

## Recovering increased rent from a residential tenant after serving a termination notice

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### Cases Considered:

[Merkl v. Wallburger, 2008 ABPC 264](#)

In 2007, amendments were made to Alberta's residential tenancy legislation to give tenants some protection from the challenges of rent increases and the difficulties of finding affordable rental accommodations in a province experiencing an economic boom. Many critics said the amendments did not go far enough. This recent decision of Provincial Court Judge Derek G. Redman highlights the piecemeal nature of these amendments, and the fact that, despite the amendments, Alberta's *Residential Tenancies Act*, S.A. 2004, c. 17.1 (*RTA*) remains a landlord-friendly statute.

In this case, Ms. Merkl was the landlord and Mr. Wallburger was the tenant under an oral monthly periodic tenancy agreement. For three years Mr. Wallburger had paid rent of \$750 per month. On March 16, 2008, Ms. Merkl provided the required three-month "Notice of Rental Increase" indicating that rent would increase to \$1050 per month as of July 1, 2008. Mr. Wallburger objected to this increase on the basis that it was unreasonable and that certain promised repairs to the premises had not yet been done.

In response, by letter dated May 1, 2008, Ms. Merkl provided Mr. Wallburger with a three-month "Notice Terminating a Tenancy" pursuant to section 8 of the *RTA*. The date of termination was July 31, 2008. Without fault on the part of the tenant, landlords can only terminate periodic tenancies in Alberta for certain prescribed reasons. One such reason, set out in section 2 of the *Residential Tenancies Ministerial Regulation*, A.R. 211/2004, allows landlords to terminate a periodic tenancy if the landlord or a relative of the landlord intends to occupy the residential premises of the tenant. As stated by Judge Redman, Ms. Merkl terminated Mr. Wallburger's tenancy "purportedly on the basis that a relative intended to move in" (at para. 4). The court made no further comment about this "purported" basis and so the reason for the disparaging description is unknown.

For the July 1 rental payment, Mr. Wallburger gave Ms. Merkl a cheque for \$750 marked "paid in full". Ms. Merkl never cashed this cheque. Instead, she responded with a two-week eviction notice on the basis that the rent owing for July was \$1050. Mr. Wallburger replied by stating that

the correct rent for July was \$750 and that he intended to leave the premises by the end of July 2008. Mr. Wallburger in fact vacated the premises on July 31, 2008 and the tenancy was thus, according to the Court, deemed terminated as of that date. Possession of the premises was granted to Ms. Merkl as of July 31.

In addition to a writ of possession, Ms. Merkl asked the court for arrears of rent in the amount of \$1050 for the month of July. Her position was that the rental increase notice served in March was effective notwithstanding the subsequent notice to terminate the tenancy. Mr. Wallburger disagreed and took the position that the notice given on May 1st, 2008 terminating the tenancy nullified or cancelled the previous rental increase notice. In his view, the rent outstanding for July was \$750. Judge Redman reserved his decision on this issue.

Neither the *RTA* nor the regulations provide a blanket prohibition against landlords increasing the rent payable before or after a notice to terminate has been served. As Judge Redman noted, only two of the prescribed reasons that allow landlords to terminate periodic tenancies attracted 2007 amendments dealing with rent increases. If the landlord gives notice to terminate because the landlord intends to sell the premises as a condominium unit or because the landlord intends to make major renovations to the residential premises that require the premises to be unoccupied, the 2007 amendments increased the notice period from three months to one year and provided that no rental increases would be permitted during this one year period: see section 3(2) of the *Residential Tenancies Ministerial Regulation*, A.R. 211/2004.

In the case of notices to terminate served on the basis of the other prescribed reasons, however, the legislation does not prohibit the landlord from increasing the rent before or after the notice to terminate has been served. According to Judge Redman, “the drafters of this legislation could very well have prohibited rent increases during the notice periods for all acceptable terminations, but chose only to include those related to condominiums and renovations” (at para. 11). Thus, Judge Redman concluded that Ms. Merkl, who had terminated “purportedly on the basis that a relative intended to move in”, was entitled to judgment in the amount of \$1050 for rent owing for July 2008.

Exactly why tenants are entitled to one year’s notice within which rent cannot be increased in the case of termination for condominium conversion or major renovations is not obvious. On the one hand, it could be said that these reasons are less personal and have less to do with social welfare concerns than the prescribed reasons relating to allowing the landlord or a relative to live in the rental premises. On the other hand, it is difficult to understand the difference between these two special circumstances and another prescribed reason which allows a periodic tenancy to be terminated where a landlord intends to use or rent the residential premises for a non-residential purpose. Ultimately, the differences in treatment may simply be an inadvertent result of a piecemeal amendment process during a time when condominium conversion and major renovations posed the greatest threat to tenants in Alberta.