



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

Citation: GROVER v URBY ENTERPRISES INC, 2023 ONLTB 66253

Date: 2023-10-16 **File Number:**
LTB-L-063193-22-RV

In the matter of: 2607, 300 FRONT STREET WEST TORONTO
ON M5V0E9

Between: SAMIRA GROVER Landlord

And

URBY ENTERPRISES INC Tenant

Review Order

SAMIRA GROVER (the 'Landlord') applied for an order requiring URBY ENTERPRISES INC (the 'Tenant') to pay the rent that the Tenant owes.

This application was resolved by order LTB-L-063193-22 issued on April 6, 2023.

On May 3, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On May 5, 2023, interim order LTB-L-063193-22-RV-IN was issued, staying the order issued on April 6, 2023.

This application was heard in by videoconference on May 25, 2023, and concluded on September 26, 2023.

The Landlord, the Landlord's Representative, Elaine Page, the Tenant Cameron Kuru (CK) and the Tenant's Representative, Samuel Michaels attended the hearing.

Determinations:

Review:

1. The review of the Order issued on April 6, 2023, is granted.



2. The Board sent the notice of hearing to an employee of the corporate Tenant who was on leave and the Tenant did not receive the notice of hearing that was held on March 14, 2023. The Landlord identified a different email address on their L9 application from the contact email address the Tenant provided on the tenancy agreement for the purposes of service of legal documents. The Landlord also disclosure documents to the Tenant in advance of the hearing to a different e-mail address from that identified on the tenancy agreement which the Tenant also did not receive. Since the Landlord provided the wrong e-mail address on the L1 application, I find that on a balance of probability, the Tenant was not able to reasonably participate in the proceeding held on March 14, 2023, because he did not receive the Notice and was unaware of the proceedings.

Preliminary Issue:

3. Does the Act apply? Yes.
4. The corporate Tenant argues that the Act does not apply because the definition of tenant pursuant to subsection 2(1) of the Act includes a 'person' who pays rent in return for the right to occupy a rental unit and because the tenant is a corporation and not a person, they do not meet the definition of tenant. The Tenant also argues that their relationship with the Landlord is commercial. The Tenant's Representative described the corporation as a large company that operates business internationally and provides housing and other services too their clients (immigrant students) who pay them a fee and it's their position that the Landlord was aware that they were operating a business from the rental unit. The tenancy agreement names a corporate entity as the tenant and full disclosure was always given to the Landlord. They further argued that ERBY is a subsidiary of the parent company Harrington and information about the company was available on the Internet and on social media which the Landlord would have been aware of if she did her due diligence.
5. The Landlord testified she was represented by a real estate agent when the tenancy agreement was signed electronically and did not speak to an agent of the Tenant or the corporate Tenant at any time before the tenancy was signed. The information given to her was that the corporate Tenant would be housing their employees. The Landlord testified she only became aware that the Landlord was operating a business when she spoke to the students occupying the rental unit when she first did an inspection of the unit on March 25, 2022, at which time she stated she was shocked to find students occupying her unit. She subsequently reached out to the Tenant's employee to investigate, and the tenancy ended a few months later by agreement.
6. With respect to the first argument. I find that the corporate Tenant meets the definition of tenant because the Act also defines a "person" or any expression referring to a person means an individual, sole proprietorship, partnership, limited partnership, trust or body



corporate, or an individual in his or her capacity as a trustee, executor, administrator, or other legal representative”. Therefore, the corporation is a ‘person’ in law.

7. With respect to the second argument, the best evidence before me was the testimony of the Landlord, and I accept that the Landlord was unaware that the corporate Tenant was running a business from the premises. I considered the testimony of the principle of the corporation, CK who testified he manages the operations of the company, but he confirmed he has no knowledge of the information that was given through their own realtor to the Landlord’s realtor involved in the transaction. He also verified he has no documentary evidence such as emails to support information exchanged during their discussion or that the Landlord was given full disclosure; and CK’s partner, who managed the transaction did not attend the hearing to provide testimony about what transpired at the time the tenancy agreement was reached. Therefore, there was not enough evidence to contradict the Landlord’s testimony. I also noted, that CK stated the Landlord “first rejected the placement of students” when the Landlord inspected the unit in March 2022 which is also the nexus that corroborate the Landlord’s testimony that she was unaware of the placement of students in the rental unit.
8. The Board must ascertain the true substance of the transaction of the tenancy, and I find that on a balance of probabilities, the relationship between the Landlord and the corporate Tenant was residential and the Act applies. The intention of the parties when the tenancy started is material in this case and I’m not persuaded that the Landlord knew or ought to have known that the corporate Tenant was running a business from the rental unit. The corporate Tenant at all times had control of the rental unit and in my view that makes the students the occupant of the rental unit. There was also no dispute the corporate Tenant paid the Landlord monthly rent to have possession of the rental unit as supported by the residential tenancy agreement.
9. I considered the relationships with the corporate Tenant and the occupants with the Landlord. I do not believe the relationship can be characterized as an assignment or sublet. Under subsection 95(8) up the Act an assignment is where a tenant ceases to be a tenant; all the tenant’s rights and obligations are assigned and passed to the new occupants of the rental unit; and they step into the shoes of the tenant under the tenancy agreement. The student occupants, in this case never became tenants of the Landlord nor was there any evidence that the Tenant enter in a subtenancy with the occupants with the consent of the Landlord.

L9 Application:

10. The Tenant owes the Landlord rent for the period of June 1, 2022, to August 15, 2022, in the amount of \$5,235.62.



11. I considered the parties written agreement whereby the Landlord agreed to waive June and July 2022 rent charges if the tenancy terminates on or before July 31, 202. The Tenant's Representative also argues that that the Landlord had a separate agreement with the student occupants and permitted them to stay in the unit until August 15, 2022. With respect to the later argument, the Tenant Representative concedes he has no evidence to support his claim. With respect to the written agreement, section 3 of the Act, states that the despite any agreement or waiver to the contrary the Act applies. Therefore, since the Tenant had possession of the rental unit from June and August 15, 2022, and did not pay rent, the Landlord is entitled to rent arrears up to August 15, 2022.
12. The monthly rent charge is \$2,100.00 and per diem is \$69.04.
13. The Landlord is holding a last month rent deposit of \$2,100.00 collected on June 1, 2020.
14. The Landlord owes the Tenant interest on the deposit of \$39.53 from June 1, 2020, to August 15, 2022.
15. The total amount the Tenant owes the Landlord is \$3,096.09 (\$5,235.62-\$2,100.00\$39.53).

It is ordered that:

1. The request to review order LTB-L-063193-22 issued on April 6, 2023, is granted.
2. Order LTB-L-063193-22 is cancelled and replaced as follows:
3. On or before October 27, 2023, the Tenant shall pay the Landlord \$3,096.09 which represent rent owing to August 15, 2023, less the deposit and interest.
4. If the Tenant does not pay the Landlord the full amount owing* on or before October 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 28, 2023, at 7.00% annually on the balance outstanding.

October 16, 2023

Date Issued

Sandra Macchione

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.