

**BETWEEN**

**BH**  
APPLICANT

**AND**

**YS**  
RESPONDENT

**AND**

**YSY**  
SECOND RESPONDENT

Date of Order:

21 March 2013

Referee:

Referee Reuvecamp

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the case is struck out for lack of jurisdiction and referred to the Tenancy Tribunal**

**This order is made in the absence of the first respondent and pursuant to section 42 of the Disputes Tribunal Act 1988**

### **Material facts**

[1] The applicant claims \$320.00 being the amount of the dividend distributed on the dividend payable as per the dividend date of 8 August 2012 to the respondent landlords by the ABC Trust (“ABC”) in respect of electricity used and paid for by the applicant under his Residential Tenancy Agreement dated 27 May 2012. He claims that he is entitled to that amount on the basis of a collateral oral agreement entered into with the respondents at the time he entered into the tenancy agreement.

### **Law**

[2] Residential Tenancies Act 1986 (“RTA”)

### **Issue**

[3] Whether the Disputes Tribunal has jurisdiction to hear the claim.

### **Findings**

[4] The name of the applicant is amended to reflect his non-corporate status. Since both the applicant and the second respondent attended the hearing and the second respondent also purported to represent the first respondent and it was agreed that the applicant as now amended, rather than a corporate entity, entered into the relevant tenancy agreement, I find that no prejudice is caused by this amendment.

[5] Sections 2 and 4 of the Residential Tenancies Act provide as follows:

***Section 4 Act generally to apply to all residential tenancies***

*Except as otherwise provided in this Part of this Act, this Act shall apply to every tenancy for residential purposes.*

***Section 2 defines “tenancy” as follows:***

*tenancy, in relation to any residential premises, means the right to occupy the premises (whether exclusively or otherwise) in consideration for rent; and includes any tenancy of residential premises implied or created by any enactment; and, where appropriate, also includes a former tenancy.*

Section 77 RTA provides as follows:

**Section 77 Jurisdiction of Tribunal** [My comment: here the Tenancy Tribunal.]

- (1) *The Tribunal has, subject to the Limitation Act 1950, jurisdiction to determine in accordance with this Act any dispute that—*
- (a) *exists between a landlord and a tenant or between a landlord and the guarantor of a tenant; and*
  - (b) *relates to any tenancy to which this Act applies or to which this Act did apply at any material time.*

[6] The applicant claims that he has attempted to lodge his claim with the Tenancy Tribunal but that his application to do so was rejected on the grounds that no bond had been received by the Department of Building and Housing for the relevant tenancy. He states that this was confirmed by more senior staff of the Department and, again, after the Registrar of the Disputes Tribunal had contacted and queried the Department to check whether that was correct.

[7] A landlord is obliged to lodge a bond, if received, within 23 working days with the Department of Building and Housing as prescribed by section 19(1) RTA. In this case the agreement shows that a bond of \$660.00, being the amount of 2 weeks rent, was paid on 27 May 2012.

[8] It may be that language difficulties have contributed to the confusion, but I find it difficult to believe that the Department of Building and Housing would decline to accept the filing of a claim for that reason. If it has, I would have great concerns about this. The very protection of tenants would be endangered if it was accepted that landlords would be able to place themselves effectively outside the jurisdiction of the Tenancy Tribunal by not lodging the bond as required by section 19(1) of the RTA.

[9] I find that because the applicant's claim in terms of the sections referred to above relates to a dispute between landlord and tenant and relates to a tenancy, the Tenancy Tribunal is the appropriate tribunal to hear his claim. I find that the Disputes Tribunal does not have jurisdiction to hear the claim unless the Tenancy Tribunal finds on lawful grounds that it has no jurisdiction.

[10] I therefore strike out the claim in the Disputes Tribunal. The respondent may resubmit his claim to the Tenancy Tribunal to be heard under its jurisdiction in terms of the RTA.