



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

Citation: Pham v Bryson, 2023 ONLTB 65291

Date: 2023-10-05

File Number: LTB-L-037561-23

In the matter of: C, 9 Buxton Road
Toronto Ontario M3M1Y6

Between: Ahn Pham Landlords
Vu Nguyen

And

Jenoi Leary Martin Bryson Tenant

Ahn Pham and Vu Nguyen (the 'Landlords') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard by videoconference on July 31, 2023. The Board permitted and received a post hearing submission from the Landlord, a post hearing submission from the Tenant, and a reply to the Tenant's post hearing submission from the Landlord.

The Landlords, the Landlords' legal representative, Masoud Tchavosh, the Tenant, and the Tenant's legal representatives, Leon Presner and Lavinia Volney, attended the hearing. The Landlords' sons, William Nguyen (WN) and Michael Nguyen (MN), attended the hearing as witnesses for the Landlords.

Determinations:

1. Based on the evidence before me, I find that the Act applies to the rental unit or residential complex.
2. The parties agree that the Tenant started renting a room on the main floor in June 2022 and that he moved to a room in the basement in January 2023. I find that this move constitutes the formation of a new tenancy and that January 2023 is the relevant time period to determine whether the Act applies.
3. It was not contested that the Landlords and their two adult children (or very near adult children as their ages were not disclosed at the hearing) resided at the residential complex at all material times.
4. What was contested was whether the Tenant shared a washroom or kitchen with the Landlords or their children.

5. Ahn Pham (AP) testified that she started renting a room in the residential complex to GJ in April 2022, that she rented a second room to VO in May 2022, and that she then rented a third room on the main floor to the Tenant on June 1, 2022, for a total of three rented rooms. She said she found the tenants through Internet advertising.
6. AP, WN, and MN testified that when the Tenant moved in on June 1, 2022 and when the Tenant moved to the basement room in January 2023, there was only one functioning kitchen and only two functioning washrooms, all of which were located in the basement of the residential complex. They testified that the other kitchen and washrooms in the upper floors of the residential complex were under renovation and non-functional. They testified that the Tenant, GJ, and VO shared the facilities in the basement with the Landlords and their children.
7. The Landlords also supplied declarations from GJ, VO, and other renters in the residential complex stating that they, the Tenant, and the Landlords and their children all shared washroom and kitchen facilities.
8. The Tenant testified that when he moved in on June 1, 2022 and when he moved to the basement in January 2023, he used the washrooms and the kitchen in the basement. He testified that the Landlords and their children did not use these facilities and that they used the washrooms and kitchen upstairs.
9. While I am mindful that the Landlords have more witnesses supporting their position, I did not find the Landlords' evidence to be compelling. The Landlords' evidence largely consists of blank statements that washroom and kitchen facilities are shared. I am aware of the written tenancy agreements for June 2022 and January 2023, but put little weight on these as it is the actual practice of the individuals involved rather than the written agreement that is determinative.
10. There was very little evidence from either party speaking to their day-to-day interactions to assist in resolving their diametrically opposite positions.
11. One exception to this is the evidence with respect to usage of the refrigerator. The Tenant testified that he and the other renters had separate areas in the refrigerator for their own personal items. AP testified that all seven people used the refrigerator and they all knew what belonged to each other. I found the Tenant's evidence to be more credible on this point. I find it more likely than not that seven people sharing a refrigerator would develop an organizing principle for the shared use.
12. Another exception to this is with respect to usage of the washrooms. AP presented text evidence sent from another renter to AP with respect to a dispute he was having with the Tenant regarding usage of the washrooms in the basement. The renter states that the Tenant is telling the renter not to use one of the washrooms. The renter further states that he told the Tenant that the washroom is not the Tenant's. AP responds to the renter saying she will talk to the Tenant. I find it improbable that the Tenant would have attempted to lay claim to one of the two washrooms if all seven people were using the two washrooms. It is more likely than not that this would have occurred if it was just the three renters who were using the two washrooms. In addition, if it was the case that the Tenant was laying claim to

one of the two washrooms being used by all seven individuals, AP would not need a text from the renter to become aware of the situation as she would have been directly affected. As a result, the existence of this text communication suggests that the Tenant was not sharing a washroom with the Landlords or their children.

13. As a result, I find, on a balance of probabilities based on the evidence before me, that the Tenant was not required to share a washroom or kitchen with the Landlords or their children and that the Act applies.

It is ordered that:

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

October 5, 2023

Date Issued

Richard Ferriss

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.