



Order under Section 21.2 of the
Statutory Powers Procedure Act
and the **Residential Tenancies Act, 2006**

File Number: HOL-07430-20-RV

In the matter of: 2309, 55 BREMNER BOULEVARD
TORONTO ON M5J0A6

Between: Andrew Kwon c/o Howard Tavroges Landlord

and

Mary-am Hospitality Corp. Tenants
Raymond Zar

2021 CanLII 135912 (ON LTB)

Review Order

Andrew Kwon c/o Howard Tavroges (the 'Landlord') applied for an order to terminate the tenancy and evict Raymond Zar (RZ) and Mary-am Hospitality Corp. (Mary-am) (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order HOL-07430-20 issued on January 13, 2021.

On February 16, 2021, the Tenant RZ requested a review of the order.

The request was heard by video/teleconference on April 14, 2021.

The Landlord, Howard Tavroges, the Landlord's legal representative, and Alex Fernet Brochu, the legal representative of the Tenant RZ, attended the hearing.

Determinations:

1. In the request to review the Tenant RZ submitted that the Board had no jurisdiction to issue the order against him because he was not a Tenant, and moreover, the *Residential Tenancies Act, 2006* (the 'Act') does not apply to this tenancy because the landlord and tenant relationship is commercial in nature, and the rental unit is exempt from the Act as it is short-term living accommodation intended for the travelling public.
2. For the reasons below, I find that the Board lacks jurisdiction to issue an order because RZ was not a Tenant when the Application was filed, moreover, the tenancy is commercial and the rental unit is exempt from the Act.
3. Although, I find that the Tenants are not tenants as defined by the Act, for the purposes of this order I refer to them as Tenants.

Evidence:

4. The rental unit is a condominium unit.
5. On March 6, 2013, the Tenants, RZ and Mary-am, entered into a two-year residential lease agreement with the Landlord.
6. On February 11, 2015, the Landlord and Mary-am entered into an amended lease agreement. The amended lease agreement described Mary-am as the only Tenant. RZ was removed from the lease as a Tenant. RZ did not sign the amended lease agreement. This amended lease agreement was renewed several times; on May 17, 2017; April 15, 2018; and on February 20, 2019. The only named Tenant in the amended lease agreements was Mary-am. RZ was not a signatory to the amended lease agreements.
7. It was the evidence of the Tenant that the rental unit was being used for furnished rentals for out of town guests, corporations and other customers of Mary-am for short-term occupancy.
8. It was the Landlord's evidence that he did not know, nor did he inquire, who would be residing in the rental unit when the lease agreement was signed in March 2013. Nor did the Landlord inquire who would be residing in the rental unit when the amended lease agreements were signed and RZ was no longer the named Tenant. According to the Landlord, the parties signed a residential lease agreement and as long as the rent was being paid, the Landlord was happy. There were no issues with the arrangement until the global pandemic hit and the Landlord was informed by the condominium corporation that there were various unregistered guests accessing the rental unit.

Findings:

9. While RZ was a party to the original lease agreement, he did not reside in the rental unit. Even if he had resided in the rental unit at some point, his status as a Tenant would have ended upon the execution of the lease amending agreement on February 11, 2015. As of February 11, 2015, there was no contractual relationship between the Landlord and RZ.
10. Accordingly, RZ was not a Tenant when the Application was filed on May 16, 2020, and, as such, the Board had no jurisdiction to issue an order against RZ.
11. Moreover, based on the evidence before me, I find that the rental unit was leased to the corporate Tenant, Mary-Am, for the purpose of providing short-term furnished accommodations to its clients. The rental unit was used to run a business. It was not used, or intended for use, as a "rented residential premises".
12. Section 202 of the Act provides that the Board shall ascertain the real substance of all transactions and activities relating to a residential complex. The real substance of the arrangement in question was for a commercial tenancy whereby the tenant Mary-am would run a short-term rental business from the rental unit. Mary-am paid monthly rent to the Landlord under the lease agreement and, in turn, furnished the rental unit as short-term rental for its business. The rental unit was being used for furnished rentals for out of

town guests, corporations and other customers of Mary-am for short-term occupancy. This was a commercial arrangement and as such not captured under the Act.

13. In addition to the real substance of the relationship being a commercial tenancy, the rental unit is exempt from the Act by virtue of section 5(a), as it is a temporary short-term living accommodation intended to be provided to the travelling public. Subsection 5(a) of the Act specifically provides that the Act does not apply with respect to:

(a) living accommodation intended to be provided to the travelling or vacationing public or occupied for a seasonal or temporary period in a hotel, motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment, inn, campground, trailer park, tourist home, bed and breakfast vacation establishment or vacation home [...]

14. In conclusion, the Board did not have jurisdiction to issue an order against RZ, because he was not a Tenant. Moreover, the Board has no jurisdiction to issue an order in this matter because the matter at issue is commercial in nature and the rental unit is exempt from the Act by virtue of section 5(a) as a temporary short-term living accommodation intended to be provided to the travelling public. As such, the Landlord's Application must be dismissed.

It is ordered that:

1. Order HOL-07430-20 issued on January 12, 2021 is cancelled and replaced by the following:
2. The Act does not apply.
3. The Landlord's Application is dismissed.



Jana Rozehnal
Member, Landlord and Tenant Board

May 14, 2021
Date Issued

Head Office
777 Bay Street, 12th Floor
Toronto Ontario M5G2E5

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