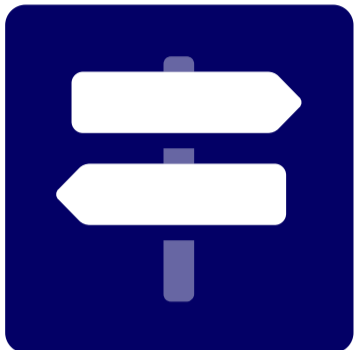


### Proceedings Brought Within Improper Venue May Be Dismissed for Lack of Jurisdiction



A common issue for matters arising out of a residential tenancy arrangement involves whether the matter is properly heard at the Landlord Tenant Board (the "LTB") or properly heard at the Small Claims Court. If a matter is brought in the wrong venue, the matter may be 'kicked out'; and getting kicked out of the wrong venue when past the date in which the matter could have been brought in the proper venue can result in a situation where a person becomes unable to pursue the legal issue. Accordingly, reviewing the jurisdictional issues prior to starting a legal proceeding is of foremost importance.

For the majority of disputes arising out of the relations between a landlord and tenant involved in a residential tenancy, the *Residential Tenancies Act, 2002*, [S.O. 2006, Chapter 17](#) (the "*RTA*") will apply. For matters where the *RTA* applies and the LTB is conferred with decision making authority, per the 'exclusive jurisdiction' provision stated with in [s. 168](#) of the *RTA*, such decisions **must** be made by the LTB and jurisdiction of the Small Claims Court is ousted; *Brydges v. Johnson*, [2016 CanLII 4942](#); *Finney v. Cepovski*, [2015 CanLII 48918](#) at 17; *Efrach v. Cherishome Living*, [2015 ONSC 472](#) at 6; *Mercier v. Hawco*, [2014 CanLII 141](#) at 6 to 7; *Fraser v. Beach*, [2005 CanLII 14309](#) (ON CA) at 15. Regrettably, the *RTA* provisions, and thus LTB exclusive jurisdiction, can be confusing as many provisions are conditional and perhaps vague; and accordingly, subject to differences of interpretation.

The conditions can cause, and often do cause, a multiplicity of proceedings occurring in two places such as where tenancy relations break down prior to the 'move in date' whereas the tenant must apply to the LTB for return of a rent deposit as governed by [s. 107\(1\)](#) of the *RTA*; and yet, the landlord may be forbidden from applying to the LTB per the [s. 87\(1\)](#) condition that require the landlord's access to the LTB be available for certain matters only if the tenant is in possession of the rental unit. For example, this circumstance often occurs where a tenant tries to 'opt

out' of a lease at the last moment, for whatever other reason, by failing to occupy the rental unit and then subsequently seeking return of a first and last rent deposit. Regardless of the reason the tenant seeks return of the rent deposit, the tenant must pursue the return of the rent deposit at the LTB per s. 107(1) which provides that the LTB may hear a case about why the rent deposit should be returned and this section coupled with the s. 168 exclusive jurisdiction provision imposes the absoluteness of the requirement that the rent deposit question be decided by the LTB. Contrarily, in the same situation, if the landlord wishes to claim loss of rent arising from the 11th hour 'opt out' by the tenant, the landlord must proceed to the Small Claims Court by virtue of inaccess to the LTB that arises from the s. 87(1) condition that the landlord may seek 'rent arrears' from the LTB only if the tenant remains in possession of the rental unit - and in this situation the tenant failed to take possession of the rental unit. It is interesting to note that the tenant may be with good reason to 'opt out' at the last moment, the tenant may even be in the right with a good enough reason to 'win'; however, the tenant must pursue return of the rent deposit via the LTB and the landlord must pursue the loss of rent at the Small Claims Court despite the multiplicity of proceedings problem that arises.

With the above said in regards to a 'multiplicity of proceedings', principles of natural justice may permit, and perhaps require, that one of the proceedings be 'stayed' until a decision is made in the other forum and then the decision in the matter that was stayed may need to follow the factual decisions in the matter decided upon first. This 'staying' of one of the two processes ensures that the risk of two opposing factual decisions are avoided whereas two opposing factual decisions would put the administration of justice into disrepute.