



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Fox v Caillier, 2024 ONLTB 28496

Date: 2024-04-26

File Number: LTB-L-065820-23

In the matter of: BSMT, 1372 WOODBINE AVE
EAST YORK ON M4C4G5

Between: Laura Fox

and

Stacy Caillier
Mike Field



Landlord

Tenants

Laura Fox (the 'Landlord') applied for an order to terminate the tenancy and evict Stacy Caillier and Mike Field (the 'Tenant') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on April 11, 2024.

The Landlord's Legal Representative, the Landlord and the Tenants attended the hearing. The Tenants spoke to Tenant Duty Counsel prior to the hearing. Cheryl Fox ('CF') testified on behalf of the Landlord.

Determinations:

Preliminary Issue – Does the Act apply?

1. At the hearing, the Landlord's Legal Representative submitted that there is no landlord and tenant relationship between the parties and, therefore, the Act does not apply.
2. It was undisputed that parties were long time family friends prior to the Tenants moving into the basement apartment. While the Tenant, Stacy Caillier ('SC'), testified that they only maintained that relationship over the years for the sake of her daughter, the Tenants did not dispute that the parties are old family friends. SC referred to the Landlord as "Grandma Too".
3. SC's aunt occupied the basement apartment for approximately 17 years prior to the Tenants moving in and is the only person other than the Tenants to occupy the basement apartment since the Landlord first took ownership of the property. In July 2022, SC emailed the Landlord to inquire about the Landlord's plans for the basement apartment

once her aunt moved out and proposed the Tenants move in as they were intending on moving to Toronto.

4. It was undisputed that there is no written tenancy agreement between the parties. The Landlord testified that she agreed to allow the Tenants to move in temporarily while they looked for another place. She testified that they were to pay \$800.00 per month towards the household expenses and cut the lawn. The Landlord testified that the amount of \$800.00 was a contribution to the household's expenses and not required for occupancy of the rental unit. This was disputed by the Tenants.
5. SC testified that they had already made temporary arrangements to stay in Toronto, however, the Tenants were looking for something more permanent, so she inquired with the Landlord about renting the basement apartment.
6. The Landlord testified that she was undergoing cancer treatment and the Tenant, Mike Field ('MF'), would come upstairs to give her medication. The Landlord submitted a copy of a text message from the Landlord's daughter, CF, to SC asking SC to thank MF for waking the Landlord up and reminding her to take her medication in support of this statement. This was not disputed by the Tenants.
7. CF testified that on September 30, 2022, SC requested that she provide her with a rent receipt that she could provide to her Ontario Works caseworker. The Landlord submitted a copy of the text message exchange in support of this statement. The text messages show SC stating that they only provide \$490.00 towards shelter so she will tell them that she pays \$500.00 for a room.
8. Section 202(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

9. The conduct of the parties when they first moved into this basement apartment and in the discussion regarding the rent receipt is most demonstrative to determine the substance of the arrangement between the parties. The evidence shows that the parties are akin to a familial relationship. While I accept that friends or family can enter into a landlord and tenant relationship, I do not find that this is these circumstances. Based on the evidence before the Board, I find that there was no clear meeting of the minds that a landlord tenant relationship would be formed. Moreover, it is evident, through the parties' conduct that the relationship was familial in nature, specifically in light of the fact that MF would assist the Landlord with taking her medications and freely went into the Landlord's unit in order to do so.

10. It was undisputed that the Tenants paid \$800.00 per month to the Landlord. It was also undisputed that this amount was the same amount SC's aunt paid for the 17 years she occupied the basement apartment prior to the Tenants moving in. The monthly payments did not increase for either SC's aunt or the Tenants at any time during their respective occupancies of the basement apartment. It was undisputed that the Landlord never issued a notice of termination to the Tenants when payments were late.
11. Despite the fact that the Tenants assert that the parties agreed that the Tenants would pay \$800.00 for rent, SC suggested that the rent receipt for her caseworker show she pays \$500.00 for a room. In my view, if the agreement was that the Tenants would pay \$800.00 for rent, then SC would have simply requested the rent receipt in that amount, rather than suggesting that they produce a document showing she pays \$500.00 for a room.
12. For the reasons above, I am not satisfied that a landlord tenant relationship exists between the parties. Therefore, I find that the Act does not apply and the application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

April 26, 2024
Date Issued



Candace Aboussafy
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

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