

Manitoba Residential
Tenancies Commission

**Annual Report
2013**

His Honour the Honourable Philip Lee, 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 the Annual Report of the Residential Tenancies Commission on the administration of *The Residential Tenancies Act* for the year ending December 31, 2013, for the information of your Honour.

Respectfully submitted,

“original signed by”

Ron Lemieux





Tourism, Culture, Heritage, Sport and Consumer Protection
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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 Sir:

I have the honour of submitting the Residential Tenancies Commission Annual Report on the administration of *The Residential Tenancies Act* for the year ending December 31, 2013.

Respectfully submitted,

“original signed by”

A. L. Kussin
Chief Commissioner
Residential Tenancies Commission

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INTRODUCTION

The Residential Tenancies 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 nineteen part-time positions appointed for up to a four-year term, from Winnipeg, Thompson and Brandon. The Deputy Commissioner may exercise the powers and perform the duties of the Chief Commissioner.
- Panel members – forty-one 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. The neutral Chairperson also casts the deciding vote if there is a tie.

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 here 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 2013 fiscal year. Figures for the 2012 fiscal year 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 2013 the Commission received 421 appeals under Parts 1 – 8 of *The Residential Tenancies Act*. The Commission received 360 appeals of orders resulting from Branch hearings and 37 appeals of claims for security deposit or less. The remaining 24 appeals were related to various other issues such as orders to repair, non-payment of utilities, disputes over locks and doors and seizure of tenants' property.

The Commission processed 388 cases before year-end. The Commission confirmed or upheld the Residential Tenancies Branch's decisions in 130 instances. The Commission varied 160 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 40 decisions of the Branch. Another 37 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. Three hearings were cancelled and there were 19 motions to extend time to appeal denied. There were two appeals pending at the end of 2013.

In 2013, there were 14 applications to the Court of Appeal for leave to appeal. The Court of Appeal denied leave on 10 applications. Three applications for leave to appeal were withdrawn. One application for leave to appeal was abandoned.

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

	January 1, 2012 - December 31, 2012 (Cases)	January 1, 2013 - December 31, 2013 (Cases)
<u>ABANDONMENT OF PERSONAL PROPERTY</u>		
Carried forward from previous year	0	0
Appeals Received	0	0
TOTAL	0	0
Decisions Upheld	0	0
Decisions Varied	0	0
TOTAL APPEALS CLOSED	0	0
ACTIVE	0	0
<u>CLAIM FOR SECURITY DEPOSIT OR LESS</u>		
Carried forward from previous year	10	4
Appeals Received	28	37
TOTAL	38	41
Decisions Confirmed	10	7
Decisions Varied	13	9
Decisions Rescinded	2	5
Appeals Withdrawn/Rejected	6	5
Cancelled	0	0
Motion to Extend Time Denied	3	2
Appeals Pending	0	1
TOTAL APPEALS CLOSED	34	29
ACTIVE	4	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

	January 1, 2012 - December 31, 2012 (Cases)	January 1, 2013 - December 31, 2013 (Cases)
<u>DISTRAINT AND LOCKOUT</u>		
Carried forward from previous year	0	0
Appeals Received	1	1
TOTAL	1	1
Decisions Confirmed	1	1
TOTAL APPEALS CLOSED	1	1
ACTIVE	0	0
<u>ENFORCEMENT</u>		
Carried forward from previous year	0	0
Appeals Received	0	0
TOTAL	0	0
Decisions Confirmed	0	0
TOTAL APPEALS CLOSED	0	0
ACTIVE	0	0
<u>HEARINGS</u>		
Carried forward from previous year	99	77
Appeals Received	332	360
TOTAL	431	437
Decisions Confirmed	119	115
Decisions Varied	144	143
Decisions Rescinded	52	34
Appeals Withdrawn/Rejected	20	26
Cancelled	4	2
Motion to Extend Time Denied	15	15
Appeals Pending	0	1
TOTAL APPEALS CLOSED	354	336
ACTIVE	77	101

