



**Order under Section 21.2 of the
Statutory Procedures Act
and Section 9(2) of the Residential Tenancies Act, 2006**

Citation: Wright v Chartier, 2023 ONLTB 26577
Date: 2023-03-21 **File Number:** LTB-L-077704-22-
LTB-T-013662-23-RV

In the matter of: 631 Ramsay Concession 8
Mississippi Mills, ON K7C 3P1

Between: Edward Wright Landlords
Jacqueline Chartier -Wright

And

Kyle Chartier Tenants Michelle Verdon

And

Suzanne Chartier Affected Party

Review Order

Edward Wright and Jacqueline Chartier-Wright (the 'Landlords') applied for an order to terminate the tenancy and evict Kyle Chartier and Michelle Verdon (the 'Tenants') and Suzanne Chartier (the 'Affected Party' or 'AP') because the Tenants entered into an agreement to terminate the tenancy.

The Landlords' application was resolved *ex parte* by order LTB-L-077704-22 issued on January 19, 2023.

On January 30, 2023, the AP requested a review of the order alleging that it contains a serious error and that she was unable to reasonably participate in the proceeding.

On January 31, 2023, LTB-L-077704-22-RV-IN was issued staying the order and directing the request to review to a hearing.

Further, on January 26, 2023, the AP filed an A1 application with the Board to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

The request and application were heard by videoconference on February 21, 2023.

The Landlords and the Landlord's Representative Jason St. Germain attended on behalf of the Landlords. Edward Wright testified on behalf of the Landlords. The AP and the AP's Legal Representatives Charles Freed and Lisa Duchene attended on behalf of the AP. The AP and Jeanette Maillet testified on behalf of the AP.

Determinations:

Preliminary Issues – Service of Disclosure

1. The Landlords' Representative raised a preliminary issue submitting that he had just received the AP's evidence with respect to their request and application.
2. The Landlord's Representative submitted that the evidence was received on February 16, 2023, which was five days prior to the hearing and that the AP was required to provide the evidence at least seven days in advance of the hearing in accordance with the Board's *Rules of Procedure*.
3. The AP submitted that they believed they were the responding party and that they were afforded five days under the rules.
4. On the basis of the late disclosure, I had invited the Landlords to seek an adjournment of the matter in order to further review the AP's disclosure or to proceed with the matter whereby each party's evidence would be deemed served in time due to the confusion with respect to the identities of the "applicants" and the "respondents".
5. The Landlords' Representative elected to proceed with the hearing.

Background Facts

6. The Residential Complex is a house that is owned by the Landlords. The Tenants are the brother and sister-in-law of the Landlord Jacqueline ChartierWright, and the AP is the mother of both Jacqueline Chartier-Wright and Kyle Chartier.
7. In May of 2020 the Landlords and the Tenants entered into a lease agreement that commenced on June 1, 2020. The rent for the unit is \$2,500.00 per month
8. Also in and around May of 2020, the Landlords had spoken with the AP about having her also move into the residential complex. The AP moved into the residential complex in and around August 1, 2020.

Affected Party's Position

9. The AP testified that she never signed a lease with the Landlords and that she paid \$500.00 per month for rent, and \$100.00 a month for utilities.
10. The AP testified that she in May of 2020, she was invited by the Landlords to observe the residential complex and was offered what was described as the unit above the garage so that she could be close to her son and her grandchildren, as they would be living downstairs.
11. Entered into evidence were various photos of the AP's unit including photos of various entrances into the residential complex, her parking space, her room including her kitchenette, her bathroom and her computer room.
12. Further, a photo was also entered into evidence of the door into her unit that had a doorbell and a lock with a key.
13. The AP testified that she paid a first and last months rent deposit to the Tenants to pay to the Landlords. The AP testified that she had provided the money to the Tenants for the sake of convenience. As well, the AP testified that she received rent receipts directly from the Landlord and was paid interest on her last month's rent deposit directly from the Landlord.
14. Entered into evidence were a series of financial transactions showing when the rent was paid to the Landlords from the Tenants and the AP. The Tenants paid the entirety of the rent on August 26, 2020 and September 29, 2020, while the AP paid her own rent directly to the Landlords on October 28, 2020, December 1, 2020, December 30, 2020, January 29, 2021.
15. The Tenants paid their \$2,000.00 towards the rent on November 2, 2020, November 23, 2020, December 29, 2020 and February 1, 2020.
16. In July of 2022 a dispute arose amongst the Tenants and Landlords with the AP. On July 28, 2022, the AP was provided a letter from the Landlords outlining that she is an unauthorized occupant and must vacate the residential complex within 60 days.
17. The AP did not vacate the unit and on December 5, 2022, the Tenants and Landlord signed an N11 notice of termination with a termination date to end the tenancy on January 31, 2023. The AP did not sign the N11.
18. On December 8, 2022, the Landlords filed an application with the Board to terminate the tenancy. The *ex parte* order for same was issued on January 19, 2023. That same date the order was e-mailed to the AP.

