



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

Citation: Denis v Grant, 2026 ONLTB 17646

Date: 2026-03-06

File Number: LTB-L-073730-25

File Number: LTB-T-081631-25-IN

File Number: LTB-T-082916-25

In the matter of: 1789 RAINBOW VALLEY RD W
MINESING ON L9X1G8

Between: Robert Denis Landlords
Rainbow Valley Corporation Limited

And

Russell Grant Tenants
2737917 Ontario Limited

Robert Denis and Rainbow Valley Corporation Limited (the 'Landlords') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies (LTB-L-073730-25).

The Tenant applied for an order determining that the Landlord:

- Substantially interfered with the reasonable enjoyment of the rental unit or residential complex;
- Entered the unit illegally;
- Harassed, coerced, obstructed, threatened or interfered with the Tenant (LTB-T-081631-25).

The Tenant also applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies (LTB-T-082916-25).

This application was heard by videoconference on January 20, 2026 and February 27, 2026.

The Landlord, the Landlord's legal representative Eric Spalvieri, the Tenant and the Tenant's support Jessica McCutcheon attended the hearings. Daniel English acted as representative for the Tenant at the February 27, 2026 hearing. The Tenant's witness Ryan Kingsbury also attended the February 27, 2026 hearing.

Determinations:

1. The unit subject to this application is located within a campground owned by Rainbow Valley Corporation Limited and Robert Denis is the owner of the company and herein known as the Landlord.
2. The Tenant is the owner of his company operating as 2737917 Ontario Limited and herein known as the Tenant.
3. The unit was built around 1973 and historically served as the campground's storefront and clubhouse for the park campers. There are two floors with multiple rooms. The basement contained a shower room and the main floor was a store and games room. This was known as the 'clubhouse'. The main floor is approximately 20 x 40 feet and consists of one main area with a separate office area. There is a kitchenette with a counter and sink, a bathroom. The basement showers were removed and the room was primarily used as storage.
4. The Tenant states he moved in on November 19, 2022 and has used the unit as his primary residence with the approval of the Landlord. As such, the Tenant believes this landlord/tenant relationship is protected by the *Residential Tenancies Act, 2006* (the 'Act').
5. The Landlord asserts that the Act does not apply to this relationship as the unit was leased for commercial use, with no residential tenancy agreement between the parties.
6. Both parties filed an A1 application with the Board to determine if the Act applies.
7. Consequently, the issue to be determined in both the T2 and A1 applications is - does the Act apply to this tenancy?

The February 27, 2026 Hearing

8. The Landlord's representative opposed the evidence submitted by the Tenant's representative prior to the second hearing, stating the extreme prejudice to the Landlord.
9. Following party submissions, the Board declined to accept the submissions and stood the matter down for around 15 minutes to allow the Tenant's representative to review the Tenant's previously submitted disclosure.
10. The Tenant's representative's request to call Jessica McCutcheon as witnesses was denied. Ms. McCutcheon attended the previous hearing as support and was privy to the Landlord's evidence. As such, she is a compromised witness. Being made aware of this, the Tenant's representative understood the Board's direction.
11. To avoid the rule in *Browne v. Dunn* (1893), 6 R. 87 (H.L. (Eng.)), the Tenant's representative put various questions to the Landlord during cross examination in the event the Tenant's representative intended to impeach the Landlord. The Landlord was given opportunity to provide an explanation for the intended contradictory evidence.

Does the Act apply to this relationship?

