



Order under Section 9(2) Residential Tenancies Act, 2006

Citation: Stewart v Yonus, 2026 ONLTB 10650

Date: 2026-02-04

File Number: LTB-T-056756-25-IN3

LTB-L-075706-25

In the matter of: 3rd Floor, 33 COMFORT WAY
WHITBY ON L1N0K5

Between: James C. Stewart Tenant

And

Zarghuna Yonus Landlord
Mina Yonus

INTERIM ORDER LTB-T-056756-25-IN3 FINAL ORDER LTB-L-075706-25

James C. Stewart (the 'Tenant') applied under file number LTB-T-056756-25 (the 'Tenant's Application') for an order determining that Zarghuna Yonus (the 'Landlord'):

- entered the rental unit illegally.
- 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.

The Landlord applied under file number LTB-L-075706-25 (the 'Landlord's Application') for an order determining whether the *Residential Tenancies Act*, 2006 (the 'Act') applies to the rental arrangement between the Landlord and the Tenant.

The Tenant's request to expedite the hearing of his application was granted by way of interim order LTB-T-056756-25-IN issued September 8, 2025. The interim order mandated that the Landlord not re-rent the unit until the application was heard, or the Board ordered otherwise, and set out directions for the uploading of materials to the Board's portal ('TOP').

The Tenant's application first came on for hearing by videoconference on September 23, 2025. The Landlord, the Landlord's daughter M. Yonus ('MY'), the Landlord's son, S. Yonus ('SY'), the

Tenant and the Tenant's representative, V. Matadeen, attended the appearance. As set out in the Board's second interim order, LTB-T-056756-25-IN2 issued September 29, 2025, the Board determined that the Landlord's son, SY, was permitted further to the Law Society of Ontario's By-Law 4 to participate in the hearing as representative for the Landlord. Further, the Board granted the Landlord's request that the hearing of the Tenant's Application be combined with the hearing of the Landlord's Application, as a preliminary determination as to the applicability of the Act was common to both applications.

The substantive hearing of the Landlord's Application and of the preliminary matter pertaining to the Tenant's Application commenced by videoconference on October 30, 2025. The Tenant, the Tenant's representative, V. Matadeen, the Landlord and the Landlord's son as representative, SY, attended the hearing. MY, being the Landlord's daughter, signed into the hearing and was assigned to a breakout room. There was insufficient time during the October 30th appearance to hear MY's testimony. M. Vecchione ('MV') attended a portion of the hearing as a witness for the Landlord.

The Tenant's representative raised a preliminary objection to the admission of materials uploaded by the Landlord to TOP just over a week before the hearing. That material included submissions in response to submissions earlier uploaded on behalf of the Tenant. I indicated that written submissions filed by either party in advance of the hearing, as opposed to potential evidence, would not be considered by me during the hearing. As such, those portions of materials which amounted to submissions were not considered for admission. One of the items uploaded by the Landlord constituted an assembly of materials previously uploaded and provided to the Tenant and so its contents were properly before me for potential admission into evidence. A few other items were uploaded in response to materials filed by the Tenant and I indicated that I would consider their admissibility if and when they were referenced in the hearing.

SY, on behalf of the Landlord, requested that the Tenant's application be amended to remove the Landlord's daughter MY as a named landlord. Only the Landlord was the owner of the house in which the Tenant's unit was located and only the Landlord should properly be named, as she was in the Landlord's application. The Tenant's representative did not object to the requested amendment and the amendment was granted. That amendment is reflected in this order.

The hearing of the Landlord's Application and the preliminary matter pertaining to the Tenant's Application continued to completion by videoconference on November 14, 2025. The Landlord, the Landlord's son as representative, SY, the Tenant and the Tenant's representative, V. Matadeen, attended the hearing. The Landlord's daughter, MY, attended the hearing as a witness for the Landlord.

This order addresses only the Landlord's Application and the preliminary matter pertaining to the Tenant's Application.

