou par téléphone) ou par écrit, ou encore en partie à l'oral et en partie par écrit. Les audiences à l'extérieur de Winnipeg ont lieu dans le district judiciaire le plus proche.

Certains appels ne sont entendus que par le commissaire en chef ou par un commissaire en chef adjoint, alors que d'autres appels sont entendus par un comité composé de trois personnes, à savoir un représentant du locateur, un représentant du locataire et un commissaire neutre, le commissaire en chef ou l'un des adjoints, qui préside. En l'absence de majorité, la décision du président neutre est la décision de la Commission.

À compter du 3 juin 2019, toutes les décisions de la Commission sont définitives et exécutoires. Avant le 3 juin 2019, les affaires des parts 1 à 8 pouvaient être portées en appel devant la Cour d'appel, mais uniquement sur une question de droit ou de compétence.

La *Loi sur la location à usage d'habitation* exige du commissaire en chef qu'il soumette au ministre un rapport sur l'administration de la *Loi* six mois après la fin de chaque exercice. La période visée par le présent rapport est l'exercice se terminant le 31 mars 2020. Des chiffres correspondant à l'exercice se terminant le 31 mars 2019 sont également fournis à des fins de comparaison. Les statistiques sont fractionnées par activité (p. ex., dépôts de garantie, réparations, services publics).

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. Between April 1, 2019, to March 31, 2020, the Commission received 414 appeals under Parts 1 – 8 of *The Residential Tenancies Act*. The Commission received 322 appeals of orders resulting from Branch hearings and 54 appeals of claims for security deposit or less. The remaining 38 appeals were related to orders to repair, abandonment, utilities, distraint/lockout and administrative penalties.

The Commission processed 423 cases from April 1, 2019, to March 31, 2020. The Commission confirmed or upheld the Residential Tenancies Branch's decisions in 175 instances. The Commission varied 156 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 56 decisions of the Branch. Another 36 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 their mind and no longer wishing to continue with the appeal. There were 45 motions to extend time to appeal denied. There were no appeals pending as of March 31, 2020.

A person who did not attend or otherwise participate in the hearing before the director can 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 66 applications for leave to appeal, 26 were granted leave and 40 were denied.

From April 1, 2019, to March 31, 2020, there were three applications to the Court of Appeal for leave to appeal. The Court of Appeal denied leave on five applications (three applications received within the 2019 – 2020 reporting period and two carried over from the 2018 – 2019 reporting period). Effective June 3, 2019, all Commission decisions are final and binding. Prior to June 3, 2019, Part 1 – 8 matters could be appealed to the Court of Appeal, but only on a question of law or jurisdiction.

SOMMAIRES DES ACTIVITÉS RELATIVES AUX APPELS

PARTIES 1 À 8 DE LA *LOI SUR LA LOCATION À USAGE D'HABITATION*

Les parties 1 à 8 de la *Loi sur la location à usage d'habitation* statuent sur l'ensemble des questions afférentes au locateur et au locataire d'habitation, exception faite du contrôle du loyer. Le tableau n° 1 présente un résumé statistique des activités exercées par la Commission de la location à usage d'habitation en vertu des parties 1 à 8 de la *Loi*. Entre le 1^{er} avril 2019 et le 31 mars 2020, la Commission a reçu 414 appels relativement aux parties 1 à 8 de la *Loi sur la location à usage d'habitation*. La Commission a reçu 322 appels d'ordres provenant d'audiences de la Direction et 54 appels de réclamations du dépôt de garantie ou moins. Les 38 réalisés aux ordres de réparation, abandon, services publics, saisie/lock-out et sanctions administratives.

Entre le 1^{er} avril 2019 et le 31 mars 2020, la Commission a traité 423 causes. Dans 175 cas, la Commission a confirmé ou soutenu les décisions de la Direction de la location à usage d'habitation. La Commission a aussi modifié 156 décisions de la Direction. Parfois, ces modifications ont été dues au fait que la Commission a reçu au cours de l'audience d'appel des renseignements des parties que la Direction n'avait pas avant de rendre sa décision. La Commission a également annulé 56 décisions de la Direction, et 36 autres appels ont aussi été rejetés par la Commission, ou retirés ou annulés par l'appelant. La plupart des rejets sont causés par des appels en retard ou sans frais d'administration. Les raisons des retraits tiennent généralement du fait que : (1) les parties concernées ont pu arriver à une entente; ou (2) l'appelant a changé d'avis et ne souhaite pas poursuivre le processus d'appel. La Commission a aussi rejeté 45 motions en prorogation du délai d'appel. Il n'y avait aucun appel en instance au 31 mars 2020.

