

2012 ONSC 6107
Ontario Superior Court of Justice

Schneiderman v. Dis Avenue

2012 CarswellOnt 14858, 2012 ONSC 6107, 223 A.C.W.S. (3d) 224

**In the Matter of the Determination of Rights
under the Residential Tenancies Act, 2006**

Simon Schneiderman, Applicant and Dis Avenue, Respondent

Ellen Macdonald J.

Judgment: November 23, 2012

Docket: CV-12-447963

Counsel: Simon Schneiderman, for himself

Douglas H. Levitt, for Respondent

Subject: Property

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Real property

V Landlord and tenant

V.20 Residential tenancies

V.20.b Constitutional issues

V.20.b.i Jurisdiction of boards and commissions

Headnote

Real property --- Landlord and tenant — Residential tenancies — Constitutional issues — Jurisdiction of boards and commissions

Landlord commenced application for rent arrears before Landlord and Tenant Board ("LTB") — Tenant vacated premises between filing of LTB application and hearing — Tenant brought application for determination of his rights under Residential Tenancies Act, 2006 — Application dismissed — Fact that tenant vacated premises after LTB application was filed was immaterial to question of whether LTB had jurisdiction to hear LTB application — LTB had jurisdiction to hear LTB application — Argument regarding LTB's jurisdiction to hear LTB application should properly be advanced by way of preliminary motion at hearing of LTB application and not by way of this application — This application was not appropriate forum — If landlord took issue with it being identified as landlord in LTB application, such issue should be heard at hearing of LTB application and not in this application — LTB had authority to determine all questions of law and fact raised in this application.

Table of Authorities

Cases considered by Ellen Macdonald J.:

Turnbull's Grove Inc. v. Price (2007), 58 R.P.R. (4th) 1, 85 O.R. (3d) 641, (sub nom. *Price v. Turnbull's Grove Inc.*) 225 O.A.C. 1, 2007 CarswellOnt 3494, 2007 ONCA 408 (Ont. C.A.) — considered

Statutes considered:

Residential Tenancies Act, 2006, S.O. 2006, c. 17

Generally — referred to

s. 1 — considered

s. 2(1) "landlord" — considered

s. 5 — considered

s. 9(1)(a) — considered

s. 9(2) — considered

s. 87(1) — considered

s. 87(1)(b) — considered

s. 174 — considered

s. 210 — considered

APPLICATION by tenant for determination of his rights under *Residential Tenancies Act, 2006*.

Ellen Macdonald J.:

1 The applicant seeks a determination of rights under the *Residential Tenancies Act*, S.O. 2006, c. 17 ("the *RTA*"). The issues raised in this Application raise the following questions:

(i) If at the time of commencement of an application by a landlord for relief against a tenant under the *RTA*, there is a landlord and tenant relationship but that relationship is at an end by the time the matter comes on for hearing, does the Landlord and Tenant Board ("LTB") still have jurisdiction to determine the Application or has that jurisdiction been lost when the landlord and tenant relationship has been ended; and

(ii) If at the time of commencement of an application by a landlord for relief against a tenant under the *RTA* in circumstances where the named landlord is neither a person, a corporation or any other legal entity, does the LTB have jurisdiction to determine the Application? and;

(iii) If the LTB does not have jurisdiction to determine the application because the landlord is not a legal entity at the time of the commencement of the application, can it be amended to name another entity as landlord if at the time of the sought amendment there is no landlord and tenant relationship between the parties?

2 The Applicant, Mr. Schneiderman was a Tenant of the premises known municipally as Apt. 406, 606 Avenue Road, Toronto from 2006 until January 31, 2012. The Landlord was DIS Avenue. A property search confirms that DIS Avenue does not appear on title.

3 On November 15, 2011, DIS Avenue commenced a Landlord's application for alleged rent arrears before the LTB. The original hearing date for the LTB Application was December 12, 2011. At that time, Mr. Schneiderman was still in possession of the Unit. On December 12, 2011, the parties attended at the LTB for the hearing of the LTB Application. However, the hearing block ended before the LTB Application could be heard and, as a result, same was re-scheduled to be heard on March 15, 2012.

4 The question to be considered in this Application is whether the LTB has jurisdiction to hear a Landlord's Application for an order for the payment of arrears of rent is when the tenant is in possession of the rental unit at the time that the Application is filed with the LTB. If the tenant is in possession of the rental unit, the landlord may apply for an order for the payment of arrears of rent.

5 DIS Avenue submits that the interpretation suggested by Mr. Schneiderman, that the vacating of a rental unit by a Tenant between the filing of an Application with the LTB and the hearing of such Application, would lead to a multiplicity of proceedings. Such an interpretation would allow any tenant against whom an LTB Application was brought to vacate the rental unit in question before the hearing of such Application, which would, in turn, force the landlord to bring separate proceedings against such tenant for recovery of any arrears of rent. Such an interpretation is contrary to general principles against duplicity of proceedings.

