

Manitoba Residential
Tenancies Commission

**Annual Report
2020-2021**



Manitoba Residential Tenancies Commission

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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, 2021.

Respectfully submitted,

“original signed by”

Honourable Scott Fielding
Minister of Finance





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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 2020/2021 Annual Report of the Residential Tenancies Commission.

Respectfully submitted,

“original signed by”

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>9</i>
<i>APPEAL ACTIVITY SUMMARY: PART 9 OF THE RESIDENTIAL TENANCIES ACT</i>	<i>13</i>
<i>TABLE 2: PART 9 OF THE RESIDENTIAL TENANCIES ACT</i>	<i>15</i>
<i>TABLE 3: MOTION TO EXTEND THE TIME TO APPEAL</i>	<i>19</i>
<i>TABLE 4: APPEAL HEARINGS BY JUDICIAL DISTRICT</i>	<i>19</i>
<i>TABLE 5: REQUEST TO CORRECT OR AMEND AN ORDER</i>	<i>20</i>
<i>SIGNIFICANT DECISIONS</i>	<i>21</i>
<i>THE PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT – SUMMARY OF DISCLOSURES</i>	<i>28</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 Deputy Chief Commissioner and one 0.6 Deputy Chief Commissioner appointed for up to a four-year term and 15 part-time deputy chief commissioners appointed for up to a four-year term, located in Winnipeg, Brandon and Viriden. The Deputy Commissioners may exercise the powers and perform the duties of the Chief Commissioner.
- Panel members – 35 part-time panel members appointed for up to a two-year term located in Winnipeg, Portage la Prairie, Thompson and Brandon – approximately half representing the views of the landlords, the others the views of the tenants.

The Commission may conduct hearings orally, in person or by telephone, in writing or partly orally and partly in writing. 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. However, the Chief Commissioner may correct or amend a decision or order of the Commission in limited circumstances as set out in sections 171.01 and 160.1(1) of *The Residential Tenancies Act*.

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, 2021. Figures for the fiscal year ending March 31, 2020, 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 :

- Le commissaire en chef – un poste à temps plein; nommé pour un mandat d'au plus cinq ans; situé à Winnipeg.
- des commissaires adjoints – un commissaire en chef adjoint à temps plein, 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 membres à temps partiel nommés pour un mandat pouvant aller jusqu'à deux ans et situés à Winnipeg, Portage-la-Prairie, Thompson et Brandon – environ la moitié représentant les points de vue des propriétaires, les autres, les points de vue des locataires.

La Commission peut tenir des auditions oralement, en personne ou par téléphone, par écrit ou en partie oralement et en partie par écrit. Certains appels sont entendus uniquement par le commissaire en chef ou un commissaire en chef adjoint et certains appels sont entendus par un comité de trois composé d'un propriétaire et d'un représentant des locataires et soit le commissaire en chef ou un commissaire en chef adjoint en tant que président neutre. S'il n'y a pas de décision majoritaire, 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. Cependant, le commissaire en chef peut corriger ou modifier une décision ou une ordonnance de la Commission dans circonstances limitées, telles qu'énoncées aux articles 171.01 et 160.1(1) de la Loi sur la location à usage d'habitation.

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 2021. Des chiffres correspondant à l'exercice se terminant le 31 mars 2020 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, 2020, to March 31, 2021, the Commission received 345 appeals under Parts 1 – 8 of *The Residential Tenancies Act*. The Commission received 269 appeals of orders resulting from Branch hearings and 51 appeals of claims for security deposit or less. The remaining 25 appeals were related to orders to repair, abandonment, utilities, distraint/lockout and administrative penalties.

The Commission processed 310 cases from April 1, 2020, to March 31, 2021. The Commission confirmed or upheld the Residential Tenancies Branch's decisions in 131 instances. The Commission varied 122 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 31 decisions of the Branch. Another 26 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 21 motions to extend time to appeal denied. There were no appeals pending as of March 31, 2021.

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 32 applications for leave to appeal, 11 were granted leave and 21 were denied. The Commission received 29 requests to correct or amend an order. One order was amended and the remaining 28 orders were upheld.