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

	January 1, 2012 - December 31, 2012 (Cases)	January 1, 2013 - December 31, 2013 (Cases)
<u>REPAIRS</u>		
Carried forward from previous year	8	4
Appeals Received	21	23
TOTAL	29	27
Decisions Confirmed	7	7
Decisions Varied	8	8
Decisions Rescinded	5	1
Cancelled	0	1
Appeals Withdrawn/Rejected	5	3
Motion to Extend Time Denied	0	2
Appeals Pending	0	0
TOTAL APPEALS CLOSED	25	22
ACTIVE	4	5
<u>UTILITIES</u>		
Carried forward from previous year	4	0
Appeals Received	4	0
TOTAL	8	0
Decisions Confirmed	7	0
Decisions Varied	0	0
Decisions Rescinded	0	0
Appeals Withdrawn/Rejected	0	0
Cancelled	0	0
Motion to Extend Time Denied	1	0
TOTAL APPEALS CLOSED	8	0
ACTIVE	0	0

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

	January 1, 2012 - <u>December 31, 2012</u> (Cases)	January 1, 2013 - <u>December 31, 2013</u> (Cases)
<u>TOTAL APPEALS</u>		
Carried forward from previous year	121	85
Appeals Received	386	421
TOTAL	507	506
Decisions Confirmed	144	130
Decisions Varied	165	160
Decisions Rescinded	59	40
Appeals Withdrawn/Rejected	31	34
Cancelled	4	3
Motion to Extend Time Denied	19	19
Appeals Pending	0	2
TOTAL APPEALS CLOSED	422	388
ACTIVE	85	118

APPEAL ACTIVITY SUMMARY

PART 9 OF *THE RESIDENTIAL TENANCIES ACT*

In 2013, the Commission received appeals for 84 buildings affecting 523 rental units on orders the Residential Tenancies Branch issued under Part 9 of *The Residential Tenancies Act*.

The Commission processed appeals on orders for 108 buildings affecting 851 rental units in the 2013 calendar year. The Commission upheld orders on 32 units in 18 buildings and varied orders on 534 units in 38 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 52 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.

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

	January 1, 2012 – December 31, 2012		January 1, 2013– December 31, 2013	
	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 Confirmed	0	0	0	0
TOTAL APPEALS CLOSED	0	0	0	0
ACTIVE	0	0	0	0
APPLICATION - REHABILITATION				
Carried forward from previous year	2	12	0	0
Appeals Received	7	54	7	38
TOTAL	9	66	7	38
Decisions Confirmed	4	15	1	1
Decisions Varied	1	47	4	7
Appeals Withdrawn/Rejected	4	4	0	0
TOTAL APPEALS CLOSED	9	66	5	8
ACTIVE	0	0	2	30
LIFE LEASE				
Carried forward from previous year	0	0	0	0
Appeals Received	0	0	1	1
TOTAL	0	0	0	0
Appeals Withdrawn/Rejected	0	0	1	1
TOTAL APPEALS CLOSED	0	0	1	1
ACTIVE	0	0	0	0

TABLE 2 - APPEALS

**STATISTICAL SUMMARY FOR MANITOBA
PART 9 OF *THE RESIDENTIAL TENANCIES ACT***

	January 1, 2012– December 31, 2012		January 1, 2013 – December 31, 2013	
	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	1	3	2	155
Appeals Received	4	157	1	2
TOTAL	5	160	3	157
Decisions Confirmed	2	4	0	0
Decisions Varied	0	0	1	2
Appeals Withdrawn/Rejected	1	1	1	153
TOTAL APPEALS CLOSED	3	5	2	155
ACTIVE	2	155	1	2
COMPLIANCE				
Carried forward from previous year	1	1	9	9
Appeals Received	14	40	9	16
TOTAL	15	41	18	25
Decisions Confirmed	3	22	7	7
Decisions Varied	1	8	2	6
Appeals Withdrawn/Rejected	2	2	3	3
TOTAL APPEALS CLOSED	6	32	12	16
ACTIVE	9	9	6	9

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

	January 1, 2012– December 31, 2012		January 1, 2013 – December 31, 2013	
	Bldgs.	Units	Bldgs.	Units
APPLICATION – RENT INCREASE ABOVE GUIDELINE				
Carried forward from previous year	22	50	32	247
Appeals Received	105	1005	66	466
TOTAL	127	1055	98	713
Decisions Confirmed	8	14	10	24
Decisions Varied	41	532	31	519
Appeals Withdrawn/Rejected	43	255	42	104
Appeals Cancelled	2	7	4	16
Motion to Extend Denied	1	0	1	8
TOTAL APPEALS CLOSED	95	808	88	671
ACTIVE	32	247	10	42

