

Order under Section 9(2)  
**Residential Tenancies Act, 2006**

**File Number:** TST-30893-12

**In the matter of:** UPPER, 21 R ATLANTIC AVENUE  
TORONTO ON M6K3E7

**Between:** Angela Foot Tenant

**and**

Kenny Dias Landlords  
Carlos Dias

**and**

Jason Stroud Other Tenant

Angela Foot (the 'Tenant') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard in Toronto on October 24, 2012. The Tenant, her solicitor Hugh Scher, named respondent Jason Stroud (the 'Other Tenant'), his solicitor Jodi Feldman, the Landlords and their paralegal Steven J. Smith attended the hearing. The Tenant is referred to as a tenant of the rental unit for convenience only in this order.

All of the reasons for this order follow and no further reasons shall issue.

**Determinations:**

1. In summary, I find the Tenant has no standing to bring this application as she is not a tenant of the rental unit. The Tenant agreed in a separation agreement with the Other Tenant that she is not a tenant, a position consistent with that of the Landlords. Disputes involving separation agreements are outside of the Landlord and Tenant Board's jurisdiction.
2. The application pertains to the municipal address above, referred to specifically as the "upper level" unit, where there was also a commercial unit, the lower level, not within the scope of this application. It is brought pursuant to subsection 9(1) of the Act, which provides "a landlord or a tenant may apply to the Board for an order determining, (a) whether this Act or any provision of it applies to a particular rental unit or residential complex."

3. The separation agreement made December 16, 2012, to which only the Tenant and the Other Tenant were parties, contains standard domestic contract releases. Among these, as to it being a final settlement between the parties and specifically as to “residency at (the rental unit),” that “it shall continue to govern the relationship between (the Tenant and the Other Tenant),” and that it contains truthful statements. Further, there is an acknowledgment it was concluded after full disclosure, that the parties read and understood it and that they signed it voluntarily.
4. The separation agreement has specific provisions applying to the rental unit, the most significant of which is in section 2 of the incorporated Schedule, which says: “as of the date of signing this Agreement, no written lease exists between (the Other tenant) and (the Tenant) and the Owner of (the rental unit), *however a verbal lease agreement exists between (the Other Tenant) and the Owner, of (the rental unit)*,” my emphasis. Subsection 12(a) of the separation agreement provides how the Tenant “shall have a licence to exclusive occupation” of the rental unit until August 1, 2012 with the Other Tenant having the “primary relationship with (the Landlord),” and how the Other Tenant is to pay the monthly rent. It goes on to say that the Tenant can “elect to remain in the (rental unit)” when the agreement expires and pay the monthly rent thereafter where the schedule says the Tenant’s status “will (then) convert from sub letter (sic) to leaseholder, directly responsible to (the Landlords).” The parties even inserted a specific release relating to the rental unit in paragraph 13 of the separation agreement, saying “each covenants and agrees that the arrangement herein described constitutes a full, complete, and final settlement of all rights, causes, claims and demands with respect to support, property, and residency at the (building containing the rental unit).”
5. Subsection 9(1) of the Act provides only a tenant or a landlord can bring an application to determine whether the Act applies, and the italicized excerpt from the separation agreement above contains a specific acknowledgment that the Tenant is not, in fact, a tenant of the rental unit. The question of how the Tenant can later become a tenant of the rental unit without the consent of the Landlords is not one for me to consider here.
6. The separation agreement also matches what I understand would have been the Landlords’ position regarding paragraph 6 of the application, which alleges the Tenant and the Other Tenant have a verbal tenancy with the Landlords. In any event, Family Court has exclusive jurisdiction over the separation agreement pursuant to subsection 21.8(1) of the *Courts of Justice Act* if it is the case the Tenant now intends to resile from it. Extrinsic evidence as to who might have paid rent when is irrelevant in view of the explicit acknowledgment of the parties in the separation agreement as and Landlords’ position.
7. The Tenant lacks standing to bring the application. The application must therefore be dismissed.

**It is ordered that:**

1. The Tenant's application is dismissed.

**October 26, 2012**  
**Date Issued**

---

**Jean-Paul Pilon**  
Member, Landlord and Tenant Board

Toronto South-RO  
79 St. Clair Avenue East, Suite 212, 2nd Floor  
Toronto ON M4T1M6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.