Due to the risks associated with in-person contact during the COVID-19 pandemic, hearings were conducted by teleconference. Between March 24, 2020 and September 30, 2020, most evictions were temporarily suspended due to orders under *The Emergency Measures Act*. However, the Commission continued to accept, process and hear all other

matters during the temporary suspension. The Commission received fewer appeals in the fiscal year than the average number of appeals received in previous years. However, the number of appeals received in the fourth quarter reflects the average in previous years. The Commission therefore anticipates being at pre-pandemic volume of appeals in the next fiscal year.

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 2020 et le 31 mars 2021, la Commission a reçu 345 appels relativement aux parties 1 à 8 de la *Loi sur la location à usage d'habitation*. La Commission a reçu 269 appels d'ordres provenant d'audiences de la Direction et 51 appels de réclamations du dépôt de garantie ou moins. Les 25 réalisés aux ordres de réparation, abandon, services publics, saisie/lock-out et sanctions administratives.

Entre le 1^{er} avril 2020 et le 31 mars 2021, la Commission a traité 310 causes. Dans 131 cas, la Commission a confirmé ou soutenu les décisions de la Direction de la location à usage d'habitation. La Commission a aussi modifié 122 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 31 décisions de la Direction, et 26 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 21 motions en prorogation du délai d'appel. Il n'y avait aucun appel en instance au 31 mars 2021.

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 32 demandes d'autorisation d'appel : elle en a accordé 11 et rejeté 21. La Commission a reçu 29 demandes de correction ou de modification d'une ordonnance. Une ordonnance a été modifiée et les 28 ordonnances restantes ont été confirmées.

En raison des risques associés aux contacts en personne pendant la pandémie de COVID-19, les audiences ont été menées par téléconférence. Entre le 24 mars 2020 et le 30 septembre 2020, la plupart des expulsions ont été temporairement suspendues en raison d'ordonnances prises en vertu de la *Loi sur les mesures d'urgence*. Toutefois, la Commission a continué à accepter, traiter et entendre toutes les autres affaires pendant la suspension temporaire. La Commission a reçu moins d'appels au cours de l'exercice que le nombre moyen d'appels reçus au cours des années précédentes. Toutefois, le nombre de recours reçus au quatrième trimestre correspond à la moyenne des années précédentes. La Commission prévoit donc d'atteindre le volume d'appels pré-pandémique au cours du prochain exercice.

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

	<u>April 1, 2019 – March 31, 2020</u>	<u>April 1, 2020 – March 31, 2021</u>
	(Cases)	(Cases)
<u>ADMINISTRATIVE PENALTIES</u>		
Carried forward from previous year	0	0
Appeals Received	5	0
TOTAL	5	0
Decisions Confirmed	4	0
Decisions Varied	1	0
TOTAL APPEALS CLOSED	5	0
ACTIVE	0	0
<u>CLAIM FOR SECURITY DEPOSIT OR LESS</u>		
Carried forward from previous year	12	12
Appeals Received	54	51
TOTAL	66	63
Decisions Confirmed	21	21
Decisions Varied	17	26
Decisions Rescinded	6	6
Appeals Withdrawn/Rejected	10	2
Cancelled	0	1
Appeals Pending	0	0
TOTAL APPEALS CLOSED	54	56
ACTIVE	12	7
<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, 2019 – March 31, 2020</u> (Cases)	<u>April 1, 2020 – March 31, 2021</u> (Cases)
<u>DISTRAINT AND LOCKOUT</u>		
Carried forward from previous year	1	1
Appeals Received	2	5
TOTAL	3	6
Decisions Confirmed	0	3
Decisions Varied	1	0
Decisions Withdrawn	0	0
Decisions Rescinded	1	2
TOTAL APPEALS CLOSED	2	5
ACTIVE	1	1
<u>ENFORCEMENT</u>		
Carried forward from previous year	0	0
Appeals Received	2	4
TOTAL	2	4
Decisions Confirmed	2	3
Decisions Rescinded	0	1
TOTAL APPEALS CLOSED	2	4
ACTIVE	0	0
<u>ORDER OF POSSESSION AND CLAIM HEARINGS</u>		
Carried forward from previous year	57	49
Appeals Received	322	269
TOTAL	379	318
Decisions Confirmed	128	97
Decisions Varied	132	94
Decisions Rescinded	47	22
Appeals Withdrawn/Rejected	13	12
Cancelled	10	4
Appeals Pending	0	1
TOTAL APPEALS CLOSED	330	230
ACTIVE	49	88

