



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

Citation: Dineen v Huang-Johnston, 2023 ONLTB 15357

Date: 2023-01-17

File Number: LTB-T-050184-22

In the matter of: 370A Churchill Court
Waterloo Ontario N2L6B4

Between:

Jessica Dineen Tenant

And

Christina Huang-Johnston Landlords
Mark Johnston
Danielle Johnston

Jessica Dineen (the 'Tenant') applied for an order to determine whether the Residential Tenancies Act, 2006 (the 'Act') applies (A1).

This application was heard by videoconference on January 11, 2023. The Landlord and the Tenant attended the hearing. The Landlord's witnesses, Nathaniel Johnston (NJ), and Andrew Johnston (AJ) also attended the hearing.

Preliminary Issues:

Danielle Johnston stated that she and her father, Mark Johnston were co-owners of the residential complex with her mother, Christina Huang-Johnston. The Tenant responded that the tenancy agreement signed by the parties showed she was a representative of the Landlord but did not oppose an amendment to reflect the names of the three Landlords.

The application is amended to include Danielle Johnston (DJ) and Mark Johnston as parties to the application.

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 "Landlords" and "Tenant" for the purpose for this order.

Determinations:

1. The rental unit is one of two units in the basement of the home which contains three bedrooms in the upper level. The Tenant rented the unit from the Landlords in December 2015 and shared the kitchen and bathroom in the basement with DJ who occupied the second room in the basement ('second unit').

Tenant's Evidence

2. The Tenant stated that they shared the kitchen and bathroom with DJ at the commencement of the tenancy. However, they stated that DJ was in the second unit only for four months at a time and out for another four. During her time away, her unit was either vacant or rented out.
3. In January 2017 and for a period of at least 4 months, an individual, Shawn occupied the second unit. The Tenant was unaware if DJ returned to the unit after that time. The Tenant's brother, Robert occupied the second unit for a certain period about the beginning of 2021 and moved out at the end of the same year.
4. The Tenant further stated that a new tenancy was created in January 2017 when the Landlords, at the Tenant's request sent a copy of a new tenancy agreement which the Tenant signed on January 11, 2017. A copy of the new tenancy agreement was presented as evidence at the hearing but it is not signed by the Landlords. The Landlords acknowledged sending the new tenancy agreement to the Tenant.

Landlords' Evidence

5. The Landlord, CJ, stated that they purchased the rental unit in 2015 for the sole purpose of having a unit in town for their children as they attended school.
6. The Landlord, DJ, testified that at the end of each school year, she left town for co-op opportunities for a period of four months until she graduated in 2016. For the period from March 2017 to August 2017, her brother AJ resided in the second unit after switching units with Shawn in March 2017.
7. DJ further stated that her brother, NJ, at one point moved into the second unit when the Tenant's brother Robert, requested a transfer after residing in that unit for a few months in 2020, from May 2020 to October 2020. DJ believes that NJ occupied the second unit from March 2020 to January 2022.
8. The Landlords' witness, NJ, testified that he resided in the second unit at the start of the pandemic in 2020 but had to leave due to the pandemic. He claimed that some of his belongings remained in the unit until his return in January 2022 but the Tenant opposed the claim, stating that the unit was vacant.
9. The Landlord's witness, AJ, testified that he resided in the second unit from March 2017 to August 2017, when he moved out to pursue a co-op opportunity out of town. He returned in September 2018 and was in the unit until December 2018. The Tenant stated that they were uncertain if AJ was in the unit in March 2017 but did not oppose his testimony.

Analysis

10. Based on all the evidence, there is no dispute that at the start of the tenancy in December 2015, the Tenant was required to share the bathroom and kitchen facility in the basement with the Landlord, DJ.
11. As DJ was sometimes away from the unit due to end of school activities, the unit was occupied at different times by her siblings, the Tenant's sibling, and Shawn. At the time of

the purported new tenancy which was signed by the Tenant on January 11, 2017, there was no plan for DJ or any of her siblings to stop occupying the second unit and in fact, the Tenant did not dispute AJ's claim that he resided in the second unit and so shared the bathroom and kitchen with the Tenant from March 2017 to August 2017, and again from September 2018 to December 2018.

12. This pattern of activities leads me to the conclusion that despite the Tenant's claim of a new tenancy in 2017, the dynamics in the relationship in terms of the sharing of the kitchen and bathroom, did not change.
13. Having determined that the Tenant was required to share kitchen and bathroom facilities in the basement with the Landlord's family members, I considered section 3(1) of the Act which states that the Act applies with respect all rental units despite any other Act and despite any agreement or waiver to the contrary. "Rental unit" is defined in section 2(1) of the Act as "any living accommodation used or intended for use as rented residential premises". I am satisfied that the premises in question in this application meets this definition.
14. However, the Act also contains a few exemptions and section 5(i) of the Act specifically provides:

Exemptions from Act

- 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; ...

15. In this case, and despite the Tenant's arguments that DJ was away from the second unit for up to four months at a time, the evidence demonstrates that the Tenant was required to share the bathroom and kitchen in the basement with her from the commencement of the tenancy. This requirement to share the facilities did not change in 2017 after the purported new tenancy agreement because the Landlords' child, AJ resided in the second unit from March 2017. Therefore, I find the unit is exempt from the provisions of the Residential Tenancies Act, 2006.

It is ordered that:

1. The Act does not apply.

January 17, 2023
Date Issued

 Jitewa Edu
 Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.