Determinations:

1. The appearances on October 30th and November 14th concerned only the preliminary question of whether the occupancy arrangement between the Tenant and the Landlord is exempted from the operation of the Act by virtue of subsection 5(i) of the Act.
2. The Landlord submits that the occupancy arrangement with the Tenant is exempted from the operation of the Act by virtue of subsection 5(i) of the Act. That subsection provides that the 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 ... and where the owner... lives in the building in which the living accommodation is located.’
3. The Tenant disputes the applicability of the exemption.
4. An overview of uncontested facts is as follows:
 - a) The house in which the Tenant’s room was located (the ‘House’) is comprised of three floors. The ground floor, which is accessed through the main front door, has a rented room with its own bathroom. The main floor (being the second level) houses the sole kitchen, a small two-piece bathroom and a large area referenced by the Landlord as the ‘Living Room’. The upper floor, above the main floor, houses three bedrooms, a bathroom and a laundry facility. One of the bedrooms, the main bedroom, has an en-suite bathroom. The other, stand-alone, bathroom is shared;
 - b) The Landlord initially took residency in the House as a tenant in 2016. She purchased the House in 2018;
 - c) The Landlord served for several years in Afghanistan as a cultural advisor to Canadian troops at a military base, returning in 2021 when troops were withdrawn;
 - d) During the Landlord’s absence from Canada her daughter MY lived in the House, occupying the master bedroom and renting out all three of the other bedrooms on the Landlord’s behalf (including that on the ground floor) to paying occupants;
 - e) On the Landlord’s return to Canada in 2021 she resumed her residency at the House and MY left the House to live in Bowmanville;
 - f) The Tenant took occupancy on December 15, 2024 of one of the two smaller upper floor bedrooms. As of January 2025 all of the three upper bedrooms and the ground floor room housed renters;
 - g) The Tenant corresponded with, and met with, the Landlord’s daughter MY in advance of entering into a rental agreement for the unit. Virtually all

communications concerning the unit and the Tenant's rental were effected through MY;

- h) On June 9, 2025 the Landlord and MY presented the Tenant with a notice to the effect that he was to vacate the unit. He was given 30 days – to July 9, 2025 – to do so. The specific circumstances of his departure are the subject of the substantive portion of the Tenant's Application and are not before me in the context of the present determination.

- 5. Ontario's Divisional Court has provided clear guidance on the application of subsection 5(i) in *Cowie v. Bindlish*, 2010 ONSC 2628, as follows:

"[16] ...The section explicitly creates an exemption from the general application of the Act only if the person in the category of the respondent [here, the Landlord] "*lives in the building in which the living accommodation is located*". That means that the respondent was required to live in the building at the time when she rented the room to the appellant [here, the Tenant] in order for the exemption to apply. It was not sufficient that she merely intended to move in at some subsequent time. Nor was it sufficient that she actually did move in at a subsequent time.

[17] Any interpretation of section 5(i) of the Act that would permit the respondent to unilaterally cause the board to be deprived of its jurisdiction to hear the appellant's application by forming an intention in her own mind without communicating it to the appellate or by moving into the house at a later time would be contrary to the language of the section and the intention of the Legislature and would be grossly unfair. It would also effectively result in an unwarranted revision of the tenancy agreement that the parties had made."

- 6. The Landlord has the burden to establish that it is more likely than not that the elements of the 5(i) exemption have been made out.
- 7. The Landlord's position is that she lived in the House, as her primary residence, from before the commencement of the Tenant's occupancy, throughout his occupancy and continuing to today. There was no change in either her residency or the shared use of the kitchen and the upstairs shared bathroom throughout his occupancy.
- 8. The Tenant, in contrast, testified that the Landlord never resided in the House until the end of June 2025, shortly after he was told to vacate. In other words, the Landlord did not reside in the House during the majority of his occupancy, including at the outset of his occupancy.
- 9. There are two questions for my determination:

First, has the Landlord established that the House was her primary residence from the outset of the Tenant's occupancy; and

Second, if so, was this arrangement communicated to the Tenant in advance of his occupancy?

