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Constraining a Landlord's Ability to Terminate a Residential Tenancy by Raising the Rent

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Case commented on: *Milner's Aloha Mobile Home Park (1998) Ltd v Jenkins*, [2014 ABQB 229 \(CanLII\)](#)

This is an important decision for residential tenants, with potentially far-reaching impact. If a residential tenant is not in breach of his or her tenancy agreement, a landlord is unable to evict them except for a small number of reasons prescribed by the applicable legislation, either the *Residential Tenancies Act*, [SA 2004, c R-17.1](#) or the *Mobile Home Sites Tenancies Act*, [RSA 2000, c M-20](#). But because Alberta has no law limiting the amount by which landlords can increase rent, everyone knows that landlords can force tenants out by raising their rent beyond what they can afford or are willing to pay. This decision by Master Andrew Robertson calls into question that received wisdom. Indeed, by finding that the increase in rent in *Milner's Aloha Mobile Home Park (1998) Ltd v Jenkins* was really a notice to terminate a periodic tenancy and of no effect as either a notice to terminate or a notice of a rent increase, Master Robertson's decision potentially signals a significant shift in the power balance between landlords and residential tenants in Alberta.

Facts

In March of 2010, the landlord, Milner's Aloha Mobile Home Park Ltd of Olds, raised the rent on the sites in the mobile home park. For most (perhaps all) other tenants, the rent was to be raised from \$310 per month to \$350 per month as of the first of October 2010. But the rent of one tenant, Ms. Brielle Jenkins, was raised to \$960 per month, a trebling of the \$310 per month that she had been paying.

Ms. Jenkins' evidence about the behavior of Irving Milner, the landlord's representative, was not disputed. She alleged his behavior was designed to drive her out of the mobile home park. She recounted a conversation between her companion and Mr. Milner in which Mr. Milner admitted he singled Ms. Jenkins out for a rent increase to almost \$1,000 per month in order to get her out of his mobile home park.

The evidence as to whether Ms. Jenkin's lease was a periodic or fixed term lease was confusing, as was the evidence about the rent arrears. Nevertheless, the landlord, Milner's Aloha Mobile Home Park Ltd of Olds, applied to court to terminate the mobile home site tenancy of Brielle Jenkins, as well as for judgment against her for arrears of rent totaling \$30,760 as of September 2013. The \$30,760 in arrears was based on a rent of \$960 per month for the mobile home site.

Ms. Jenkins' response was that the landlord had singled her out for "an effective eviction by inordinate rent increase" (at para 9). And the self-represented Ms. Jenkins carried the day on this argument.

Law

The landlord's notice of an increase in rent to Ms. Jenkins and the other tenants in the mobile home park was in compliance with sections 16 and 17 of the *Mobile Home Sites Tenancies Act*, [RSA 2000, c M-20](#) and with section 2.3 of the *Mobile Home Sites Tenancies Ministerial Regulation*, [Alta Reg 54/1996](#). As is relatively obvious from its title, the *Mobile Home Sites Tenancies Act* and its regulations apply to sites occupied by mobile homes used as residences, including mobile home parks. Like the equivalent provisions in section 14 of the *Residential Tenancies Act*, [SA 2004, c R-17.1](#) and section 3 of the *Residential Tenancies Ministerial Regulation*, [Alta Reg 211/2004](#) — which govern all other types of residential tenancies — the statutes governing rent increases for residential tenants only limit how often landlords may raise the rent and how much notice they must give before raising the rent. There is nothing in either piece of legislation limiting the amount by which a landlord may raise the rent (as there is in most other Canadian jurisdictions).

On the other hand, both the *Mobile Home Sites Tenancies Act* and the *Residential Tenancies Act* increase the security of the tenure of periodic residential tenants — their ability to stay where they are — by requiring that landlords have one of only a limited number of reasons for evicting tenants who are not in breach of the relevant Act or their lease. The *Mobile Home Sites Tenancies Act* provides in section 7:

7(1) A notice under this Part from a landlord to a tenant to terminate a periodic tenancy is of no effect unless the termination is for one or more of the prescribed reasons or for the reasons set out in section 13 or 14.

Section 13 provides for eviction in order to change the use of the mobile home sites or for condo or coop conversions. Section 14 is about evicting former employees of landlords who received accommodation in a mobile home as part of their job. The “prescribed reasons” are found in section 2(2) of the *Mobile Home Sites Tenancies Ministerial Regulation*:

2(2) For the purposes of section 7 of the Act, a landlord may terminate the periodic tenancy of a tenant for one or more of the following reasons:

- (a) the landlord or a relative of the landlord is going to occupy the mobile home site after the tenant vacates the site;
- (b) the landlord has entered into an agreement to sell the mobile home site of the tenant in which all conditions have been satisfied or waived and
 - (i) the purchaser or a relative of the purchaser is going to occupy the mobile home site after the tenant vacates the site, and
 - (ii) the purchaser requests in writing that the landlord give the tenant a notice to terminate the tenancy;
- (c) utilities on the mobile home site of the tenant are to be installed, repaired or improved and it is not reasonable to do the work unless the site is unoccupied;
- (d) in the case of a tenancy of a mobile home site located in a mobile home park, the site is to be eliminated or the boundaries of the site are to be substantially altered . . .
- (e) in the case of a tenancy of a mobile home site that is not located in a mobile home park, the land in the mobile home site is no longer to be used as a mobile home site.

