

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Roumeli Investments Ltd. v. Gish*, 2017 NSSC 125

**Date:** 20170524

**Docket:** Hfx No. 455391

**Registry:** Halifax

**Between:**

Roumeli Investments Limited

*Plaintiff*

v.

Elliot Gerald Gish, Amy Ryan

*Defendants*

---

**LIBRARY HEADING**

---

**Judge:** The Honourable Justice Ann E. Smith

**Heard:** May 4, 2017, in Halifax, Nova Scotia

**Written Decision:** May 24, 2017

**Subject:** Summary Judgment on Pleadings

**Summary:** The Plaintiff landlord sued the Defendant tenants in negligence, alleging that the tenants caused a fire in the residential unit they rented from it as owner. The Plaintiff did not file an application for resolution of its dispute with the tenants within the one-year time period allowed by the *Residential Tenancies Act*, RSNS 1989, c. 401. The Plaintiff alleged that the Supreme Court had concurrent jurisdiction with the Director of Residential Tenancies to hear and determine the matters raised in its action.

**Issues:** Does the Director of Residential Tenancies have exclusive jurisdiction over the matter such that summary judgment on the pleadings should be granted?

**Result:** Residential landlord and tenants disputes fall within the original, exclusive jurisdiction of the Director of Residential Tenancies pursuant to the *Residential Tenancies Act*. Summary judgment on the pleadings granted pursuant to *Civil Procedure Rule 13.03(1)(b)* and (2).

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Roumeli Investments Ltd. v. Gish*, 2017 NSSC 125

**Date:** 20170524

**Docket:** Hfx No. 455391

**Registry:** Halifax

**Between:**

Roumeli Investments Limited, a body corporate

*Plaintiff*

v.

Elliot Gerald Gish and Amy Ryan

*Defendants*

**Judge:** The Honourable Justice Ann E. Smith

**Heard:** May 4, 2017, in Halifax, Nova Scotia

**Written Decision:** May 24, 2017

**Counsel:** Jeremy Smith, Paul Niefer, for the Plaintiff as Respondent  
Billy Sparks, Megan Deveaux, for the Defendant Elliot Gerald  
Gish as Applicant  
Anthony Rosborough, Watching Brief for Defendant Amy  
Ryan

**By the Court:**

## **INTRODUCTION**

[1] The Defendant, Elliot Gerald Gish moves for summary judgment on the pleadings. The Defendant says that the subject matter of the pleadings falls within the exclusive jurisdiction of the Director of Residential Tenancies (“DRT”) pursuant to the *Residential Tenancies Act*, RSNS 1989, c. 401 (“RTA”). The Defendant relies on *Civil Procedure Rule 13.03(1)(b)*. The Plaintiff opposes the motion on the basis that the Supreme Court of Nova Scotia has inherent jurisdiction to hear and determine its action.

## **BACKGROUND**

[2] On February 14, 2015 a fire started in the kitchen of Unit 2016 of the apartment building owned by the Plaintiff. This unit was rented by Elliot Gish and occupied by Amy Ryan (the “tenants”). The unit was extensively damaged by the fire and the tenants vacated the unit and terminated their tenancy with the Plaintiff’s consent.

[3] There is no dispute between the parties that the Plaintiff and the tenants were in a landlord and tenancy relationship within the meaning the RTA on February 14, 2015.

**ISSUE: The sole issue is whether the DRT has exclusive jurisdiction over this matter such that summary judgment on the pleadings should be granted.**

[4] The Defendant argues that *Civil Procedure Rule 13.03(1)(b) and (2)* provides that the statement of claim must be set aside and summary judgment granted because the “claim is based on a cause of action in the exclusive jurisdiction of another court or tribunal” - in this case, the DRT. The Plaintiff contends that this Court has concurrent jurisdiction with the RTA authorities to resolve landlord and tenant disputes.

[5] The burden is on the Defendant to show that it is plain and obvious that the pleadings are based on a cause of action in the exclusive jurisdiction of the RTA.