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

	January 1, 2012– December 31, 2012		January 1, 2013 – December 31, 2013	
	Bldgs.	Units	Bldgs.	Units
TOTAL APPEALS				
Carried forward from previous year	26	66	43	411
Appeals Received	130	1256	84	523
TOTAL	156	1322	127	934
Decisions Confirmed	17	55	18	32
Decisions Varied	43	587	38	534
Appeals Withdrawn/Rejected	50	262	47	261
Appeals Cancelled	2	7	4	16
Motion to Extend Denied	1	0	1	8
TOTAL APPEALS CLOSED	113	911	108	851
ACTIVE	43	411	19	83

TABLE 3
APPEAL HEARINGS BY JUDICIAL DISTRICT
RESIDENTIAL TENANCIES COMMISSION

	<u>January 1, 2012 – December 31, 2012</u>	<u>January 1, 2013 – December 31, 2013</u>
Winnipeg	508	516
Altona	0	0
Beausejour	2	1
Brandon	14	8
Carman	0	2
Dauphin	1	0
Flin Flon	0	0
Morden/Winkler	0	1
Portage la Prairie	17	3
Russell	0	0
Selkirk	3	5
Steinbach	1	6
The Pas	0	0
Thompson	4	1
	<hr/>	<hr/>
TOTAL	<u>550</u>	<u>543</u>

TABLE 4
APPLICATIONS FOR LEAVE TO APPEAL

	<u>January 1, 2012– December 31, 2012</u>	<u>January 1, 2013– December 31, 2013</u>
Granted	12	0
Denied	13	10
Withdrawn/Abandoned	0	4
Pending	<u>3</u>	<u>0</u>
	<hr/>	<hr/>
TOTAL	<u>28</u>	<u>14</u>

SIGNIFICANT DECISIONS

Significant Decisions

1.

The Residential Tenancies Branch (the Branch) granted an Order requiring the landlord to return the security deposit plus interest to the tenants and ordered the landlord to pay to the tenants \$15,465.00 for loss of personal property, increased rent incurred as a result of the tenants having to find a new rental unit, and costs. The landlord appealed both Orders and a hearing date was set for the landlord's appeal.

The tenant stated that her tenancy began with the former owner in April 2010. A tenancy agreement from April 1, 2010 to March 31, 2011 was entered into. The tenants last renewed the lease with the former landlord in early February 2012 for the period of April 1, 2012 to March 31, 2013.

The tenant stated that she and her co-tenant are students from Ontario and are attending the University of Winnipeg. She stated that she and her co-tenant would leave the unit during breaks from university to go to Ontario. They left the unit every Christmas, summer, reading week and Thanksgiving during the term of the tenancy. When they would leave the unit, they would ensure that post-dated cheques were left with the landlord to cover rent as it became due. The tenant stated that they last left the unit in April 2012 to return to Ontario and would return to the unit in late August 2012 before the commencement of the next university term. She stated that when they left they simply took a few suitcases of personal belongings and left the rest of their personal possessions in the unit. This included all furniture and personal paperwork such as student aid receipts, university documents, health cards, social insurance cards, tax information, receipts for belongings and purchases, and personal photographs. Because they were returning in a few months, they left their dry goods in the unit, canned soups, cereal and other foodstuffs.

Before they left the unit, the tenant provided her current landlord and former owner with post-dated cheques to cover the rent for May, June, July and August 2012. She stated that the former owner and landlord had her contact information for where they were staying in Ontario. Further, she stated that her home phone number was still active while they were in Ontario and that the phone had voicemail.

The tenant stated that when she and the co-tenant left the unit in April 2012, the unit was fairly messy. They had a train to catch and were running late. She accidentally left a submarine sandwich in the fridge when she left to catch the train.

