



Order under Section 31 Residential Tenancies Act, 2006

Citation: Pereira et al. v The Estate of Alex Gorbatenko, 2026 ONLTB 13742

Date: 2026-02-18

File Number: LTB-T-097861-25/LTB-T-097896-25
LTB-T-097912-25/LTB-T-101190-25

In the matter of: 2 Main Floor, 1 Main Floor, Second
48 Fuller Avenue
Toronto On M6R2C3

Between: Robert Pereira
Alvin Ali
Stevenson Sinclair
Tenants

And

The Estate of Alex Gorbatenko
Landlord

Robert Pereira, Alvin Ali, and Stevenson Sinclair (the 'Tenants') applied for an order determining that The Estate of Alex Gorbatenko (the 'Landlord'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.
- withheld or interfered with their vital services or care services and meals in a care home.
- did not give the Tenant 72 hours to remove their property from the rental unit or from some place close to the rental unit after the Sheriff evicted the Tenant.

This application was heard by videoconference on December 10, 2025 and February 6, 2026.

The Landlord's legal representative Domenic Rosso, the Landlord's agent Gary Valiquette, the Tenant's legal representative Brianna Robinson, the Tenant Robert Pereira and Tenant Stevenson Sinclair attended the hearing.

Preliminary Issue:

1. At the outset of the December 10, 2025 hearing, a preliminary issue was raised concerning the proper parties to the application. On December 12, 2025, the Board issued orders LTB-T-097861-25-IN2, LTB-T-097896-25-IN2, LTB-T-097912-25-IN2, and LTB-T-101190-25-IN2, determining that Pomer & Boscia Professional Corporation and

Domenic Rosso were not proper parties. As a result, they were removed from the proceeding.

2. At the outset of the February 6, 2026 hearing, two additional preliminary issues were raised. The first concerned whether the *Residential Tenancies Act* (the Act) applies to Mr. Pereira's tenancy. The parties agreed that the tenancies of Mr. Ali and Mr. Sinclair are exempt from the Act pursuant to section 5(i), as both individuals shared a kitchen and bathroom with the Landlord prior to the Landlord's passing. Mr. Pereira's position, however, is that he did not share a kitchen or bathroom with the Landlord and therefore the exemption in section 5(i) does not apply to his tenancy.
3. The second preliminary issue concerned whether any exemption that may have existed prior to the Landlord's passing continues to apply following the Landlord's death.

Is there an Exemption for Mr. Pereira?

Testimony of Robert Pereira

4. Mr. Pereira began his testimony by stating that he moved into his rental unit (Main Floor Unit 2) in 2023. He entered into evidence a document titled "Intent to Rent", executed on August 16, 2022. Mr. Pereira testified that at the time he signed this document, he was accompanied by Mr. Sinclair, Mr. Ali, an individual named Allan Mitchell, and the Landlord.
5. Mr. Pereira described his rental unit as having an independent half-bathroom which was a separate room within the house containing a sink and toilet. He further testified that his room contained a fridge and a stovetop. He acknowledged bringing the fridge into the unit himself but maintained that the stovetop was present when he moved in.
6. Mr. Pereira testified regarding his use of the kitchen, stating that he only used the communal kitchen when cooking for the Landlord, as he served as the Landlord's caregiver. He stated that he stored his own food in his room and prepared his meals exclusively on the stovetop located there. Photographs of his room were entered into evidence.
7. During cross-examination, Mr. Pereira was questioned about the date he moved into the rental unit. He was uncertain whether he moved in during 2021, 2022, or 2023, explaining that he does not have a good memory for dates.
8. Mr. Pereira was also questioned about his initial living arrangements. He admitted that when he first moved into the house, he resided in the basement, where he shared a kitchen and bathroom with the Landlord. After a few weeks, he moved to Main Floor Unit 2, after which he stated he no longer shared a kitchen or bathroom with the Landlord. He confirmed that the stovetop in his room did not have an exhaust fan.

