



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

Citation: Josephine Walker v John Dzelme, 2023 ONLTB 39802

Date: 2023-05-25

File Number: LTB-L-000347-23

In the matter of: 65 Rosedene Avenue
Hamilton ON L9A1G2

Between: Josephine Walker Landlord

And

John Dzelme Tenant

Josephine Walker (the 'Landlord') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard by videoconference on April 6, 2023. The Landlord, their legal representative, F.Gomez, their witness C.Farrauto and the Tenant attended the hearing.

Determinations:

1. Based on the evidence before me and the submissions of the parties, I find on a balance of probabilities that the Act does not apply with respect to this tenancy.
2. Section 5 of the Act lists a series of exemptions. The one relevant to this application is subsection 5(i)- which states:
 - (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;
3. The following facts are not disputed:
 - The residential complex is a house where the Tenant resides in the basement and the Landlord resides on the main floor.

- Tenant moved into the unit on or about September 18, 2021
 - The Landlord and the Tenant met through a mutual friend of the Landlord.
 - The Tenant was not required to share a bathroom with the Landlord. The focus of the hearing was with respect to the kitchen facilities.
4. During the hearing, the parties relied on a series of photographs depicting the rental unit. There was a shared laundry facility which also had a table storing small countertop cooking appliances and a full-size refrigerator. The Tenant's bedroom was in a main family **File Number:** LTB-L-000347-23

room where there was a tv and couch that he also used as a bed and a bathroom. The rental unit was equipped with a small wet bar that had a working sink in it and a small 'bar' refrigerator underneath. The Landlord claims that they shared the refrigerator, and she would sometimes store things in the freezer portion. The Tenant states that they did not.

5. The Tenant says that he needed inexpensive living accommodations due to ongoing personal litigation and that the original agreement was that he would reside in the rental unit for a period of 6-8 months, maybe more. The rental unit was equipped with a hot plate, dishes and the small bar fridge- so the unit was equipped with everything he needed and therefore was not required to use the kitchen on the main floor of the residential complex.
6. The Landlord claims that they were doing the Tenant a 'favour' by letting him reside in the basement as he was going through a long litigation. The basement did not have proper kitchen ventilation in the basement, that the Tenant brought in their own cooking appliances after they took possession.
7. The Landlord called C. Farrauto as a witness, who gave submissions regarding how he introduced the Landlord to the Tenant and was present when the parties were negotiating the Tenant taking possession of the basement space. He says that the accommodation was meant to be shared. That the Tenant would have access to the basement which was shared with the Landlord.

ANALYSIS

8. The operative word with respect to the exemption being claimed under 5(i) of the Act is required. Therefore, the first question to be determined is whether the Tenant was required to use and share the kitchen with the Landlord. If the answer to that question is yes, then the Act will not apply with respect to this arrangement.
9. The Landlord claims that there is no kitchen facility in the basement unit and the Tenant claims that there is. Therefore, an added question to be determined is what constitutes the meaning of a 'kitchen facility' within the meaning of the Act.

10. Although the Act does not define the term 'kitchen', the concept is mentioned in *Ontario Regulation 517/06*, s. 14 (3) which says "every kitchen shall have outlets suitable for a refrigerator and cooking appliance.
11. I also observe the municipal by-law for the community in which the rental unit is located outlines requirements of any kitchen facility (City of Hamilton By-Law No 10-221, Property Standards By-Law). Section 15 speaks to the kitchen requirements. It states;
- 15 (1) A kitchen shall contain:
- a) a sink serviced with potable running water and a splash back which are water and grease resistant;
 - b) a work surface of at least .74 m², which is impervious to grease and water;
 - c) storage facilities for food, dishes and cooking utensils having an interior capacity of at least .8 m³, of sufficient strength that they will
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- not collapse, tip or, if fastened to a wall, become detached when filled; and
- d) space sufficient to accommodate a cooking range or countertop cooking unit and refrigerator without placing such cooking range, countertop cooking unit or refrigerator in a location that provides access to or egress from the kitchen.
 - e) every cupboard, kitchen fixture and fitting shall be maintained in a state of good repair and working order.
12. The basement unit had a wet bar, equipped with a small sink and a tiny countertop, typically for recreational use. Below the countertop was a small bar fridge. There were some cooking appliances like a microwave, and a convectional oven- the parties disagree on who provided it. The Landlord says that she did not and the Tenant claims that she did.
13. Based on the Tenant's description, and the evidence adduced at the hearing, I am not satisfied that the basement is properly outfitted with kitchen facilities as are contemplated by the Regulation and municipal by-laws. As the basement does not contain a kitchen facility, I find that the Tenant is required to share a kitchen with the Landlord. Therefore, this arrangement is exempt from the Act.
14. I note in coming to this decision, I take reference to Order TET-95797-18, issued on October 15, 2018. Although I am not bound by other Board decisions, the facts from that case are similar to the facts of this one, I agree with the reasoning of the Member in that decision. The Board has an interest in consistent findings and so I see no reason to deter from a similar finding.

It is ordered that:

1. The Board does have jurisdiction, as the relationship between the parties is exempt from the Act.

May 25, 2023

Date Issued

Curtis Begg

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.