



Order under Section 9(2) and 31 Residential Tenancies Act, 2006

Citation: Yousuf v Douglas, 2023 ONLTB 78137

Date: 2023-12-15

File Numbers: LTB-T-066210-23
LTB-T-062844-23

In the matter of: TH 25, 2184 TRAFALGAR RD
OAKVILLE ON L6H0N4

Between: Adil Yousuf Tenants
Imperial Living Corp.

and

Granett Douglas Landlords
Kristina Douglas

LTB-T-066210-23 – T2 Application

Adil Yousuf and Imperial Living Corp. (the 'Tenants') applied for an order determining that Granett Douglas and Kristina Douglas (the 'Landlords'):

- entered the rental unit illegally;
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys;
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenants household;
- harassed, obstructed, coerced, threatened or interfered with the Tenant; and
- did not give the Tenant 72 hours to remove their property from the rental unit or from some place close to the rental unit after the Sheriff evicted the Tenant.

LTB-T-062844-23 – A1 Application

Adil Yousuf and Imperial Living Corp. (the 'Tenants') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies to their tenancy.

These two applications were first heard by videoconference on October 4, 2023. The A1 application was heard before the T2 application. The Tenants completed presenting all of their evidence for the A1 application; however, there was insufficient time during the hearing block for the Landlords to present their A1 evidence, or to hear the T2 application. Both applications were therefore adjourned. The adjourned hearings for these two applications were heard on November 22, 2023. The Tenant and the Tenants' representative, Erli Bregu, attended the hearing. The Landlords and the Landlords' representative, Allister Trent, also attended the hearing.

Preliminary Issue:

1. The Landlords requested that an email they received from the Tenant on March 23, 2023 be accepted as evidence in response to the Tenants' A1 application. The Landlords asserted that this email identified that the Tenant did not live in the rental unit for the period of time as testified. The Tenant objected to the acceptance of this evidence.
2. I accept that Interim Order LTB-T-062844-23-IN, issued on October 20, 2023, prohibited the parties from providing any further disclosures to each other with respect to the A1 application. For this reason, and given the late request that this email be considered as evidence, I find that it would not be fair to the Tenants to accept this email as documentary evidence. The Landlords' request is therefore denied.

Determinations:

3. As explained below, the Act does not apply to this tenancy. Accordingly, the Board does not have the jurisdiction to consider the Tenants' T2 application, and the T2 application is therefore dismissed.

LTB-T-062844-23 A1 Application

4. On July 28, 2023 the Tenants filed an A1 application with the Board to determine whether the Act applies to their tenancy.
4. The Tenants contend that a residential lease agreement was signed with the Landlords for residential purposes, and it was agreed that the Tenants could lease out the unit on a short-term rental basis when not occupied by Tenant Adil Yousuf. The Tenants assert that the Act applies.
5. The Landlords contend that their tenancy agreement with the Tenants is for commercial purposes to permit the Tenants to operate a short-term rental business. The Landlords assert that their tenancy with the Tenants is exempt from the Act pursuant to sections 5(a) and 5(j) of the Act.

Tenants' Evidence

6. The Tenant testified that he signed a residential lease agreement with the Landlords for a fixed term period from August 15, 2022 to August 14, 2023, and with a monthly rent of \$3,600.00 payable the first day of each month. The Tenant submitted the lease agreement with *Schedules A* and *B*. The lease was signed by both Tenants on June 21, 2022, and by both Landlords on June 22, 2022.
7. The Tenant testified further that both he and Imperial Living Corporation are listed as the Tenants in the residential lease agreement. The Tenant stated that he founded Imperial Living Corporation, and both he and his brother are the proprietors of the corporation.

