



**Order under Section 69
Residential Tenancies Act, 2006**

File Number: LTB-L-048212-24

In the matter of: 32 BOOKER DR
AJAX ON L1Z0H3

Between: Aura Larios

And

Jurian Russell

Landlord

Tenant

I hereby certify this is a
true copy of an Order dated
OCT 15, 2024
Landlord and Tenant Board

Aura Larios (the 'Landlord') applied for an order to terminate the tenancy and evict Jurian Russell (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 18, 2024.

The Landlord and the Tenant attended the hearing.

Determinations:

1. At the onset of the hearing, I raised the following two preliminary issues with the parties and asked for submissions: whether the *Residential Tenancies Act, 2006* (the 'Act') applies to the rental unit and, if so, whether the rental unit is identified on the N4 Notice of Termination.

Is the rental unit exempt from the Act?

2. The Landlord provided that she lives in the residential complex and shares the kitchen with the Tenant. She submitted that she moved into the residential complex on June 1, 2024, after the other tenants moved out. The Landlord submits that the Tenant was being aggressive towards her and as such, she moved out temporarily on September 1, 2024.
3. The Tenant submits that at the start of the tenancy on February 1, 2023, there was four bedrooms in the house, and each was rented out separately to different tenants. The Tenant testified that the tenancy agreement stated the Landlord's address is different from the residential complex. As such, the Landlord did not reside at the rental unit and there was no space for her to reside there. The Tenant also provided the lease agreement and there was no references to whether the Landlord shared a kitchen and a bathroom with the Tenant. The Tenant did not dispute that the Landlord moved in on June 1, 2024 but moved out again.
4. The rental unit is a self-contained bedroom unit and has a door separating itself from the common areas and the shared entrance. The Landlord acknowledged that she only moved into the rental unit after June 1, 2024, which was after the start of the Tenancy. There are

several general comments I would make about exemption contained in section 5(i) of the Act. First the tenancy agreement between the parties must require the tenant to share the kitchen or bathroom with the owner or the owner's immediate family. In addition, the Board must consider the living arrangements at the beginning of the tenancy and any unilateral change to the pattern of use by the Landlord after the tenancy begins will not cause a tenancy that is subject to the Act to be exempted by section 5(i) (see *Cowie v. Bindlish*, [2010] O.J. No. 2193 (Ont. Div. Ct.)). In addition, and as with any exemption, the burden of proof rests on the person seeking to rely on the exemption. In this case, that is the Landlord.

5. Based on the evidence before the Board, I find that the exemption in section 5(i) does not apply with respect to this tenancy. Therefore, the Act applies to the rental unit.

No rental unit on N4

6. Section 43 of the Act provides a notice of termination must contain certain information as follows:

43 (1) Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,

(a) identify the rental unit for which the notice is given; (emphasis added)

(b) state the date on which the tenancy is to terminate; and

(c) be signed by the person giving the notice, or the person's agent.

7. Strict compliance is required with section 43 of the Act. A notice of termination which does not comply with the mandatory content requirements of the Act is void and cannot be amended or corrected. [See *Bianchi v. Aguanno*, 1983 CanLII 1967 (ON SC); (1983), 42 O.R. (2d) 76 (Div Ct.), and *Vu v. Kiumarsi*, 2021 CanLII 115915 (ON LTB) at para. 7]
8. The Tenant submitted the rental unit is the master bedroom in the house and should have been identified on the N4 Notice. The Landlord confirmed the property contained four separate units but ultimately the other tenants moved out and only the Tenant remaining is Jurian Russell, therefore he now rents the whole house. It was the Landlord's own testimony that she was living in one of the other rooms until recently, based on this I find that the Tenant does not have exclusive use and access to other rooms. As said earlier, the Landlord cannot unilaterally change the terms of the tenancy agreement or of use by the Tenant.
9. At the hearing, the Landlord was asked if they to proceed with the hearing on the basis of arrears only.
10. The Landlord declined the offer to proceed with arrears only.

11. Based on the above, I find the N4 Notice invalid as the notice did not specify the rental unit as the master bedroom. Therefore, this tenancy cannot be terminated based on this invalid N4 Notice.

It is ordered that:

1. The L1 application is dismissed.

October 15, 2024
Date Issued



Vinuri Sivalingam
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.