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

	<u>April 1, 2019 – March 31, 2020</u> (Cases)	<u>April 1, 2020 – March 31, 2021</u> (Cases)
<u>REPAIRS</u>		
Carried forward from previous year	3	2
Appeals Received	25	15
TOTAL	28	17
Decisions Confirmed	16	7
Decisions Varied	6	2
Decisions Rescinded	2	0
Cancelled	0	0
Appeals Withdrawn/Rejected	2	6
Appeals Pending	0	0
TOTAL APPEALS CLOSED	26	15
ACTIVE	2	2
<u>UTILITIES</u>		
Carried forward from previous year	0	0
Appeals Received	4	0
TOTAL	4	0
Decisions Confirmed	3	0
Decisions Varied	0	0
Decisions Rescinded	0	0
Appeals Withdrawn/Rejected	1	0
Cancelled	0	0
TOTAL APPEALS CLOSED	4	0
ACTIVE	0	0
<u>ABANDONMENT</u>		
Carried forward from previous year	0	0
Appeals Received	0	1
TOTAL	0	1
Decisions Varied	0	0
TOTAL APPEALS CLOSED	0	0
ACTIVE	0	1

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

	<u>April 1, 2019 – March 31, 2020</u> (Cases)	<u>April 1, 2020 – March 31, 2021</u> (Cases)
<u>TOTAL APPEALS</u>		
Carried forward from previous year	73	64
Appeals Received	414	345
TOTAL	487	409
Decisions Confirmed	174	131
Decisions Varied	157	122
Decisions Rescinded	56	31
Appeals Withdrawn/Rejected	26	20
Cancelled	10	5
Appeals Pending	0	1
TOTAL APPEALS CLOSED	423	310
ACTIVE	64	99

	<u>April 1, 2019 – March 31, 2020</u> (Cases)	<u>April 1, 2020 – March 31, 2021</u> (Cases)
<u>LEAVE TO APPEAL APPLICATIONS TO THE RESIDENTIAL TENANCIES COMMISSION</u>		
Carried forward from previous year	0	0
Applications Received	66	32
TOTAL	66	32
Leave to Appeal Granted	26	11
Leave to Appeal Denied	40	21
TOTAL APPEALS CLOSED	66	32
ACTIVE	0	0

APPEAL ACTIVITY SUMMARY

PART 9 OF THE *RESIDENTIAL TENANCIES ACT*

The Commission received appeals for 67 buildings affecting 430 rental units on orders the Residential Tenancies Branch issued under Part 9 of *The Residential Tenancies Act* between April 1, 2020, and March 31, 2021.

The Commission processed appeals on orders for 63 buildings affecting 726 rental units in the fiscal year ending March 31, 2021. The Commission upheld orders on 94 units in 26 buildings and varied orders on 523 units in 14 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 23 other buildings affecting 109 units were either rejected by the Commission or withdrawn or cancelled by the appellant.

Due to the risks associated with in-person contact during the COVID-19 pandemic, hearings were conducted by teleconference. Between March 24, 2020 and September 30, 2020, rent increases were frozen due to the passing of Bill 58, *The Residential Tenancies Amendment Act*. However, the Commission continued to accept, process and hear all rent increase appeals as the rent freeze impacted the implementation date of the rent increase and not the ability of the rent increase application to be heard.

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 67 immeubles comptant 430 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 2020 et le 31 mars 2021.

La Commission a traité des appels d'ordres pour 63 immeubles comptant 726 unités locatives pendant l'exercice se terminant le 31 mars 2021. La Commission a confirmé les ordres concernant 94 unités dans 26 immeubles et a modifié les ordres concernant 523 unités dans 14 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 23 autres immeubles comptant 109 unités ont été rejetés par la Commission, ou retirés ou annulés par l'appelant.

En raison des risques associés aux contacts en personne pendant la pandémie de COVID-19, les audiences ont été menées par téléconférence. Entre le 24 mars 2020 et le 30 septembre 2020, les augmentations de loyer ont été gelées en raison de l'adoption du projet de loi 58, Loi modifiant la loi sur la location à usage d'habitation. Cependant, la Commission a continué d'accepter, de traiter et d'entendre tous les appels relatifs aux augmentations de loyer, car le gel des loyers a eu un impact sur la date de mise en œuvre de l'augmentation de loyer et non sur la capacité de la demande d'augmentation de loyer à être entendue.