In August 2012 the tenant noticed that the money to cover June, July and August 2012 rent was not taken out of her bank account. She contacted the former landlord and was directed to contact the new owner. She stated she was informed by the new owner that the previous owner had sold the building. She stated she was told that the new landlord owned the building since May 2012, that its system had a move out date of June 1, 2012 for her unit, and that the only lease agreements it had on file for their unit were from 2010 and 2011. She stated she was advised by the new landlord that they had deemed her unit to be abandoned and had cleared out all of their belongings from the unit. She was advised that all of their possessions, including all paperwork, identification and photographs, had been disposed of.

The tenant stated that they never received any correspondence from the previous owner advising them of the sale of the building. She stated that they had never received any correspondence from the new owner at any time before she contacted them in August.

As a result, the tenant stated that she and the co-tenant were forced to find alternate housing on short notice at a cost of \$200.00 more per month. The tenants were claiming compensation of \$200.00 per month for the increase in rent for the seven months left on their lease.

The tenants provided a list of the possessions that were in the unit and ultimately disposed of by the landlord.

The list of possessions included furniture, clothing, electronics, kitchen/household items, small appliances, dishes, books and textbooks, CDs, DVDs, video games, luggage, vacuum, board games, toiletries, eyeglasses, and jewellery. Included in the list is a PVR that was rented from MTS. Ultimately MTS charged the tenants for their failure to return the PVR.

The tenant reiterated that the previous landlord was fully aware they were remaining tenants and that they had provided payment for the months they were going to be away.

The tenant stated that the account they used for rent was not one that they accessed on a daily basis and therefore didn't notice until August 2012 that the rent was still in their account.

The new landlord's representative stated that the new landlord took over the building from the previous landlord on June 1, 2012. He stated that, on June 11, 2012, a building inspection was conducted. He stated that when they entered the tenants' unit to test the smoke detector, they noticed multiple notices in the suite, the hydro had been disconnected, and the unit smelled of rotten food. He stated they contacted hydro and were advised that the tenants cut off the hydro in April 2012. He stated that they attempted to contact the tenants at the phone number they were given and there was no answer. As a result, the landlord determined the unit to be abandoned and made arrangements to have the unit cleaned out.

The new landlord representative stated that he had no contact from the tenants until August 16, 2012. He stated it seemed very unusual that the tenants would not have contacted the landlord before August. He stated the tenants were advised that the previous landlord did not provide the new landlord with the rent cheques and that the landlord deemed the unit abandoned.

The new landlord representative strongly submitted that there weren't any items of value in the unit.

An assistant property manager of the new landlord stated that notices were given out regarding the new building ownership and that a walk through was conducted to determine the conditions of the suites. He stated that when he entered the tenants' unit, he noticed numerous notices under the door, a foul odor, that the hydro was cut off, and that the unit was "a complete mess". He stated that his first reaction was that "these people have skipped".

The new landlord's property manager acknowledged that he did not go through the tenants' belongings before they were disposed of. He stated that he didn't touch the belongings and that he didn't rearrange anything. He acknowledged that there was an item in one of the pictures that looked like a cheque book and that the address on the cheque book could have given them a means of locating the tenants.

An employee of the new landlord stated that the unit was re-rented on July 6, 2012, because the tenants had “forfeited”. She stated that there had been a problem with bedbugs in the building, but acknowledged that no bedbugs were found in the tenants’ unit. She stated that when the new landlord took over the building from the old landlord all they received was the original application to rent and lease. She stated that there was not a good transfer of information from the old landlord. She stated that she received post-dated cheques from the old landlord for other units in the building but nothing for the tenants’ unit.

She stated she tried to locate the tenants through facebook, but to no avail.

The new landlord’s senior property manager acknowledged that even if the belongings had limited value, it was their responsibility to complete an inventory and that they did not. He acknowledged that there was nothing in the old landlord’s evidence to show that the building had a bedbug problem. He stated that it wasn’t until after the tenants’ belongings were disposed of that they were advised by the old landlord that they found the tenants’ post-dated cheques.

As a direct result of being improperly evicted and having to find housing on short notice, the tenants incurred an increased cost of \$200.00 per month for rent.

The new landlord acknowledged that the security deposit was still being held by the landlord and was owed to the tenants.

