



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

Citation: Kunszt v Murphy, 2024 ONLTB 21388

Date: 2024-03-25

File Number: LTB-L-010962-23

In the matter of: 80 William St S
Lindsay ON K9C3B1

Between: Andrew Kunszt Landlord
G.A.S.S. Get and Stay Sober Inc

And

Mike Murphy Tenant
Carter Austen
Leonard Bottiau
Dave Mizell
Terry Pearce
Greg Kemp
Jason Bruce
Earnst Laneway
Ronald Countryman
Len Sholer

The term “Landlord” refers to all persons or companies identified as a Landlord and “Tenant” refers to all persons identified as a Tenant, within the order.

Andrew Kunszt and G.A.S.S. Get and Stay Sober Inc (the 'Landlord') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard by videoconference on February 6, 2024.

Only the Landlord attended the hearing.

As of 10:19am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

- 1. For the reasons that follow, I find the Act applies with respect to this residential complex.**
2. By way of background, the residential complex is a single-family dwelling owned by the individual Landlord, AK, which consists of 10 rooms, a kitchen, and a bathroom. The Landlord does not reside at this residential complex.
3. The Landlord submits the named tenants on the application no longer reside at the property. The Landlord seeks a determination from the Board with respect to whether the Act applies to the residential complex.
4. The Landlord testified that he, inspired by his own life experiences, has operated the complex as a "dry house" for the past 15 years, where he helps adult males with a substance use disorder to "get clean and stay sober" until they can get on their own feet, and move on with their life.
5. He testified that he rents out individual rooms to adult males who have a substance use disorder and/or mental health issues; each resident has their own key to their room. The rent is due on a weekly basis and is usually paid 4 weeks in advance from pay direct (ODSP). The parties sign a rental contract that is approximately 6 pages long which outlines the rules and stipulations of residing at the premises. Most of the residents are referred to him from organizations such as CMHA, OW, ODSP, and the John Howard Society but that he also has one advertisement on Kijiji.
6. The Landlord testified that each resident receives mail at the premises; the front door is locked. Each room is furnished with its own fridge and microwave. The Landlord further testified that he pays for the utilities at the premises; he provides toiletries, and it is his responsibility to ensure common areas, such as the bathroom, are cleaned regularly.
7. The Landlord testified further that he helps the residents get a job with the goal of getting them on their own two feet. The residents can stay as long as they want provided that they follow the rules. The rules stipulate that if any resident becomes violent or is found to be using substances, they are removed from the premises with the support of police officers immediately and money is returned for any prepaid weeks.
8. The Landlord submits that this is not a landlord-tenant arrangement between the residents and himself, but rather, a service he provides to help people, which, in his opinion, seems to be working.

9. The Landlord submits that lately the police have been giving him a hard time in removing residents who fail to comply with the house rules; this is why he has applied to the Board for such an order.
10. The Landlord argues the Act does not apply as the arrangement between the parties is not meant to be long-term in nature; it is intended to provide a space for residents to transform themselves and transition to their next life chapter.

ANALYSIS

11. It is not uncommon for landlords to house a specific demographic of people; while this landlord houses single adult males with substance use disorders, other landlords such as university housing, house students-only; CMHA houses individuals with mental health disabilities; and local community housing house individuals with low-income; these are still landlord-tenant relationships.

12. Section 9 of the Act states:

9 (1) 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;**

13. The Landlord argues that the arrangement between him and the residents is temporary and short-term in nature, as they may come from the street, hospitals, recent jail releasees, or are referred to him by an organization. They stay as long as they please and if they comply with the rules before moving on.

14. The Landlord relies on the exemption found in subsection 5(f) of the Act which states:

5 This Act does not apply with respect to

(f) short-term living accommodation provided as emergency shelter;

15. While the Act does not define “short-term” or “emergency shelter,” its primary focus is to protect the security of tenure. Thus, it can be inferred that the exemptions outlined in section 5 of the Act are intended to deal with situations where it is either not in the contemplation of the parties that there be security of tenure, where it would be unreasonable to grant security of tenure, or where there is other legislation that governs the issue.
16. So, the question before the Board is whether this arrangement is meant to provide security of tenure to the residents? Or is it a means for transition?

17. While the Landlord's occupancy agreement makes many references to this arrangement as being "short term," "emergency accommodation" and "temporary assistance" – subsection 202 of the Act requires the Board to determine the "real substance" of transactions that come before it.

18. Based on the evidence before the Board, I am not satisfied that this arrangement is indeed short term/temporary/emergency based in nature. I say this because the residents are not exiting a dire situation facing an imminent threat of homelessness as in Board orders SWT-00111 and TNT-33787-12; further, the residents live at the property as long as they want on the condition that they comply with the rules. The occupancy agreement does not indicate an end-date and it is open to the resident to make the call on when they leave (as outlined in paragraphs 1 and 21):

If The Occupant deviates from the RULES, he will be required to leave and this agreement will terminate with a maximum of 7 days notice, unless The Occupant is intoxicated or violent, in which case he will be immediately and permanently removed from the premises.

21. Rent is to be paid 4 weeks in advance for convenience purposes only. This Short Term Emergency Accommodation Agreement is a week to week agreement intended to provide temporary shelter to The Occupant until they can secure stable and/or long term accommodation.

19. Thus, I find the agreement is meant to provide security of tenure on the condition that one complies with the house rules - it is not uncommon for housing providers to have rules or eligibility criteria for their residents. I also find that one's occupancy ends when they choose to leave – whether it's of their own volition or as a result of their behaviour.

20. The next question before the Board is, does any other exemption apply?

21. Subsections 5(k) and 5.1 look at living accommodations that provide therapeutic, rehabilitative, employment support and or life skills development support services. I do not find that these exemptions apply to the Landlord's 'dry house' because once again, the period of occupation is not for a specified duration, such services, are not being provided – although it may be argued that having stable housing is assisting life skills development, and there is no funding supported by the agencies set out in s.5.1(2)(3).

22. In *Smith v. Youthlink Youth Services*, 2020 ONSC 7624, the Courts establish the following:

a) in order to meet the s. 5(k) exemption, the services provided must be more than incidental to the occupation;

b) s. 5.1 is broader and encompasses more housing situations but does not replace or eliminate [the exemption] s. 5(k);

c) Both s. 5(k) and s. 5.1 exempt occupancy agreements in which rehabilitative and therapeutic services are a component of that relationship. The primary distinction between s. 5(k) and s. 5.1 in exempting rehabilitative and therapeutic services is that s. 5.1 covers occupancy agreements that are longer in term [up to four years].

d) “rehabilitative services” includes providing health care or “conditions of support” and services need not be specifically “rehabilitative” but can include other supports, for example supportive counselling and case management.

23. In the case before the Board, I find that there was no evidence to support any other service aside from the occupation of the rental unit was being provided to the residents – the Landlord would help as much and if he could.

24. Given the above, I do not find that the exemptions found in subsections 5(k) and 5.1 apply to this residential complex.

25. As such, I find the Act applies.

It is ordered that:

1. The *Residential Tenancies Act, 2006* applies.

March 25, 2024

Date Issued

Sonia Anwar-Ali

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.