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

	<u>April 1, 2019 – March 31, 2020</u>		<u>April 1, 2020 – March 31, 2021</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	1	2	0	0
Appeals Received	1	9	1	15
TOTAL	2	11	1	15
Decisions Confirmed	0	0	0	0
Decisions Varied	0	0	0	0
Decisions Rescinded	1	9	0	0
Appeals Withdrawn/Rejected	1	2	0	0
TOTAL APPEALS CLOSED	2	11	0	0
ACTIVE	0	0	1	15
LIFE LEASE				
Carried forward from previous year	0	0	0	0
Appeals Received	0	0	1	5
TOTAL	0	0	1	5
Decisions Confirmed	0	0	0	0
Appeals Withdrawn/Rejected	0	0	0	0
TOTAL APPEALS CLOSED	0	0	0	0
ACTIVE	0	0	1	5

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

	<u>April 1, 2019 – March 31, 2020</u>		<u>April 1, 2020 – March 31, 2021</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	2	13	0	0
Appeals Received	2	2	2	47
TOTAL	4	15	2	47
Decisions Confirmed	1	1	0	0
Decisions Varied	3	14	2	47
Appeals Withdrawn/Rejected	0	0	0	0
Appeals Cancelled	0	0	0	0
TOTAL APPEALS CLOSED	4	15	2	47
ACTIVE	0	0	0	0
COMPLIANCE				
Carried forward from previous year	7	22	5	7
Appeals Received	8	12	10	18
TOTAL	15	34	15	25
Decisions Confirmed	7	9	2	4
Decisions Varied	2	6	3	3
Appeals Withdrawn/Rejected	1	12	0	0
TOTAL APPEALS CLOSED	10	27	5	7
ACTIVE	5	7	10	18

TABLE 2 - APPEALS

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

	<u>April 1, 2019 – March 31, 2020</u>		<u>April 1, 2020 – March 31, 2021</u>	
	Bldgs.	Units	Bldgs.	Units
APPLICATION – RENT INCREASE ABOVE GUIDELINE				
Carried forward from previous year	31	267	25	447
Appeals Received	82	641	53	345
TOTAL	113	908	78	792
Decisions Confirmed	45	134	24	90
Decisions Varied	11	65	9	473
Appeals Withdrawn/Rejected	30	255	20	93
Appeals Cancelled	2	7	3	16
TOTAL APPEALS CLOSED	88	461	56	672
ACTIVE	25	447	22	120

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

	<u>April 1, 2019 – March 31, 2020</u>		<u>April 1, 2020 – March 31, 2021</u>	
	Bldgs.	Units	Bldgs.	Units
TOTAL APPEALS				
Carried forward from previous year	41	304	30	454
Appeals Received	93	664	67	430
TOTAL	134	968	97	884
Decisions Confirmed	53	144	26	94
Decisions Varied	16	85	14	523
Appeals Withdrawn/Rejected	32	269	20	93
Appeals Cancelled	2	7	3	16
Appeals Rescinded	1	9	0	0
TOTAL APPEALS CLOSED	104	514	63	726
ACTIVE	30	454	34	158

TABLE 3
MOTION FOR EXTENSION OF TIME TO APPEAL

	<u>April 1, 2019 – March 31, 2020</u> (Cases)	<u>April 1, 2020 – March 31, 2021</u> (Cases)
<u>MOTIONS FOR EXTENSION OF TIME TO APPEAL</u>		
Carried forward from previous year	0	0
Applications Received	91	59
TOTAL	91	59
Decisions Denied	45	21
Decisions Granted	46	38
TOTAL	91	59
ACTIVE	0	0

TABLE 4
APPEAL HEARINGS BY JUDICIAL DISTRICT
RESIDENTIAL TENANCIES COMMISSION

	<u>April 1, 2019 - March 31, 2020</u>	<u>April 1, 2020 - March 31, 2021</u>
Winnipeg	548	324
Brandon	5	0
Dauphin	0	0
Morden/Winkler	0	0
Portage la Prairie	3	0
Russell	0	0
Steinbach	0	0
Thompson	0	0
TOTAL	<u>556</u>	<u>324</u>

TABLE 5
REQUEST TO CORRECT OR AMEND AN ORDER

	<u>April 1, 2019 – March 31, 2020</u> (Cases)	<u>April 1, 2020 – March 31, 2021</u> (Cases)
<u>REQUEST TO CORRECT OR AMEND AN ORDER</u>		
Carried forward from previous year	0	0
Applications Received	14	29
TOTAL	14	29
Decisions Denied	14	28
Decisions Granted	0	1
TOTAL	0	29
ACTIVE	0	0

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 2020/21 fiscal year.