The Residential Tenancies Act (the Act) and tenancy agreements define the obligations of landlords and tenants. The tenants entered into a tenancy agreement with a one-year fixed term beginning April 1, 2012 and ending March 31, 2013. The panel accepted the evidence of the tenants that since their tenancy began in 2010, they had regularly returned to Ontario while university was not in session. Their evidence shows that the tenants’ left post-dated cheques with the former landlord to cover the rent while they returned to Ontario in the spring and summer of 2012. Because of the condition of the unit at the time of the suite inspection, the fact that notices to the tenants were still in the suite at the time of the inspection and because the hydro to the suite was cut off, the new landlord incorrectly, but understandably, determined that the unit was abandoned. This determination was made by the new landlord through no fault of the tenants as the tenants had made the necessary arrangements with the old landlord. Given the tenants signed a

lease, provided post-dated cheques to the old landlord and provided the old landlord with their contact information in Ontario, the panel found that the unit was not abandoned by the tenants.

Even if the panel held that the unit was abandoned, the landlord was not entitled to dispose of all the tenants' belongings as it did. Part 7 of *The Residential Tenancies Act* addresses the personal property of tenants and clearly states in subsection 106(2) that a landlord may remove, store, sell or dispose of abandoned property only in accordance with Part 7 of the *Act*. Section 106.1 of *The Residential Tenancies Act* states:

Worthless, unsanitary or unsafe property

106.1(2) If a landlord is satisfied on reasonable grounds that an item of abandoned property

- (a) has no monetary value; or
- (b) is unsanitary or unsafe to store;

the landlord may remove the item and dispose of it at an appropriate disposal facility.

Landlord to prepare inventory

106.1(3) A landlord may remove abandoned property that has monetary value and is not unsanitary or unsafe to store but must, at the earliest reasonable opportunity,

- (a) make a reasonable effort to contact the tenant to give the tenant an opportunity to claim the property;
- (b) prepare an inventory of the property in the prescribed form and give a copy of it to the director; and
- (c) give a copy of the inventory to the tenant, and if the copy is mailed to the tenant, it is sufficiently given if it is mailed to the tenant's last known address.

Property of little value

106.1(4) If, after complying with subsection (3), the landlord is satisfied on reasonable grounds that the proceeds from selling an item of abandoned property would be less than the reasonable costs of removing, storing and selling it, the landlord may

- (a) give the item to a charitable or other non-profit organization; or
- (b) dispose of the item at an appropriate disposal facility.

Storing other property

106.1(5) A landlord who removes abandoned property that cannot be disposed of under subsection (2) (worthless, unsanitary or unsafe property) or (4) (property of little monetary value) must, subject to any direction of the director, store the property in a safe place and manner for at least 60 days.

The *Act* goes on to state that if a tenant leaves personal papers or photographs, the landlord must hold them for 60 days before disposing of them (section 106.2).

The landlord is not required to strictly comply with these provisions. According to section 108 of *The Residential Tenancies Act*, a landlord who substantially complies with Part 7 is not liable to the tenant for loss suffered by the tenant as a result of the removal, storage, disposal or sale by the landlord of the abandoned property

Substantial compliance protects landlord

108 A landlord who substantially complies with this Part is not liable to the tenant or any other person for loss suffered by the tenant or other person as a result of the removal, storage, disposal or sale by the landlord of abandoned property.

The tenants' evidence clearly showed that the belongings in the unit had some monetary value and that the landlord breached its obligation under the *Act* to prepare an inventory of the property. It is only after an inventory is compiled that the landlord may dispose of the items and this is only if the proceeds from selling the items would be less than the reasonable costs of removing, storing and selling the items.

The panel found that the possessions in the unit were improperly disposed of by the landlord, that the tenants suffered losses and that the landlord is responsible for these losses. The panel further found that the landlord had a duty to inventory the property and store it for 60 days prior to disposing of it. It is the panel's view that the landlord did not substantially comply with the *Act* and therefore cannot rely on section 108 of the *Act*.

Under subsection 55(1) of the *Act*, a landlord or tenant who breaches a tenancy agreement or contravenes the *Act* is liable to compensate the other party to the agreement for loss suffered by that party as a result of the breach or contravention. The panel found that **\$6,800.00** is fair and reasonable compensation for the loss of personal property that was discarded by the landlord contrary to the *Act*.

