



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

File Number: LTB-L-042511-25

In the matter of: 29 ELBERTA ST
ST CATHARINES ON L2M5M4

Between: MARIA VOLPINI-BROWN Landlord
EDWARD BROWN

And

ENRICA CARR Tenant
ROBERT NIXON

MARIA VOLPINI-BROWN and EDWARD BROWN (the 'Landlord') applied for an order to terminate the tenancy and evict ENRICA CARR and ROBERT NIXON (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on January 7, 2026.

The Landlords, the Landlord's Legal Representative, Elena Grigorieva, and the Tenants attended the hearing.

Determinations:

1. At the outset of the hearing, the Tenants raised a preliminary issue and argued that the Board lacks jurisdiction to hear the matter as the parties do not have a Landlord and Tenant relationship to which the *Residential Tenancies Act, 2006*. ('the Act') applies.
2. The Landlord's Legal Representative acknowledged that she was unsure if the Board did in fact have the jurisdiction to hear the matter, but she believed the Board did have jurisdiction as the Tenants owe rent. In any event, she asked that the Board make an order determining the issue of jurisdiction.
3. For the reasons set out below, I find that the Act does not apply to the parties' relationship and, therefore, I do not have jurisdiction to consider this matter and the application is dismissed.
4. For the purpose of this order only, I will refer to Enrica Carr and Robert Nixon as Tenants, and Maria Volpini-Brown and Edward Brown as Landlords, without attributing to them the legal status of landlords and tenants under the Act.

Background:

5. For the purpose of this order only, I will refer to Enrica Carr and Robert Nixon as Tenants, and Maria Volpini-Brown and Edward Brown as Landlords, without attributing to them the legal status of landlords and tenants under the Act.
6. It is not disputed that the Landlords are the Tenants' parents.
7. It is also not disputed that since the Landlords purchased the property, the Tenants have and continue to reside at the property.
8. It is not disputed that the Landlords are the registered owners of the property, but they purchased the property with the intention of allowing the Tenants to live in the unit and with a view of eventually transferring ownership to the Tenants when they qualified for a mortgage.
9. It is not disputed that the parties agreed that as a condition of living in the unit, the Tenants are responsible for paying the mortgage (at a variable rate), utility bills, insurance premiums, regular maintenance costs, and property taxes.
10. It is not disputed that at no time did the parties enter into a written tenancy agreement. In addition, the parties never discussed what would happen if the Tenants failed to make the agreed-upon payments. Importantly, there was no agreement about what constituted the base monthly rent amount. The parties agreed about the types of expenses the Tenants would cover but there was no agreement about a fixed amount that was to be paid every period as "rent".
11. It is not disputed that the parties got into a dispute, and the Tenants have stopped making any and all payments towards the property.

There is no residential tenancy

1. Based on the evidence before me, I am satisfied on a balance of probabilities that the Act does not apply to the relationship between the parties.
2. In *Fuamba v. Irving*, 2024 ONSC 4587, the Divisional Court found that the LTB must consider whether it has jurisdiction over a matter having regard to the "essential character of the dispute".
3. In the present case, I find that the essential character of the dispute is one in which parents purchased a property for their children with the goal of eventually transferring ownership to them, and having the children cover the carrying costs in the meantime. This is not a residential tenancy relationship.
4. In arriving at this determination, I considered the following definitions of "landlord", "tenant", "tenancy agreement" and "rent" in section 2(1) of the Act: definitions:

“rent” includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord’s agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the 2010 CanLII 25295 (ON LTB) File Number: TEL-02855-10 Order Page 2 of 2 occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing . . .

“tenancy agreement” means a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit. . .

“tenant” includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives

“landlord” includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; (“locateur”)

[emphasis added]

5. I applied these definitions to the facts before me in order to ascertain the real substance of the transactions and activities related to the rental unit as required by section 202 of the Act.
6. While the Landlords may satisfy the definition of “landlord” because they are the registered owners of the property, I am not satisfied that the other definitions apply in this case.
7. I am not satisfied that the other definitions are met because they are predicated on the parties having agreed that the Tenants will pay “rent”, and I cannot find this is the case. I am not satisfied that the monthly payments that the Tenants make to cover the carrying costs for the property constitute rent. All of these payments fluctuate regularly. Even the mortgage is payable at a variable rate. The payments are not flat amounts. Because of the manner in which the Act strictly regulates rent increases and decreases “rent” cannot be an amount that fluctuates regularly. When asked, the parties could not tell me the amount of the base rent. In addition, the L1/L9 Update Sheet and the ledger that the Landlords submitted show inconsistent and varying rent each month.

8. I think it is fair to say that the rent charged is a fundamental term of any tenancy agreement. Without a meeting of the minds regarding this term, I cannot find that the parties have a tenancy agreement, and I cannot find that the Tenants pay “rent” in return for the right to occupy the rental unit.
9. Accordingly, I am not satisfied that this is a residential tenancy relationship, and the application must be dismissed.

It is ordered that:

1. The application is dismissed.

February 9, 2026
Date Issued

Samantha Greaves
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.