Did the Landlord Live in the House from the Outset of the Tenant's Occupancy

10. I find, as follows, that the Landlord has met the burden of establishing that the House was her primary residence and that, she 'lived' in the house as contemplated by subsection 5(i) from the outset of the Tenant's occupancy.
11. Details of the evidence relevant to the question of residency is set out below. Except as otherwise noted, exhibits from the Landlord Brief are found at TOP Doc-6621737 and from the Tenant Brief at TOP Doc-6399283. If I find that the Landlord has established that the House is her primary residence, a finding with respect to the shared use of the kitchen necessarily follows by inference, as there is only one kitchen in the House.
12. The Landlord testified to the following:
 - a) The House has been her primary residence continuously since 2016 except for her time in Afghanistan. She has no other home, and has had no other home since her return 2021;
 - b) The Landlord's son, SY, attended medical school in Australia for a number of years, returning to Canada in late 2023. On his return he moved into the House with the Landlord for three months before returning to Australia to complete examinations to practice in Canada. The Landlord continued to live in the House;
 - c) On her return from Afghanistan in 2021 the Landlord was without employment. Her Old Age pension income of \$1,600 per month fell far short of what she needed to finance both the mortgage on the House and her contribution of \$500,000.00 for SY's medical education in Australia. She was compelled to rent out all the bedrooms and take up residency in the large living room area on the main floor of the House across from the kitchen. The House continued to be her primary residence and home;
 - d) The bedrooms on the upper floor were rented out to various occupants over time. The room on the ground floor has been occupied by a niece of the Landlord, RN, since 2021;
 - e) Both the Landlord and MY manage the House and rental of the rooms, but almost all communication with the various occupants, including the Tenant, was conducted by MY on the Landlord's behalf. English is not the Landlord's first language;
 - f) The Landlord pointed me to a photo and three videos of the inside of the House and the set up of the living room area in support of the Landlord's testimony about her use of the space, as follows:
 1. A video (Refer Exhibit 4 at TOP Doc-6619825) was taken by SY (as confirmed by SY) in May 2024, prior to the commencement of the Tenant's occupancy. It shows a very large room with two couches, a bed and a large wall unit with a television. It shows a screen beside a

bed, the bed being located by the wall furthest from the entrance to the room. It appeared to me that the screen blocked the bed from view from the room's entrance. The video shows another, black, screen immediately inside the room in front of the entrance, also blocking a view into or out of the room. The presence of this black screen accords with the Tenant's own testimony (as set out below) of his observations in the House on taking occupancy. I find that this video is more likely than not the most accurate depiction of the living room at the outset of the Tenant's occupancy;

2. A photo taken from the kitchen on the main floor of the house (Refer Exhibit 1 at TOP Doc-6621690) shows a hallway with a door on the right reportedly leading to the small bathroom and a curtain straight ahead. The Landlord testified that the curtain covers the door to the living room area. The photo is undated and no testimony was provided as to the date on which it was taken. The Tenant testified that the curtain was not installed, during his tenancy, until April 2025, some four months after he took occupancy;
 3. A video (Refer Exhibit 3 at TOP Doc-6619821) was described by the Landlord as having been taken in 2024 to send to her daughter in Germany, before the commencement of the Tenant's occupancy. It shows the same large living room with essentially the same furniture as in Exhibit 4. I particularly note, again, the presence of a bed. This video shows the curtain over the door suggesting, on the basis of the Tenant's evidence about the timing of the curtain's installation, that the video may have been taken some time towards the end of his occupancy. I note that the Landlord indicated during the hearing that she had some difficulty, due to medical issues, with recalling certain specifics such as dates; and
 4. Another video (Refer Exhibit 2 at TOP Doc-6607066), taken after the departure of the Tenant from the House, confirms the configuration of the main and upper levels of the house as described by the Landlord. The video shows the living room, again, containing two large couches, the coffee table and wall unit. No bed was evident in the room at that point and the Landlord testified that after the Tenant vacated the Landlord took over the Tenant's room for her own use, so the bed had been removed from the living room;
- g) The Landlord has two phones, one of which has a 289 area code (Southern Ontario outside Toronto) and the other of which has an 807 area code (Northwest Ontario, including Thunder Bay where SY lives). The reason that one of her phones has the Thunder Bay code is that her son SY lives in Thunder Bay. He obtained the phone for her and pays the bills for it;
- h) All of the Landlord's government-issued documentation and bills show the Landlord's address to be the address of the House (Refer Exhibits 7, 8 and

20 at pages 3, 5, 7, 13, 14 and 15 of the Landlord Brief). Her driver's licence runs from December 2022 to September 2027. Rogers bills, Ontario Trillium Benefit correspondence and Ontario Old Age Security correspondence documents are all dated July 2025 and show the House as her address. Her income tax return for 2024 (Refer Exhibit 22 at page 29 of the Landlord Brief) shows the House as her address;

- i) The Landlord shared the kitchen with the Tenant. She was frequently in the kitchen on occasions when he used the stove. She used the powder room on the main floor as her bathroom but also used the upstairs bathroom, or her gym, for showers; and
- j) The Landlord has no home other than the House.