Regarding the increased rents incurred by the tenants between September 1, 2012 and March 31, 2013, the panel found that the tenants, through no fault of their own, were forced to find alternate housing and that the landlord is responsible for this increase in rent.

The new landlord who took over the obligations of the old landlord, is liable to compensate the tenants for the old landlord's negligence. The panel is not satisfied that the new landlord took enough steps to try to locate the tenants given that the tenants continued to use their Ontario address on their cheques and personal paperwork and that these items were in the unit.

The panel also awarded the tenants \$200.00 for 7 months for a total of **\$1,400.00** for the increased rent the tenants were forced to pay as a result of being removed from their rental unit. The landlord holds the tenants' security deposit plus interest of **\$243.74** (\$240.00 + \$3.74). The panel ordered the landlord to return the security deposit plus interest to the tenants.

2.

The tenant moved into the unit on October 1, 2008. He signed his first lease in September 2008. The last lease renewal expired September 30, 2011, and he had not signed a renewal. The tenant was never offered another renewal. The landlord says she didn't want to sign a new lease because the tenant wanted to add new tenants.

The tenant stated that he believed that because there was no longer a signed lease, he was no longer bound by any conditions and could leave whenever he wanted without notice.

The tenant moved out on June 1, 2012. The landlord claimed that since the tenant did not give notice she should be compensated.

When the landlord did not offer a written renewal in 2011, and the tenant continued to occupy the unit, *The Residential Tenancies Act* ("the Act") article 21(5) applied:

Deemed renewal if landlord fails to comply

21(5) If a landlord fails to comply with subsection (1) and the tenant continues to occupy the rental unit after the end of the existing agreement, the existing agreement is deemed to be renewed for the same term or a term of 12 months, whichever is less, and with the same benefits and obligations...

Therefore the existing agreement was deemed to be renewed for a year until September 30, 2012. When the agreement expired again in September 2012, article 22 applied:

Renewal of oral or implied tenancy agreement: specified term

22 When a tenancy agreement that is not in writing specifies a date for it to end, the landlord and tenant are deemed to renew the tenancy agreement on that date for a further period equal to the term of the existing agreement or a term of 12 months, whichever is less, and with the same benefits and obligations...

Thus the agreement was again deemed to be renewed until September 2013. The tenant was therefore under an obligation to give notice to break the lease.

The tenant was entitled to terminate a "deemed" lease agreement under article 87(5) of the *Act* with one month's notice. The landlord testified that she was aware that the tenant moved out on June 1, 2012, and therefore this was considered the notice. This notice was effective June 30, 2012.

The Residential Tenancies Commission found that since the tenant did not give notice, the landlord is entitled to compensation for one month's notice. The Commission awarded the landlord **\$1,050.00**, the amount of one month's rent as compensation for the tenant's breach of the *Act*.

3.

The landlord applied to the Residential Tenancies Branch (hereafter referred to as the “Branch”) under Section 123(2) of *The Residential Tenancies Act* (hereafter referred to as the “Act”) for a rent increase of 38.13%.

After considering the information provided by the landlord and their tenants, the Branch approved an increase of 35.2% and issued Orders to this effect on September 7, 2012.

After the Branch issued the Orders, 9 tenants submitted an appeal to the Residential Tenancies Commission (hereafter referred to as the “Commission”).

Prior to the first hearing of the appeal the Commission’s Appeal Officer noted discrepancies in the documentation filed by the landlord and proceeded to investigate the application. The most significant discrepancies appeared to be alterations to the largest capital invoices which changed the amounts charged by various providers of services and materials.

The landlord was asked by the Residential Tenancies Commission panel for proof of payment of various invoices. He provided photocopies of the front of several cheques purporting to be payment of said invoices. Although he was asked for these, he did not provide photocopies of the back of the cheques, which would have been endorsed by the alleged payees. He further provided portions of bank statements which indicated that the cheques had in fact been drawn on his account. However, there were discrepancies in the amounts of the cheques and the charges stated on the invoices.

The makers of the invoices were contacted by the Commission’s Appeal Officer to verify the amount of their invoices and they provided the following information in writing:

1. An Exterminator Company’s invoice for \$1,210.75 had been altered to read \$3,260.75.
2. A Carpet Company’s invoice for \$1,424.64 had been altered to read \$9,424.64.
3. A Hardwood Flooring Company’s invoice for \$8,106.00 had been altered to read \$18,106.00.

