

2009 CarswellOnt 8562
Landlord and Tenant Board of Ontario

TST-02765, Re

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In the matter of [Address removed]

[Applicant's name removed], Applicant and [Respondent's name removed], Respondent

Ruth Carey Member

Heard: August 31, 2009

Judgment: September 1, 2009

Docket: TST-02765

Counsel: None given

Subject: Property

Headnote

Real property --- Landlord and tenant — Residential tenancies — Definitions

Real property --- Landlord and tenant — Residential tenancies — Leases — Assignment or sublet

Ruth Carey Member:

1 [Applicant's name removed] (the 'Applicant') applied for an order determining that [Respondent's name removed] (the 'Respondent') harassed, obstructed, coerced, threatened or interfered with her and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of her household.

2 This application was heard in Toronto on August 31, 2009.

3 The Applicant and the Respondent's representative, Ray Sims, attended the hearing.

4 *Determinations:*

1. The Applicant is not a "tenant", and the Respondent is not a "landlord" for the purposes of the *Residential Tenancies Act, 2006* (the 'Act'). As a result, the Board does not have the jurisdiction to deal with the subject matter of the application and it must be dismissed accordingly.

5 *It is ordered that:*

1. The Applicant's application is dismissed.

Ruth Carey Member:

6 [Applicant's name removed] (the 'Applicant') applied for an order determining that [Respondent's name removed] (the 'Respondent') harassed, obstructed, coerced, threatened or interfered with her and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of her household.

7 This application was heard in Toronto on August 31, 2009.

8 The Applicant and the Respondent's representative, [Respondent Representative's name removed], attended the hearing.

Reasons

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1. It was the evidence of both parties before me that the Respondent is a tenant who rents the rental unit from a third party landlord. In turn, the Respondent has rented out rooms to occupants like the Applicant, but he does not live in the rental unit itself. There was also no dispute that the third party landlord did not authorize an assignment or a sub-tenancy by the Respondent to the Applicant or to any of the other occupants.

2. As I stated at the hearing, I believe that what these facts mean is that the Board has no jurisdiction to deal with the Applicant's complaints concerning the Respondent's behaviour.

3. Sections 95 through 104 of the *Residential Tenancies Act, 2006* (the 'Act') set out detailed provisions dealing with sub-tenancies and assignments. A subtenant is someone who rents a rental unit from a tenant (sometimes referred to as a "head tenant"), where the agreement is for a fixed term and the tenant retains the right to move back into the rental unit at the end of the term. An assignment is where a tenant finds someone else to take his or her place under the lease and retains no rights to the rental unit after moving out. Under the Act, the landlord has the right to withhold consent to assignment, but cannot prevent a tenant from subletting a rental unit. However, in subletting situations, the landlord does have the right to withhold consent with respect to a particular proposed subtenant. If no consent is obtained from the landlord but the arrangement goes ahead anyway, then the subsequent occupant of the rental unit is considered to be an unauthorised occupant.

4. When an assignment is approved the new occupant steps into the legal shoes of the tenant and becomes the new tenant under the Act. Section 99 of the Act indicates that in sub-tenancy situations the original tenant, or head tenant, is given the right to evict his or her sub-tenant as if the tenant was a landlord.

5. However, in this situation, the Applicant is clearly an unauthorised occupant. The legal question that arises in this application is whether or not an unauthorised occupant has the right to bring an application like this one before the Board under section 29 of the Act.

6. Subsection 29(1) of the Act says that a "tenant or former tenant" of a rental unit may apply to the Board for an order such as the one sought here. The kinds of orders that a tenant or former tenant may apply for are orders against a "landlord, superintendent or agent of the landlord". I am of the view that what this means is that the right to apply to the Board under section 29 is restricted to people who are either tenants or former tenants, and the only people they can bring applications against are landlords, superintendents or agents of landlords.

7. There was no dispute between the parties before me that the Respondent is actually the tenant of the rental unit and the landlord is an unnamed third party. As a result, it seems to me that only the Respondent has the right to bring application to the Board under section 29 and the proper responding party could only be the third party landlord or its superintendent or agent.

8. Now an argument could be made that the definitions of "tenant" and "landlord" in subsection 2(1) of the Act are so broad that they could include unauthorised occupants and head tenants. I say this because essentially a "tenant" is defined as a person who pays rent in return for the right to occupy a rental unit and a landlord is someone who permits occupancy of a rental unit.

9. The difficulty I have with this argument is that if the legislature intended the definitions of "tenant" and "landlord" to be read to include unauthorised occupants and head tenants, then section 99 of the Act would be completely unnecessary. I believe it is a general rule of statutory interpretation that an Act should be read so that its provisions have meaning. Section 99 is the provision which clearly says which sections of the Act apply to head tenants who want to evict their authorised sub-tenants. If the definition of "landlord" was read to include head tenants, then section 99 would be redundant as all of the provisions concerning a landlord's right to evict a tenant would apply. Section 99 indicates that they do not, which

means that the legislature intended the word "landlord" to be interpreted in a way so as not to include head tenants, even where the sub-tenancy is authorised by the landlord.

10. As a result, I am of the view that an unauthorised occupant is not a "tenant or former tenant" for the purposes of subsection 29(2) of the Act. Therefore, as the Applicant here is an unauthorised occupant the Board has no jurisdiction to deal with her application.