

Ontario Landlord and Tenant Board

Ontario **Landlord** and Tenant Board

Panel: Renée Lang, Member

Decision: January 2, 2019.

File Numbers: TST-82647-17, TST-81126-17

2019 LNONLTB 304

Order under Section 31, Residential Tenancies Act, 2006 [Names of Parties are not Published]

(89 paras.)

ORDER

1 The Tenants applied for an order determining that O.D.C.L. (the '**Landlord**') or the **Landlord**'s superintendent or the **Landlord**'s agent substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household. (T2 application)

2 The Tenants applied for a reduction of the rent charged for the rental unit due to a reduction or discontinuance in services or facilities provided in respect of the rental unit or the residential complex. (T3 application)

3 This T2/T3 application was heard in Toronto on October 4, 2017, January 24, 2018 and September 17, 2018.

4 The Tenants' legal representative J.K., the **Landlord**'s representative A.K., and the **Landlord**'s legal representative J.H. attended on all hearing dates.

5 The following Tenants attended the hearing on October 4, 2017: SB, LTW, RL, TT, RP, PK, DJC, PK, LL and SC.

6 The following Tenants attended the hearing on January 24, 2018: SB, LTW, RL, and PK.

7 The following Tenants attended the hearing on September 17, 2018: JO, PK, and DJC.

Procedural/preliminary:

8 1. These applications were heard together with several related **Landlord** L2 applications: TSL-82621-17, TSL-82747-17, TSL-82650-17, TSL-82620-17, TSL-82597-17, TSL-82589-17, TSL-82583-17, TSL-82571-17.

9 2. Through the course of these proceedings, some Tenants who were originally named in the applications withdrew from the applications and at least one Tenant was added. The Board issued an endorsement on January 25, 2018 to effect these changes. Schedule 2 to this order reflects these changes.

Determinations:

10 1. The issues in this combined T2/T3 application are:

- * Was the **Landlord** entitled to reduce or eliminate a service or facility (storage lockers) that was included in the tenancy agreement for each of the applicant Tenants;

- * If the Landlord was so entitled, how should the resulting rent reduction be quantified; or
- * If the Landlord was not so entitled, what remedy should be ordered; and
- * Did the Landlord substantially interfere with the Tenants' reasonable enjoyment of the premises in the manner in which the Landlord took over the storage locker space?

11 2. The following facts are uncontested:

- a) The Tenants each started their tenancies with the use of a storage locker in the building and this was included in their rent.
- b) In early 2015 the Tenants were told that the Landlord intended to take over the space used by the storage lockers but the Tenants were also told that the Landlord intended to build new storage lockers in the building as replacements.
- c) On December 9, 2016 the Landlord gave notice to the Tenants that the Tenants would no longer have use of the storage lockers in the building, as the Landlord plans to create new rental units in the space occupied by the lockers. Tenants were given until January 8, 2017 to remove their belongings from their lockers. The Landlord offered assistance to any tenants who cannot clear their lockers on their own and the Landlord stated that the Tenants' rent will be reduced by \$25.00 a month in compensation.
- d) On December 15, 2016 representatives of the Landlord met with tenants of the building and the parties discussed the storage lockers. After this meeting the Landlord agreed to provide storage lockers in another building and agreed to hire movers to move the tenants' belongings to the lockers in the other building. The movers were to do so on January 28, 2017. The Landlord also agreed to provide a mover, at a set date and time twice per year, to move items to and from lockers at the other building. The Landlord agreed to provide an access card to the other building so that tenants may access their storage lockers at any time.
- e) After January 8, 2017, the Landlord extended the deadline to remove belongings from the storage lockers.
- f) Some of the Tenants either moved or allowed their belongings to be moved into the storage lockers in the other building. The storage lockers in the other building are smaller than the ones previously provided by the Landlord in the residential complex.
- g) The other building is located approximately one kilometre from the residential complex.
- h) Some of the Tenants left their possessions in their lockers after January 31, 2017. On various dates in July and August, 2017, the Landlord cut the locks on these lockers and moved the Tenants' possessions to a new temporary storage space, after giving the Tenants one week's notice that the Landlord would do so if the Tenants' belongings weren't moved. The Landlord gave these Tenants keys to the temporary lockers. As of the last day of hearing, the temporary lockers are still being used by these Tenants.