9. Mr. Pereira confirmed that the house contained only one shower, which was accessible to everyone residing in the home. He was adamant that he never used the shower, stating instead that he showered exclusively at the local recreation centre.

Testimony of Gary Valiquette

10. Mr. Valiquette testified that he is the executor of the estate and has served as the Landlord's Power of Attorney since October 2025. He stated that he is a former prosecutor of 30 years and lawyer.
11. The Landlord's agent testified that he had first-hand knowledge of the Landlord's intentions with respect to the use of the premises. According to Mr. Valiquette, the Landlord intended that all occupants of the house share the accommodations. He stated that Mr. Pereira's room was never intended to be a self-contained unit, noting that it contained only a half-bathroom with no shower, was a smaller space, and did not include a kitchen. He also referred to the "Intent to Rent" document, which describes the rental unit as a "room" rather than an independent suite.
12. In cross-examination, Mr. Valiquette confirmed that he had not been inside the house in the past several years.

Testimony of Rosemary Legault

13. The witness testified that she had known the Landlord for many years, and that their relationship became closer beginning in 2020.
14. The witness was asked whether she had any knowledge of Mr. Pereira's rental unit and occupancy. She confirmed that Mr. Pereira initially resided in the basement of the house from the summer of 2022 until early 2023. She further testified that the Main Floor Unit 2 had previously been the Landlord's plant room and had never contained cooking equipment or a refrigerator. She stated that it was always her understanding, based on conversations with the Landlord, that the entire house was intended to function as shared accommodation for all tenants.

Testimony of Phil Molnar

15. The witness is former tenant in the house, having lived there from 2017 to 2021. He originally lived on the second floor, then moved to Main Floor Unit 2, the same room occupied by Mr. Pereira.
16. The witness confirmed that when he lived in the room there was no stovetop or other cooking appliance. The witness used the shared kitchen for all of his cooking needs. Furthermore, while he had use of a half bathroom for himself, he was required to use the common bathroom in order to shower.

17. In cross-examination, the witness was asked if he resided in Main Floor Unit 2 immediately prior to Mr. Pereira. The witness confirmed that once he vacated, Mr. Pereira moved in and there was nobody between them.

Analysis

18. The burden of proving that an exemption applies rests with the party asserting it. In this case, the onus is on the Landlord.
19. The first issue that needs to be determined revolves around whether the Act applies to Mr. Pereira. Section 5(i) of the Act states:
- 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
20. It is undisputed that when Mr. Pereira first moved into the house, initially occupying the basement, he shared both a kitchen and a bathroom with the Landlord. I find that Mr. Pereira and the Landlord executed the "Intent to Rent" document at the time Mr. Pereira first took occupancy of the basement. Although Mr. Pereira was uncertain about the exact date he moved in, he clearly acknowledged that his initial residence was in the basement. Ms. Legault's testimony clarified the timeline, as she vividly recalled Mr. Pereira moving in during the summer of 2022 and subsequently relocating to the Main Floor Unit 2 at the beginning of 2023. This timeline aligns with the "Intent to Rent" document, which is dated August 16, 2022.
21. The Landlord submits that after Mr. Pereira moved to Main Floor Unit 2, he continued to share a kitchen and bathroom with the Landlord. Specifically, the Landlord asserts that the rental unit did not contain a kitchen or a shower, and therefore Mr. Pereira was required to share those facilities. The Landlord further contends that the stovetop and refrigerator found in the unit were brought in by Mr. Pereira.
22. In *McKnight v. Kirk*, 2022 ONSC 3617, the Divisional Court found that the application of the s. 5(i) exemption very much turns on the facts of each particular case. While the legislature intended for the Act to be tenant protection focused, I must analyze the evidence before the Board in this particular circumstance to ascertain the true substance of the situation.
23. Mr. Pereira acknowledged in his testimony that he brought a refrigerator into the rental unit, but that a stovetop was already present when he moved in. I do not accept this assertion. It is apparent from Mr. Pereira's oral testimony, and from his own admission, that his memory is unreliable. I prefer the evidence of the Landlord's witnesses regarding the section 5(i) exemption. Mr. Molnar testified that he lived in the rental unit immediately prior to Mr. Pereira and that no stovetop was present. I find it more likely than not that Mr.