1. Rent Redirect – A landowner may be found to be the landlord of a rental unit

According to a Manitoba land titles search, the rental unit (rental unit 1) is owned by Company A, a Manitoba Corporation. Company A's address for service is an address in Winnipeg (address 1). Company A's directors are persons X, Y and Z. Person X is the president. Company B is a Manitoba Partnership. The partners are persons X and Y. Company B's address is also address 1.

Certain tenants in a rental unit (rental unit 2) moved out. They felt their landlord was person X. The landlord didn't return their security deposit, so they filled out a Deposit Information Sheet at the Residential Tenancies Branch (the Branch). The Branch sent its standard letter both to person X and to Company A (both at address 1), giving the landlord a chance either to return the security deposit and interest or to file a claim. When the landlord did neither, the Branch issued an Order, ordering Company A to pay the security deposit and interest to the tenants. The landlord never appealed this Order. A similar series of events transpired in respect of another rental unit (rental unit 3). Again, the landlord never appealed. The landlord failed to comply with both Orders, so the Branch issued a series of five Rent Redirect Orders, ordering various tenants of the landlord to pay their rent to the Branch rather than the landlord. The landlord did not appeal four of the Rent Redirect Orders.

The landlord appealed one Rent Redirect Order to the Commission, an order concerning rental unit 1. One of the landlord's arguments was that Company A and Company B are separate entities. They argued company A was the landlord for rental unit 2, but Company B was the landlord for rental unit 1, so it was improper to redirect rent from a rental unit 1 tenant to pay for the security deposit and interest for the rental unit 2 tenants.

The Branch argued that *The Residential Tenancies Act* (the *Act*) defines “landlord” broadly to include both landowners and property managers and that the *Act* allowed the Branch to issue the rental unit 1 Rent Redirect Order.

The Commission upheld the Branch’s decision. The Commission found that the *Act* is worded so as to allow orders such as the rental unit 1 Rent Redirect Order. The definition of landlord is broad and includes the person or entity that owns the land. The evidence showed that Company A owns the land upon which rental unit 1 stands. Accordingly, Company A was a landlord in respect of rental unit 1. In the alternative, the Commission found that this would be a textbook case for “piercing the corporate veil” and treating person X, Company A and Company B as a single landlord.

2. Repair Orders - Repairs addressing the cosmetic appearance of a rental unit may be ordered

During the course of the tenant's nine-year tenancy, the seams in the ceilings of her unit became visible. The ceilings are stippled. The tenant found the ceilings had become unsightly, and she filed a Request for Repairs at the Branch. The Branch issued a Repair Order, requiring the landlord to remedy the problem. The Branch determined the landlord would be free to replace the stippled finish on the ceilings with a flat finish.

The landlord appealed to the Commission. The landlord testified that he recently bought the building and has already made about \$400,000 in repairs and upgrades. He argued the visible seams in the ceiling are not a safety issue. He also argued that, if he deals with the tenant's ceilings, other tenants will demand similar treatment, and the result will be a large expense. Finally, he argued that, in order to work on all ceilings in the tenant's unit, the tenant would have to vacate the unit.

The Branch's decision was upheld. The Commission found that section 58 of the *Act* requires landlords to maintain the "appearance" of rental units. That often includes matters that don't involve safety, such as painting. The landlord was commended for his other work in the building, but that did not negate the tenant's right to have the appearance of her own rental unit properly and fully maintained. The landlord and the tenant were encouraged to communicate and cooperate in finding a practical way to finish the work with minimal disruption.

3. Rent Abatement – Inconvenience

The tenant's ceiling leaked on August 11, 2019, and the tenant contacted the landlord. The landlord promptly sent a roofer to determine the cause of the leak, which was not immediately evident. The roofer acted reasonably and repaired the roof by early October 2019. The ceiling was damaged and some mold began to grow. The landlord sent a contractor, who came several times and did various work. His last visit was in January 2020. Some mold continued to grow in the unit. The tenant did not contact the landlord again until May 2, 2020. On May 31, 2020, the tenant moved out. The tenant filed a claim for \$1,500 rent (based on \$150/month for 10 months).

