



Order under Section 100
Residential Tenancies Act, 2006

File Number: LTB-L-074526-22
(TSL-26435-22)

In the matter of: A, 1012 WESTON ROAD
TORONTO ON M6N3S1

Between: Luke Kumar

and

Chen Kumar
Myly La

I hereby certify this is a
true copy of an Order dated

FEB 7, 2023

Landlord and Tenant Board

Landlord

Tenants

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-074526-22.

Luke Kumar (the 'Landlord') applied for an order to terminate the tenancy of Chen Kumar (CK) and Myly La (ML) (the 'Tenants') and evict unauthorized persons occupying the rental unit (Unauthorized Occupants).

This application was heard by videoconference on July 20, 2022 and October 25, 2022.

The Landlord, the Landlord's legal representative K. Markoff, the Tenants, and Pagal Sharma (PS) (one of the occupants) attended the hearing.

Determinations:

1. For reasons that follow, I find that the *Residential Tenancies Act, 2006* (the 'Act') does not apply as between the Landlord and the Tenants and so this application must be dismissed.
2. The hearing of this matter commenced on July 20, 2022. I adjourned the matter to continue on another date because I was not satisfied that the occupants had sufficient notice of the hearing. I am satisfied that the occupants had sufficient notice of the October 25, 2022 hearing and one of them, PS, appeared on behalf of all of the occupants.

3. The Landlord and the Tenant CK are brothers. The Tenant ML is CK's spouse. The Tenants have never lived in the rental unit. The Landlord and the Tenants agreed at the outset that the Tenants could rent out the rental unit to third parties.
4. The Landlord submitted that the agreement between the parties was that the Tenants could only rent out to third parties for short term rentals. The Tenants submitted that the parties never limited the kind or length of rentals in which the Tenants were permitted to engage.
5. The parties' arrangement was never put into writing.
6. The Landlord submits that the Tenants breached their agreement by permitting the occupants to live in the rental unit on an indefinite basis.
7. At the hearing on July 20, 2022 I raised with the parties that in this situation, the Tenants may actually be co-Landlords with the Landlord and that the Act may not apply as between the Landlord and the Tenants. I invited the parties to make submissions on this issue at the next hearing and I directed their attention to order TSL-50630-14-RV2/TST-57285-14/TST-57947-14 (the 'panel decision'), which is a decision decided by a panel of adjudicators and was issued on March 13, 2015.
8. The panel decision dealt with a situation where there was a private commercial landlord (HPA), a supportive housing provider (HCH) that rented units from HPA, and a resident to which the HCH rented a unit. The panel decision found that there was a single residential tenancy in respect of the unit and that tenancy is between the resident as the Tenant and HCH and HPA as Landlords.
9. The panel's finding that the resident was a Tenant was made after considering the tenant protection focus of the Act and considering that the rental unit that is the subject of the application is the resident's home and the resident pays rent for the right to occupy that home. The panel found that because the resident has the exclusive right to occupy the unit and no other person or entity, including HCH, has that right, the resident fits squarely within the definition of Tenant in section 2(1) of the Act.
10. In this case the rental unit is the occupants' home and they pay rent to the Tenants for the right to occupy that home. The occupants have the exclusive right to occupy the unit and no other person or entity, including the CK and ML, has that right. I therefore find that in this case, the occupants are Tenants.
11. The panel decision found that the Board has no jurisdiction over the commercial relationship between HCH and HPA except to the extent that the relationship may be relevant to, and arise in a proceeding dealing with, the residential tenancy covered by the Act. They made this finding because HCH and HPA had an agreement whereby HCH would rent units from HPA but would not live in them; instead HCH would rent the units out to their individual clients. The panel considered that each of HCH and HPA have the responsibilities of a landlord and each may exercise certain rights of a landlord. The panel noted that the resident paid rent directly to HCH and interacts with HCH regarding

all, or nearly all, aspects of his tenancy. The panel noted that HPA continues to have rights and responsibilities regarding the resident's tenancy, eg., responsibility for maintenance of the rental unit.

12. In this case the Landlord and the Tenants have an agreement whereby the Tenants rent the unit from the Landlord but do not live in it and instead they rent the unit out to the occupants. The Landlord and the Tenants each have certain responsibilities and rights of a landlord just as is the case in the panel decision. The Landlord testified that he is responsible for maintenance. CK testified that he takes care of minor maintenance issues and the Landlord takes care of the bigger issues. The occupants pay rent to CK and it was CK who negotiated the monthly rent with the occupants. The occupants have a written lease with CK.
13. Based on the reasoning in the panel decision, I find that the Act does not apply between the Landlord and the Tenants. The Tenants do not pay rent for the right to live in the unit; they pay the Landlord so that they can rent the unit out to others. This is not a landlord/tenant relationship as defined in the Act.
14. The Landlord submitted that it was always his intention that CK could live in the unit if necessary. This does not change the relationship or whether the Act applies to it. If the parties want to change their use of the unit, they can enter into a new agreement. Their current agreement is not subject to the Act, at least as it relates to each other.
15. The Landlord also submitted that the Tenants had breached their agreement with the Landlord. Even if it is true that the Tenants breached this agreement, that does not affect the analysis above. The Board does not have jurisdiction over this arrangement and so any breach of it must be addressed in a different forum.
16. I find that the Landlord and the Tenants are both Landlords in relation to the occupants, who are their Tenants. The Act does apply as between the Landlord/Tenants (who are the landlords) and the occupants (who are their tenants).
17. The application was brought by the Landlord against the Tenants. The Act does not apply to their arrangement regarding the rental unit and so the Landlord's application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

February 7, 2023
Date Issued



Renée Lang
Member, Landlord and Tenant Board

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