



Order under Section 31 Residential Tenancies Act, 2006

Citation: Shmyrin v Shmyrina, 2026 ONLTB 18388

Date: 2026-03-02

File Number: LTB-T-009791-26

In the matter of: 110, 10 PARKWAY FOREST DR
NORTH YORK ON M2J1L3

Between: Stanislav Shmyrin Tenant

And

Olga Shmyrina Landlord

Stanislav Shmyrin (the 'Tenant') applied for an order determining that Olga Shmyrina (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.

This application was heard by videoconference on February 25, 2026.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The rental unit is a one-bedroom condominium in a multi unit complex, owned by the Landlord.
2. The Landlord described the unit and said that she has two tenants residing in the unit; one sleeps in the main living area and the other sleeps in a den. She maintains possession of the bedroom and the tenants are permitted to store items in her room.
3. Each tenant pays monthly rent in the amount of \$550.00 as per written lease agreements which are not the Standard Form Lease.
4. The Tenant in this application is the Landlord's son.

5. It is not in dispute that:

- the Tenant moved into this unit on July 20, 2025;
- the Tenant did not pay rent for July, August or September 2025;
- there is no written lease agreement;
- the Landlord provides financial support to her son.

6. The Tenant filed a T2 application for Tenant's Rights on February 2, 2026.

7. At the hearing, the Landlord stated the Board does not have the jurisdiction to hear this matter. She said the party's agreement is exempt from the Act as it was a short-term arrangement, no lease was executed, the Tenant did not pay rent and the Tenant is required to share a kitchen and/or bathroom with her. For clarity, the Landlord claims an exemption under s.5(i) of the *Residential Tenancies Act, 2006* (the 'Act') and the nature of the relationship.

8. The Landlord seeks a declaration that the Act does not apply.

9. The Tenant disputes this claim and states their relationship is covered by the Act.

10. As explained at the hearing, the person claiming the exemption bears the burden of proof that the Act does not apply to their circumstance. In this case, that burden fall to the Landlord.

Does the Act Apply?

11. The central dispute between the parties is whether the Landlord (owner) actually resided at the rental unit at all material times of the tenancy and whether the Landlord and the Tenant were required to share a kitchen and/or washroom with each other at that time.

12. The Landlord's exemption claim also includes the nature of the arrangement between the parties where no Landlord/Tenant relationship exists.

13. The Landlord's evidence includes: utility bills, receipts financial records, lease agreements, witness statements and various communications (DOC7328287, DOC7397182, DOC7370927, DOC7370889, DOC7328461, DOC7328511, DOC7328257, DOC7328247, DOC73228378).

14. The Tenant did not properly disclose his evidence prior to the hearing. He intended to rely on text communication between his mother and a video. I explained the minimal prejudice to the Landlord and the Landlord did not object to the Tenant's late submission.

15. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

The Landlord's Evidence:

16. To summarize, the Landlord takes two positions on the issue of jurisdiction; s.5(i) of the Act which exempts living accommodations where occupants are required to share a

kitchen or bathroom with the owner and the general nature of the agreement between herself and her son.

17. The Landlord states that her principal residence is in Barrie, ON. However, she maintains a bedroom at the rental unit for her own personal purposes. She uses the bedroom around one to two times per week. However, she does not stay overnight at the rental unit. She uses the space to meet with clients for work purposes.
18. It is the evidence of the Landlord that her son encountered financial difficulties prior to July 2025. She paid the rent he owed to his previous landlord and offered a place for him to live. He wanted to move closer to the Toronto area so she permitted him to move into the bedroom she maintains at the rental unit as a temporary means for him to get on his feet. Her son never paid rent and they did not enter into any lease agreement. The Tenant did not transfer any bills to the rental unit due to the temporary nature of the arrangement.
19. The Landlord relied on witness statements from the two tenants at the rental unit. They were not present to testify. The Board's process for accepting such statements and hearsay evidence was addressed at the hearing. Ultimately, I found these statements had minimal probative value.

The Tenant's Evidence:

20. To summarize, the Tenant takes the position that he fell into financial difficulties and his mother provided financial support. He said they had an oral agreement that he would move into the bedroom at the complex and when his Ontario Works (OW) was approved he would pay rent. He did not pay rent for July, August or September 2025. However, his OW was put in place around October 2025 when he started to pay \$500.00 in cash to his mother as she requested. He said rent was due on the first of each month and his mother requested cash payments and he would drop it off to her or she would pick it up around the 1st of each month. The Tenant did not provide any documentary evidence to support this claim.
21. The Tenant acknowledged that there is no written lease agreement. Rather, this arrangement was verbally negotiated with his mother.
22. The Tenant said that around December 28, 2025 his mother sent a text advising that she planned to undertake renovations at the condo in February 2026 which would take around 1-3 months. He was asked to vacate for that time period and expected to move out by February 1, 2026. The Tenant did not move out.
23. Further, the Tenant asserts that his mother is a skilled and sophisticated landlord. She owns four residential complexes, with multiple tenancies and has established her landlord/tenant relationships in a manner to circumvent the Act.
24. The Tenant believes the Landlord is merely trying to circumvent the protection afforded to a tenant as prescribed by the Act.