Pereira brought the stovetop into the rental unit after moving in, thereby creating a temporary cooking area for his own use.

24. Furthermore, even had I found that there was a stovetop in the rental unit prior to moving in, I do not find a single burner on a counter to be a considered a kitchen as contemplated by section 5(i) of the Act. While the Act does not define what constitutes a kitchen, the *Toronto Municipal Code*, Chapter 629, Property Standards, defines kitchen facilities as:

629-34. Kitchen facilities. A. Every room in which meals are prepared in a dwelling unit shall have a sink that is installed in a counter having a backsplash and a drain board made of material impervious to water. B. The sink shall be connected to an adequate supply of potable running hot and cold water and be connected to the drainage system of the dwelling unit. C. Each kitchen in a dwelling unit shall have an approved, connected and operating gas or electrical supply for cooking and refrigeration appliances. D. Every cupboard, kitchen fixture, fitting and supplied appliance shall be maintained in good repair and good working order

25. The room occupied by Mr. Pereira contains none of the features required to constitute a kitchen. Based on the evidence before me, I cannot conclude that the space, as described, could reasonably be considered a kitchen. Given the absence of an independent kitchen within the rental unit, I find that Mr. Pereira was required to share the Landlord's kitchen. Accordingly, on a balance of probabilities, I find that Main Floor Unit 2 is exempt pursuant to section 5(i) of the Act.
26. The second issue raised by the Tenants concerns the continued applicability of the exemption following the Landlord's death. The Tenants argue that, because the Landlord has passed away and can therefore no longer share a kitchen or bathroom with them, the exemption no longer applies to any of the three units.
27. The Tenants' representative referred me to several decisions in which a landlord attempted to alter the nature of the tenancy in order to create an exemption. In particular, in *Cowie v. Bindlish*, 2010 ONSC 2628 (CanLII), the Divisional Court held that the Board must consider the circumstances as they existed at the commencement of the tenancy, and that neither party may unilaterally alter the terms of the tenancy to create an exemption under section 5(i). *Cowie* makes clear that the Board must prevent unilateral actions by either party that would have the effect of removing the tenancy from the Act's jurisdiction.
28. This case, however, can be distinguished from *Cowie*. In *Cowie*, the Board initially had jurisdiction over the tenancy and the dispute arose from a subsequent unilateral attempt to alter that jurisdiction. Here, the Board never had jurisdiction over these tenancies from the outset due to the applicable exemption. As such, the Landlord's passing cannot be characterized as a unilateral act that caused the Act to cease to apply.

29. In *Hooey v. Bomze et al*, 1993 ONCJ (Gen. Div.) CarswellOnt 2047, the Court found at paragraph 8:

The definition of "residential premises" in s. 1 of the LTA excludes premises whose occupants are required to share a bathroom or a kitchen facility with the owner where the owner lives in the building in which the premises are located. While it is true that the passing of Hedy Groves raises a question about the present applicability of this definition, I hold that the operative time for determining this issue falls in the period while Hedy Groves still lived. I cannot accept in a circumstance like this that the death of the owner suddenly alters the character of the premises vis a vis the executor and the tenants for purposes of this application.

30. The decision in *Hooey* is consistent with modern interpretation indicating that the Board should focus on the nature of the relationship at the commencement of the tenancy to determine whether the exemption exists (see: *McKnight* and *TET-79055-17-RV*).

31. Based on the decision in *Hooey*, I find that the death of Landlord does not reverse the exemption that was previously present. The matter before the Board is strikingly similar to that of *Hooey* and there is no reason to differentiate it.

It is ordered that:

1. The tenancies are exempt from the Act pursuant to section 5(i) as they all were required to share a kitchen and/or bathroom with the Landlord.
2. The T2 applications are dismissed.

February 18, 2026
Date Issued

Brett Lockwood
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.