8. The Tenant explained that his intent in signing the lease for the unit was to sub-lease the unit for short-term rentals, and operate a short-term rental business through Imperial Living Corporation. The Tenant explained further that Imperial Living Corporation was the sole landlord for the short-term rentals. The Tenant acknowledged that the *Residential Tenancies Act, 2006* did not apply to these short-term rentals – as stipulated in the short-term rental agreements. The Tenant asserted that the short-term rental residents were not subtenants, but were identified as “guests”.
9. The Tenant stated that the Landlords agreed to the short-term rentals of the unit, and Imperial Living Corporation’s role as the Property Manager for these short-term rentals. The Tenant remarked that this agreement was established as per *Schedule A* of the lease agreement. The Tenant contended that on the basis of this agreement, the Landlords’ permission was not required or sought for any of the short-term rentals.
10. The Tenant testified that his possession of the rental unit started on August 15, 2022, and that the unit was furnished with the possessions of Imperial Living Corporation. The Tenant stated that from August 15, 2022 to August 16, 2023 the rental unit was occupied as follows:
 - (a) August 15, 2022 to end September 2022 – no residents in the unit;
 - (b) End September 2022 to mid December 2022 – first short-term rental;
 - (c) End December 2022 to early January 2023 – second short-term rental;
 - (d) January 15, 2023 to end February 2023 – Tenant resided in the unit;
 - (e) March 2023 to mid August 2023 – a total of four or five short-term rentals with an average of three weeks for each short-term rental; and
 - (f) August 16, 2023 – no residents in the unit.
11. The Tenant testified further that the rent charged for the unit by Imperial Living Corporation, depending on the time of year, ranged from \$5,000.00 to \$10,000.00 monthly, or from \$1,500.00 to \$2,500.00 weekly.
12. The Tenant remarked that from August 2022 to January 2023 his principal residence was a rental unit in Mississauga, from January 15, 2023 to end February 2023 his principal residence was the rental unit, and from February 2023 to the day of this hearing his principal residence is a rental unit in downtown Toronto.

Landlords’ Evidence

13. The Landlords testified that they entered into a tenancy agreement with the Tenants with the understanding that the rental unit would be used for commercial short-term rentals, and that the Tenant never had the intention to reside in the unit. The Landlords provided a copy of an email, dated June 19, 2022, from the Tenants’ real estate representative to

the Landlords' real estate representative indicating that the purpose of the tenancy agreement would be for the Tenants to use the unit for short-term rentals for professional clients.

14. The Landlords testified further that they signed a one-year lease tenancy agreement with the Tenants on June 22, 2022. The Landlords acknowledged that although the tenancy agreement was drafted on an *Ontario Real Estate Association (OREA) Form 400 Agreement to Lease – Residential*, their agreement with the Tenants was solely commercial in nature, as stated in *Schedules A and B* of the agreement. The Landlords asserted that page 5 of *Schedule A*, and page 3 of *Schedule B* clearly indicated that the nature of the tenancy agreement was commercial, specifically for the Tenants to rent out the unit for short-term rentals. The Landlords provided a copy of the tenancy agreement with *Schedule A* and *Schedule B*. The Landlords noted that page 5 of *Schedule A* states: "The Landlord and Tenant are aware that the Tenant operates a short-term rental service using this condo" and "Imperial Living Corp. will act as Property Managers for the unit and will be responsible for finding tenants for this suite over the term of the agreement". The Landlords also noted that page 3 of *Schedule B* states: "The Tenant/Leasee agree they shall not allow any shorter-term rentals/stays for less than a term of 5 days".
15. The Landlords stated that during the course of the tenancy they only visited the unit on two occasions. The first visit, by Landlord Granett Douglas, occurred in November 2022 for maintenance reasons. The Landlord testified that the unit was furnished, but vacant, with no personal effects, food, or any evidence of anyone living in the unit. The second visit by Landlord Granett Douglas took place on March 21, 2023. The Landlord remarked that during this visit the unit was also furnished, but appeared to be vacant, with no personal effects, food, or any evidence of anyone living in the unit.
16. The Landlords testified further that they believe that the Tenant never lived in the unit, on the basis of their visits to the unit, and email correspondence from the Tenant on March 23, 2023 indicating that the unit had been vacant for the three-month period before March 15, 2023. The Landlords acknowledged that the tenancy agreement did not preclude the Tenant from residing in the unit.
17. Lauren Parker, the Landlords' real estate representative, testified that she received an email from the Tenants' real estate representative on June 19, 2022, inquiring about the unit for the purpose of the Tenants re-renting the unit for commercial short-term rentals to professional clients. The Landlords submitted a copy of this email.
18. The Landlords' real estate representative testified further that the Tenants' real estate representative drafted the *Agreement to Lease – Residential* with *Schedule A*, and she drafted *Schedule B*, noting that both parties made a series of amendments to both documents before signing. The Landlords' real estate representative stated that on the basis of the agreement, she believed that the Tenant would never live in the unit, but rather re-rent the unit for commercial short-term rentals. The real estate representative acknowledged that the tenancy agreement did not preclude the Tenant from residing in the unit.

