Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Childs v Peters, 2025 ONLTB 20255
Date: 2025-03-17
File Number: LTB-T-067722-24-RV

In the matter of:	Lot 1, 334 RATTLESNAKE RD LOWBANKS ON N0A1K0	
Between:	Gary Childs Carolyn Childs	Tenants
	And	
	Bernhard Peters 1000145191 Ontario Limited o/a "Sandy Acres Park"	Landlords

I hereby certify this is a true copy of an Order dated
Mar 17, 2025
Landlord and Tenant Board

Review Order

Gary Childs, Carolyn Childs and . . (the 'Tenants') applied for an order determining that Bernhard Peters and 1000145191 Ontario Limited o/a "Sandy Acres Park" (the 'Landlords') :

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.
- withheld or interfered with their vital services or care services and meals in a care home.

This application was resolved by order LTB-T-067722-24 issued on November 18, 2024.

On November 28, 2024, the Landlords requested a review of the order and that the order be stayed until the request to review the order is resolved.

On December 30, 2024, interim order LTB-T-067722-24-RV-IN was issued, staying the order issued on November 18, 2024.

The review request was heard by videoconference on March 4, 2025.

The Landlord, The Landlords' legal representative Kevin Lundy, the Tenants and their legal representative Shaun Harvey attended the hearing.

Determinations:

The Review Request

1. On the basis of the submissions made in the request, I am satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.

2. The Landlord asserts that the November 18, 2024 order contains serious error in fact and law that resulted in the determination that the *Residential Tenancies Act, 2006* (the 'Act') applies to this circumstance.

3. Essentially, the Landlord argues that the presiding Member lacked jurisdiction to hear the Tenants' application as the Member failed to interpret s.5(a) of the Act in a purposive manner consistent with binding authority.

4. The Landlords; representative argues that the Member failed to consider that the wording of s.5(a) bifurcates the accommodations to which is applied based on the intent of the parties versus the actual conduct of the parties.

5. Relying on *Rogers v. Fisherman's Cove Tent & Trailer Park Ltd., [2002] O.J. No 5942 (Ont. Div. Ct.),* the Landlord asserts that the wording of the exemption is interpreted to include two different situations; where the accommodation is intended for the travelling or vacationing public; or where it is in fact only occupied for a seasonal or temporary period.

6. In this present case, the Landlord takes the position that the Member errored when he considered the "intention" of the parties in his analysis of branch two of the test in s.5(a) of the Act. It is settled law that "intention" is not the proper legal test in this circumstance.

7. The Landlord's representative acknowledged that the while the analysis was "thin" at the original hearing, it was undisputed that the water is not supplied to the property during the winter off-season and the fact that the Tenant may have disregarded the restriction, does not suggest that Landlord consented.

8. The Landlord asserts that the Member's decisions is grounded in the analysis of the "intention" of the parties at the onset of the tenancy rather than by the conduct and behavioural aspects of the relationship. The Member, by reading in the requirement of "intention" to the second group of exempted living accommodations, when that wording only applied to the first group; the travelling or vacationing public.

9. The Landlord takes the position that the Member's misinterpretation of s.5(a), is a serious error and contrary to the case law. As such, the order contains a serious err as the Board lacks jurisdiction to proceed with the Tenants' application.

10. The Tenants' representative states that the Member appropriately considered the intention of the parties at the onset of the relationship. He believes the Member's order reflects his consideration to the pattern of behaviour. He states that one must look past the issue of vital services as the indicator of the intention of the parties and their behaviour.

11. The Tenants' representative states that the Landlord failed to meet the burden of proof at the hearing and the Member made his decision based on the best evidence before him

and his decision is reasonable and entitled to deference. He said, the Landlord did not challenge the order by seeking additional reasons.

Analysis

12. At the September 27, 2024 hearing the Tenant relied on *Matthews v. Algoma Timberlakes Corp.*, 2010 ONCA 468 (CanLII), [2010] O.J. No. 2710 (C.A.) to support the proposition that the rental unit is subject to the Act.

13. However, I note that *Matthews v. Algoma* is distinguishable as services were provided to the park with no seasonal limitation. The leases permitted the tenants to occupy their units on a full time and permanent basis and were not restricted to seasonal occupation by the landlord.

14. In this present case, it was undisputed that water service was discontinued to the rental unit during of the off-season; October to May annually.

15. The Tenants' representative also relied on the case of *White v Upper Thames River Conservation Authority*, 2020 ONSC 7822 ("Upper Thames"), to argue that limited access to a rental unit does not preclude lease arrangements from being subject to the Act. In my view, I do not find Upper Thames to be relevant to this case, as it does not address the exemption under section 5(a) of the Act.

16. While it is possible for the Tenant to access the park during the closed season and while the Tenant's trailer is structurally capable of habitation during the off season months, the evidence is clear and undisputed that the supply of water is turned off.

17. I acknowledge that the Landlord's evidence was lean at the September 27, 2024 hearing, it remains uncontested that the water service to the rental unit was shut off during the off-season.

18. The following facts are clear; the home is the Tenant's secondary residence and located in a park where the Landlord considers some of the residents to be seasonal and others year-round, water was not supplied to the property during the winter months.

19. The presiding Member made his decisions primarily focused on the intention of the parties. I agree with the Landlord's representative that the attempt to impute intention into the seasonal and temporary branch of s.5(a) of the Act is an error in law. In my view, the November 18, 2024 order contains a serious error; specifically the Member did not appropriately apply the legal test in s.5(a) of the Act.

20. The Divisional Court, in Rogers, held that:

> To interpret section 3(a) in the fashion urged on us by the Appellants would entail incorporating the words "intended to be" before the words "occupied for a seasonal or temporary period" in the provision. We do not read the provision in that fashion. In our view section 3(a) should be read as dealing with "living accommodation intended to be provided to the traveling or vacationing public ..." and "living

accommodation occupied for a seasonal temporary period ..." **The latter focus is a focus on the fact of occupation rather than on the fact of intention to occupy** [Emphasis added].

21. Pursuant to section 202(1) of the Act, the Board is to ascertain the true substance of the transaction between the parties and in doing so may disregard the outward form of the transaction the pattern of activities relating to the residential complex or rental unit and may have regard to the pattern of activities relating to the residential complex or rental unit. What this means is the Board can make a finding that the Tenant and Landlord agreed that the Tenant would have unimpeded access to the site during the off-season; October to May despite any agreement or statement to the contrary.

22. Having found that the Member erred in the November 18, 2024 order, I now look to the evidence before the Board with respect to this tenancy arrangement.

23. Based on the submissions of the parties, on a balance of probabilities, I find that the unchallenged evidence that the water service is shut off to the rental unit during the off-season and the repeated annual behaviour of doing so, strongly supports the Landlord's position that this rental unit is not subject to the Act due to the seasonal nature of the relationship. The intention of the parties was that the rental unit may no be used on a year round basis. The fact that the Tenant may have accessed the property during the off-season months does not change the relationship of the parties. I find the residential complex is intended to be provided to the travelling or vacationing public or occupied for a seasonal or temporary period and a such, is exempted from the Act. The Act therefore does not apply.

24. The Landlord's review request is granted.

25. The Act does not apply and the Tenant's application must be dismissed.

26. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-T-067722-24 issued on November 18, 2024 is granted.
2. The interim order issued on December 30, 2024 is cancelled.
3. The order LTB-T-067722-24 is cancelled and replaced with the following order.
4. The Tenants' application is dismissed.

March 17, 2025
Date Issued

Dana Wren
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.