[6] For the reasons which follow I find that this action does fall exclusively within the jurisdiction of the RTA authorities. Summary judgment on the pleadings is granted. The statement of claim is set aside and the action dismissed.

## **LAW AND ANALYSIS**

[7] The following provisions of the RTA are applicable:

### **Purpose**

**1A** The purpose of this Act is to provide landlords and tenants with an efficient and cost-effective means for settling disputes.

**2** In this Act,

....

(b) “landlord” includes a person who is deemed to be a landlord, a lessor, an owner, the person giving or permitting the occupation of premises and his and their heirs and assigns and legal representatives;

....

(j) “tenant” includes an individual who is deemed to be a tenant and an individual who is a lessee, occupant, subtenant, under-tenant, and his or their assigns and legal representatives;

[8] The RTA sets out nine statutory conditions that apply to every landlord and tenant relationship in Nova Scotia. Statutory Condition 4 provides:

**4** Obligation of the Tenant – The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damages caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises.

[9] A tenant or landlord may apply to the DRT to determine a question arising under the RTA or alleging a breach of a lease or a contravention of the RTA. Section 13 of the RTA provides:

### **Application to Director**

- 13** (1) Where a person applies to the Director
- (a) to determine a question arising under this Act; or
  - (b) alleging a breach of a lease or a contravention of this Act,

and, not more than one year after the termination of the lease, files with the Director an application in the form prescribed by regulation, together with the fee prescribed by regulation, the Director is the exclusive authority, at first instance, to investigate and endeavour to mediate a settlement.

(2) Upon making an application pursuant to subsection (1), the applicant shall, in accordance with the regulations, serve the other parties to the matter with a copy of the application.

(3) Where the landlord or the tenant has made efforts to serve the other party that have been unsuccessful, the Director may order an alternate acceptable method of service.

(4) An applicant may withdraw an application at any time before an order or decision is made. 1997, c. 7, s. 7.

(emphasis added)

[10] The duties and powers of the DRT are set forth in Section 16:

**16** (1) Upon receiving an application pursuant to Section 13, the Director shall investigate and endeavour to mediate a settlement of the matter.

(2) Where a matter is settled by mediation, the Director shall make a written record of the settlement which shall be signed by both parties and which is binding on the parties and is not subject to appeal.

(3) Where a matter is settled by mediation, the Director may, if a party fails to comply with the terms on which the matter was settled, make an order pursuant to Section 17A. 1997, c. 7, s. 7.

[11] Plaintiff's counsel says that s. 13 must be interpreted to give meaning to the words "where a person applies to the Director." He contends that the Director has a duty to investigate and mediate a question or dispute under the RTA only when all of the following circumstances, which he calls "pre-conditions", have been met:

- (1) A person makes an application to the Director;
- (2) The application is in the form and with the fee prescribed by regulation; and
- (3) The application is made within one year after the termination of the lease.

[12] The Plaintiff says that these "pre-conditions" trigger the DRT's jurisdiction. In that regard, the Plaintiff refers to the following statement made by the Nova Scotia Court of Appeal in *Reference Re An Act to Amend Chapter 401 of the Revised Statutes, 1989, The Residential Tenancies Act*, S.N.S. 1992, c. 31 (1994), 115 DLR (4<sup>th</sup>) 129 (NSCA) where the majority said at para. 73:

73 The primary jurisdiction of the Director begins when an application of a breach of a tenancy agreement, or contravention of the Act is alleged (s. 13(1)).

[13] While the Court of Appeal's decision on the constitutionality of the *Tenancies Act* was overturned by the Supreme Court of Canada in *Reference re An Act to Amend Chapter 401 of the Revised Statutes, 1989, the Residential Tenancies Act*, S.N.S. 1992, c. 31, [1996] 1 SCR 186 (SCC) ("the 1996 RTA Reference"), the above statements with respect to the DRT's jurisdiction were not criticized.

[14] The Plaintiff says that in this case none of the "preconditions" under s. 13 of the RTA have been satisfied. No application was filed with the DRT and more than one year has passed since the termination of the lease. In these circumstances, the Plaintiff contends that the Supreme Court of Nova Scotia retains inherent jurisdiction over the matter.