Toute personne qui ne s'est pas présentée à l'audience devant le directeur ou qui n'a pas participé à celle-ci ne peut pas interjeter appel d'un ordre autorisant un ordre de reprise de possession à un locateur relativement à la résiliation d'une location pour non-paiement de loyer ou des frais de services aux locataires, à moins que la Commission, au moment de la demande, accorde à cette personne l'autorisation d'appel. La Commission a reçu 66 demandes d'autorisation d'appel : elle en a accordé 26 et rejeté 40.

Du 1er avril 2019 au 31 mars 2020, trois demandes d'autorisation d'appel ont été déposées auprès de la Cour d'appel. La Cour d'appel a refusé l'autorisation sur cinq demandes (trois demandes reçues au cours de la période de rapport 2019-2020 et deux reportées de la période de rapport 2018-2019). À compter du 3 juin 2019, toutes les décisions de la Commission sont définitives et exécutoires. Avant le 3 juin 2019, les affaires des parties 1 à 8 pouvaient être portées en appel devant la Cour d'appel, mais uniquement sur une question de droit ou de compétence

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

	<u>April 1, 2018 – March 31, 2019</u>	<u>April 1, 2019 – March 31, 2020</u>
	(Cases)	(Cases)
<u>ADMINISTRATIVE PENALTIES</u>		
Carried forward from previous year	0	0
Appeals Received	0	5
TOTAL	0	5
Decisions Confirmed	0	4
Decisions Varied	0	1
TOTAL APPEALS CLOSED	0	5
ACTIVE	0	0
<u>CLAIM FOR SECURITY DEPOSIT OR LESS</u>		
Carried forward from previous year	12	12
Appeals Received	57	54
TOTAL	69	66
Decisions Confirmed	22	21
Decisions Varied	19	17
Decisions Rescinded	6	6
Appeals Withdrawn/Rejected	9	10
Cancelled	1	0
Appeals Pending	0	0
TOTAL APPEALS CLOSED	57	54
ACTIVE	12	12
<u>DISPUTES</u>		
Carried forward from previous year	0	0
Appeals Received	0	0
TOTAL	0	0
Decisions Varied	0	0
Decisions Rescinded	0	0
Appeals Withdrawn/Rejected	0	0
Cancelled	0	0
TOTAL APPEALS CLOSED	0	0
ACTIVE	0	0

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

	<u>April 1, 2018 – March 31, 2019</u> (Cases)	<u>April 1, 2019 – March 31, 2020</u> (Cases)
<u>DISTRAINT AND LOCKOUT</u>		
Carried forward from previous year	0	1
Appeals Received	8	2
TOTAL	8	3
Decisions Confirmed	5	0
Decisions Varied	0	1
Decisions Withdrawn	0	0
Decisions Rescinded	2	1
TOTAL APPEALS CLOSED	7	2
ACTIVE	1	1
<u>ENFORCEMENT</u>		
Carried forward from previous year	0	0
Appeals Received	1	2
TOTAL	1	2
Decisions Confirmed	1	2
TOTAL APPEALS CLOSED	1	2
ACTIVE	0	0
<u>HEARINGS</u>		
Carried forward from previous year	78	57
Appeals Received	343	322
TOTAL	421	379
Decisions Confirmed	168	128
Decisions Varied	135	132
Decisions Rescinded	29	47
Appeals Withdrawn/Rejected	12	13
Cancelled	18	10
Appeals Pending	1	0
TOTAL APPEALS CLOSED	364	330
ACTIVE	57	49