These discrepancies were raised with the landlord by the Commission by letter. The landlord responded in writing that “I have provided info as you requested” which was not responsive to the Commission’s concerns.

At the first hearing the landlord attended the hearing and testified under oath.

Among other things, he testified that:

1. He did not understand the discrepancy with the Exterminator Company's invoice identified by the Commission and that he had provided a copy of a cheque for \$3,260.75 and did not think that it should be reduced.
2. He disagreed with the Hardwood Flooring Company's invoice in respect to the discrepancy identified by the Commission and testified that he had provided the Commission with photocopies of six cheques that represented progress payments that totalled \$18,967.00.
3. He testified under oath that he paid the Carpet Company \$9,424.64 for providing and installing the flooring.

The Hardwood Flooring's Company representative testified under oath that the original invoice provided to the landlord was for \$8,106.00. She presented the original invoice to the Commission panel and testified that the landlord had paid \$4,012.00 of this account.

Second Hearing

The purpose of this hearing was to hear arguments from the landlord and the tenants to determine whether the appeal should be expanded to include all of the tenants in the complex or to restrict the appeal and the Commission's ultimate determination to the original appellants.

The landlord attended the hearing.

At the outset of the hearing the Deputy Chief Commissioner introduced the panel members and reviewed the conduct and purpose of the proceedings. She informed the parties that this hearing was as a result of the submissions made at the hearing held on March 28, 2013. The Deputy Chief Commissioner reminded the parties that the Commission, pursuant to the provisions of the "Act", has the ability to expand the proceedings to include additional parties directly affected by the decision. She further explained that if the panel determined that all tenants should be included in the appeal process that another hearing would be held on the merits of the landlord's application. If the panel determined that all tenants should not be a party to the appeal, the panel would make its determination based

on current evidence, information and submissions provided by all parties and that only the current units appealed would be affected by the outcome of the appeal.

The Deputy Chief Commissioner further explained that if the Commission determined to open up the hearing and add all the tenants as parties then the determination made by the Commission would affect all tenants, not just the ones that originally appealed.

The Deputy Chief Commissioner further explained that if the panel determined that all tenants should be parties to the appeal, another hearing would be scheduled to hear submissions on the merits of the increase and evidence could be submitted at that time.

Upon considering the evidence provided by the parties, the decision of the Commission Panel was to add all the tenants as parties to the appeal and notify them accordingly.

The Deputy Chief Commissioner further explained that based on the information available to the Residential Tenancies Commission, and following an analysis of the application and the material filed in support thereof, the anticipated evidence may lead the Commission to substantially revise the decision of the Residential Tenancies Branch. In the circumstances, all of the interested parties in the entire complex must be involved in the process so as to ensure compliance with the rules of natural justice and the equitable application of the rent regulation provisions of the *Act*.

The landlord attended the third hearing.

The Commission subpoenaed representatives of the Exterminator Company, the Sheet Metal Company, the Hardwood Flooring Company, the Millwork Company, the Asphalt Company, the HVAC-R Company, the Cladding Renovations Company, and the Carpet Company as per the questionable invoices provided by the landlord in support of his application.

The landlord again testified under oath at this hearing.

The landlord presented photocopies of the front and back of three cheques to the Hardwood Flooring Company totaling \$8,262.00 to the Commission as evidence.

The landlord admitted under oath to his altering or creating the following documents:

1. Carpet Company invoice was altered by the landlord from \$1,424.64 to read \$9,424.64 to add \$8,000.00.
2. HVAC-R Company invoice which itemized charges that totaled \$29,661.00 was in fact a quote from the HVAC-R Company and this company never did any work on the residential complex.
3. Hardwood Flooring Company invoice was altered by the landlord from \$8,106.00 to \$18,106.00.
4. The Cladding Renovation Company invoice was altered by the landlord from \$7,485.00 to \$17,485.00.
5. The Millwork Company. invoice was altered by the landlord from \$21,705.60 to \$42,649.60.
6. He fabricated Sheet Metal Company invoice in the following manner: he utilized an actual invoice from the Sheet Metal Company to the Millwork Company by removing the original charges and substituting a number of fabricated charges to create an expense of \$1,480.43.
7. The Exterminator Company's invoice was altered by the landlord from \$1,210.75 to \$3,260.75.
8. The Asphalt Company's invoice was altered by the landlord from \$5,040.00 to \$15,540.00.
9. He further testified that he had reported 25 boxes of hardwood for one of the suites at a cost of \$3,200.00 and that he only used ½ of the boxes of hardwood for the suite.