13. The Landlord's position with respect to residing at the unit is largely supported by the testimony of her son, SY, her daughter, MY, and her son's girlfriend/fiancé, MV. Two written statements from other renters in the House further corroborate the Landlord's position. Neither of those renters were available for cross examination and my comments as to their weight are set out in paragraph XX below.

14. MY, the Landlord's daughter, testified to the following:

- a) MY assists the Landlord with management of rental of the House, and by being the primary contact with the renters, as English is not the Landlord's first language;
- b) Her mother resided at the House full time during the time that the Tenant lived at the House;
- c) All rental payments went to the Landlord;
- d) The Landlord's room was behind a curtain on the main floor and the Landlord slept there 'every night';
- e) She asked the Tenant to do an inspection of another renter's room at the end of December 2024, after that renter vacated. MY was asked about why the Landlord did not perform that inspection herself if she lived in the House. MY acknowledged that this was something the Landlord would normally do but that the Landlord was away on vacation visiting family at the time and MY was in Bowmanville;
- f) MY used the laundry facility on the upper floor for her own laundry. She asked the Tenant a number of times to move her laundry items into the dryer at the House. This was not something she would ask her mother to do as her mother may not have been available at the time. Also, her mother has bad knees and it is difficult for her to go up and down the stairs to the upper floor;

- g) The Tenant was not given responsibility for accessing the mail, as the Tenant alleged. The Tenant had been given a key at his request, but that was one of three keys. MY would check the mail herself on the occasions when she visited the House. She still received mail at the House pertaining to the time she had lived at the House before her mother's return from Afghanistan;
- h) MY was referred to a text string from March 20, 2025 (Refer Exhibit 19 at page 37 of the Tenant Brief). The texts stated:

MY: Hey Cam [the Tenant] messaging everyone in the house. That the owner is inspecting everyone's rooms tomorrow during the day.

Tenant: Why:

MY: Cus she always does when she's down to check that it's being kept clean and nothing damaged

MY indicated that she could not recall what she meant by 'down'. Perhaps it was a reference to the Landlord's mood as the Landlord was going through a lot of pain.

15. I find the testimony of MY to be, for the most part, supportive of her mother's position about residency. I question two aspects of MY's testimony going to the frequency of the Landlord's presence at the House. MY testified that the Landlord stayed at the House 'every night'. This statement conflicts with the testimony of MY's brother, SY (as set out below) to the effect that the Landlord visited Thunder Bay from time to time and, in particular, to pursue medical treatment arranged with the hospital at which he is posted for training. Second, I find MY's attempt to frame the reference to "when she's down" as anything other than coming to the House from another location to be vague.

16. SY, the Landlord's son, testified to the following:

- a) He is in training to become an orthopedic surgeon;
- b) On completing his medical training in Australia in December 2023 he returned to Canada and lived in the House with his mother for roughly three months. After subsequently returning to Australia to complete his qualifications for Canada he took a posting in Thunder Bay in July 2024 as an orthopedic trainee. He presently lives in Thunder Bay;
- c) His pursuit of medicine followed a dream of this mother's to have a doctor in the family. When the family first came to Canada they were on social welfare. His mother's purchase of the House in 2018 also fulfilled a dream;
- d) The Landlord incurred costs in the amount of \$90,000 per year to finance SY's medical studies in Australia. This financial strain on top of mortgage payments for the House, combined with the Landlord's loss of income

following her return from Afghanistan, compelled her to rent out all the available rooms in the House and take over the Living Room for her own use;

- e) SY gives his mother some financial support by paying her bills. It was he who arranged for her two phones, including the phone with the Thunder Bay area code. He arranged for the latter once he was living in Thunder Bay;
- f) The Landlord does not live in Thunder Bay;
- g) The Landlord comes to visit SY from time to time, particularly since she was diagnosed in the last year with breast cancer. SY has used his connection as a trainee at the hospital in Thunder Bay to expedite her access to treatment at that hospital . The fact that she visits Thunder Bay is not an indication that her residence is anywhere other than the House;
- h) He still gets some mail delivered to the House from the short time he lived at the House following his training in Australia; and
- i) He referred to a rental agreement form dated (Refer Exhibit 21 at page 16 of the Landlord Brief). The document is dated May 1, 2025 and is signed by only the Landlord. It leads off with the following statement:

“This is a legally binding agreement. It is intended to promote household harmony by clarifying the expectations and responsibilities of the homeowner (Landlord) and roommate when they share the same home....”
The document identifies the Landlord as ‘landlord’ and the Tenant as ‘roommate’.