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

	<u>April 1, 2018 – March 31, 2019</u> (Cases)	<u>April 1, 2019 – March 31, 2020</u> (Cases)
<u>REPAIRS</u>		
Carried forward from previous year	5	3
Appeals Received	175 ¹	25
TOTAL	180¹	28
Decisions Confirmed	14	16
Decisions Varied	155 ¹	6
Decisions Rescinded	2	2
Cancelled	1	0
Appeals Withdrawn/Rejected	5	2
Appeals Pending		0
TOTAL APPEALS CLOSED	177¹	26
ACTIVE	3	2
<u>UTILITIES</u>		
Carried forward from previous year	0	0
Appeals Received	0	4
TOTAL	0	4
Decisions Confirmed	0	3
Decisions Varied	0	0
Decisions Rescinded	0	0
Appeals Withdrawn/Rejected	0	1
Cancelled	0	0
TOTAL APPEALS CLOSED	0	4
ACTIVE	0	0

1 A landlord appealed 151 Orders to the Commission which related to one issue, regarding multiple rental units in one residential complex.

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

	<u>April 1, 2018 – March 31, 2019</u> (Cases)	<u>April 1, 2019 – March 31, 2020</u> (Cases)
<u>TOTAL APPEALS</u>		
Carried forward from previous year	95	73
Appeals Received	584 ²	414
TOTAL	679²	487
Decisions Confirmed	210	175
Decisions Varied	309 ²	156
Decisions Rescinded	39	56
Appeals Withdrawn/Rejected	27	26
Cancelled	20	10
Appeals Pending	1	0
TOTAL APPEALS CLOSED	606²	423
ACTIVE	73	64

2 A landlord appealed 151 Orders to the Commission which related to one issue, regarding multiple rental units in one residential complex.

	<u>April 1, 2018 – March 31, 2019</u> (Cases)	<u>April 1, 2019 – March 31, 2020</u> (Cases)
<u>LEAVE TO APPEAL APPLICATIONS TO THE RESIDENTIAL TENANCIES COMMISSION</u>		
Carried forward from previous year	0	0
Applications Received	50	66
TOTAL	50	66
Leave to Appeal Granted	25	26
Leave to Appeal Denied	25	40
TOTAL APPEALS CLOSED	50	66
ACTIVE	0	0

APPEAL ACTIVITY SUMMARY

PART 9 OF *THE RESIDENTIAL TENANCIES ACT*

The Commission received appeals for 93 buildings affecting 664 rental units on orders the Residential Tenancies Branch issued under Part 9 of *The Residential Tenancies Act* between April 1, 2019, and March 31, 2020.

The Commission processed appeals on orders for 104 buildings affecting 514 rental units in the fiscal year ending March 31, 2020. The Commission upheld orders on 144 units in 53 buildings and varied orders on 85 units in 16 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 35 other buildings affecting 285 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.

SOMMAIRES DES ACTIVITÉS RELATIVES AUX APPELS

PARTIE 9 DE LA LOI SUR LA LOCATION À USAGE D'HABITATION

La Commission a reçu des appels pour 93 immeubles comptant 664 unités locatives relativement à des ordres rendus par la Direction de la location à usage d'habitation en vertu de la partie 9 de la *Loi sur la location à usage d'habitation* entre le 1^{er} avril 2019 et le 31 mars 2020.

La Commission a traité des appels d'ordres pour 104 immeubles comptant 514 unités locatives pendant l'exercice se terminant le 31 mars 2020. La Commission a confirmé les ordres concernant 144 unités dans 53 immeubles et a modifié les ordres concernant 85 unités dans 16 immeubles. Parfois, ces modifications ont été dues au fait que la Commission a reçu au cours de l'audience d'appel des renseignements que la Direction n'avait pas avant de rendre sa décision. Des appels concernant 35 autres immeubles comptant 285 unités ont été rejetés par la Commission, ou retirés ou annulés par l'appelant.

Il n'y a pas d'appel auprès de la Cour d'appel relativement au contrôle des loyers.