12. Based on the evidence before me, I am satisfied on a balance of probabilities that the Act applies to the rental unit or residential complex.
13. The Landlord's disclosure includes: the "Camper Agreement", commercial leases, insurance documentation, invoices, Geowarehouse report and various communications (DOC7145676).
14. The Tenant's disclosure includes a summary of events, photographs, property listing, invoice, letter (DOC7145334, DOC6703130).
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 Landlords states that he is the owner of Rainbow Valley Corporation Limited that owns the campground where the unit is located. There are 28 sites and the park is deemed seasonal/recreational. Campers must provide details of their permanent residence on the seasonal rental agreement.
17. It was the evidence of the Landlord as per the December 5, 2025 letter from the Landlord's registered insurance broker that relevant insurance was a commercial package policy for the seasonal campground and commercial operations. This policy has been in place for many years. Additionally, the GeoWarehouse Property Report, generated on January 9, 2026 identifies the property type as commercial.
18. The Tenant rented a trailer site for 2022, signed the 'Seasonal Camping Agreement' on May 13, 2022 and provided his permanent residence address in Orillia, Ontario.
19. The Tenant renewed for the 2023 season and paid a deposit to leave his trailer over the winter. The fees were paid in full in April 2023 for another camping season.
20. Around October 2022, the Landlord said the nature of the relationship with the Tenant changed. The Landlord had plans to hire a caretaker and made arrangements with the Tenant to do renovation work on a location to accommodate a caretaker. Based on the number of seasonal campers at that time, there was no longer a need for a store and recreational facility. The Landlord relied on various text messages to confirm the contractual relationship with the Tenant for around 20 to 40 hours per month.
21. The Landlord said that the Tenant was in the process of starting a business and required space to house a workshop and office. In lieu of payment for work, the parties agreed that the Tenant could use the clubhouse during renovation as a workshop and office for his business. The work was never completed by the Tenant.
22. The Landlord said the relationship changed again around spring 2023. The Tenant's business was developing and he required the space for his workshop and office on a more

permanent basis. The Landlord had no interest in a residential lease as the Landlord required the unit for campground purposes based on expansion plans.

23. It was the evidence of the Landlord that the unit was not zoned residential, the septic system insufficient for residential purposes was and he continuously carried commercial insurance on the property. However, his plan, once the septic system was approved, the space would be once again used as a camper clubhouse.
24. The Landlord ensured the Tenant was aware that the unit was intended for commercial purposes, zoned and insured for commercial purposes and the septic system was for temporary use.
25. With this in mind, the Landlord agreed to and entered in to three OREA Agreements to Lease for Commercial purposes with the Tenant on or around April 30, 2023, October 23, 2023 and May 21, 2024.
26. The parties negotiated the rent for commercial purposes and the Tenant provided the Landlord with his commercial insurance policy on April 30, 2023.
27. At all material times, rent was by to the Landlord by electronic transfer and HST was paid by the Tenant as a result of the commercial nature of the relationship. The Landlord provided the Tenant with receipts until the Tenant said they were no longer required
28. At the conclusion of the third lease May 31, 2025, the Landlord opted not to renew the Tenant's commercial lease as he had received the required approvals to expand the number of camping sites and the use of the unit would be required for campground expansion purposes.
29. The Landlord states that the parties mutually negotiated the commercial nature of their relationship at all material times and at no time, did he consent to a transitional to a residential tenancy.
30. As a result, the Landlord seeks a declaration that the Act does not apply to this relationship.

The Tenant's Evidence

31. To summarize, to the Tenant takes the position that this landlord/tenant relationship is covered by the Act as it is a residential tenancy and has been since the Tenant moved into the rental unit.
32. The Tenant said that the Landlord's own actions by serving a Board notice N13 to end the tenancy demonstrates that the Landlord too considered this to be a residential tenancy.
33. Although disputed by the Landlord, the Tenant said he moved into the rental unit with his partner and five children around November 19, 2022. He was previously a camper and opted to sell his home to help finance his new business development.
34. The Tenant provided a timeline for the sequence of events from the transition from camper to Tenant and said the Landlord was aware of his intention to make the unit his home. When he sold his home, he moved into the unit on a permanent basis and with the

Landlord's understanding of the nature of the residential tenancy. He said the Landlord provided residency letters for school enrollment and days care subsidies; the Landlord attended the unit with his child who played with the Tenant's children. He provided furniture and offered some physical support in moving a shed and loaned tools for the Tenant to build the basement bedrooms and other projects. At all material times, the Landlord accepted the tenancy as residential.