12 3. It is not contested that the Landlord's removal of the old lockers and replacement with new lockers in a different building constitutes a reduction in a service or facility. It is also not contested that the storage lockers were a service/facility that was included with the rent.

Was the Landlord entitled to reduce or eliminate a service or facility that was included in the tenancy agreement for each of the applicant Tenants?

13 4. If a service/facility is included with the rent, it is part of the tenancy agreement. The Tenants' legal representative submitted that the Landlord was not entitled to reduce a service or facility that is included in the tenancy agreement. He submitted two Board orders supporting this submission. Board orders are not binding on

other Board Members. I do not agree with the reasoning in these orders provided by the Tenants' legal representative. I note that the **Landlord's** legal representative submitted copies of Board orders finding that **landlords** are entitled to reduce a service or facility that is included in the tenancy agreement.

14 5. The *Residential Tenancies Act, 2006* (the 'Act') and the General Regulation under the Act (the 'regulation') provide for a remedy for a tenant in the case where a **landlord** reduces or discontinues a service or facility, whether that service or facility was originally included in the terms of the tenancy agreement or was added on later by agreement (with an agreed corresponding increase in rent). The remedy available to tenants in these circumstances is a rent reduction that takes effect on the date that the service or facility is reduced or discontinued. In the case of a service or facility that was originally part of the tenancy agreement, s.39 of the regulation provides that the method by which the Board quantifies the rent reduction is based on a determination as to whether the reduction or discontinuance of the service was reasonable. I believe that this means the legislation contemplates an unreasonable reduction or discontinuance of a service or facility that is included in the tenancy agreement.

15 6. Two decisions of the Ontario Court of Appeal support this interpretation. In *First Ontario Realty Corporation Ltd. v. Deng*, [2011 ONCA 54](#) ('*Deng*'), the Court of Appeal noted that the Act and the regulation provide that when a **landlord** reduces or discontinues a service or facility the remedy is a rent reduction. The Court found that "In the context of this legislative scheme, it is presumed that a reasonable charge for the 'services and facilities' is included in the rental value of the units and that the rent reduction is equal to a reasonable charge for the reduction or discontinuance of those services or facilities" (at para. 35).

16 7. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA ('*Onyskiw*') the Court of Appeal interpreted this point in *Deng* as follows:

Deng illustrates that tenants do not bargain for a particular service or facility that can never be changed or interrupted. Looking at the jurisprudence as a whole, it appears that a **landlord** ought to provide something in exchange for a significant interruption or discontinuation of a particular facility or service. The adequacy of what is provided is to be adjudged by regard to the legislation and regulations under the RTA, the Board's Guidelines and the particular factual circumstances, including the reasonable expectations of the parties viewed objectively. (at para 80)

17 8. For the reasons given above, I find that the **Landlord** was entitled to reduce or discontinue the storage locker facilities and that the only appropriate remedy for doing so is a rent reduction as calculated in accordance with the Act and regulation.

How should the rent reduction be quantified?

18 9. The relevant portions of s.39 of the regulation provide as follows:

39 (2) If a service or facility is discontinued and the discontinuance was reasonable in the circumstances, the rent shall be reduced by an amount that is equal to what would be a reasonable charge for the service or facility based on the cost of the service or facility to the **landlord** or, if the cost cannot be determined or if there is no cost, on the value of the service or facility, including the cost to the tenant or former tenant of replacing the discontinued service or facility.

