



Legal Alert | December 13, 2022

Can the Small Claims Court Determine Rent Disputes?

Introduction

Recently, the High Court found the Small Claims Court lacked jurisdiction to listen to rental claims.

We analyse the decision in HC Commercial Appeal No. E036 of 2022, Lisa Kristine Christoffersen vs Kavneet Kaur Sehmi T/A The Random Shop.

What happened?

A landlord appealed against a finding by the Small Claims Court to the High Court. The landlord wanted judgement for rental arrears from its former tenant.

Before diving into the case, the High Court noted there was a question whether the Small Claims Court had authority to hear and determine rent disputes. This issue had not been raised by the parties or picked up by the Small Claims Court.

The landlord argued the Small Claims Court had authority since rent arrears could be recovered as a debt, after termination of tenancy. The landlord also felt that providing rentals was a service, making this a civil claim within the Small Claims Court's authority.

What did the court find?

Jurisdiction is a fundamental issue without which a court cannot deal with a matter. The types and monetary limits of disputes the Small Claims Court can deal with are set out in the Small Claims Court Act, 2016. The Act did not specifically authorize the Small Claims Court to deal with rental disputes.

The High Court found it would be an illegal expansion of the jurisdiction of the Small Claims Court to interpret "rent" as a service. Rental disputes are not civil wrongs or claims for compensation for personal injuries. The High Court therefore dismissed the appeal and struck out the claim.

Rental disputes fall outside the scope of civil claims which the Small Claims Court can handle. Such disputes should be filed before ordinary courts.

How does this affect me?

Making the right choice of dispute resolution forum is critical to avoiding wasted resources. Authority is such an important an issue that it can be raised at any time. Proper advice on the merits and demerits of different forums, in addition to their legal authority, ensures your dispute resolution needs are met.

What needs to happen?

This decision highlights a key gap in the design of the Small Claims Court. This Court was introduced to provide quick resolution of simple claims at greatly reduced cost.

There is no logical reason why the court should not have power to deal with claims over rent arrears. Practically, rent disputes require quick solutions to prevent accumulation of unrecoverable arrears. A 60-day timeline to resolve disputes minimizes the landlord's exposure while the process is underway.

The Small Claims Court Act needs urgent updates so landlords and tenants can enjoy its speedy process.

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