

## LexisNexis® Agricultural Law *NetLetter*

A twice-monthly current awareness service reviewing recent cases on land use, marketing boards, environmental issues, creditor rights, animals, grain, import/export and other matters in an agricultural context.

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### HIGHLIGHTS

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- \* The Ontario Court of Appeal had dismissed the Appeal of an owner of a farm who argued that she had a right to terminate a three year lease of the farm because the tenants had failed to provide information with respect to rates of fertilizer and chemical applied to the land in the form stipulated by the lease. The Court of Appeal upheld the trial judge's conclusion that the failure to provide information in the stipulated form "in no way amount to substantial non-performance". The Court also observed that the lease did not contain a provision which identified the failure to provide this information as an "event of default" which entitled the landlord to terminate, and that the trial judge properly considered the proportional effect of the alleged breach to the total value of performance of the lease. (Drew v. Huskinson, [CALN/2019-006](#), [\[2019\] O.J. No. 289](#), Ontario Court of Appeal)

### NEW CASE LAW

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#### Drew v. Huskinson;

Ontario Court of Appeal,

D.M. Brown, D. Paciocco and B. Zarnett JJ.A.,

January 22, 2019.

[CALN/2019-006](#)

[\[2019\] O.J. No. 289](#) | [2019 ONCA 38](#)

**Farm Leases — breach of term to provide information regarding fertilizer and chemical rates — whether failure amounts to substantial failure of performance entitling landlord to terminate.**

Linda Huskinson who owned a 120 acre farm ("Huskinson") appealed to the Court of Appeal for Ontario from a decision of Bale J. of the Ontario Superior Court of Justice ( [2017 ONSC 592](#)) who had awarded \$64,051.02 in damages to Randy Drew and Paul Shaughnessy (the

"Tenants") representing their loss profit arising from Huskinson's wrongful termination of her lease to them.

The Tenants had entered into a written lease on April 12, 2012 for the 2012, 2013 and 2014 crop years (the "Lease") and had farmed the land in the 2012 crop season.

On December 12, 2012 Huskinson sent the Tenants a letter indicating that she was scrapping the Lease. She asked them to sign a new agreement, failing which the April 12, 2012 Lease would be "null and void". Huskinson's letter did not specify any conduct upon which she was relying to end the Lease.

The Tenants offered to engage in discussions for a new lease, however on February 15, 2013, Huskinson indicated she was not prepared to continue renting her farm to them.

At trial, Huskinson argued that she was entitled to terminate the Lease because, among other things, the Tenants had failed to provide information about chemical fertilizer application rates in the form she contended was required by the Lease.

The Lease contained the following provision:

"Supply copy of application rates for fertilizer and chemical by 3rd party once available."

Huskinson understood a third party would provide this information. On September 12, 2012, the Tenants provided her with a handwritten document that identified the type and quantity of the fertilizer used and the details of chemical spraying -- but nothing from a third party.

The Tenants were unable to provide third party confirmation because they applied the fertilizer and chemicals to a number of farms and had only received a single invoice for all the farms.

The trial judge rejected Huskinson's argument and held that whether or not the Landlord was entitled to third party information, she was not entitled to terminate the lease and that failure to provide this information would "in no way amount to substantial non-performance.

Decision: The Ontario Court of Appeal dismissed the appeal [at para 15]. The Court concluded, [at para 14] that the trial judge did not err in concluding that Huskinson was not entitled to terminate the lease.

The court also stated that the trial judge's conclusion that the failure to provide information regarding the fertilizer and chemicals in a specific form did not give Huskinson a right to early termination, stating [at para 13]:

"...The trial judge's interpretation of the Lease as not giving the appellant a right of early termination in the event the respondents failed to provide information relating to fertilizer and chemicals in the third party form she requested was a reasonable one in light of several factors:

- (i) the Lease did not contain a provision that defined the events of default that would permit the appellant to terminate the Lease prior to the expiry of its three-year term;
- (ii) the trial judge considered the proportional effect of any breach on the total value of performance and concluded that the benefit for which the appellant contracted under the Lease was the payment of rent, which the respondents duly paid; and
- (iii) the appellant did not identify any inadequacy with the content of the respondents' handwritten disclosure of the chemical application rates in her December 12, 2012

termination letter."

## CREDITS

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