39 (3) If a service or facility is discontinued and the discontinuance was not reasonable in the circumstances, the rent shall be reduced by an amount that takes into account the following matters:

1. The value of the service or facility, including the cost to the tenant or former tenant of replacing the discontinued service or facility.
2. The effect of the discontinuance on the tenant or former tenant.

39 (4) The amount of the rent reduction determined under subsection (3) shall not be less than the amount of the reduction that would have been required under subsection (2) had the discontinuance been reasonable.

...

39 (6) If a service or facility is reduced, the amount of the reduction of rent shall be a reasonable proportion, based on the degree of the reduction of the service or facility, of the amount of the reduction in rent that would have been determined under subsections (2) to (5) had the service or facility been discontinued

19 10. The key issue in deciding the quantum of the rent reduction is whether the reduction of the service was reasonable. I find that it was not reasonable. The storage lockers, as located in the residential complex, are included in the rent and, as such, form part of the tenancy agreement. The Landlord has not been ordered by any authority to remove the lockers. The Landlord decided to convert the locker space into more rental space from which the Landlord may gain more income. There is nothing inherently unreasonable about a landlord taking steps to increase its income. However, when doing so deprives tenants of a service or part of a service that the Landlord is obligated to provide with the rent as part of the tenancy agreement, it is unreasonable.

20 11. Because I have found the reduction in the service/facility to be unreasonable, the calculation of the rent reduction must be performed in accordance with subs. 39(3) and 39(6) of the regulation. The relevant factors are the value of the service/facility to the Tenants, including the cost to replace the service/facility and the effect of the reduction of the service/facility on the Tenants.

21 12. At the hearing the Tenants gave evidence with respect to the cost of replacing their storage lockers with third party offsite storage. This is not an appropriate comparison. The comparison should be with a service/facility that is comparable to what is lost. The Tenants have access to offsite storage so they have not lost offsite storage. What the Tenants have lost is onsite storage. The comparison with the cost of third party offsite storage is therefore not an appropriate factor in calculating the rent reduction.

22 13. The only other factor listed in subs. 39(3) of the regulation is the effect of the reduction on the Tenants. Some of the Tenants did not attend the hearing and so they did not give evidence as to the effect on them of the loss of onsite storage.

Effect on all Tenants

23 14. Certain effects can be presumed for all of the Tenants. All of the Tenants have lost the ability to go to another part of the building that they live in to retrieve belongings in storage. The Tenants who have a unit in the offsite storage area (or will, due to the order in the Landlord's application, be given one soon) are inconvenienced by having to travel one kilometre to access their storage. These Tenants will have some belongings that they will no longer put in storage because of the lack of easy access. It is uncontested that the offsite storage lockers are smaller than the previous onsite lockers.

24 15. Some Tenants moved all of their stored belongings into their rental units and chose not to take the replacement locker offsite. These Tenants are more affected by the extra belongings in their unit but do not have the adverse effect of having to travel a kilometre to the offsite storage area.

25 16. Losing onsite storage has more impact on all of the Tenants than just losing the space in their storage lockers. The items that were in that space (or some of them) are now kept in the Tenants' units, effectively changing the character of their entire units.

26 17. I have also considered that the reduction of a service that was bargained for in the tenancy agreement will cause distress in some form to all of the Tenants.

27 18. At the hearing PK gave evidence as to which Tenants have cars and which Tenants do not have cars. I

have not considered this evidence in assessing the effect of the reduction in this service. The reason for this is I did not receive sufficient evidence to evaluate the level of impact on Tenants with cars compared with the impact on Tenants without cars. For example, there was no evidence about how frequently each Tenant would need to access their storage and there was no evidence comparing the cost of occasional taxi cab use to the cost of using a car for which there are associated expenses (maintenance, parking, gas, insurance).

Effect on specific Tenants

28 19. This section of the order also sets out evidence relevant to the T2 application.

LTW

29 20. At the hearing LTW testified that she has lived at the residential complex for approximately 20 years and that her locker came with the apartment. LTW testified that she uses the locker to store furniture, books, business records and items she intends to leave to her children.