Law and Analysis

The Exclusion Claim Under S.5(i) of the Act.

25. The Landlord relies on s.5(i) of the Act which specifies a situation where the landlord and the tenant enter into an agreement where:
- 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....
26. As discussed at the hearing, the party claiming the exemption from the Act, bears the burden of proof to establish all elements of the exemption.
27. The issue before me is to determine if the Landlord (owner) lives in the residential complex and the Tenant is required to share the kitchen/bathroom with the Landlord.
28. This is a two-pronged test; meaning the Landlord/owner lives in the unit and her son is required to share a kitchen and/or bathroom with the Landlord/owner
29. It was the Landlord's own evidence that she maintains a permanent residence in a neighbouring community. She visits the unit around one to two times per week and does not sleep at the unit. The bedroom is used to meet work clients and to house the other tenants and her belongings. I considered the Landlord provided no documentary evidence that she lives at the rental unit such as photos of her possessions. She did not state she cooks in the kitchen, uses the cupboards or appliances. She did not state she bathes at the unit. There was no evidence that the Landlord receives mail at this address.
30. Based on the submissions of the Landlord, I am not persuaded that she actually lives at the residential complex. For completeness, I also considered the lease agreements between the Landlord and the other tenants do not state any provision that the tenants are required to share the kitchen and/or bathroom with the Landlord.
31. What this means is that the Landlord has not met the burden of proof that she resides at the residential complex and the Tenant is required to share the kitchen and/or bathroom. Here it is logistically impossible as the Tenant resides in the unit, claimed to belong to his mother.
32. I must also consider whether the Landlord has staged her living situation in an attempt to circumvent the Act or if she genuinely resided in the rental unit.
33. It is necessary to look at the living circumstances at the commencement of the tenancy and pattern of behaviour throughout. In doing so, s.202 of the Act empowers the Board to consider the real substance of all transactions and activities of the parties.
34. The effect of s.202(1) was considered by the Court of Appeal for Ontario in *Slapsys (c.o.b. 1406393 Ontario Inc.) v. Abrams* 2010 ONCA 676 (CanLII). It was determined that the purpose of section 202(1) was both to enable and to require the Board to determine the true substance of the transaction, activities and good faith of the parties when making findings on an application.

35. The purpose of the exemption is to recognize that in a situation where the owner of a residential complex shares essential daily-use facilities with tenants, this tenancy is less formal. Here, the evidence overwhelmingly supports the proposition that the Landlord/owner does not live at the complex and does not share essential daily-use facilities such as the kitchen and/or bathroom at all with the Tenant.
36. Based on the evidence before the Board and on a balance of probabilities, I find that it is more likely that the Landlord, being aware of the exemption provision, staged the appearance of a shared arrangement as a means to evade the jurisdiction of the Act. I find this is inconsistent with the legislative intent of the Act and the exemption under s.5(1) in conjunction with s.202 of the Act.
37. As a result, the Landlord failed to meet the burden of proof to establish that she resides at the complex and shares a kitchen/bathroom with the Tenant. Based on the submissions of the parties, I find that Act must apply to this tenancy.

Was the Landlord/Tenant Relationship Temporary?

38. In the alternative, the Landlord states the Board does not have jurisdiction to hear this matter due to the negotiated terms of this tenancy.
39. As explained at the hearing, in addition to the provisions under s.5 of the Act, the Board must also consider the various definitions found in s.2 of the Act. In order for the Act to apply there must be a “tenancy agreement” between a “landlord” and a “tenant” respecting a “rental unit” and where a tenant pays “rent”.
40. If the Act does not apply to this relationship, then the Board does not have the jurisdiction to hear disputes between the parties.
41. According to s.2(1) of the Act, a rental unit is defined as.

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.

42. Subsection 2(1) of the Act defines “tenant”, in part, as follows:

“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.”

43. A tenancy agreement is defined by the Act as 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.
44. Subsection 2(1) of the Act defines “landlord”, in part, as:

(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.