As can be seen from the provisions set out above, the landlord's ability to evict a mobile home site tenant who is paying their rent and otherwise complying with their lease and the relevant legislation is limited to a very few types of situations. The same is true under sections 6, 11 and 12 of the *Residential Tenancies Act* and section 2 of the *Residential Tenancies Ministerial Regulation*. Although the list of permissible reasons for evicting a tenant is slightly different due to the different context, it is also a very limited set of reasons.

Master Robertson's Analysis and Conclusions

Master Robertson characterizes the landlord’s notice of a rent increase from \$310 per month to \$930 per month as “an obvious attempt to force the tenant out for a non-prescribed reason” (at para 37). He considers the fact that the rent of other mobile home tenants was raised from \$310 per month to \$350 per month makes it “abundantly clear” that the local mobile home site market did not justify a 300% increase in rent (at para 38).

Master Robertson notes that the *Mobile Home Sites Tenancies Act* does not set out consequences for landlords who raise the rent to get around the security of tenure protection given to tenants by the Act (at para 39), a situation he characterizes as a “loop-hole” in the Act (at para 41). He acknowledges that there is no upper limit on rent increases in the Act. Nevertheless, he holds that when a landlord is merely attempting to avoid the security of tenure provided by section 7 of the *Mobile Home Sites Tenancies Act*, it raises the issue of whether such a notice to increase the rent has any effect whatsoever — either as a notice of rent or as a constructive eviction (at para 41). He reasons that if such a notice in such circumstances is effective, then there is no reason for section 7 of the Act. Section 7 states that a notice to terminate a periodic tenancy has no effect if it is not given for one of the prescribed reasons, but a landlord without a prescribed reason can simply raise the rent to force a tenant out. That is the “loop-hole” in the Act.

Master Robertson decides that this cannot be what is intended by the Act. He therefore reads into the Act, based on a public policy he finds expressed in the Act, a requirement that landlords “raise the rent in reasonable increments” (at para 42). For the public policy behind the Act, Master Robertson relies on (at para 43) *Joma Sailaway Enterprises Partnership v. Holden*, [2009 ABQB 739 \(CanLII\)](#), a decision of Justice Don J. Manderscheid. In that case, Justice Manderscheid reviewed the history of the *Mobile Home Sites Tenancies Act* and the purposes of the Act as stated in the Legislative Assembly. He found that the one of the two primary purposes of the Act was “to provide reasonable protection to mobile home park tenants” (at para 16).

Reading the *Mobile Home Sites Tenancies Act* as a whole and in the context of the purposes of the Act, Master Robertson sets out the following rule:

[45] Where the rental increase is for a purpose contrary to the protection intended to be provided by the legislature, it is to be read for what it is — a notice to terminate a periodic tenancy and of no effect.

As a result, Master Robertson concludes that the notice of a three-fold rent increase in this case was really a notice to terminate a periodic tenancy that was not for one of the proper reasons (at para 46). The notice of the rent increase was therefore ineffective — ineffective as a notice of a rent increase and ineffective as a notice of termination.

Comments

As intimated throughout this post, Master Robertson’s decision should be just as applicable to residential tenancies governed by the *Residential Tenancies Act* as it is to those governed by the *Mobile Home Sites Tenancies Act* that he was considering. Both have the same type of security of tenure provisions and both have the same loop-hole. This easy extension of the relevance of Master Robertson’s decision means its impact could be far-reaching.

Master Robertson’s decision introduces uncertainty. In many ways *Milner’s Aloha Mobile Home Park (1998) Ltd v Jenkins* was an easy case. The rent was tripled, the rent increase was for one of many mobile home sites in a mobile home park where none of the other tenants faced more than a 13 percent increase in their rent, and the evidence of the landlord’s sole motive for doing so was not disputed. Singling out and tripling one mobile home park tenant’s rent for the sole purpose of evicting that tenant amounted to an illegitimate termination in this case, but what about a doubling of the rent? Or a fifty per cent increase? Is it the percentage increase that was most important here? Or is it the singling out of one tenant that was

key in this case? What if there are no comparables with tenants in similar premises, as there was here? Does evidence of the market have to be introduced? Or is it the fact that termination of the residential tenancy was the only motive for increase in rent? What if termination is instead the primary or only an important motive? What if evidence of motive is lacking, as it probably will be in most cases?

It will probably take quite a while to determine the reach of this decision, assuming it is not appealed and overturned. In the meantime, all of the agencies that produce consumer information advising Albertans of their rights and duties as residential tenants will need to revise their advice. The following advice is now no longer correct or, at the very least, cannot be stated so uncategorically as it currently is:

- There are no controls over the amount by which the landlord may raise the rent, but there are requirements for how much notice a landlord must give to a tenant prior to a rent increase: Alberta Government, [Consumer Tips: Renting a Mobile Home Site](#) at 5.
- The RTA does not control how much rent can be charged or how much rent can be increased: [RTA Handbook and Quick Reference Guide](#) at 47
- The law does not limit the amount of the rent increase, but the law does say when and how often an increase can take place: [Renting 101 A Guide to Renting in Alberta, 3rd edition](#) (2013-08-31) at 13
- There is no limit on the amount that the landlord can raise the rent: Centre for Public Legal Education Alberta Information Sheet - [Rent Increases at 2](#)
- There are no controls on the amount of rent increases in Alberta: Canada Mortgage and Housing Corporation, "[Renting in Alberta](#)"

What is now correct is that the law may limit the amount of rent increases in Alberta. While this is a far cry from the prescribed limits on rent increases in provinces such as [Ontario](#) (with an allowable rent increase of 0.8% in 2014), [British Columbia](#) (2.2%) and [Nova Scotia](#) (2.9%), it is a step in that direction. How small or how big a step it is remains to be seen.

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