35. The Tenant did not dispute that he signed three consecutive commercial leases with respect to this unit. He said he did so at the insistence of the Landlord. The Landlord explained to him that use of a commercial lease was more advantageous. The Tenant said he was in a precarious position as he had no alternative living arrangements and did not want to compromise a home for his family.
36. It was the evidence of the Tenant that the rental unit was far from unfinished when he moved in, as claimed by the Landlord. It contained a fully functioning kitchen, a bedroom and bathroom. In fact, there was a previous tenant who lived in the rental unit. When the Landlord wanted higher rent, he wanted to evict the previous tenant and asked the Tenant to assist with moving his possession out of the unit.
37. With respect to the letter provided for daycare subsidy purposes, while the Landlord states various deficiencies in the letter and denies having signed it, the Tenant asserts the Landlord did sign the letter and likely altered his signature as a preventative measure.
38. The Tenant takes the position that at all material times this has been a residential tenancy. The Landlord has consistently manipulated the situation with attempts to evict him using an LTB form. The Landlord also has taken extreme steps to stage a situation to avoid the protection and provisions of the Act.
39. The Tenant's witness Ryan Kingsbury (RK) said that he lived at the rental unit from the summer of 2021 to the fall of 2022. He said he paid rent to the Landlord at \$1,200.00 monthly. He is employed at two different jobs and the proximity to Hwy 400 made it convenient to travel to work. He said that he did odd jobs for the Landlord and was paid accordingly. He said that he lived full time at the rental unit and slept there 7 days a week. When the Landlord evicted him and his possession were removed, he opted not to challenge the Landlord.
40. The Tenant requests a finding from the Board that the Act applies to this landlord and tenant relationship.

Law and Analysis

41. In order for the Act to apply there must be a tenancy agreement between a "landlord" and a "tenant" respecting a "rental unit" or "residential premises", as those terms are defined in the Act. The exemptions from the Act found in section 5 must also be considered. All of which have been considered in this case.
42. The following provisions of the *Residential Tenancies Act, 2006* (Act) are applicable to the determination of the case:

Subsection 5(j) provides that the Act does not apply to:

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;

. . .

Subsection 202(1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

43. The Landlord argues that the Board should consider the zoning of the property and the history of commercial leases signed between the parties. The Tenant argues that the Board must consider the nature of the use and the intention of the parties at the time the leases were entered into, regardless of the use of a commercial lease form.
44. Although the leases were titled commercial, this is not in itself determinative of commercial use and does not entitle the Landlord to contract out of their rights and obligations if the nature of the tenancy is residential. Further, subsection 3(4) of the Act states that in the event of any conflict with another Act the *Residential Tenancies Act, 2006* applies, with the exception of the *Human Rights Code*.
45. The fact that a landlord and a tenant sign a commercial lease does not change the true nature of a tenancy. I find that the use of a commercial lease did not reflect the actual terms agreed upon by the parties at the commencement of the tenancy, specifically that the Tenants would reside in the unit.
46. I am persuaded by the Tenant's evidence that he moved into the rental unit, along with his family for residential purposes. I find that the Landlord was aware of the Tenant's circumstances and permitted the Tenant and his family to move into the unit where the Tenant undertook renovations to comfortably accommodate his family. While a google map may reference this address as the Tenant's place of business, I accepted that his business was growing and is mobile in nature. I prefer the Tenant's evidence that he and family moved into the rental unit as their home. I do not find the intention of the parties at the onset of their relationship was that the unit was to be used by the Tenant for storage and an office.
47. Overall, there was insufficient evidence that the rental unit is operated as a place of business and the Tenant does not have any business signage on the residential complex that supports commercial use.
48. I considered the Landlord's evidence that the building is zoned commercial. However, municipal by-laws and zoning cannot be used to determine the contractual relationship

between a landlord and a tenant. The fact that the building is zoned commercial and that residential occupation may be a violation of the building code is irrelevant as to the application of the Act.