30 21. LTW testified that in December 2016 when she received notice that she had to clear out her locker she attempted to do so. LTW testified that she put the possessions from her locker into her living room and her second bedroom and that these rooms became filled with her previously stored possessions.

31 22. LTW left some belongings in the locker, and these were **removed** by the **Landlord** and put into a new temporary storage space in the summer of 2017. LTW testified that this space is much smaller than her previous storage locker and that her unit is still cluttered with belongings that she once stored in her locker. LTW testified that she cannot use the temporary storage locker without assistance from her children because it is so densely packed and it has a very high ceiling.

32 23. LTW testified that when she was told she had to clear out her locker she disposed of many of her belongings, including her father's journals from World War I and II, her children's memorabilia, old correspondence, and books. LTW testified that she felt rushed and she did not have time to properly choose what to keep and what to throw out.

33 24. LTW testified that one of the reasons she chose this unit over others in the neighbourhood was the size of the locker, because she was moving from a house.

34 25. LTW testified that she attended a meeting on December 15, 2016 at which the removal of the lockers was discussed. LTW testified that at this meeting tenants were told that the **Landlord's** lawyers told the **Landlord** that they are entitled to **remove** an **amenity** provided for in the lease, but that no further explanation was offered.

SB

35 26. SB testified that she has lived in the residential complex for approximately 12 years and that she has had a storage locker since she moved into the unit. She testified that the storage locker came with the monthly rent and that parking was an extra charge.

36 27. SB testified that she used her locker to store art supplies, tools, and paintings.

37 28. SB testified that in February 2015 the **Landlord** told the tenants that the lockers would be replaced with other lockers in the basement. SB testified that in December 2016 the **Landlord** changed the plan and offered storage in a different building instead.

38 29. SB testified that she attended one of the City's committee of adjustment meetings about the **Landlord's** project and that at this meeting the City representatives seemed interested only in the number of parking spaces.

SB testified that she and other tenants raised issues with respect to anticipated disturbances due to the renovation work and that none of them raised issues with respect to the lockers.

39 30. SB testified that when she was given notice to clear out her locker in December 2016, she removed two valuable paintings and left the rest of her belongings in the locker. SB's things were transferred to another temporary locker in the summer of 2017. SB testified that she has not gone to look at the storage lockers in the other building.

40 31. SB testified that she has a mental illness and she has found the tension about this issue to be very stressful.

LL

41 32. LL testified that she moved into the residential complex in 1999 or 2000. LL testified that a locker came with the unit and she has had a locker since moving in. LL testified that the fact that the unit came with a locker made a big difference in her decision to move into the unit because of the extra space.

42 33. LL testified that she used her locker to store furniture, Christmas decorations and other things for which she did not have a regular use. LL testified that she used the entire space of the locker.

43 34. LL testified that when she was given notice to clear out her locker in December 2016, she felt rushed and she did not know what to do with the items that she was not throwing away or donating. LL testified that she put many of her stored items in her apartment but did not have room for all of them so she put some items in the hallway outside her unit until she was told this is a fire code violation.

44 35. LL testified that the lockers offered at the other building were not appealing to her because she did not know how she was going to get to the other building to access her belongings.

RP

45 36. RP testified that he moved into the residential complex in December 2009. RP testified that a locker came with the unit and he started using his locker when he moved in. RP testified that the locker was a big reason why he took this unit.

46 37. RP testified that he used his locker for seasonal items, photographs, and other items that he did not need to use regularly.

47 38. RP testified that when he was given notice to clear out his locker in December 2016, he was very upset. He emptied his locker before an extension of time was granted. He testified that he threw out some things, donated some things, and sold some things. The remainder of his items went into his apartment, stacked against walls, stuffed into closets and put into the second bedroom. RP testified that he uses the second bedroom as an office and that the storage items in that room affect his use of it. RP testified that these items cluttered his apartment and the management of these items in the unit caused tension with his spouse. RP testified that he does not feel comfortable entertaining guests because he is embarrassed and does not like having to explain the clutter.

