



Order under Subsection 135 Residential Tenancies Act, 2006

Citation: Solomon v Lichtel, 2023 ONLTB 65134

Date: 2023-09-27

File Number: LTB-T-008956-23

In the matter of: 8 McElroy Court
Caledon East Ontario L7C3X2

Tenant

Between: Andrea Solomon

And

Catherine Lichtel

Landlord

Andrea Solomon (the 'Tenant') applied for an order determining that Catherine Lichtel (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on September 20, 2023.

The Tenant attended the hearing and spoke to Tenant Duty Counsel prior to the hearing. The Landlord's Legal Representative, Jackie Struthers and the Landlord attended the hearing.

Preliminary Issue-Does the Act Apply?

1. The Landlord's Legal Representative asserts the Act does not apply as the Landlord and the Tenant share a kitchen.
2. The tenancy began October 15, 2022 and was a month-to-month tenancy.

Agreed Upon Facts

3. The Landlords advertisement to lease the property clearly stated that it was shared accommodations with the Landlord and the parties would be required to share a kitchen.
4. The kitchen at the residential complex is located on the main floor.

Tenant's Evidence

5. The Tenant testified she was aware that the Landlord resided at the rental unit at the commencement of her tenancy.
6. She testified she has her own bathroom and is not required to share a bathroom with the Landlord.

7. The Tenant testified there was space in the basement where tenants could go to have their own space. This space had a mini fridge, coffee maker and cabinets for food storage.
8. On cross examination, the Tenant testified that she could not remember if she moved any items into the kitchen on the main level when she moved in or if she cooked in the kitchen as she vacated the rental unit after 24 hours.

Landlord's Evidence

9. The Landlord testified that the residential complex consists of four bedrooms and three and a half bathrooms.
10. She testified the Tenant's bedroom and sitting room were located on the upper floor. She further testified the Tenant had access to a powder room on the main floor as well as the kitchen on the main floor which was shared with the Landlord.
11. She testified there is only one kitchen in the residential complex.
12. She testified there is not a kitchen in the basement, and the basement consists of a bar sink and a cold cellar, and the Tenant did not have access to use this area of the residential complex.

Analysis

13. In order for the exemption in section 5(i) to apply, the tenancy agreement between the parties must require the Tenant to share the kitchen or bathroom with the owner. That section states:
 - (5) This Act does not apply with respect to:
 - (i) "Living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located"
14. In this case, I accept the Landlord's evidence that there is only one kitchen in the residential complex and the Landlord and Tenant are required to share the kitchen. I am not satisfied that there is a secondary kitchen located in the basement of the residential complex.
15. I am satisfied the Tenant was aware at the time she entered the tenancy agreement that it was a shared accommodation with the Landlord and that she was required to share a kitchen with the Landlord.
16. I find that the Board does not have jurisdiction to consider the Tenant's T1 application because the *Residential Tenancies Act, 2006* (Act) does not apply to this rental unit.
17. This order contains all reasons for the decision and no other reasons will be issued.

It is ordered that:

1. The *Residential Tenancies Act, 2006* does not apply.
2. The Tenant's application is dismissed.

September 27, 2023

Date Issued

Trish Carson

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.