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

	<u>April 1, 2018 – March 31, 2019</u>		<u>April 1, 2019 – March 31, 2020</u>	
	Bldgs.	Units	Bldgs.	Units
APPLICATION - LAUNDRY INCREASE				
Carried forward from previous year	0	0	0	0
Appeals Received	0	0	0	0
TOTAL	0	0	0	0
Decisions Varied	0	0	0	0
Appeals Withdrawn/Rejected	0	0	0	0
TOTAL APPEALS CLOSED	0	0	0	0
ACTIVE	0	0	0	0
APPLICATION - REHABILITATION				
Carried forward from previous year	0	0	1	2
Appeals Received	3	4	1	9
TOTAL	3	4	2	11
Decisions Confirmed	2	2	0	0
Decisions Varied	0	0	0	0
Decisions Rescinded	0	0	1	9
Appeals Withdrawn/Rejected	0	0	1	2
TOTAL APPEALS CLOSED	2	2	2	11
ACTIVE	1	2	0	0
LIFE LEASE				
Carried forward from previous year	1	1	0	0
Appeals Received	0	0	0	0
TOTAL	1	1	0	0
Decisions Confirmed	1	1	0	0
Appeals Withdrawn/Rejected	0	0	0	0
TOTAL APPEALS CLOSED	1	1	0	0
ACTIVE	0	0	0	0

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

	<u>April 1, 2018 – March 31, 2019</u>		<u>April 1, 2019 – March 31, 2020</u>	
	Bldgs.	Units	Bldgs.	Units
TENANT OBJECTIONS TO GUIDELINE OR LESS				
Carried forward from previous year	0	0	0	0
Appeals Received	0	0	0	0
TOTAL	0	0	0	0
Decisions Confirmed	0	0	0	0
Decisions Varied	0	0	0	0
TOTAL APPEALS CLOSED	0	0	0	0
ACTIVE	0	0	0	0
APPLICATION - WITHDRAWAL OF SERVICE				
Carried forward from previous year	0	0	2	13
Appeals Received	3	14	2	2
TOTAL	3	14	4	15
Decisions Confirmed	0	0	1	1
Decisions Varied	1	1	3	14
Appeals Withdrawn/Rejected	0	0	0	0
Appeals Cancelled	0	0	0	0
TOTAL APPEALS CLOSED	1	1	4	15
ACTIVE	2	13	0	0
COMPLIANCE				
Carried forward from previous year	4	12	7	22
Appeals Received	12	28	8	12
TOTAL	16	40	15	34
Decisions Confirmed	2	10	7	9
Decisions Varied	4	4	2	6
Appeals Withdrawn/Rejected	3	4	1	12
TOTAL APPEALS CLOSED	9	18	10	27
ACTIVE	7	22	5	7

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

	<u>April 1, 2018 – March 31, 2019</u>		<u>April 1, 2019 – March 31, 2020</u>	
	Bldgs.	Units	Bldgs.	Units
APPLICATION – RENT INCREASE ABOVE GUIDELINE				
Carried forward from previous year	17	121	31	267
Appeals Received	82	885	82	641
TOTAL	99	1006	113	908
Decisions Confirmed	23	197	45	134
Decisions Varied	9	57	11	65
Appeals Withdrawn/Rejected	33	43	30	255
Appeals Cancelled	3	442	2	7
TOTAL APPEALS CLOSED	68	739	88	461
ACTIVE	31	267	25	447

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

	<u>April 1, 2018 – March 31, 2019</u>		<u>April 1, 2019 – March 31, 2020</u>	
	Bldgs.	Units	Bldgs.	Units
TOTAL APPEALS				
Carried forward from previous year	22	134	41	304
Appeals Received	100	931	93	664
TOTAL	122	1065	134	968
Decisions Confirmed	28	210	53	144
Decisions Varied	14	62	16	85
Appeals Withdrawn/Rejected	36	47	32	269
Appeals Cancelled	3	442	2	7
Appeals Rescinded	0	0	1	9
TOTAL APPEALS CLOSED	81	761	104	514
ACTIVE	41	304	30	454

TABLE 3
MOTION FOR EXTENSION OF TIME TO APPEAL

	<u>April 1, 2018 – March 31, 2019</u> (Cases)	<u>April 1, 2019 – March 31, 2020</u> (Cases)
<u>MOTIONS FOR EXTENSION OF TIME TO APPEAL</u>		
Carried forward from previous year	0	0
Applications Received	92	91
TOTAL	92	91
Decisions Denied	49	45
Decisions Granted	43	46
TOTAL	92	91
ACTIVE	0	0