17. The witness MV testified to the following:

- a) She has been the girlfriend of SY, the Landlord’s son, for two years;
- b) The Landlord comes to visit MY and SY from time to time but does not live in Thunder Bay. Her primary residence is the House; and
- c) MV first visited the House in May 2024, prior to the Tenant taking occupancy. She confirmed, from this visit and other later visits, that the Landlord lived at the House. The Landlord stayed in the living room area, which had been blocked off with a curtain for her privacy by MY’s husband. None of the other occupants of the House are allowed to use the living room area, as it is the Landlord’s private space.

18. The Landlord referred me to two written statements, as follows:

- a) RN is the tenant living in the room on the ground floor of the house. The Landlord identified her as the Landlord’s niece. She works as a Personal Support Worker and was not available to attend the hearing. Her statement includes the following:

"I have been a tenant in this home [the House] since 2021
...

Additionally, I can confirm this is a shared house with the landlord, [the Landlord]. We share the kitchen and bathroom with her."

- b) TV is a tenant living in one of the upstairs rooms. He did not attend the hearing. The Landlord initially testified that this tenant lived at the House for three years. She acknowledged her mistake on this point when she was referred to the body of the statement. She testified that she has trouble with certain specifics, such as dates, attributable to her treatment for cancer. TV's statement, dated August 8, 2025, includes the following:

"... I have been living at this property [the House] since March 1/2025

The landlord [the Landlord] lives at this property as her primary residence, She occupies part of the home and receives her mail here.

The previous tenant [the Tenant] shared the kitchen and bathroom with me and with the landlord. The kitchen is located on the main floor and is used by all occupants of the home. ..."

19. The Tenant contested the Landlord's characterization of living in the House. He testified on that point to the following:

- a) The Landlord did not live in the House. She visited the House on occasion and, on those occasions, slept on a couch in the Living Room.
- b) The main floor had a kitchen, powder room and Living Room. The latter had a couch, television and chair and a black divider, which he was told was to keep renters out of the living room. There was no bed in that room;
- c) The curtain which appears in some of the videos referenced by the Landlord in the hearing was not in fact installed until mid April 2025, being four months after the Tenant took occupancy. He remembers the timing because a contractor who installed the curtain has been hired at that time to fix caulking in the upstairs bathroom;
- d) Text messages were exchanged about the Tenant's move shortly before he took occupancy on December 15th. MY indicated that she would not be available that day to arrange for his cupboard space (Refer Exhibit 11 at page 12 of the Tenant Brief). There was no mention of the Landlord's involvement in making arrangements for his move in;
- e) He first met the Landlord on her visit to the House in mid-January 2025, roughly a month after he had moved into the House. They discussed the cold winter weather in Thunder Bay. The Landlord indicated to him that she lived

in Thunder Bay. I note that this allegation was not put to the Landlord in cross examination and the Tenant's testimony was given after that of the Landlord;

- f) The Tenant detailed the various other renters who occupied the other two upstairs rooms during his tenure. There was a significant amount of movement and changeover of the renters and of the rooms they occupied;
- g) On one occasion, at the request of MY, he inspected the condition of a room which had been vacated by another renter. As set out above, he questioned why the Landlord would not herself have performed this inspection if she in fact resided at the House;
- h) He shared the upstairs bathroom only with whatever renter was in the other of the two smaller rooms upstairs;
- i) The Tenant collected all the mail from the locked mail box for the House aside from a period when he left the key in the kitchen for one of the other occupants, J, to collect his own mail,. The Tenant was told that he had been given the only key to the mailbox. Mail came to the House for the Landlord and for MY;
- j) MY did her laundry at the House and frequently asked the Tenant to move her clothes from the washing machine to the dryer or suggested that he remove her clothes from the dryer if he needed the machine. The Tenant frequently accommodated MY with respect to her laundry;
- k) On one occasion the batteries to the front door lock died. The Tenant was let into the House by another renter. The Landlord was not at the House to let him in;
- l) He did not share either a bathroom or the kitchen with the Landlord;
- m) He texted the Landlord in mid-February 2025 to thank her for reducing his rent (Refer Exhibit 27A at page 26 of the Tenant Brief). Had the Landlord resided at the House he would have spoken with her directly rather than through text; and
- n) The Landlord came to live at the House only the end of June, after he had been provided with a notice to vacate the unit.