48 39. RP testified that he is not interested in using a locker at the other building because it is far away and so he would not be able to monitor it. RP testified that he is concerned that the locker in the other building will be broken into; however, he also testified that there is no reason for him to believe there is a greater probability that the other locker will be broken into. RP testified that he heard the other lockers are smaller and that only ten of them are available. He said he received this information from the Landlord's communications, but he did not submit copies of any of these communications.

TT

49 40. TT testified that she moved into the residential complex in August 2004. TT testified that when she moved in her storage locker came with the unit. TT testified that the storage locker was a large part of her decision to move into the unit.

50 41. TT testified that she used her locker to store books, seasonal items, and bulk items. TT testified that she accessed her locker often, about once or twice a month.

51 42. TT testified that in December 2016 she learned that she had to clear out her locker before Christmas. (This contradicts the uncontested fact stated in the Landlord's notice to the Tenants dated December 9, 2016, that the deadline to move items is January 8, 2017). TT testified that when she received the notice she was very upset. TT moved her things into her unit and into the hallway outside her unit. These things remained in her unit and in the hallway until they were moved to the locker in the other building.

52 43. TT testified that she has been to the locker in the other building and it is as high and nearly as deep as her original locker but it is about 1/3 narrower and so it holds fewer things. TT testified that she is storing some of the previously stored items in her unit. TT testified that the extra things in her apartment clutter her space and cause her anxiety. TT testified that she cannot entertain guests anymore because she is embarrassed by the clutter. TT testified that she also keeps things at home that she used to store because she needs regular access to them: humidifiers, fans, bulk supplies, books.

SC

53 44. SC testified that she moved into the residential complex in July 2013. SC testified that she found the apartment on an online classified advertisement site and that the locker was advertised as included. SC testified that the locker was a factor in her decision to take the unit.

54 45. SC testified that she used her locker to store extra dishes, seasonal items, household items, and business items. SC testified that she used approximately 80% of the space in her locker. SC is an artist; her business items include canvasses, ladders, lumber, cans of paint, and scaffolding.

55 46. SC testified that when she was given notice to clear out her locker in December 2016, she moved out some things and then received a notice extending the time to clear out her locker. SC testified that she moved some of her things into her parents' garage. SC's remaining things were moved into a temporary locker in the summer of 2017.

56 47. SC testified that with less space she cannot recycle materials as easily as before. SC testified that she cannot store canvasses in a place with dust or with temperature changes. SC gave no evidence as to whether her original locker, the temporary locker, or the locker in the other building are dusty or are subject to temperature changes.

57 48. SC testified that in the summer she does murals, for which she needs to store ladders and scaffolding, which do not fit in the temporary locker. She did not testify as to whether these items would fit in the locker in the other building.

58 49. SC testified that because of the change in lockers, she has had to store more of her things in her apartment and that it is cluttered. SC testified that she has a mental illness and her spouse has a brain injury and these conditions affect their ability to cope with the clutter.

59 50. SC testified that the locker in the other building is not an option for her because she does not trust the Landlord as a result of the Landlord promising these other lockers without having them available. SC gave no evidence that the other lockers were not available at the time the Landlord offered them.

RL

60 51. RL testified that she and her spouse have lived in the residential complex for approximately 17 years. RL testified that the storage locker came with the unit and that the locker was crucial to her decision to take the unit.

61 52. RL testified that she used her locker to store books, records from her post-graduate degree, and some of her parents' things. RL's spouse also stored items in the locker and, in fact, stored more things in it than RL did.

62 53. RL testified that when she and her spouse were given notice to clear out their locker in December 2016 they were shocked. RL testified that the notice gave them very little time to empty their locker and that they moved a few things out just before the deadline.

