



**Order under Section 31
Residential Tenancies Act, 2006**

File Number: LTB-T-092430-24

In the matter of: 178 King Street West
Hamilton ON L8P1A5

Between: John Kennedy Tenant
Catherine Kennedy

And

1000063327 Ontario Inc Landlord

John Kennedy and Catherine Kennedy (the 'Tenant') applied for an order determining that 1000063327 Ontario Inc (the 'Landlord'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on January 29, 2026.

The Landlord's Agent Konstantine Takis and the Tenant attended the hearing.

Determinations:

The Adjournment Request

1. At the outset of the hearing the Tenant requested an adjournment. He testified that he did not receive the Notice of Hearing until January 26, 2026, and did not have time to prepare and gather evidence. The Tenant also testified that he phoned the Landlord and Tenant Board in October and was informed that his hearing date would be March 29, 2026.
2. The Tenant testified that he needed an adjournment to prepare and gather additional evidence. He testified that his wife had all the papers for the case, and she has passed away and he has been attempting to understand them. He also testified that he has spoken with a representative but had not yet signed a retainer. After the adjournment request was declined the Tenant revised this and testified that he had secured someone who had agreed to act as his representative if the matter were adjourned.

3. After considering the Tenant's submission I elected to deny the adjournment request. Interpretation Guidelines 1 Adjourning and Rescheduling Hearings states:

Parties are expected to make any necessary arrangement to proceed with a case management or merits hearing on the date set out in the Notice of Hearing. The granting of adjournments is at the discretion of the Member hearing the application or the Hearing Office conducting the case management. Pursuant to s. 21 of the *SPPA*, an adjournment will only be granted by the Board if it is required to permit an adequate hearing to be held.

Where the Member is satisfied that the party has received sufficient notice of the hearing and has been provided with an adequate opportunity to prepare their evidence and submissions, summons witnesses and obtain counsel ahead of the hearing date, an adjournment is not usually granted unless there are exceptional circumstances.

The specific factors the Member may consider in deciding whether to grant an adjournment include:

1. the reason for the adjournment and position of the parties;
2. the issues in the application;
3. any prejudice that may result from granting or denying the request;
4. the history of the proceeding including other adjournments or rescheduling;
5. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.

Adjournment to Allow Representation

Section 10 of the *SPPA* states that a party may be represented by a representative at a hearing. However, the right to representation is not absolute and an adjournment is not automatically granted when it is requested on this ground. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing date.

A short adjournment may be allowed where a representative has been retained but is unavailable on the date set for the hearing, or where the party can demonstrate that they have made reasonable efforts to retain a lawyer or paralegal before the hearing but have not yet been able to do so.

Adjournment to Prepare Case

Both parties are expected to be prepared with their evidence, witnesses, and submissions on the scheduled hearing date, and adjournments are not generally granted because a party is not prepared to proceed.

If a party requests an adjournment to acquire necessary evidence or secure the attendance of a witness, the Member may consider whether the party attempted to acquire the evidence or witness as soon as they became aware it would be required. The Member may also consider whether options other than adjournment are sufficient, such as taking a short recess, proceeding with the hearing and reconvening the hearing at a later date to consider the additional evidence or witness's testimony, or accepting the evidence on a post-hearing basis.

If the applicant's claims are unclear or not detailed enough to allow the respondent to know what evidence they must present at the hearing, the Member may consider whether the application should be dismissed or adjourned to permit the applicant to provide further details. In deciding whether the claim is sufficiently complete and clear, the Member will evaluate the application, documents filed with it and any information the respondent already has.

4. While the Tenant testified that he did not receive the Notice of Hearing until January 26, 2026, I note that the Boards records indicate that the Notice of Hearing was mailed to the parties on January 2, 2026. Therefore, it was be deemed received on January 7, 2026. I am satisfied that this allows the Tenant adequate time to prepare for the proceeding and gather and serve any relevant evidence.
5. I also note that this Application was before the Board for an Adjudicative Case Conference on June 24, 2025, where it was adjourned to a merits hearing. Therefore, the Tenant has known since June 2025 that the matter would be proceeding to a merit hearing, and has had adequate time to gather and submit evidence and secure representation.
6. With respect to the Tenant's assertion that he contacted the Board in October and was informed that his hearing would be held on March 29, 2026, I see no indication of this in the Tribunals Ontario Portal, and the Tenant did not provide any documentation to corroborate that he was informed of a March 29, 2026, hearing date.
7. With respect to the Tenant's request for an adjournment to secure representation, I note that the right to representation is not absolute, and the Tenant has had adequate time since the Case Conference to select and retain representation, and I am not satisfied that the Tenant has demonstrated that an adjournment is necessary on this basis.
8. Therefore, I am satisfied that the Tenant has had adequate to prepare and submit evidence and secure representation. The Board has a duty to be expeditious, and I am not satisfied that it would be an expeditious use of the Boards time to grant an adjournment in these circumstances. I also note that the Landlord intends to raise a preliminary issue with respect to whether the Act applies and find that it would be an expeditious use of both the Board and the parties time to address this preliminary issue before an adjournment is granted.

The Act does Not Apply

9. At the hearing the Landlord's Agent indicated that the Board does not have the jurisdiction to hear this Application as the tenancy is a Commercial tenancy not a residential tenancy.