45. Here, the Landlord permitted her son to move into the rental unit, the bedroom at the residential complex on July 20, 2025.
46. As can be seen from the wording above, the key element in the definition of tenant under the Act is the concept of payment of rent in return for the right to occupy and here is where the parties' central dispute lies.
47. Conversely, a landlord by definition is the owner of a rental unit or another person who permits occupancy of a rental unit. Based on the submissions of the parties, I find the Landlord permitted the Tenant to occupy the rental unit and therefore meets the definition of landlord.
48. So, the Board must determine if the parties entered into a verbal agreement, where the Tenant was permitted occupancy of the bedroom in exchange for a rental payment.
49. Based on the submissions of the parties and on a balance of probabilities, I find that the Landlord permitted her son to move into the rental unit on July 20, 2025. While she referred to the arrangement as "temporary" in nature, I must consider the actions of the parties. There was insufficient evidence that the Landlord, after July 20, 2025, inquired about her son finding alternative housing. If it was truly a temporary arrangement, it would be reasonable to expect the Landlord to inquire about her son's plans to vacate. I also considered that her notice to vacate in December 2025 was related to a renovation and not any other purpose. I also considered the Tenant's position that the notice directed him to vacate for the specified renovation period. This suggests to me that the relationship was more than temporary in nature.
50. With respect to the payment of rent, I acknowledge that the Tenant did not provide documentary evidence such as bank statements to support his claim that commencing October 2025, he paid in cash \$500.00 to his mother as rent. I found the Tenant's testimony to be consistent and credible even under the scrutiny of cross examination. While the initial arrangement may have been temporary in nature, I find the relationship evolved when the Tenant began paying rent to the Landlord in October 2025.
51. Based on the evidence before the Board and on a balance of probabilities, I find all of the hallmarks of a landlord and tenant relationship are present in this circumstance. I am satisfied that the parties mutually agreed that the Tenant would move into the rental unit and would pay rent to the Landlord in exchange for the right to occupy. Commencing October 2025, I prefer the Tenant's evidence that he pays rent in cash to his mother.
52. Therefore, I find that there is a Landlord/Tenant relationship between the parties. Section 3(1) states that that the Act applies with respect to rental units in residential complexes, despite any other Act and despite any agreement or waiver to the contrary.
53. Therefore, the Act must apply to this rental unit.

The Tenant's T2 Application

54. While I did not make a finding on the issue of jurisdiction at the hearing, I advised the parties that it would be both expeditious and cost effective to hear the Tenant's T2 application and the final outcome would flow from the determination related to jurisdiction. The parties did not object to this process.
55. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must follow the terms as set out below.
56. In the application, the Tenant claims that the Landlord entered the unit illegally on September 24, 2025, changed the locks at the residential complex on February 2, 2026 and substantially interfered with the Tenant's reasonable enjoyment of the rental unit and complex on December 25, 2025 regarding his visitor. The Tenant also claims the Landlord harassed the Tenant on December 28 and 29, 2025 when she objected to his guest and gave the "fake" renovation notice.
57. Essentially the Landlord did not dispute the claims made in the application. Rather, she asserts that the Board lacks jurisdiction in this relationship. She was not required to give notice of entry, was entitled to change the locks and needed to address the issues of the Tenant's guests and behaviour in the rental unit due to the impact on the other tenants.
58. By way of remedy the Tenant solely seeks a cease and desist order and replacement keys. For clarity, the Tenant seeks an order from the Board that the Landlord not enter the unit without proper notice, not change the locks in contravention with the Act, provide a key so he can enter the unit without having to go through his bedroom window and to stop interfering with his right to have guests.
59. Based on the submissions of the parties and on a balance of probabilities, I am satisfied that the Landlord is in breach of the Act as related to the claims made in the T2 application and therefore it is reasonable to award the remedy requested by the Tenant.
60. The Landlord should make herself aware of the *Residential Tenancies Act, 2006*.
61. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Act applies.
2. The Tenant's T2 application is granted.
3. The Landlord shall forthwith, provide a key to the Tenant to access the residential complex and/or rental unit.
4. For the duration of the tenancy, the Landlord shall not:
 - Enter the rental unit without providing proper notice;
 - Change the locks to the rental unit/complex without providing the Tenant with a replacement key;

- Interfere with the Tenant's rights to have guests.
5. The Tenant, at any time, can file an application with the Board where he believes the Landlord is in breach of the Act.
 6. The Landlord shall pay to the Tenant the cost to file the application in the amount of \$48.00.
 7. The Landlord shall pay the Tenant the full amount owing by March 13, 2026.
 8. If the Landlord does not pay the Tenant the full amount owing by March 13, 2026, the Landlord will owe interest. This will be simple interest calculated from March 14, 2026 at 4.00% annually on the balance outstanding.
 9. If the Landlord does not pay the Tenant the full amount owing by March 14, 2026, the Tenant may recover this amount by deducting \$48.00 from the rent owing for April 2026.
 10. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 2, 2026
Date Issued

Dana Wren
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.