63 54. RL testified that they moved tools and books out of the locker and that they are storing these in their unit. RL testified that these items are cluttering the unit, particularly her home office. The items that were still in the locker after the deadline were moved to a temporary locker in the summer of 2017. RL has not visited the locker area at the other building. RL testified that she is concerned about using a locker in the other building because the storage area in the residential complex was broken into. RL is concerned that it will be harder to monitor the lockers at the other building.

CB

64 55. CB is RL's spouse. CB testified that before they had to clear their locker out, he stored business records, tools, and supplies/materials in the locker. CB testified that he now only stores items that are not very valuable in the temporary locker, because it is framed in wire mesh and anyone with access to the parking area can see what is in his locker.

65 56. CB testified that the items that he and RL now store in their apartment are cluttering the apartment. CB testified that as a result of the clutter, when he and RL entertain guests they have to close off some areas of their apartment.

66 57. CB testified that it would not be practical for he and RL to use a locker in the other building because it would not be as accessible. CB also testified that he gave no thought to using a locker in the other building because he had seen too many unsecured locker areas in other buildings. CB did not go to the other building to see the locker area.

PK

67 58. PK testified that he has lived in the residential complex on and off since 1992 and that he has lived in his unit for 12 years. PK testified that during his entire time in the residential complex, he has always had a locker. PK currently lives with his spouse and two children.

68 59. PK testified that he and his family used his locker much like an extra closet or pantry. PK testified that he and his family stored bulk goods, seasonal clothing, books, sports equipment, scooters, tools and other such things in the locker.

69 60. PK testified that when he was given notice to clear out his locker in December 2016, he moved his family's more valuable possessions into their apartment. In the summer of 2017 the items still in the locker were moved to a temporary locker. PK testified that the temporary locker is much smaller than his old locker and so there are still a large number of items in his apartment that used to be in his old locker. PK testified that as a result of this clutter, his family can no longer have overnight guests. PK testified that the lack of space has affected his family's decisions on buying in bulk and has caused him to buy storage furniture.

70 61. PK testified that he has not considered using a locker in the other building because he and his family could not use it as domestic overflow, which is how they used the old locker.

Quantum of rent reduction

71 62. After considering the factors set out at paragraphs 14 to 18, above, I find that an appropriate rent reduction based on the impact of losing the onsite storage lockers is 15% for all of the Tenants. This reduction is to be applied to the rent amount prior to the \$25.00 per month reduction that some Tenants have been given by the **Landlord**. In other words, the 15% reduction replaces the \$25.00 reduction.

72 63. I have considered all of the evidence given by each individual Tenant who testified and I see no reason to further reduce any of these Tenants' rent. The impact that the reduction in this service has had on these Tenants is not markedly greater than the impact on all of the Tenants. Some Tenants testified as to disabilities that affected their ability to cope with the reduction in this service/facility but no medical evidence was given and so the extent to which this should affect their remedy cannot be determined.

73 64. Subsection 39(4) of the regulation provides that the amount of the rent reduction determined under subsection (3) shall not be less than the amount of the reduction that would have been required under subsection (2) had the discontinuance been reasonable.

74 65. The **Landlord** gave detailed evidence as to what its cost was to provide the onsite storage lockers. The Tenants gave no evidence as to this cost. This makes sense; all of the information as to the **Landlord's** cost is in the hands of the **Landlord**. The Tenants' legal representative vigorously cross-examined the **Landlord's** witness with respect to this cost and submitted that the actual cost of the onsite storage could not be determined based on the **Landlord's** evidence. The **Landlord** submitted a cost breakdown indicating a monthly cost of \$25.26 per locker and an amended breakdown indicating a monthly cost of \$22.35 per locker.

75 66. If the **Landlord's** evidence is sufficient to determine the cost of the onsite lockers, then the amount of the reduction ordered is much higher than this cost, as \$25.00 is very likely less than 15% of any of the Tenants' rent. If the **Landlord's** evidence is not sufficient, and the cost is actually higher, I cannot determine whether this amount is lower than the reduction ordered because I do not know how much this cost is. I note that if the cost is twice what is claimed by the **Landlord**, it would be \$50.00 per month, which is very likely less than 15% of any of the Tenants' rent. The only information that was provided as to any of the Tenants' rent is in the T3 application, which gives PK's monthly rent. \$50.00 per month is substantially lower than 15% of PK's rent.