The Representatives for the following companies that were subpoenaed by the Commission were sworn in and confirmed the landlord's evidence that he had altered or manufactured the invoices as set out above.

A representative of the Carpet Company, testified that the original invoice provided to the landlord was in the amount of \$1,424.64 and provided a copy of the invoice and proof of payment of same to the Commission as evidence.

A representative of HVAC-R Company, confirmed under oath that it did not do any work on the residential complex and the "invoice" provided in support of his rent application by the landlord was in fact simply a quote for the following work:

- Electrical work in the amount of \$8,100.00
- Brick work in the amount of \$9,500.0
- Paint and plaster work in the amount of \$11,500.00
- Supply a water line to build exterior in the amount of \$811.00

The representative of the Hardwood Flooring Company testified under oath that the original invoice provided to the landlord was in the amount of \$8,106.00 and provided a copy of the invoice and proof of payment of same to the Commission as evidence.

The representative of the Cladding Renovations Company testified under oath that the original invoice provided to the landlord was in the amount of \$7,485.00 and provided a copy of the invoice and proof of payment of same to the Commission as evidence.

The representative of the Millwork Company testified under oath that the invoice provided to the landlord was in the amount of \$21,705.60 and provided a copy of the invoice and proof of payment of same to the Commission as evidence.

The representative of the Asphalt Company testified under oath that the original invoice provided was in the amount of \$5,040.00 and provided a copy of the invoice and proof of payment of same to the Commission as evidence.

The representative of the Sheet Metal Company testified under oath that the original invoice was an invoice provided to the Millwork Company, and not the landlord. He testified that he did not know who the landlord was and had never dealt with him. He provided a copy of the original invoice to the Commission as evidence.

The representative of the Exterminator Company testified under oath that the original invoice provided was in the amount of \$1,210.75 and provided a copy of the invoice and proof of payment of same to the Commission as evidence.

The appeal application filled out by the landlord clearly stated that the landlord was to record his actual expenditures. The landlord certified therein that all information given in his application was true, correct and complete. It was clear to the landlord, as he

acknowledged under oath, that he was to report his actual costs as per Section 125(3) of the *Act* and *Residential Rent Regulation 7(1), 8(1) and 9(1)*, not “fair market value” as determined by him.

The Commission panel was satisfied on the balance of probabilities in finding that the landlord attempted to provide fabricated documents to the Branch and to the Commission.

The altered documents he provided had been falsified and he provided fabricated cheques and falsified bank documents purporting to show payments that he later recanted after the aforementioned witnesses testified and corroborated their testimony with documentation.

The Commission panel did not give any weight to the records provided by the landlord in support of his testimony.

The landlord’s fabricated documents added \$92,635.43 to the capital expenses claimed. The total claimed by the landlord was \$197,071.00 so that almost one half of the claim was admitted by the landlord to be false. Other expenses, such as labour and cash receipts from stores for items allegedly installed were determined by the Commission panel to be dubious at best.

The Commission panel found that the landlord was not credible, that his documentation did not support his claim and rejected his position and arguments.

The Commission panel determined that the landlord deliberately attempted to prejudice the tenants. The landlord compounded his action by providing the Commission with falsified bank documents, including copies of the altered and bogus cheques. He acknowledged his actions when faced with the witnesses and their documents subpoenaed by the Commission.

The Commission panel found that the landlord and his application were not credible on any level and that he did not prove that all the expenses that he submitted related to the usual operation of the complex.

The Commission therefore denied the landlord an increase in rent based on his fabricated application, material filed and admissions.

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 2013 calendar year:

Information Required Annually (per Section 18 of the Act)	January 1, 2013 to December 31, 2013
The number of disclosures received, and the number acted on and not acted on. <i>Subsection 18(2)(a)</i>	NIL