20. I find, as follows, that the preponderance of evidence supports a finding that the House was the Landlord's primary residence prior to, and throughout, the time that the Tenant was in occupation:

- a) The Landlord's direct testimony to that effect is expressly corroborated by the testimony of her son, SY, her daughter, MY and SY's girlfriend MV;

- b) The living room area presents as a large, comfortable and functional living space, consistent with other evidence that the Landlord used it as her private living quarters. The Tenant acknowledged that he understood the area was off limits to all the renters at the House;
- c) The Landlord's government-related documents and mailed bills reference the House as her address;
- d) The Landlord's evidence to the effect that she has no other home was supported by the testimony of SY, MY and SY;
- e) While the two statements from other, current, tenants were not tested by way of cross examination, I accept them as proof of the fact that the two tenants were willing to commit themselves to statements which could impact the applicability of the Act to their own rental agreements. Accordingly I give the statements more weight than I might otherwise give them in the absence of cross examination; and
- f) While I find, on the basis of the testimony of SY and MV, that it is likely that the Landlord did not spend all of her time at the House, full time attendance is not necessary for a finding that the 5(i) exemption applies. (Refer, for eg, TST-77277-16, 2016 CanLII 71659 at para 10). Some Board decisions which find the Act to apply (that is, not be exempted by 5(i)) in situations where a landlord attended intermittently at the building in question are distinguishable in that it was uncontested, in those cases, that the landlords had other homes as their primary residences (Refer for example TSL-75552-16(re), 2016 CanLII 71276 (ON LTB) and TEL-01821-09, 2009 CanLII 84381 (ON LTB)).

Was the Landlord's Residency Communicated to the Tenant Prior to Occupancy

21. MY's testimony with respect to communications with the Tenant in advance of his occupancy was:

- a) The Kijiji ad to which the Tenant responded explicitly stated that it was for shared accommodation with other roommates and that it was the "homeowner's house". No copy of the ad was produced;
- b) The Landlord was at the House on the day the Tenant came for the viewing on December 9, 2024;
- c) MY told the Tenant that she was not the Landlord – that her mother was the Landlord; and
- d) MY told the Tenant, in advance of his taking occupancy, that the House was the Landlord's home.

22. The Landlord's evidence with respect to communication with the Tenant in advance of his occupancy was very limited and was as follows:

- a) She was at the House on December 9, 2024, the day he came to view the House, and had a conversation with him in the kitchen. He spoke about divorce with some emotion; and
- b) She believed that he understood she lived there at the time as he would have been able to see, from the kitchen, the bed in the living room. There was no indication that she made any reference, herself, to living in the House.

23. The Tenant testified that he was not told until mid-January 2025, a month after he took occupancy of the unit that the Landlord was in fact the landlord. He testified that he was never told at any point, until shortly before the Landlord gave him notice to vacate, that the Landlord purported to live in the House. His testimony to that effect included the following:

- a) He first communicated by text with MY in response to an ad on Kijiji in early December 2024. MY's text confirmed that there were two rooms available for rent. Arrangements were made for the Tenant to come to view the House and the rooms on December 9, 2024 (Refer Exhibits 9 and 10 at pages 5 and 8 of the Tenant Brief, being text exchanges between the Tenant and MY). There was no reference in these texts either to the fact that the Landlord, and not MY, was the Landlord or that the Landlord lived in the House. In his December 9, 2024 email to MY (Exhibit 10) the Tenant referred to himself as 'your tenant'. There was no written correction to that characterization;
- b) He would not have agreed to rent the room had he understood the Landlord lived in the House;
- c) On December 11, 2024 MY mentioned by text that she would be preparing a room rental agreement for him before Saturday (December 14th, the day he was scheduled to take occupancy) (Refer Exhibit 28 at page 11 of the Tenant Brief). The agreement indicated that the House was shared with the Landlord but the document was not provided to the Tenant until May 2025, roughly 5 months after he took occupancy;
- d) He saw no bed in the living room on the day he viewed the House or when he moved in, though he testified that there was a screen erected at the entrance to the room in the interests of prohibiting use of the room by the paying occupants of the House;
- e) On the day he viewed the House he met with only MY. He did not meet the Landlord that day, as the Landlord alleged. As set out above his first meeting with the Landlord was in mid-January 2025; and
- f) On January 7, 2025 he texted MY to inquire whether the email he was provided for payment was MY's email. She responded, "No That's my moms the house owners" and provided her own email.

24. I find, as follows, that the Landlord has failed to meet the onus of establishing that sharing the House with the Landlord was communicated to the Tenant in advance of his occupancy:

- a) MY's testimony to the effect that she told the Tenant, in advance of his occupancy, that the Landlord was the landlord is inconsistent with the Tenant's inquiry, on January 7, 2025 (roughly three weeks after taking occupancy) as to whether the email he had been provided was MY's. I find that enquiry to be consistent with the Tenant's testimony to the effect that he did not know, at that time, that the Landlord was the landlord;
- b) Nothing in any of the text exchanges prior to the Tenant's occupancy reference either the identity of the Landlord or the fact that the Landlord lived in the House;
- c) The Kijiji ad referenced by MY was not produced but its alleged contents were not contested. I find as a fact it stated that the accommodation was shared with roommates and that the House was the homeowner's house. I do not find, however, that such a statement made the Landlord's residency in the House in any way clear. The reference is to sharing with 'roommates'. The Tenant's testimony was clear that he understood he would be sharing the House with other roommates. The point was that he did not understand he would be sharing with the Landlord;
- d) When MY was questioned about whether she told the Tenant about the Landlord's residency prior to his occupancy her initial response was to refer to the Kijiji ad. It was only when pressed, through several specific questions requiring only a yes/no answer, that she testified in the affirmative. I question the reliability of the latter response;
- e) No details were provided as to when the rental agreement provided to the Tenant in May 2025 was drawn up or by whom it was prepared. There was no indication that its contents were communicated to the Tenant in advance of his occupancy;
- f) The presence of the Landlord at the House on December 9, 2024 was disputed. Even if the Landlord were to establish that she had been present that day, there was no indication that her presence translated into communication about her residency. On her own evidence she assumed that the Tenant drew the inference about her residency because she assumed that he saw a bed in the living room. As set out above, I determined that the most reliable video of the Living Room when the Tenant took occupancy was the video showing a black screen blocking the entrance to the living room. I do not accept that the bed was necessarily visible to the Tenant at that time and, in any event, do not accept that the mere presence of a bed would constitute the requisite communication to the Tenant; and

- g) The sole specific evidence to the effect that the Tenant was informed about the Landlord's residency was MY's assertion that she had so informed him. I find that this piece of evidence has insufficient weight to refute the conflicting testimony of the Tenant.

25. I find that the Landlord has met the onus of establishing that the Landlord resided in the House from before the Tenant's occupancy but also find that the requisite communication to this effect was not provided to the Tenant in advance of his occupancy. Subsection 5(i) does not apply to exempt the arrangement between the Landlord and the Tenant from the operation of the Act. To be clear, my determination in this regard applies only to the relationship between the Tenant and the Landlord. It has no bearing on the relationships between the Landlord and other occupants of the House.

26. I heard no evidence on the substantive issues raised in the Tenant's Application and am not seized of those issues.

It is ordered that:

1. Subsection 5(i) does not apply to the relationship between the Landlord and the Tenant and the rental arrangement between them is subject to the *Residential Tenancies Act*, 2006.
2. This order constitutes a final determination with respect to the Landlord's Application under file LTB-L-075706-25 and an interim, preliminary, determination with respect to the Tenant's application under file LTB-T-056756-25.
3. The hearing of the substantive portion of the application under Board file LTB-T-056756-25 shall be scheduled by the Board for the earliest available date.

February 4, 2026
Date Issued

Lynn Mitchell
Member, Landlord and Tenant Board

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