Effective date

76 67. Subsection 130(4) of the Act provides that an order under this section reducing rent takes effect on the day that the discontinuance or reduction first occurred. I find that the date that the reduction first occurred is January 28, 2017, which is the extended deadline that the **Landlord** set for the removal of the Tenants' belongings from their onsite storage lockers.

T2 application: Did the **Landlord** substantially interfere with the Tenants' reasonable enjoyment of the premises in the manner in which the **Landlord** took over the storage locker space?

77 68. Some of the Tenants who testified gave evidence that the **Landlord** had not provided adequate notice for the removal of items from their lockers. It is uncontested that the **Landlord** gave notice on December 9, 2016 for removal of items from lockers by January 8, 2017. This is one month of notice, which I find is reasonable under the circumstances. Further, after some tenants raised an issue with the deadline, it was extended.

78 69. Some of the Tenants who testified gave evidence that they were surprised when, in December 2016, they learned that they would not be given replacement lockers onsite. It was apparent from these Tenants' testimony

that they interpreted earlier communications about the building of new replacement lockers in the building as a promise. There was no evidence that this was ever actually promised. In any event, it was not unreasonable and not an interference for the Landlord to change its mind about the extent and nature of the renovations that they undertook to build the new rental units. The Landlord kept all of the tenants in the building updated by giving notice, on December 9, 2016, that it intends to take over the onsite locker area.

79 70. The Tenants' legal representative submitted that the Landlord's conduct was arrogant. He referred specifically to letters from the Landlord's staff to the Tenants. These letters are notices about how balconies will be affected by the renovations, about how to access the offsite storage, and about the transfer of belongings from the old locker space to the temporary lockers. There is nothing in them that is disrespectful; the language is neutral. The fact that these letters were sent to the Tenants does not constitute any kind of interference. If these letters were not sent, the Tenants would not have had notice of the events to which the letters refer. None of these letters constitute substantial interference with the Tenants' reasonable enjoyment of the premises.

80 71. The Landlord's actions in moving belongings left in lockers after the deadline also does not constitute substantial interference. The Landlord needed the space for the renovations and in order to mitigate any damage caused by delays, the Landlord had to move some of the Tenants' belongings into temporary onsite storage.

81 72. At the hearing CB testified that he received insulting e-mails from the Landlord's representatives, including AK. CB did not submit any insulting e-mails into evidence, even after he was given time to retrieve them. Based on the lack of evidence, I cannot find, on a balance of probabilities, that any representative of the Landlord sent CB insulting e-mails.

82 73. SC testified that she was contacted by telephone by employees of the Landlord many times and she found this to be harassing. SC did not testify as to the frequency of these calls, the duration of these calls, what was discussed in these calls, or who called her. At the hearing the Landlord's property manager EP testified that he called some Tenants about their plans for their lockers. EP testified that he only called Tenants whose lockers appeared to have a small amount of items in them so that he could find out those Tenants' intentions. EP testified that he did not contact any Tenant whose locker was either empty or full, because these Tenants' intentions were already clear. This makes sense. The Landlord had to ascertain whether it was necessary to move some Tenants' belongings into temporary storage and how much temporary storage that they had to construct. It was reasonable to contact some of the Tenants, including SC, for this purpose.

83 74. PK testified that he did not feel that the Landlord "worked with" the Tenants. The Landlord extended the deadline, offered a rent decrease, provided disposal facilities, offered to move belongings to the offsite storage, and will provide a moving truck twice a year to move things to and from the offsite storage. I find that the Landlord took reasonable steps to accommodate inconveniences caused to the Tenants.

