

Conflict Within Legal Cases Regarding Small Claims Court and Landlord Tenant Board Jurisdiction on Unpaid Utilities



A significantly frequent concern to many residential landlords involves the right to pursue tenants for reimbursement of utility bills paid for by the landlord as in accordance to a lease agreement and where to pursue such a right. While it would seem that where rent is defined within a lease agreement as a specified dollar amount plus utilities, the issue of unpaid utilities should come under review by the Landlord Tenant Board ("LTB"), such is often debated within legal circles. Furthermore, it seems that the administrative clerk staff for the LTB routinely turn away landlord applications seeking payment of the portion of rent involving unpaid utilities.

In the recent case of *Luu v. O'Sullivan*, [2012 CanLII 98396](#) at paras 55 to 58, it was stated by Winny D.J. that legislative instruction or appellate clarification of the LTB jurisdiction seems necessary on this issue. Here specifically is what was said:

Closing Remarks

55. The question of the Board's jurisdiction over the utilities component of rent payable in residential tenancies cries out for appellate resolution. One avenue for such resolution would be on appeal from this judgment.



56. The other avenue would be for the Board to make a decision on this issue which could then be appealed as a question of law under s. 210 of the RTA. However if the practice of the Board's staff is to turn away applications based on the contents of Interpretation Guideline 11, this creates an unfortunate obstacle to clarification of the law for residential landlords and tenants in Ontario. My view is that Interpretation Guideline 11 is seriously flawed and internally inconsistent, but it is clearly not a legally-binding instrument. The Board's ability to adjudicate this issue should not be compromised by its own staff; nor should the ability of the Divisional Court to clarify this issue be so compromised.

57. It also appears plain that there is no aspect to this problem which could not be addressed by amendment to the RTA or its regulations.

58. The Small Claims Court, like any other court or tribunal, must apply the current law. My determination is that this matter falls within the exclusive jurisdiction of the Landlord and Tenant Board. Accordingly, both parties' claims are dismissed for want of jurisdiction.