Landlord's Position

19. The Landlords submit that the AP is not a tenant because she never signed a lease with the Landlord and was invited to live in the residential complex by the Tenants.
20. Further, the Landlords submit that the AP's unit is in fact not a unit but a separate room and bathroom within the residential complex that is only accessible through the Tenant's unit.
21. The Landlords further challenge the AP's evidence that she has her own kitchen, as she essentially has a bar fridge and a small sink and that her clothes washer is simply hooked into her washroom and is not a separate service as offered.

Analysis

22. The question for me to consider with respect to this request and application is whether or not the AP is a tenant and should have been included as a signatory to the Tenant's N11 notice of termination.
23. The Tenants did not attend the hearing or provide any evidence. The Landlords submitted that the Tenants remain in the unit.
24. A "tenant" is defined under s. 2(1) of the Act as:

"tenant" includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant's heirs, assigns and personal representatives, but "tenant" does not include a person who has the right to occupy a rental unit by virtue of being,

(a) a co-owner of the residential complex in which the rental unit is located, or

(b) a shareholder of a corporation that owns the residential complex;

25. The parties all agree that the AP never signed a lease with either the Landlords or the Tenants regarding her occupation within the residential complex. The lease that was entered into evidence was between the Landlords and the Tenants only. The lease was never amended by agreement of all parties to include the AP after she had moved into the unit.
26. Section 202 of the Act requires me to ascertain the real substance of all transactions and activities relating to a residential complex or to a rental unit and that I may have regard to the pattern of activities relating to the residential complex or unit.

27. It is clear from the evidence that there was a change in the language the Landlords used when referring to their relationship with the AP subsequent to their falling out. The Landlords initially referred to the AP's accommodations as an "apartment" and subsequently started referring to them as a "room".
28. With respect to the unit in question, while the AP does have a separate "space" within the residential complex I do not find that the space constitutes a separate unit. The reason I have come to this conclusion is the fact that the AP must pass through the Tenants' space in order to access her room. While her space is separate the space itself is not completely removed from the Tenants' unit. As well, the residential complex only contains one address, and the mail is delivered to one box for both the Tenants and the affected party.
29. Further, the residential lease entered into between the Landlords and the Tenants provides that the Tenants have access to the entire residential complex.
30. That said, despite the lease having been signed between the Landlord and the Tenants, I find as a fact that there was an initial meeting of the minds between the Landlords, the Tenants and the AP that the AP would be moving into the unit in the summer of 2020 and would be paying a portion of the Tenants' rent.

Is the Affected Party a Tenant?

31. Despite the lease between the Tenants and the Landlords not being amended to reflect the addition of the AP, I find on a balance of probabilities that the AP was a tenant as defined under the Act.
32. Having heard the evidence of the parties and applying my powers under s. 202 of the Act, it was clear from the outset of the tenancy that all parties understood and were aware that the AP would be moving into the residential complex.
33. Further, despite the fact that the AP was not included in the lease, the Landlords accepted payments for the rent directly from the AP, provided the AP with rent receipts directly and paid the interest on the AP's last month's rent deposit.
34. Further, the Landlords' communication utilized when dealing directly with the AP I find to have been consistent with that of a Landlord/Tenant relationship. The AP was routinely referred to as a tenant, the Landlords contacted her directly about paying rent and other maintenance concerns and the AP's space was often referred to as a nanny-suite or other similar terms.

35. As such, despite having found that the AP's space is not a separate unit, I find that the relationship between the Landlords, the Tenants and the AP to be a joint tenancy where all the tenants share a single, undivided interest in the tenancy.

Review

36. Having determined that the AP is a tenant, I find on a balance of probabilities that order LTB-L-077704-22 contains a serious error as the AP was not a signatory to the N11 notice of termination.

37. Further, because the AP was a tenant I find on a balance of probabilities that she was not reasonably able to participate in the proceedings.

It is ordered that:

38. The Act does apply. The Affected Party is a tenant as defined under the Act.

39. The Affected Party's request to review on the basis of serious error and not reasonably being able to participate is granted and LTB-L-077704-22 is dismissed.

March 21, 2023

Date Issued

Jagger Benham

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-3323234.