84 75. RL and PK testified that in February 2015 the Landlord's staff gathered the Tenants' signatures to acknowledge receipt of a booklet that gave information about the renovations. RL and PK testified that they were told by SB that in a Committee of Adjustments meeting which was considering the Landlord's application for a building permit for the project, the Landlord's representative AK falsely presented those signatures as evidence of the Tenants' consent to the project.

85 76. When SB initially testified, she did not mention anything about signatures and a Committee of Adjustments meeting. SB was recalled to testify again later in the hearing and at first she testified that AK told the Committee of Adjustments that the Landlord had gathered signatures and at that point SB told the Committee of Adjustments that the tenants had only signed for booklets. Later under cross-examination SB testified that she did not remember what was said at that meeting. There was no documentary evidence given at the hearing that connects the signatures for the booklets with a representation that they were collected for a different purpose. The Landlord submitted a copy of the minutes of the Committee of Adjustments meeting, which notes that SB and AK were present, AK outlined the application and referred to documents on file, and SB opposed the application.

86 77. The Tenants accuse AK of fraudulent conduct. This is a very serious allegation. Based on the lack of any evidence to support this allegation, I am not satisfied, on a balance of probabilities, that the Landlord collected the Tenants' signatures for one purpose then used those signatures to support its application for a building permit.

87 78. I have also considered whether the Landlord's actions in serving certain of the Tenants with notices of termination and filing applications seeking eviction constitutes substantial interference. Some of the Tenants posted notes on their original lockers threatening criminal prosecution if any of their items are moved anywhere other than different onsite storage. Collectively the Tenants who left items in the old storage lockers communicated to the Landlord that they did not intend to move their belongings. The Tenants' T3 application to the Board, filed in January 2017, asserted that the Landlord was not entitled legally to take over the storage space. This communicated that the Tenants were not going to move their belongings from the lockers willingly. The notices of termination were served in February 2017. The Landlord had no other recourse but to serve these notices of termination and file these applications and so I cannot find that these actions constitute substantial interference. I note that in the Landlords' applications, I found that the Tenants had substantially interfered with a lawful right, interest or privilege of the Landlord.

88 79. For the reasons given above, the Tenants' T2 application shall be dismissed.

89 It is ordered that:

1. The Tenants' T2 application is dismissed.
2. Each of the Tenants' lawful rent is reduced by 15%, effective January 28, 2017.
3. The Landlord shall rebate to the Tenants any amount owed as a result of the retroactive reduction of rent. This rebate shall be paid to the Tenants no later than January 31, 2019.
4. The Landlord shall pay to the Tenant PK \$195.00 for the cost of filing the application. It is expected that PK will return an appropriate portion of this amount to any Tenants who contributed to the filing fee.
5. If the Landlord does not pay the Tenants the full amount owing by January 31, 2019, the Landlord will owe interest. This will be simple interest calculated from February 1, 2019 at 3.00% annually on the balance outstanding
6. If the Landlord does not pay the Tenants the full amount owing by January 31, 2019, the Tenants may recover this amount by deducting it from the rent each month until the full amount owing is recovered.
7. The Tenants have the right, at any time, to collect the full amount owing or any balance outstanding under this order.

January 2, 2019

Date Issued

Renée Lang
Member, Landlord and Tenant Board

* * * * *

Schedule 2

Babcooke, Terry

Clary, Dona-Jean

Jane Dean

Jane, Ashley

Kundarewich, Paul

Lobo, Rosalind

Padios, Lourdes

Pelz, Justin Dube

Stanzeleit, Rebecca

Taylor-Wright, Lindley

Vandenbbosche, Jonathan

Wang, Grace

Aldaoud, Sima

Barber, Sharin

Connor, Sarah

Krueger, Philip

Lem, Linda

Olson, Judith

Padios, Rosita

Phillips, Ric

Sucharov, Boris

Tyzkyj, Tatjana

Veitch, Ian

Zhongdho, Tsering

End of Document