



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

**Citation:** McEwan v Holden, 2026 ONLTB 1957

**Date:** 2026-01-07

**File Number:** LTB-L-088065-25

**In the matter of:** 102 PARK ST  
BROCKVILLE ON K6V2G7

**Between:** Ruth McEwan Landlord

**And**

Deborah Holden Tenant

Ruth McEwan (the 'Landlord') applied for an order to terminate the tenancy and evict Deborah Holden (the 'Tenant') because:

- the Landlord requires possession of the rental unit in order to convert the unit to a non-residential use.

This application was heard by videoconference on November 19, 2025.

The Landlord, the Landlord's Legal Representative, Daisy Hamilton, the Tenant, the Tenant's Legal Representative, Francis Dobri, and the Tenant's Support, Cara Holden, attended the hearing.

### **Determinations:**

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.

#### *Preliminary Issue: Adjournment Request Denied*

3. At the hearing the Tenant sought an adjournment to properly prepare for the hearing. The Landlord had served 211 pages of disclosure 7 days prior to the hearing. The Tenant testified that they had responded with what they could within the 5 day time period, however due to the volume of the Landlord's disclosure, they had not been able to respond to everything. The Tenant stated they wanted time to follow up with the city about the

bylaw permits, wanted to obtain a copy of the zoning compliance, and they are disputing the lawful rent.

4. The Landlord opposed the adjournment and stated they had served and filed their disclosure pursuant to the Board's Rules of Procedure.
5. I denied the request for the adjournment. I was not satisfied that the Tenant did not have adequate time to prepare for the hearing. In addition, the additional information the Tenant wanted to gather would not be determinative on my finding and sufficient information was provided to be able to address the lawful monthly rent.
6. As noted in the LTB's Interpretation Guideline 1: Adjourning and Rescheduling Hearings, adjournments will only be granted in exceptional circumstances if the parties have been given adequate notice of the hearing. While the guideline is not binding on me, I see no reason to depart from it here.
7. In this case, the Tenant was given adequate notice, and while I agree that the disclosure provided by the Landlord was lengthy and included some irrelevant documents, I do not find that the Tenant would be able to provide any further relevant information should I grant an adjournment. As a result, I denied the adjournment request and continued the hearing.

*Preliminary Issue: Lawful Monthly Rent*

8. The Tenant stated that the Landlord was charging above the guideline increase. Prior to the Landlord buying the property, the former landlord increased the monthly rent from \$700.00 to \$768.25 on June 1, 2023.
9. On August 1, 2024 the Landlord increased the rent to \$850.00. The Tenant and Landlord both acknowledged that the Landlord had proposed raising the rent to \$950.00, but the Tenant did not agree. The Tenant had agreed verbally to \$850.00 and the Landlord provided a new lease with that rent amount, however the Tenant never signed the new lease.
10. The Tenant paid the \$850.00 a month from August 1, 2024 until May 1, 2025. The Tenant stopped paying the rent increase in June 2025 and paid the prior lawful rent of \$768.25.
11. The Landlord testified that she has never served the Tenant with a Notice of Rent Increase. The Tenant stated she never received a Notice of Rent Increase from the former landlord either.
12. The Tenant acknowledged that she paid that rent increase of \$668.25 for 12 consecutive months. Pursuant to section 135.1(1) of the *Residential Tenancies Act, 2006*, (the 'Act'), a rent increase that would otherwise be void under subsection 116(4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months. As the Tenant paid the rent increase from June 1, 2023 to July 1, 2024, the lawful monthly rent is deemed to be \$768.25 during this time period.
13. As the Landlord stated she did not serve a notice of rent increase on the Tenant, and the Tenant only paid the rent increase for 10 consecutive months, pursuant to section 116(4) of the Act, the rent increase is void. The lawful monthly rent remains \$768.25.

*Preliminary Issue: Prior and Current Compensation*

14. The Tenant stated that the Landlord had not paid her 3 month's compensation or provided another unit to the Tenant.
15. The Landlord claimed that the Tenant owed her 3 months rent as she previously paid 3 months compensation on a prior N13 that was subsequently dismissed. Or in the alternative, current compensation is not required as the Landlord previously paid this under the prior N13 notice and application.
16. Section 73.1(1) states: if the landlord compensated the tenant under section 48.1, 49.1, 52, 54 or 55, as the case may be, in connection with a notice of termination under section 48, 49 or 50 and the Board refuses to grant an application under section 69 for an order terminating the tenancy and evicting the tenant based on the notice, the Board may order that the tenant pay back the compensation to the landlord.
17. The Landlord could have sought for the compensation to be paid back under the prior dismissed application, however she did not. The Landlord cannot rely on a previously dismissed application where compensation was paid but the Tenant was not ordered to pay back the Landlord to establish that compensation was paid for a new application and N13 notice.
18. The Landlord sought for me to order the Tenant to pay back the compensation paid under the prior application that was dismissed. This is not within my jurisdiction as this was not compensation paid pursuant to the current application. Based on the evidence provided, the Landlord never advised the Tenant that the compensation from the previously deficient N13 notice was being used for the current N13 notice before me. The Landlord should have sought for compensation to be paid back by the Tenant at the time of the prior application, or should have clearly communicated to the Tenant that they were relying on the prior compensation paid for the current N13 application.
19. Therefore, I cannot order compensation from the prior application that is not before me to be returned, and no compensation was paid on the current application before me to be returned.

