IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

QUALITY MANAGEMENT	)	***R. Winkler***
	)	*on her own behalf*
(Landlord) Respondent	)	
	)	***E. Yewchyn***
	)	*on behalf of the*
	)	*Respondent*
- and -	)	
	)	***T. D. Gisser***
	)	*for the Residential*
	)	*Tenancies Commission*
RAYMONDE WINKLER	)	
	)	*Chambers motion heard and*
(Tenant) Applicant	)	*Decision pronounced:*
	)	*May 18, 2017*

BEARD JA

[1]   This is an application by the tenant pursuant to section 175(2) of *The Residential Tenancies Act*, CCSM c R119, (the *Act*) for leave to appeal a decision of the Residential Tenancies Commission (the Commission). The leave application was dismissed at the hearing with reasons to follow. These are those reasons.

[2]   The landlord obtained a decision from the Residential Tenancies Branch (the Branch) on February 23, 2017, whereby the tenant was found liable for one month's rent of $1,063, late payment fees of $70 and costs of $65, for a total of $1,198. It allowed the landlord to apply the damage deposit and accrued interest to the outstanding balance, leaving an outstanding judgment against the tenant of $663.97. The tenant appealed the decision to the Commission, which

upheld the decision of the Branch.

[3]   Section 175(2) of the *Act* provides a party with a very limited right of appeal from a decision or order of the Residential Tenancies Commission:

> **Appeal with leave**
> **175(2)**   An appeal under subsection (1) may be taken only on a question of jurisdiction or of law and only with leave obtained from a judge of the Court of Appeal.

[4]   This right of appeal was explained by Freedman JA in *Manitoba Housing Authority v Horvat*, 2010 MBCA 43, as follows (at para 3):

> …   Appeals are limited to questions of jurisdiction or law, and an applicant needs leave to appeal. Three factors are considered by a judge in determining whether to grant leave.   See *Pelchat v Manitoba Public Insurance Corp.*, 2006 MBCA 90 (at para. 2):
>
> > ….
>
> > 1.   The question must be truly one only of jurisdiction or of law, and not one which "involve[s] the court in an assessment or analysis of conflicting factual issues" (*Shersty v. Manitoba Public Insurance Corp.* (2002), 43 C.C.L.I. (3d) 35, 2002 MBCA 108 (Man. C.A. [In Chambers]), at para. 2, *Fillion v. Manitoba Public Insurance Corp.* (2004), 10 C.C.L.I. (4th) 182, 2004 MBCA 61 (Man. C.A.), and cases cited therein).
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> > 2.   The case must be one that warrants the attention of the court. "The issue must be one of importance; not just for the immediate case, but in determining other similar disputes which are apt to arise in [the] future" (*Wuziuk v. Manitoba (Director of Social Services) (No. 2)* (1979), 3 Man.R. (2d) 81 (Man. C.A.), at para. 7).
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> > 3.   There must be an arguable case of substance; i.e., one with a reasonable prospect of success (see *Lejins v. Manitoba Public Insurance Corp.* (2003), 50 C.C.L.I. (3d) 1, 2003 MBCA 95 (Man. C.A. [In Chambers])).

[5]   In *3391397 Manitoba Ltd v Winnipeg (City) Assessor*, 1998 CarswellMan 84, Scott CJM explained the first factor as follows (at para 5):

> … The Court cannot be concerned with reassessing findings of fact. Unless a legal question can be identified without the Court involving itself in reweighing or reconsidering factual issues, leave to appeal will not be granted. …

[6]   The tenant was renting two suites from the landlord. She was living in suite 701, for which the lease terminated on July 31, 2016, at which time she vacated that suite. She was using suite 1012 to store some personal possessions, and the lease on this suite terminated on January 31, 2017. This dispute relates to suite 1012 only.

[7]   There was a factual dispute before both the Branch and the Commission as to whether the tenant had vacated suite 1012 towards the end of July, 2016, whether she attempted to pay the rent to the landlord on August 2, 2016, but the payment was refused and whether she attempted to sublet the suite or assign her lease but was unsuccessful due to the lack of co-operation by the landlord. There was also an issue as to the tenant's request for repairs regarding suite 1012, whether the Branch was refused entry to inspect the suite and whether the landlord breached its duties in relation to the condition of the suite.

[8]   It is uncontested, however, that the tenant did not pay the August rent for suite 1012 to either the landlord or the Branch. The landlord re-rented the suite effective September 1, 2016, so it filed a claim with the Branch to obtain judgment for one month's rent (August, 2016) and to be able to apply the damage deposit to the outstanding rent.

[9]   Both the Branch and the Commission found in favour of the landlord.

The Commission found that, even on the tenant's own admissions, she owed the rent for August. It found that, if there was a valid dispute regarding repairs, the tenant was required to pay the rent and have that dispute resolved through the Branch. A dispute regarding repairs or whether the landlord was not fulfilling its obligations did not permit the tenant to withhold the rent.

[10]   In both her written material and her oral argument on this leave application, the tenant again argued that she did not pay the August rent because the suite was filthy and needed repairs, and the landlord had failed or refused to get the work done. She said that the suite was not habitable and, for that reason, she refused to move in or to pay the rent. She acknowledged that she had raised these arguments before the Commission, and she argued that it erred in not accepting that argument and finding that the landlord had breached the lease by failing to repair or clean the suite and in requiring her to pay rent for a suite that was not habitable.

[11]   The issues that the tenant raises are all clearly questions of fact and mixed fact and law that were considered by the Commission. The appeal does not raise either a question of law or one of jurisdiction. Thus, her motion does not disclose any basis within section 175(2) of the *Act* upon which she can appeal.

[12]   Leave to appeal is denied and the order of the Commission is confirmed. There was no submission as to costs, so I am making no order in that regard.

Beard JA