10. The Tenant disputed this and testified that the tenancy was both commercial and residential.
11. Based on the evidence before me, I am satisfied on a balance of probabilities that the Act does not apply to the rental unit or residential complex.
12. The Landlord testified that the tenancy between the parties began November 1, 2023 and relied on a lease agreement between Konstantine Takis and John Fitzgerald Kaye (the Tenant's name prior to hyphenation after marriage). The lease agreement clearly indicates at paragraph 13 that the Tenant agrees to use the space for the re-sale of antiques (display and sell) and that any other use shall be requested in writing to the Landlord and will need approval by the Landlord.
13. The Landlord testified that the unit is the ground floor of a building which is mixed commercial and residential, with the upper units being residential units, and the ground floor being a commercial storefront unit. He described the unit as having one large room, with two smaller rooms off of it. He testified that there was a small toilet and sink in the basement, but no kitchen or living area.
14. The Landlord testified that the Tenant used the space, which is a commercial storefront, to buy and sell antiques and other items including tables, chairs, and refrigerators. The Landlord testified that to his knowledge the Tenant never occupied the unit residential.
15. The Landlord also relied on an Enbridge gas bill in the name of "Global Humanitarian Education Missions" and Catherine Kennedy (the Tenant's partner) and a letter from Wawanesa Insurance indicating the commercial property policy on the unit had been cancelled on October 24, 2024. The Landlord testified that the fact that the Tenant had placed the gas bill in the name of his business and secured commercial property insurance demonstrates that the unit was used commercially.
16. The Landlord also relied on an Inspection Order from the Hamilton Fire department which he indicated described the unit as commercial.
17. The Landlord also indicated that the Tenant had a residential property which he resided in at the time the commercial lease was signed, and where he still resides now. He testified that there was no traffic or comings and goings in the unit during the evening hours, as it was not used as a residence by the Tenant.
18. The Tenant testified that the unit was both commercial and residential, and that he had both used the unit as a store front and resided there. He testified that the Landlord was aware of his intention to both reside in and operate from the rental unit.
19. He testified that while he did have another residential unit, where he now resides, that unit had been subleased in order to free up capital to live and work in this rental unit. The Tenant disputed that the unit did not contain a kitchen and indicate that there were two kitchens within the unit.
20. The Tenant denied signing the lease relied on by the Landlord and testified that there had been no lease between the parties and the Landlord had demanded payment in cash from him each month. The Tenant initially testified that he first rented the unit in the spring of 2023 but later revised this to indicate that he had moved in September 2023.

21. He agreed that he had secured commercial property insurance and testified that he registered the gas bill in his business's name in order to apply for tax breaks and assistance from city hall. However, he was unsuccessful in obtaining these as the unit was zoned residential and not commercial.

Analysis

22. On a balance of probabilities, I am satisfied that the tenancy between the parties is commercial. And therefore, the Act does not apply. Even if I were not satisfied that the tenancy is commercial, I would still find that the act does not apply by operation of Section 5(j).
23. I found the testimony of the Landlord to be both credible and reliable. While the Tenant was credible, I did not find his testimony to be as reliable, as it was somewhat inconsistent, for example with respect to the commencement of the lease agreement. Therefore, on the whole, I prefer the testimony of the Landlord over that of the Tenant.
24. The lease agreement between the parties clearly indicates the unit is to be used as a storefront. However, I am not satisfied that my analysis should end there as while the lease is relevant, I am not satisfied that it is determinative of the relationship between the parties. I note that *Di Geso v. Fiset*, [1998] O.J. No. 3466 ('Fiset') the court determined that: "the form of the lease document is not irrelevant but it is not determinative." The court also said that "if the intent was to occupy the premises as residential premises or if in fact the premises were occupied and, as I have found, known to be occupied, as residential premises, it does not matter what is said in the lease documents. Therefore, I am satisfied that further analysis is warranted.
25. I do not accept the Tenant's submissions that he did not sign the lease agreement. It clearly bears his name and signature and given my concerns with the Tenant's reliability, I am prepared to accept that the lease was signed by the parties.
26. I also accept that the commercial property insurance and gas bill, which has been placed into the name of the Tenant's business, both support the conclusion that the unit was used for commercial purposes rather than residential. While the Tenant claims to have occupied the rental unit and used it for a dual purpose he did not rely on any documentation in support of this claim, and I am prepared to accept the Landlord's testimony that he never observed the tenant occupying the unit as a residence.
27. Even if I were to accept the Tenant's claims that he resided in the unit while using it as a business, I am not satisfied that the intention of the parties was ever to create a residential tenancy, and I accept the Landlord's testimony that the property was intended to be used commercially.
28. Therefore, I am satisfied that the tenancy between the parties was commercial in nature.
29. I also note that even if I were to accept the Tenant's testimony that he also resided in the rental unit, it would still be exempt from the Act under Section 5(j) which states that the act does not apply to:

(j) premises occupied for business or agricultural purposes with living accommodation attached if the occupancy for both purposes is under a single lease and the same person occupies the premises and the living accommodation.

30. Therefore, even if I were to accept the Tenant's submissions that the unit is both commercial and residential, and that he both resided in the rental unit, and used it as business, the Act would not apply as the unit would be deemed exempt under Section 5(j).

31. Therefore, the Tenant's Application must be dismissed.

It is ordered that:

1. The Tenant's Application is dismissed.

February 6, 2026
Date Issued

Reid Jackson
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.