[15] In sum, the Plaintiff's argument is that at any time during the residential landlord and tenant relationship, and for one year after the termination of the lease, a landlord or tenant is free to choose to have a dispute resolved either in the Supreme Court of Nova Scotia, or by the DRT. After a year has passed from the termination of the lease, the Plaintiff says that a landlord or tenant may only have the dispute heard by the Supreme Court.

[16] I find that while the words "Where a person applies to the Director" (s. 13(1)) trigger the jurisdiction of the DRT, that is so only in the sense that it starts the process whereby a tenant or landlord has a dispute as described by s. 13(1)(a) and (b) investigated. The words "Where a person applies to the Director" simply make it clear that the process is complaint driven. The DRT has no jurisdiction to investigate possible breaches of the RTA without someone applying to him or her in the prescribed manner and within the prescribed time period.

[17] In *Confu Investments Ltd. v. Oickle*, 2011 NSSC 119 Rosinski J. conducted a thorough analysis of the same issue that is before the Court in the within case: Do the RTA authorities have exclusive jurisdiction to deal with "residential tenancies" matters? Justice Rosinski answered that question – "yes." I concur.

[18] As noted previously, s. 13(1) of the RTA provides that the DRT "is the exclusive authority, at first instance" to attempt to mediate and resolve residential tenancy disputes. The following provisions of the RTA are also of central importance to the Court's analysis:

**Purpose**

**S. 1A** The purpose of this Act is to provide landlords and tenants with an efficient and cost-effective means for settling disputes.

**Application of Act**

**3 (1)** Notwithstanding any agreement, declaration, waiver or statement to the contrary, this Act applies when the relation of landlord and tenant exists between a person and an individual in respect of residential premises.

**(2)** for the purposes of subsection (1), the relation of landlord and tenant is deemed to exist in respect of residential premises between an individual and a person when an individual

(a) possesses or occupies residential premises and has paid or agreed to pay rent to the person;

(b) makes an agreement with the person by which the individual is granted the right to possess or occupy residential premises in consideration of the payment of or promise to pay rent;

(c) has possessed or occupied residential premises and has paid or agreed to pay rent to the person. R.S., c. 401, s. 3.

....

**Application of Act**

**25 (1)** This Act governs all landlords and tenants to whom this Act applies in respect of residential premises.

**(2)** This Act binds Her Majesty in right of the Province and Canada. R.S., c. 401, s. 25; 1994, c. 32, s. 2.

(emphasis added)

[19] I am satisfied that the combined effect of these provisions is to oust the jurisdiction of the Supreme Court in matters of residential tenancy disputes.

[20] Both parties have referred the Court to the principles of statutory interpretation reviewed by Oland JA for the Court of Appeal in *Coats v. Capital District Health Authority*, 2011 NSCA 4 at para.36:

36 In *Cape Breton (Regional Municipality) v. Nova Scotia (Attorney General)*, 2009 NSCA 44, (2009), 277 N.S.R. (2d) 350, this court reiterated:

[36] The Supreme Court of Canada had endorsed the “modern approach” to statutory interpretation as expounded by Elmer Driedger, **Construction of Statutes**, 2<sup>nd</sup> ed. (Toronto: Butterworths, 1983) at p. 87:

... 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, the object of the Act, and the intention of Parliament.

See *Re Rizzo and Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 at 41; *Canada (House of Commons) v. Vaid*, 2005 SCC 30, [2005] 1 S.C.R. 667; and *Imperial Oil Ltd. v. Canada; Inco Ltd. v. Canada*, 2006 SCC 46, [2006] 2 S.C.R. 447.