TABLE 4
APPEAL HEARINGS BY JUDICIAL DISTRICT
RESIDENTIAL TENANCIES COMMISSION

	<u>April 1, 2018 - March 31, 2019</u>	<u>April 1, 2019 - March 31, 2020</u>
Winnipeg	476	548
Brandon	12	5
Dauphin	0	0
Morden/Winkler	1	0
Portage la Prairie	3	3
Russell	0	0
Steinbach	2³	0
Thompson	0	0
TOTAL	<u>493</u>	<u>556</u>

3 A landlord appealed 151 Orders to the Commission which related to one issue, regarding multiple rental units in one residential complex. One hearing was held as these matters were heard together.

TABLE 5
APPLICATIONS FOR LEAVE TO APPEAL TO THE COURT OF APPEAL

	<u>April 1, 2018 - March 31, 2019</u>	<u>April 1, 2019 - March 31, 2020</u>
Granted	0	0
Denied	18	5
Withdrawn/Abandoned	1	0
Pending	<u>2</u>	<u>0</u>
TOTAL	<u>21</u>	<u>5</u>

****Effective June 3, 2019, all Commission decisions are final and binding. Prior to June 3, 2019, Part 1 – 8 matters could be appealed to the Court of Appeal, but only on a question of law or jurisdiction.*

SIGNIFICANT DECISIONS

Significant Decisions

The following are summaries of significant decisions of the Residential Tenancies Commission (the Commission) and the reasons for the decisions that were issued in the 2019/20 fiscal year.

1. Rent Abatement - Loss of Use

The rental unit was a penthouse that included a rooftop patio. This was an attractive feature, and the tenants testified it was this feature that persuaded them to rent the unit. For valid safety reasons, the landlord had to repair the roof, including the patio. The landlord gave the tenants written notice about the coming repair project, saying that, “the scope of work will last a few weeks”. In fact, the work was slow to start and took much longer. The tenants lost access to the patio for about a year. The tenants filed a claim for \$7,200 based on the estimated difference in rent between their unit and a three-bedroom unit in the building, multiplied by 12.

Oral and implied tenancy agreements are as valid as written ones. It might be argued that there is an implied term in every tenancy agreement that tenants might have to endure minor inconvenience from time to time because of valid repairs to their units and/or their buildings. However, there comes a point at which the inconvenience is so substantial and/or so prolonged that the tenants are no longer getting the full value of the package they are paying for with their rent.

There was no evidence that the contractors who completed the repairs were negligent or incompetent. However, the tenants’ loss of value was nevertheless real and significant. Taking into account the various differences between penthouses and ordinary three-bedroom units in the building, and other relevant facts, the Commission determined a fair and reasonable compensation was \$1,000 for the loss of the rooftop patio during the lengthy repairs.

2. A Landlord's Duty to Mitigate

The tenancy agreement ran until September 30, 2019. On May 4, the tenants told the landlord that they wanted to move out on June 30. The tenants began advertising for new tenants in order to assign the lease. The tenants gave several names (with contact information) to the landlord for screening. The landlord felt that there was a major difference between married couples and between unmarried roommates. He felt that married couples were less likely to split up during the course of the tenancy agreement. In the landlord's view, if unmarried roommates wanted to be tenants, each would have to have an income large enough to pay the entire rent by themselves (in the event that the roommates split up and one moved out).

The tenants sent the landlord the contact information for a potential tenant with a co-signer (guarantor), but the landlord did not take any initiative to find out any information about the co-signer. The landlord did not approve a new tenant until August 1. The landlord filed a claim for July rent, because the unit was vacant in July.

The Commission found that the landlord's screening process was unreasonable. His distinctions between married couples and unmarried potential tenants was inconsistent with human rights legislation. Human rights values are useful in helping to determine what is reasonable conduct by a landlord. Although the landlord claimed that he would consider potential tenants with co-signers, his conduct suggested otherwise. Again, the Commission found this conduct to be unreasonable. The tenant's appeal was allowed and no compensation or costs were awarded to the landlord.