19. The real estate representative stated that she visited the unit in March 2023 and met one of the guest tenants. She noted that the unit was in good condition. The real estate representative stated further that the Landlords listed the unit for sale in June 2023, and as a result of this listing she visited the unit five or six times in June 2023. She noted that during these visits the unit was furnished but vacant, with no personal effects, food, or any evidence of anyone living in the unit.
20. The Landlords confirmed that the unit was sold on June 22, 2023.

Analysis

21. On the basis of the evidence provided, I am satisfied on a balance of probabilities that the *Residential Tenancies Act, 2006* does not apply to the rental unit and the tenancy.
22. I accept that the tenancy agreement was drafted and signed on an *Ontario Real Estate Association (OREA) Form 400 Agreement to Lease – Residential* with *OREA Form 400 Schedule A*, and *OREA Form 401 Schedule B*. I am satisfied that in accordance with this agreement the Tenant had a right to occupy the rental unit. I am also satisfied that the Tenants paid monthly rent for this right. I accept however that not everyone who pays rent in return for the right to occupy a unit is a residential tenant under the Act.
23. On the basis of the evidence provided, to include the email from the Tenants' real estate representative on June 19, 2022, *Schedule A* and *Schedule B* of the tenancy agreement, testimony from the Landlords and their real estate representative, and finally the Tenant's own testimony, I am satisfied that it was never the Tenant's intent at the start of the tenancy to personally occupy the rental unit for his residential occupation, but rather it was the Tenant's intention to commercially re-rent the unit for short-term rentals.
24. I am satisfied that over the one-year period of the fixed term tenancy agreement, from August 15, 2022 to August 14, 2023, the unit was vacant for a period of 6 weeks from August 15, 2022 to end September 2022, the Tenant resided in the unit for 6 weeks from January 15, 2023 to end February 2023, and for the remaining time of 9 months the Tenants commercially re-rented the unit as short-term rentals – as they had intended. I am also satisfied that the Tenant's principal residence during the one-year fixed term tenancy period, with the exception of the 6-week period from January 15, 2023 to end February 2023, was not the rental unit.
25. I accept that the Tenants' commercial short-term re-renting of the unit was not conducted pursuant to the Act, as stipulated in the Tenants' short-term rental agreements, and given the fact that the units were re-rented at higher rental rates, contrary to s. 134(3)(a) and s. 234(l) of the Act.
26. Section 202 of the Act states:
 - (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.

27. For the reasons provided in paragraphs 22 through 25 above, and pursuant to s. 202(1) of the Act, I find that the predominant purpose and real substance of the tenancy agreement between the Tenants and the Landlords was commercial in nature, to allow the Tenants to re-rent the unit on a short-term temporary basis, beyond the jurisdiction of the Act. Accordingly, I find that the predominant purpose and real substance of the tenancy agreement was not residential, despite *OREA Form 400 Agreement to Lease – Residential* being used for the tenancy agreement, and despite the Tenant residing in the unit for a period of 6 weeks over a 52-week period. The Tenant's short duration residence in the unit was subordinate and ancillary to his predominantly commercial use of the unit. I find that the real substance of the tenancy agreement was not predominantly for the Tenant's residential occupation of the rental unit.

28. I therefore find that the Act does not apply to this tenancy, pursuant to s. 5(j) of the Act, that states:

- 5. This Act does not apply with respect to,
 - (j) premises occupied for business or agricultural purposes with living accommodation attached if the occupancy for both purposes is under a single lease and the same person occupies the premises and the living accommodation;

29. The use of the s. 5(j) exemption for predominantly commercial tenancies was upheld by the Divisional Court in *Zeta Psi Elders Association of Toronto v. Kavanaugh, 2022 ONSC 4142*.

30. I also find that the Act does not apply to this tenancy, pursuant to s. 5(a) of the Act, that states:

- 5. This 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;

31. The s. 5(a) exemption for tenancies with a predominant purpose of providing the travelling public with temporary short-term accommodation was similarly determined by the Board in *Andrew Kwon c/o Howard Tavroges v Mary-am Hospitality Corp., 2021 CanLII 135912 (ON LTB)*.

LTB-T-066210-23 – T2 Application

32. Given that the *Residential Tenancies Act, 2006* does not apply to this tenancy, the Board does not have the jurisdiction to consider the Tenants' T2 application. The Tenants' T2 application must therefore be dismissed.

It is ordered that:

LTB-T-062844-23 – A1 Application

1. The *Residential Tenancies Act, 2006* does not apply to this tenancy.

LTB-T-066210-23 - T2 Application

2. The Tenants' T2 application is dismissed.

December 15, 2023
Date Issued

Frank Ebner
Member, Landlord and Tenant Board

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