



Order under Section 31 of the Residential Tenancies Act, 2006

Citation: ESTHER VARDY v DANNIELLE AYOTTE, 2023 ONLTB 39822

Date: 2023-06-20

File Number: LTB-T-013124-23

In the matter of: CABIN, 2824 GOODSTOWN ROAD OTTAWA
ON K0A2Z0

Between: ESTHER VARDY Tenant

And

DANNIELLE AYOTTE Landlord

CHRISTOPHER VARDY, ESTHER VARDY, and MADSION VARDY (the 'Tenant') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard by videoconference on May 17, 2023. The Landlord and the Tenant attended the hearing. The Tenant, ESTHER VARDY, the Landlord's Legal Representative, J. Kohne, and the Landlord. attended the hearing.

Although I find that the named Tenant is not a Tenant and the unit is not covered by the Residential Tenancies Act, 2006 (the 'Act'), for ease of reference the parties are referred to as "Landlord" and "Tenant" for the purpose of this order.

Determinations:

1. The Tenant stated that she met the Landlord in 2021 through a school, Mental Health, and Addiction Services of Ottawa (MHASO), placement at the Landlord's healing centre.
2. The Landlord needed someone to take over her business when she retired and after working with the Landlord in the fall of 2021, the Tenant moved into a cabin in the Landlord's property in May 2022. The Tenant helped the Landlord with administrative duties but denied she was an employee. The Tenant planned to purchase the residential complex in two years.
3. In an email titled 'Announcement' dated February 8, 2022, the Landlord informed several members of MHASO and the Tenant, that she is taking a step back and "*I am really happy to announce that our very own Estée will be taking over the management of the facility.*"



4. The Tenant confirmed she prepared a document titled “Commercial Lease Agreement” which was expected to take effect on June 1, 2022 and the parties were the Landlord and Davalon Ltd, a company owned by the Tenant. Although unsigned, the document included the description of the premises; the term of lease beginning June 1, 2022 and ending May 31, 2024; and the rent determined as \$2,500.00 with a provision for ‘Additional Rent’ including *“...all operating expenses, maintenance fees and costs, and any other costs and expenses that occur or may be considered under any provision of this lease, ...”*.
5. The document’s ‘Use of Property by Tenant’ confirmed the property *‘... may be occupied and used by Tenant exclusively as a healing centre, third party office space for therapists, animal therapy, and any therapies and activities aligned with Tenant’s business. As well as rental of premises for use in production of media, and for agricultural purposes.’*
6. The parties did have a signed agreement titled Preliminary Informal Leasing Agreement dated July 4, 2022. This document acknowledged that *‘... an agreement is in the works to lease the structures, some agricultural land, and in particular the addition to the main horse stable ... as well as the trail system and the original log cabin and what is known as the workshop, in that end of the farm. Esther Vardy, Davalon Ltd, will be paying \$2,500.00 for those spaces. She has permission to make some changes to the spaces to best serve her business which she is doing at her expense.’*
7. According to the Landlord, the Tenant did not request a tenancy agreement until November 2022 when the Landlord asked her to leave. The Tenant argued that she resided in the cabin with her husband, for a while, and daughter. The Tenant paid to the Landlord, \$2,500.00 each month from June 2022 to October 2022 and in November 2022 withheld the rent because the Landlord failed to provide a tenancy agreement.

Analysis

Application of Act

- 3 (1)** This Act, except Part V.1, applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.
8. Based on all the evidence, I find that the Act does not apply to the relationship between the parties despite the Tenant’s assertions. From the announcement email of February 8, 2022, to the failed attempt at creating a “Commercial Lease Agreement”, to the signed Preliminary Informal Leasing Agreement on July 4, 2022, there is nothing to demonstrate that the parties had a residential agreement in any form. The intent behind the relationship between the parties was solely commercial. The Tenant paid \$2,500.00 to the Landlord in exchange for several areas of the Landlord’s property and the cabin was just one of them.
 9. Even if I were to find that the cabin was a rental unit, it cannot be separated from the commercial nature of the agreement. Section 5 (j) of the Act provides:



Exemptions from Act

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.

10. The only signed agreement, the Preliminary Informal Leasing Agreement, is a single lease for the areas of the property intended for the Tenant's business and a cabin, all rented for \$2,500.00.

11. In *Hahn v. Kramer* (1979), 23 O.R (2d) 689 (Div. Ct.), the court held that the lease of a retail store with associated living accommodation was not a residential tenancy under the Act. In the same vein, the lease of structures, some agricultural land, horse stable, trail system and a cabin cannot be considered a residential tenancy under the Act.

12. Based on the foregoing, I find that the Act does not apply to the accommodation rented by the Tenant.

It is ordered that:

1. The Act does not apply.
2. The Tenant's application is dismissed.

June 20, 2023

Date Issued

Jitewa Edu

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.