

COURT FILE NO.: 554/07

DATE: 20081113

ONTARIO  
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

A.C.J.S.C. CUNNINGHAM, CARNWATH AND BELLAMY JJ.

BETWEEN:

)

)

) *Tracy Heffernan*, for the Tenant/Appellant

)

)

Tenant/Appellant

)

)

- and -

)

)

DOVERHOLD INVESTMENTS LTD.

)

) *Aaron Rousseau*, for the Landlord/

)

) Respondent

)

Landlord/Respondent

)

)

)

)

) **HEARD at Toronto:** November 13, 2008

A.C.J.S.C. CUNNINGHAM: (Orally)

[1] This case raises an issue of procedural fairness. Without reciting the facts, suffice to say that the tenant has never had a hearing on the matters at issue. She, albeit wrongly, believed the hearing was to be held September 28<sup>th</sup>, 2007. In fact, the notice of hearing showed the date to be September 21<sup>st</sup>. Whether the tenant actually received a notice is not seriously an issue. The tribunal Member found she did, based upon the Board's internal documentation.

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[2] The fact is, for whatever reason, the tenant thought the date was September 28<sup>th</sup>. Perhaps that resulted from discussions held on August 24<sup>th</sup> at the Board before Member Borgon, some of which, perhaps not all, were transcribed. Clearly on August 24<sup>th</sup>, the issue was the date to which the hearing would be adjourned. Even in its own documentation (see page 50 of the Appeal Book), there is a notation of the new date being September 28<sup>th</sup> and then a scratching out of that, "8" to a "1". Perhaps the date of August 28<sup>th</sup>, the date of the notice to her, confused her. The reality is the tenant has never had an opportunity to be heard. We are of the view she is entitled to a hearing.

[3] Being reasonably able to participate in the proceeding must be interpreted broadly; natural justice requires no less. The tenant has never delayed in pursuing her remedies.

[4] The appeal is allowed. The matter will be referred back to a different Member for hearing.

### COSTS

[5] This is not a case for costs.

  
A.C.J.S.C. CUNNINGHAM  
CARNWATH J.  
BELLAMY J.

Date of Reasons for Judgment: November 13, 2008

Date of Release: NOV 17 2008

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**A.C.J.S.C. CUNNINGHAM, CARNWATH  
AND BELLAMY JJ.**

**B E T W E E N:**

Tenant/Appellant

- and -

DOVERHOLD INVESTMENTS LTD.

Landlord/Respondent

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**ORAL REASONS FOR JUDGMENT**

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**A.C.J.S.C. CUNNINGHAM**

**Date of Reasons for Judgment: November 13, 2008**

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THE MEMBERS OF THE PRESIDING PANEL OF JUDGES**