6 In the alternative DIS submitted that this Application is not the correct means of determining whether the LTB has jurisdiction to hear the LTB Application.

7 See section 9 of the RTA which provides as follows:

Application to determine issues

9. (1) A landlord or a tenant may apply to the Board for an order determining,

(a) whether this Act or any provision of it applies to a particular rental unit or residential complex...

(2) On the application, the Board shall make findings on the issue as prescribed and shall make the appropriate order

8 In response, Mr. Schneiderman is seeking a declaration as to whether the Landlord and Tenant Board (the "LTB") has jurisdiction to consider an application made to the LTB by the Respondent, DIS Avenue ("DIS"), for, *inter alia*, an order requiring Mr. Schneiderman to pay DIS arrears of rent (the "LTB Application"). Mr. Schneiderman questions the LTB's jurisdiction to hear the Application on the basis that Mr. Schneiderman vacated the rental unit that he had rented from DIS (the "Unit") after DIS commenced the LTB Application, but before it was heard by the LTB.

9 In response, DIS says that Mr. Schneiderman's application is frivolous, wasteful and unnecessary. DIS submitted that the RTA and the LTB has jurisdiction to matters raised in this Application.

10 DIS submits that subsection 87(1) of the *Residential Tenancies Act, 2006* (the "RTA") is a complete answer to the question posed by the Applicant's application.

11 Specifically, subsection 87(1) of the RTA provides, in part, as follows:

Application

87. (1) A landlord may apply to the Board for an order for the payment of arrears of rent if,

...

(b) the tenant is in possession of the rental unit

12 DIS filed the LTB Application while Mr. Schneiderman was in possession of the Unit. It is DIS's position that, as a result of the foregoing, and based on the plain wording of subsection 87(1) of the RTA, the LTB has jurisdiction to hear this LTB Application.

13 DIS submitted that the fact that Mr. Schneiderman vacated the Unit after the LTB Application was filed with the LTB is, immaterial to the question of whether the LTB had jurisdiction to hear the LTB Application. I agree with this submission.

14 DIS also submitted that subsection 87(1) of the RTA should be read and interpreted in a plain-language manner. In this regard, the Supreme Court of Canada has frequently cited with approval the following approach to statutory interpretation as set out in Dreidger's *Construction of Statutes*, 4d ed.:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the intention of Parliament...

Turnbull's Grove Inc. v. Price, 2007 CarswellOnt 3494 (Ont. C.A.) at para. 24

15 DIS's submission was that subsection 87(1) must be read and interpreted on its face and in the context of the RTA as a whole. In this regard, section 1 of the RTA provides that a purpose of the RTA is to "provide for the adjudication of disputes" between landlords and tenants. Section 174 of the RTA gives the LTB the power to hear and determine "all questions of law and fact with respect to all matters within its jurisdiction". It follows that the clear intention of the Legislature in enacting the RTA was to confer authority in the LTB to hear and adjudicate upon all residential landlord and tenant disputes unless these disputes fall within the exemptions set out in the RTA in section 5 of the RTA). DIS submitted that having regard for the intent of the Legislature, subsection 87(1) merely requires the LTB Application to be filed while Mr. Schneiderman was in possession of the unit.

16 In response, DIS submitted that this Application, and the interpretation of the RTA that has been suggested herein by Mr. Schneiderman, amounts to an effort by Mr. Schneiderman to make an "end run" around the clear authority of the LTB to deal with the LTB Application.

Disposition

17 I have concluded that the LTB has jurisdiction to hear the LTB Application, and that this Application should be heard before the LTB.

18 If LTB does not have jurisdiction to hear the LTB Application, such an argument should properly be advanced by way of a preliminary motion at the hearing of the LTB Application and not by way of this Application. If Mr. Schneiderman was to disagree with the LTB's disposition of such a preliminary motion, s. 210 of the RTA would give him the right to appeal the LTB's decision to the Divisional Court.

19 It is on this basis that I find that this application is not in the appropriate forum.

20 DIS submitted that the fact that DIS does not own the building is immaterial to this Application. Subsection 2(1) of the RTA defines "landlord" as including "...other person who permits occupancy of a rental unit". As DIS permitted Mr. Schneiderman to occupy the unit, DIS was a landlord within the meaning of the RTA.

21 If DIS was planning to take issue with DIS being identified as the Landlord in the LTB Application, such issue should be heard at the hearing of the LTB Application and not in this Application. The LTB has authority to determine all questions of law and fact raised in this Application.

22 An order shall go dismissing this application, without prejudice to this application proceeding before the LTB.

23 The parties may make written submissions on costs. DIS Avenue shall deliver to Mr. Schneiderman its written submissions within 7 days of the release of these reasons. DIS Avenue shall respond within a further 7 days. Both submissions shall be delivered to Judges' Administration at Osgoode Hall.

Application dismissed.

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