



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

File Number: LTB-L-050405-24

In the matter of: 40 SHERINGHAM ST
BRAMPTON ON L6Z3P8

Between: Gregory Allen Landlord

And

Monique Buchanan Tenant

ORDER

Gregory Allen (the 'Landlord') applied for an order to terminate the tenancy and evict Monique Buchanan (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on June 2, 2025.

The Landlord, the Landlord's Legal Representative, Paul Portman, the Tenant and the Tenant's Legal Representative, Mark Addo, attended the hearing.

Determinations:

Preliminary Issue – The Board's Jurisdiction

1. The Tenant raised the jurisdiction of the Board as a preliminary issue in this matter.
2. The Tenant stated that:
 - a) she and the Landlord are common-law spouses;
 - b) they have a child (JA) together;
 - c) there is an active family law matter (FS-19-00000236-000) before the Ontario Superior Court of Justice;
 - d) that she has invested over \$90,000.00 in the rental unit;

e) that, as a result of the above, she is not a tenant and the provisions of the *Residential Tenancies Act, 2006* (the 'Act'), do not apply.

3. In response, the Landlord relied on a trial endorsement (the 'endorsement'), dated October 31, 2022, from Baltman J in the family law matter that states the following:

"The Father apparently attempted to evict the Mother through a proceeding before the Landlord and Tenant Board (LTB) but was advised that this was a 'matrimonial matter' and therefore should be directed to the courts. That is incorrect. As the parties have never cohabited, the Sheringham house is NOT a matrimonial home and not a family asset, and therefore this court has no jurisdiction to order the Mother to vacate. It is a straightforward Landlord and Tenant dispute. The proposed eviction should therefore proceed before the LTB."

4. However, neither party identified the specific LTB decision the Court was referring to in its endorsement and I was unable to find it in the Board's records. The only other LTB matter involving these parties (LTB-L-037878-23) concerned another N12 notice of termination for Landlord's own use. It was dismissed by the Board in an order issued on February 22, 2024, on the basis of that the N12 notice was served invalidly and the Landlord's failure to pay the required compensation in accordance with sections 48.1 and 55.1 of the Act. The Board made no determinations that the Act doesn't apply because the rental unit is a matrimonial home or otherwise lacks jurisdiction.
5. I accept the determination made by Baltman J that the rental unit is not a matrimonial home because the parties never cohabited. However, that determination alone is not sufficient to make this rental unit subject to the Act and the Board's jurisdiction. That is because section 168(2) of the Act states:

(2) The Board has exclusive jurisdiction to determine all applications under this Act and with respect to all matters in which jurisdiction is conferred on it by this Act.

[emphasis added]

6. Thus, in determining whether the Board has jurisdiction to hear this application, I must consider whether the Act confers jurisdiction. With all due respect to Baltman J., a Justice of the Superior Court cannot confer jurisdiction to the LTB to hear a matter if the Act itself does not provide the LTB with that jurisdiction.
7. In order to determine whether the Act confers jurisdiction on the Board to hear this application, it is necessary to set out some facts. It is not disputed that:
- a) Gregory Allen is the owner and Landlord of the rental unit;
 - b) the Tenant moved into the rental unit sometime after the birth of JA on January 17, 2015;
 - c) that JA is the child of the Landlord; and
 - d) that the rental unit is a single-family home.

8. Section 5 of the Act states that:

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.

[emphasis added]

9. Section 5(i) of the Act means that the Board does not have jurisdiction to hear a matter concerning a rental unit if the occupant of that unit is required to share a bathroom or kitchen with the owner's child.
10. Based on the agreed upon facts, the 'occupant' in this matter is the Tenant and given the layout the rental unit and her relationship as the mother of JA, the Tenant is required to share the rental unit's bathroom and kitchen facility with JA. JA is the 'owner's child'.
11. In [Quin v. McCaughey](#), 2016 ONSC 7921, ('Quin') the Divisional Court agreed with the LTB that section 5(i) applied where the tenant was required to share a kitchen and bathroom with the child of the owner. In that case, the child of the owner was an adult who was married to the tenant for a period of time. In this case, the child of the owner is a minor. I see nothing in the Act or the jurisprudence suggesting that this factual difference is material.
12. Given that this issue of the applicability of s. 5(i) of the Act was not addressed at the oral hearing, by way of interim order dated July 30, 2025, I directed the parties to provide written submissions on whether they believe s. 5(i) applies to this accommodation.

Landlord's Submissions

13. The Landlord's Legal Representative provided submissions on August 15, 2025, which in summary stated:
- a) The LTB has previously determined the jurisdiction issue, as indicated in the endorsement;
 - b) The Superior Court of Justice has expressly ruled that the LTB must make an order in this matter and that it has been given authority and jurisdiction to issue an eviction;
 - c) There would be a clearly appealable error in issuing an improper LTB order which contradicts an Order of the Superior Court of Justice which expressly assigned the ruling on the eviction to the Board; and
 - d) Quin is distinguishable as the parties in that case were married.

Tenant's Submissions

14. The Tenant's Legal Representative provided submissions on August 14, 2025 and reply submissions on August 29, 2025, which in summary stated:
 - a) The Tenant resides at the rental property with the Landlord's son;
 - b) The Tenant and the Landlord's son share a bathroom and kitchen;
 - c) Quin affirmed that the term 'child' in s. 5(i) includes cases where the occupant cohabits with the landlord's child; and
 - d) Therefore, s. 5(i) applies in this case.

Analysis

15. The Landlord's assertion that the jurisdiction issue has already been before the Board and is, as such, estopped, is not supported by the facts. The Landlord has provided no evidence of the purported previous LTB order that dealt with the jurisdictional issue, other than relying on what appears to have been communicated to Baltman J. during the family law matter, and subsequently written into the endorsement. As I indicated in paragraph 4 above, I was only able to identify one other application involving these parties and this rental unit, and the issues dealt with therein do not touch on jurisdiction. I therefore find that I am not estopped from considering the jurisdiction matter.
16. The Landlord relies on Baltman J.'s endorsement to confer jurisdiction in this matter on the Board. As discussed above, section 168(2) provides that the Board only has jurisdiction to consider an application if jurisdiction is conferred upon it by the Act itself. Baltman J clearly has jurisdiction to determine matters regarding the matrimonial (or non-matrimonial) nature of the rental property/home. If I was deciding this matter on the basis of the relationship between the Landlord and Tenant, and whether this property is a matrimonial home, deference would have to be given to the endorsement.
17. I am not, however, considering this matter on the basis of the Landlord and Tenant's relationship or whether the rental unit is a matrimonial home.
18. I am required to consider the living arrangements and the composition of the rental unit to determine whether any of the exemptions contained in section 5 of the Act apply. In this case, the undisputed evidence establishes that the Tenant is required to share the kitchen and bathroom with the Landlord's son. This form of living arrangement is clearly exempted from the Act under s. 5(i) and this interpretation has been confirmed by the Divisional Court in *Quin*. It would be an error of law for me to assume jurisdiction over an application where the legislature has clearly indicated that the Act does not apply.
19. I find that the rental unit constitutes living accommodation whose occupants are required to share a bathroom and kitchen facility with the owner's child and where the child lives in the building in which the living accommodation is located. Therefore, the Act does not apply to this living accommodation in accordance with s. 5(i) of the Act.

It is ordered that:

1. The Landlord's application is dismissed.

January 7, 2026
Date Issued

Curtis Smith
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 1-888-332-3234.