The Branch held a hearing and agreed that the tenant should be compensated because of the repairs and the mold. The Branch awarded the tenant \$950 (based on 9.5 months at \$100/month).

The tenant appealed to the Commission. The crucial facts were not in dispute. The landlord argued that the tenant should have communicated with the landlord between the last contractor visit in January 2020 and May 2, 2020.

The Commission found that living with a leaking ceiling for several weeks was certainly an inconvenience. Having contractors coming and going over several months to repair the ceiling was also an inconvenience. Furthermore, having to live with mold in one's home for many months was, at a minimum, a serious inconvenience. The Commission held that the tenant was entitled to rent abatement for this inconvenience. However, the Commission also found that the tenant could have made greater efforts to update the landlord between January and May 2020, and could have filed a Request for Repairs at the Branch. The Commission held that it was appropriate to reduce any rent abatement to account for the fact that the tenant did not file a Request for Repairs at the Branch. The Commission found that the tenant was entitled to a rent abatement for the period of August 11, 2019 and May 31, 2019, and found that the Branch total of \$950 in rent abatement was within a reasonable range of fair estimates. The Branch's decision to award \$950 in rent abatement was confirmed.

4. Order of Possession (OP) for Non Payment of Rent – OP granted despite evidence of a significant pest problem

The landlord filed an application for an OP for non-payment of rent and sought outstanding rent and costs. The tenant stated that he didn't pay his rent because his unit has a significant cockroach problem. Because of the cockroaches, he is forced to eat out all the time. He asserted everything he owns has been ruined. He only goes to the unit to sleep. The landlord's representative stated that an exterminator was sent to the building to treat it for cockroaches and believed the tenant's unit was sprayed at that time. The tenant denied that the unit had been sprayed and stated he would pay his rent once it was. He acknowledged that he had not contacted the Branch for assistance at any time with the cockroaches despite having had a hearing at the Branch regarding the OP.

The Commission found that if the tenant was having problems with pests in his unit, his recourse was to contact the Branch to take steps to ensure the landlord met its obligations under the *Act*. Pursuant to s. 59(1)(a) of the *Act*, the landlord is required to provide and maintain the rental unit in a good state of repair, fit for habitation and in a state that complies with health, building and maintenance occupancy standards required by law. Had the landlord failed to address the pest problem within a reasonable time after receiving a request to comply, the tenant could have applied for an order that the landlord compensate the tenant (see s. 59.1(a)).

The Commission found that rather than using the tools under the *Act*, the tenant chose to stop paying the rent and that the tenant was not entitled to stop paying his rent under these circumstances. Accordingly, an OP for non-payment of rent was granted to the landlord.

5. Rent Regulation – Maintenance and repairs can only be considered in limited circumstances on a rent increase above guideline application

The tenant had a number of specific repair and maintenance concerns including heating problems, poorly insulated windows, holes in walls, old appliances, an unsafe parking lot and parking spot issues. The tenant submitted that the rent increase was not justified based on the repair and maintenance issues as well as the overall mismanagement of the landlord.

The Commission found that the *Act* only allows it to consider maintenance and repair issues in certain circumstances. Subsections 125(3) and 125(4) of the *Act* include the mandatory, and other considerations of the Commission before making an Order. Subsection 125(3)(e) of the *Act* requires the Commission to consider whether there has been any finding that the landlord is in contravention of the obligation to repair under s. 59(1) of the *Act*. In this case, there was no evidence that the landlord was in contravention of the obligation to repair under s. 59(1) of the *Act*. Subsection 125(4)(b) of the *Act* indicates that the Commission may consider whether the rent increase is reasonably attributable to the costs of performing obligations of the landlord that have not been fulfilled. In this case, the panel found there was insufficient evidence there were obligations in the reporting periods that the landlord has not fulfilled that were reasonably attributable to any part of the rent increase pursuant to the *Act* and *Regulation*. The Commission found that the tenant's concerns regarding general maintenance and repair items were not relevant to this rent increase application. The Commission noted that matters such as repairs can be dealt with separately through the Branch if the parties cannot resolve them on their own. The Branch has the power to open a repair file, send an inspector, force the landlord to fix the problem(s) and make repair orders.

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, 2020 to March 31, 2021:

Information Required Annually (per Section 18 of the Act)	April 1, 2020 to March 31, 2021
The number of disclosures received, and the number acted on and not acted on. <i>Subsection 18(2)(a)</i>	NIL