



Legal Aid Manitoba
L'Aide Juridique du Manitoba

Legal Aid Manitoba Act
Notice of Refusal of Certificate for Legal Aid

March 04, 2011

TO: Lionel Andre Bouchard
Box 81
Elie MB R0H 0H0


Re: REPRESENT RE; LIFE INTEREST IN HOME/SOLE OCCUPANCY OF SE 1/4 14-11-3 WPM

This is to advise you that your application for legal aid dated February 17, 2011, File No. 5138083, has been refused on the following grounds:

Legal Aid does not provide coverage for civil claims.

Legal Aid will not ordinarily pay for a lawyer when your case will result in recovery of a large amount of money or property. You may be able to hire a lawyer on a "fees from proceeds" or a "contingency agreement" where the lawyer gets a percentage of the money you recover, or takes their fees out of the money you recover. If you hire a lawyer to act for you on a "fees from proceeds" or on a "contingency" basis, your agreement with the lawyer should be clear and in writing.

Take notice that you may appeal this decision to Legal Aid Manitoba at 402 - 294 Portage Ave., Winnipeg MB, R3C 0B9 by giving written notice of your appeal on the form attached within thirty days after delivery of this notice.

 **Legal Aid Manitoba**
L'Aide Juridique du Manitoba

Sean Young
794-7504 FAX
985-8584

Administration Office
402-294 Portage Avenue
Winnipeg, MB R3C 0B9

CALLER FROM: *985-8584*

Office: (204) 985-8500
Fax: (204) 944-8582
Toll Free: 1-800-261-2960
Website: www.legalaid.mb.ca

8. Unconscionable and Material Terms

Jan-04

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This guideline deals with unconscionable and material terms in a tenancy agreement.

Tenancy agreements contain terms where one party or the other promises to do or not to do something.

Unconscionable Terms

Terms which are unconscionable are not enforceable¹. Whether a term is unconscionable depends upon a variety of factors. To be unconscionable the term must be oppressive or grossly unfair. A test for determining unconscionability is whether the agreement is so one-sided as to oppress or unfairly surprise the other party. Such terms may be a clause limiting damages or granting a procedural advantage. Use of small print or unintelligible language may indicate an unconscionable term. The burden of proving a term is unconscionable is upon the party alleging unconscionability. Please refer to the definition of unconscionability in the regulation for further information.

An example of a term which may be found to be unconscionable could be a term which is printed in text which is smaller than the rest of the agreement and is difficult to read and understand, or which uses unusual words, to disguise the term or its meaning. Another example of a term which has been found to be unconscionable is where one party took advantage of the ignorance, need or distress of a weaker party which left that party in the power of the stronger. Exploiting the age, infirmity or mental weakness of a party to secure their agreement to the term may be important factors.

Material Terms

To end a tenancy agreement for breach of a material term a landlord must establish that the tenant breached a material term and that the tenant did not rectify the breach within a reasonable time after notice to do so by the landlord². To determine the materiality of a term, an arbitrator will focus upon the importance of the term in

¹ Residential Tenancy Act, s. 6(3); Manufactured Home Park Tenancy Act, s. 6(3)

² RTA, s. 47(1)(h); MHPTA, s. 40(1)(g)

- NO WRITTEN
AGREEMENT &
REGISTERED
AT LAND TITLE
- NOW FILED IN
EVICT. HJM
AFTER ONE P.