It then referred to Professor Ruth Sullivan's explanation of this modern approach in *Sullivan on the Construction of Statutes*, 5<sup>th</sup> ed. (Markham: LexisNexis Canada Inc., 2008) and summarized:

[40] ... Professor Sullivan would invite use to answer three questions:

Under the modern principle, an interpreter who wants to determine whether a provision applies to particular facts must address the following questions:

- what is the meaning of the legislative text?
- what did the legislature intend? That is, when the text was enacted, what law did the legislature intend to adopt? What purposes did it hope to achieve? What specific intentions (if any) did it have regarding facts such as these?
- what are the consequences of adopting a proposed interpretation? Are they consistent with the norms that the legislature is presumed to respect?

[41] Finally, in developing our answers to these three questions, Professor Sullivan invites us to apply the various "rules" of statutory interpretation:

In answering these questions, interpreters are guided by the so-called "rules" of statutory interpretation. They describe the evidence relied on and the techniques used by courts to arrive at the legally sound result. The rules associated with textual analysis, such as implied exclusion or the same-words-same-meaning rule, assist interpreters to determine the meaning of the legislative text. The rules governing the use of extrinsic aids indicate what interpreters may look at, apart from the text, to determine legislative intent. Strict and liberal construction and the presumptions of legislative intent help interpreters infer purpose and test the acceptability of outcomes against accepted legal norms.

(emphasis added)

[21] I conclude that the legislature intended that residential landlords and tenants could avail themselves of the "efficient and cost-effective means" for settling disputes provided for in the RTA. An interpretation of the RTA that concludes that landlord and tenants may file claims in the Supreme Court for disputes which fall within the jurisdiction of the DRT is not consistent with the purpose of the Act.

[22] A consequence of adopting the Plaintiff's interpretation of the Act would be to have potential multiplicity of proceedings. Litigants could be forced to pursue remedies in two different forums. This would result if a tenant applied to the DRT for a remedy and the landlord commenced an action in the Supreme Court for a remedy, with both disputes arising out of the same landlord and tenant relationship.

[23] I note that pursuant to s. 19(2) of the *Small Claims Court Act*, a defendant in a proceeding commenced in Supreme Court (that does not include a claim for general damages) and that is within the jurisdiction of the Small Claims Court, may elect to have the proceeding adjudicated in the Small Claims Court whereupon "the prothonotary shall transfer the proceeding to the appropriate adjudicator in accordance with the regulations made pursuant to this Act."

[24] A tenant or landlord facing an action in the Supreme Court for a minor amount of money, would lose the advantage of having the right to have that action transferred to the Small Claims Court, if the Plaintiff's interpretation is accepted.

[25] That is because s. 10(d) of the *Small Claims Court Act* ousts the jurisdiction of that court to hear claims which involve a dispute between a landlord and tenant to which the RTA applies, other than an appeal of an order of that DRT pursuant to s. 17(c) of the RTA.

[26] This means that a tenant or landlord defendant in the circumstances noted above would lose the right to have a matter transferred to Small Claims Court.

[27] The decision of Rosinski J. in *Boyce v. Abousamak*, 2014 NSSC 258 in which the Court heard a dispute brought by a residential landlord against a tenant alleging negligence which resulted in a fire does not persuade me that the Court has jurisdiction to hear disputes between residential tenants and landlords. There is no analysis in *Boyce v. Abousamak* on the issue of jurisdiction. The decision is therefore not a compelling authority in support of concurrent jurisdiction of the Supreme Court and the RTA authorities.

## **CONCLUSION**

[28] The DRT has exclusive original jurisdiction to determine the matters within his or her jurisdiction. This Court does not have concurrent or residual jurisdiction to determine such matters. A party to an order of the DRT may appeal that order to the Small Claims Court in accordance with Section 17C of the RTA. A party to an appeal to the Small Claims Court pursuant to the RTA may appeal an order of the

Small Claims Court to the Supreme Court only on the grounds of jurisdiction error, error of law or failure to follow the requirements of natural justice. To be clear, there is no original jurisdiction of the Supreme Court to adjudicate residential landlord and tenant disputes.

[29] The motion for summary judgment on the pleadings is granted and the within action dismissed.

**COSTS**

[30] Costs in the amount of \$2,000.00 are payable to the Defendant Elliot Gerald Gish within thirty (30) calendar days of this decision.

Smith J.