3. **Contracting Out of *The Residential Tenancies Act* is Invalid**

The tenant's fridge stopped working on a Friday night. She contacted various landlord representatives, who assured her the fridge would be repaired. It was not repaired until Monday. By then, the food in the fridge and freezer had spoiled and had to be replaced. Also, the tenant had avoided grocery shopping on the weekend, until the fridge was fixed. She ate fast food on the weekend, and saved all receipts. The landlord talked about providing some compensation to the tenant, but stopped communicating with her. The tenant brought a claim against the landlord for \$200. There was a clause in an addendum to the tenancy agreement stating that the landlord would not be liable for losses resulting from fridge malfunctions (the Waiver).

The Commission held that section 59 of the *Act* imposes on landlords a duty to repair rental units which included repairs to the fridge. Section 2 and 6 of the *Act* prohibit attempts to waive the provisions of the *Act*. Accordingly, the Commission determined that the Waiver was void.

The Commission found that the landlord's delay in repairing the fridge was unreasonable. The Commission also found the tenant's estimate that she suffered at least \$200 in food losses was credible. The landlord was ordered to pay the tenant \$200 plus costs.

4. Extension of the Time to Appeal

The Act has specific time requirements for filing an appeal of an order or decision of the Branch. Subsection 161(2) of the *Act* provides that generally an order of the Branch must be appealed within 14 days of receiving it or such other time as permitted by the Chief Commissioner or a Deputy Chief Commissioner. The power of the Chief Commissioner or Deputy Chief Commissioner to extend the time to appeal is discretionary.

In 2014, the landlord applied to the Branch for a rehabilitation scheme under s. 133 of the *Act*. The Branch issued orders in 2014 granting initial approval to the rehabilitation scheme. By June, 2016, the work was still not finished and the Branch issued another order rescinding the 2014 Orders. There was a change of landlord and the new landlord found out about the 2016 Orders in 2019. In April 2019, the new landlord applied to the Commission requesting an extension of time to appeal the 2016 Orders.

In *R. v. Roberge*, 2005 SCC 48, the Supreme Court of Canada articulated a number of factors which are useful to the exercise of discretion regarding extensions of time. The factors are as follows:

1. Whether the moving party formed a bona fide intention to seek leave to appeal and communicated that intention to the opposing party within the prescribed time;
2. Whether counsel moved diligently;
3. Whether a proper explanation for the delay has been offered;
4. The extent of the delay;
5. Whether granting or denying the extension of time will unduly prejudice one or the other of the parties; and
6. The merits of the application for leave to appeal.

The Commission found that despite the landlord not satisfying some of the above factors, it would be unfair to the current landlord who had spent an extraordinary amount of money on the rehabilitation not to grant an extension of time to appeal the Branch Orders. Should

the extension be granted, there was no actual prejudice to any party except the current landlord (and possibly the former landlord) and there was an arguable case on the merits. Considering all the circumstances and factors, the Commission found that the justice of the case required the granting of an extension of time to file the appeal.

5. **Landlord's Ability to Withdraw its Rent Increase Application and Charge Guideline Rent Increases**

The landlord applied to the Branch for a rent increase of 6.28%. The Branch determined that the landlord qualified for a rent increase of 1.7%. The landlord appealed to the Commission. The landlord requested to withdraw its rent increase application and charge guideline rent increases which were 1.3% in 2018 and 2.2% in 2019.

Based on the *Act* and the *Policy Guide*, the Commission found that a landlord is not automatically entitled to a guideline rent increase if it is found not to be able to justify an above guideline increase. Having applied for an above guideline rent increase, the Commission found it would be unfair and unjust to the tenants to allow the landlord to take a guideline rent increase of 2.2% in 2019 after the Branch found the landlord's costs could only justify a rent increase of 1.7%. The landlord's appeal was dismissed.

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 April 1, 2019 to March 31, 2020:

Information Required Annually (per Section 18 of the Act)	April 1, 2019 to March 31, 2020
The number of disclosures received, and the number acted on and not acted on. <i>Subsection 18(2)(a)</i>	NIL