*N13 Notice of Termination: Is converting a rental unit to an Airbnb non-residential use?*

20. On October 20, 2025, the Landlord gave the Tenant an N13 notice of termination with the termination date of February 28, 2026. The Landlord claimed vacant possession of the rental unit was required to convert the rental unit to the allegedly non-residential use of the unit as an Airbnb.
21. The Landlord provided an abundance of evidence to support her claim that she intends to convert the rental unit to an Airbnb. The Tenant also did not dispute that the Landlord intends to convert the rental unit to an Airbnb. The issue in dispute is whether converting the unit to an Airbnb rental would be for a purpose other than residential use within the meaning of section 50(1)(b) of the Act.

22. The Tenant's position is that using a rental unit as an Airbnb is still residential use despite it being a business. The nature of an Airbnb is residential as someone is using the rental unit to live in and use the unit, albeit in a short-term capacity.
23. The Landlord's position is that an Airbnb is a business that operates consistent with commercial hospitality and is not a residential use. The Landlord submitted that because short-term rentals are exempt under the Act, and there are different tax implications between an Airbnb and a rental unit, an Airbnb should not be classified as

*Analysis:*

24. Both parties made extensive legal submissions and referenced numerous case law. While I considered all case law submitted by both parties, I have only referenced case law that I find analogous.
25. The term "residential premises" is not defined in the Act, which applies to "rental units" in "residential complexes": section 3. These terms are defined in section 2(1) of the Act as follows:

"rental unit" means any living accommodation used or intended for use as rented residential premises, and "rental unit" includes,

(a) a site for a mobile home or site on which there is a land lease home used or intended for use as rented residential premises, and

(b) a room in a boarding house, rooming house or lodging house and a unit in a care home; ("logement locatif")

...

"residential complex", except in Part V.1, means,

(a) a building or related group of buildings in which one or more rental units are located,

(b) a mobile home park or land lease community,

(c) a site that is a rental unit,

(d) a care home, and,

includes all common areas and services and facilities available for the use of its residents; ("ensemble d'habitation")

26. In my view, an Airbnb rental on its face is captured by the broad definition of a rental unit under the Act. I am further satisfied that an Airbnb unit is a "residential premises", and I agree with the Tenant that renting it for the purpose of using and occupying the space is using it for a residential purpose.

27. Section 5 of the Act exempts a number of different units and accommodations from the application of the Act, including the following:
- (a) living accommodation intended to be provided to the travelling or vacationing public or occupied for a seasonal or temporary period in a hotel, motel or motor hotel, resort, lodge, tourist camp, cottage or cabin establishment, inn, campground, trailer park, tourist home, bed and breakfast vacation establishment or vacation home.
28. The Landlord submits that the fact that living accommodations intended for the vacationing public is exempt in section 5(a) is suggestive that it is not residential purpose.
29. I disagree with this submission. An exemption from the Act is not determinative as to whether the use is residential or non-residential, especially as other exemptions under section 5 of the Act clearly relate to residential use. Subsection 5(i) exempts a living accommodation where the occupants share a bathroom or kitchen with the owner, the owner's spouse, child or parent. This is clearly a residential use, however the Legislature has chosen to exempt these residential circumstances from the Act. I am satisfied that a premises can be residential despite the fact that the premises or use is exempted under section 5 of the Act.
30. While not binding upon me, I find the decision by Member Crocco in EAL-62341-17 (Re), 2017 CanLII 145945 (ON LTB) is analogous to the current situation. At paragraph 10, Member Crocco stated:
- “As I explained at the hearing, the conversion of the rental units to ones that are used only seasonally would not change their inherently residential nature. That these would not be anyone's primary or long-term residences does not mean that the rental units would not continue to be residential in nature, as they would still be places where people dwell.”
31. The circumstances in the decision by Member Crocco are almost identical to converting a long-term rental unit to a short-term rental unit. The fact that an Airbnb is not a long-term residence does not mean that the nature of an Airbnb does not remain inherently residential.
32. Being satisfied that the Landlord's intended use of converting the rental unit to an Airbnb unit is a “residential use”, the Landlord's application must be dismissed.

**It is ordered that:**

1. The Landlord's application is dismissed.

**January 19, 2026**  
**Date Issued**

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Allana McComb  
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.