SUPREME COURT OF QUEENSLAND

CITATION:	*Seo v Kent Southport Realty Pty Ltd trading as Shores Realty* [2018] QCA 319
PARTIES:	**JAY SEO** **(applicant)** **v** **KENT SOUTHPORT REALTY PTY LTD trading as SHORES REALTY** **ACN 604 639 572** (respondent)
FILE NO/S:	Appeal No 10480 of 2018 QCATA No 50 of 2018
DIVISION:	Court of Appeal
PROCEEDING:	Application for Leave *Queensland Civil and Administrative Tribunal Act*
ORIGINATING COURT:	Queensland Civil and Administrative Tribunal – [2018] QCATA 125
DELIVERED ON:	Date of Order: 15 November 2018 Date of Publication of Reasons: 16 November 2016
DELIVERED AT:	Brisbane
HEARING DATE:	15 November 2018
JUDGES:	Sofronoff P
ORDER:	**Order delivered 15 November 2018:** **Application for leave to appeal refused.**
CATCHWORDS:	APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – BY LEAVE OF COURT – where the respondent is the agent of the landlord of premises previously occupied by the applicant – where the Queensland Civil and Administrative Tribunal made a finding of objectionable behaviour against the applicant and made a termination order against the applicant – where leave to appeal against the primary decision was refused by the Appeal Tribunal – where the applicant seeks leave to appeal against the Appeal Tribunal's refusal of leave – whether there are reasons justifying the grant of leave
COUNSEL:	The applicant appeared on his own behalf The respondent appeared on their own behalf
SOLICITORS:	The applicant appeared on his own behalf The respondent appeared on their own behalf

[1] **SOFRONOFF P:** This is an application for leave to appeal, to the Court of Appeal, a refusal by the Queensland Civil and Administrative Appeal Tribunal to grant leave to appeal a decision of an administrator.

[2] The applicant was a tenant of premises. Those premises had been part of an apartment that had been divided by partitions and doors into separate premises, each of which was separately let. The switchboard of the former apartment was located in the part of the premises occupied by the applicant. Because of a dispute between the applicant and the occupant of another part of the divided premises, the applicant began turning off a switch at the power board that had the effect of switching off power in the other premises. This prevented that other tenant from using the stove in his premises.

[3] The landlord, by his agent, the respondent, applied to QCAT for a "termination order" against the applicant pursuant to s 297 of the *Residential Tenancies and Rooming Accommodation Act* 2008 (Qld) ('the Act'). The tribunal found that the applicant's behaviour in switching off power was "objectionable behaviour" within the meaning of s 297 and made a termination order. That order has now been enforced and the applicant no longer resides at the premises.

[4] The applicant applied for leave to appeal to the Appeal Tribunal. Leave was refused.

[5] The applicant then filed an application for leave to appeal to the Court of Appeal. In his written application he contends that he wishes to raise four grounds of appeal. These are that s 297 of the Act was not relevant to the facts, that s 335 of the Act depended upon s 297 and was also irrelevant because s 297 was not relevant, that s 336 had not been satisfied and that s 345 was not satisfied and was not properly considered.

[6] In oral argument, the applicant contended that leave to appeal to the Court of Appeal should be granted because there had been a "substantial error of fact" because the finding of objectionable behaviour was based upon "an assumption" that the applicant had no right to turn off the power. Second, he says that there was a "substantial mistake of fact" in the conclusion that there were separate premises. Third, the applicant says leave should be granted because "it has caused problems for me". Fourth, he says leave should be granted because "I have something to lose", namely his rental bond. Fifth, he contends that the decision to refuse him leave to appeal in QCAT was "based on an irrational conclusion of law". Sixth, the applicant says that the decision was "kind of like a miscarriage of justice". Finally, he says that some matters of fact were "not explored".

[7] There is no merit in any of these contentions. No error of law or fact has been shown. Indeed, I am of the respectful opinion that the decision of Dr Forbes to refuse leave to appeal was correct. The conduct of the applicant in turning off power to another occupant of the premises thus preventing use of a stove, to which he admitted below and at the hearing before me, was objectionable and could not possibly be tolerated by any rational landlord. The order made was entirely justified and leave to appeal it was rightly refused.

[8] In these circumstances, it follows that leave to appeal to the Court of Appeal should also be refused.