49. I have also considered the evidence that the lease agreements are on a commercial lease form and the Landlord maintains commercial insurance. However, section 202 of the Act requires the Board to ascertain the real substance of a transaction. I find the real substance of the tenancy is for residential occupation and not commercial use as the lease agreement purports to set out. The intentions of the parties when the tenancy started was for all intended purposes for residential occupation.
50. The next issue I must consider is the predominant use and exemption pursuant to s.5(j) of the Act.
51. The predominant purpose test as established in the case of *Hahn v. Kramer* 1979 CanLII 2111 (ON SC) ('Hahn') applies to this case. In Hahn the Court held as follows:

The exemption clause specifies that the premises be occupied for business purposes with living accommodation attached. To me, the wording of the section seems to indicate that the business purposes should predominate. The Act appears to specifically and carefully proceed in a manner which emphasizes the business use to be made of the combined premises so as to take them outside the definition of residential purposes.

52. The test in *Hahn* makes it clear that for the tenancy to fall outside of the parameters of the Act, the business purpose of the premise must be the primary or predominant use of the space. Therefore, in weighing the two uses of the space, the commercial use of the space would outweigh the residential use.
53. The evidence before the Board overwhelmingly supports the proposition that the rental unit is used solely for residential occupation. The photos of the unit show no business or commercial space open to the public. The Landlord failed to provide sufficient evidence that the Tenant is operating a business out of the rental unit. While some basic business administration may be conducted by the Tenant at the rental unit, I find it is minimal in nature. I am therefore satisfied that the predominate use of the unit is residential occupation.
54. The Divisional Court dealt with very similar tenancies in the *Sterling Studio Lofts Incorporated v. Clayton Stel*, 2019 ONSC 91 (CanLII) case (Sterling). In *Sterling* the landlords argued: the Board was required to apply principles of contract interpretation in assessing the lease agreement; that at the time of signing the lease, the parties had turned their minds to a commercial tenancy and that it was unreasonable and incorrect for the Member to have found that the intention of the parties was to enter into a residential tenancy agreement despite the written commercial lease agreement; that it was an error of law to allow the surrounding circumstances of the tenancy to overwhelm the written contract; and the tenants could not unilaterally change the nature of the lease that they voluntarily signed. Finally, the landlords also argued that it was an error to apply the predominant purpose test from section 5(j) of the Act.
55. In *Sterling* the Divisional Court disagreed with the landlord and held that:

“In accordance with s. 202, the terms of the agreement signed by the parties are not determinative with respect to the application of the RTA and, in our view, the LTB was entitled to find upon consideration of all the evidence that the true nature of the agreement was for use as a rented residential premise. To hold otherwise would result in a triumph of form over substance.”

56. Further, in *Sterling* the Divisional Court relied on the Court of Appeal case of *Matthews v. Algoma Timberlakes Corporation*, 2010 ONCA 468 (CanLII), “the Court of Appeal stated that s. 202 is to be applied when determining whether a unit is intended for use as a residential premises. At paragraph 24 the Court states:

Definition of a “Rental Unit” in s. 2(1) contained two components. First, the unit must be “living accommodation”. Second, it must be used or intended for use as “rented residential premises”. As I have indicated, s. 3(1) provides that the Act applies despite any term in the Lease to the contrary and s. 4 provides that “a provision in a tenancy agreement that is inconsistent with this Act or the regulations is void”. Section 2.2 requires the Board to “ascertain the real substance of the activity” relating to the rental unit and to do so disregarding “the outward form of [the] transaction”. Accordingly, a term in the Lease providing that a site is not residential nor a rental unit will not have the effect of avoiding the application of the Act, provided that the premises otherwise fit within the statutory definition of a “rental unit”.

57. In consideration of the findings of the Divisional Court and the Court of Appeal, as noted above, I find that the form of the lease cannot override the true substance of the agreement of the parties and resulting use of the premises in the matter before me; the agreement was for use as a rented residential premises.
58. On the basis of the evidence before the Board, on the balance of probabilities, I find that subsection 5(j) of the Act does not apply in this case, the tenancy is not exempt from the Act. The pre-dominate use is residential.
59. The merits of the Tenant’s T2 application have not been heard and will be scheduled accordingly.
60. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The *Residential Tenancies Act, 2006* applies.
2. The Tenant’s T2 application shall be scheduled to be heard.

March 6, 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.