



Order under Section 100 101 Residential Tenancies Act, 2006

File Number: LTB-L-032141-25

In the matter of: 14 Niagara Street
Brantford Ontario N3T3X7

Between: Valiantsina Malinouski Landlord

And

Wade McCombs Tenant

And

Rachel Kronenberg Unauthorized Occupant

Valiantsina Malinouski (the 'Landlord') applied for an order to terminate the tenancy of Wade McCombs (the 'Tenant') and evict Rachel Kronenberg (the 'Unauthorized Occupant') because the Tenant transferred occupancy of the rental unit to the Unauthorized Occupant without the Landlord's consent. The Landlord also applied for compensation by the Unauthorized Occupant for the use of the rental unit.

Valiantsina Malinouski (the 'Landlord') applied for an order to evict (the 'Subtenant') because the subtenancy ended and the Subtenant continues to occupy the rental unit.

This application was heard by videoconference on November 4, 2025.

The Landlord's Agent, Nicole Freeman, the Landlord's Legal Representative, Ian Shemesh, the Unauthorized Occupant, Rachel Kronenberg and the Unauthorized Occupant's Legal Representative, Ian Aitken attended the hearing.

Determinations:

1. It was undisputed by the Unauthorized Occupant, Rachel Kronenberg ('RK') that the Tenant Wade McCombs (WM) had vacated the rental unit in approximately March 2025 but did not provide any notice of termination to the Landlord.
2. The Landlord submits that they became aware on March 25, 2025 that WM had vacated the rental unit.
3. Section 100(1) of the *Residential Tenancies Act*, 2006 (the 'Act') states:

If a tenant transfers the occupancy of a rental unit to a person in a manner other than by assignment authorized under section 95 or a subletting authorized under

section 97, the landlord may apply to the Board for an order terminating the tenancy and evicting the tenant and the person to whom occupancy of the rental unit was transferred.

4. The Landlord filed the application on April 7, 2025. However, subsection 3(2) of O. Reg. 516/06 under the Act provides protections for a “spouse” of a tenant who vacates a rental unit:

If a tenant vacates a rental unit without giving a notice of termination under the Act and without entering into an agreement to terminate the tenancy, and the rental unit is the principal residence of the spouse of that tenant, the spouse is included in the definition of “tenant” in subsection 2(1) of the Act.

5. The central issue in this application is whether RK is WM’s “spouse” within the meaning of the Act. RK submits that she is. The term “spouse” is defined in section 2 of the Act, and includes a person “with whom the person is living in a conjugal relationship outside marriage, if the two persons...have cohabitated for at least one year.”
6. RK submits that she is the common-law spouse of the Tenant and has been cohabitating in a conjugal relationship with the Tenant since 2020. A copy of the Unauthorized Occupant’s driver’s license was entered into evidence to confirm that since at least January 22, 2021, the Tenant has resided at the rental unit.
7. RK testified that she has been added as a spouse to the Tenant’s health benefits in the past, has co-owned a vehicle with the Tenant and that she and the Tenant had purchased an engagement ring in 2022.
8. In cross-examination, RK could not recall the last time she had spoken with the Tenant. RK also testified that the Tenant vacated the rental unit in March 2025 and has not returned since vacating. RK’s testimony is that she maintains a conjugal relationship with the Tenant.
9. In TSL-09338-19-RV (Re), 2019 CanLII 134427 (ON LTB), Member Whitmore considered the list of factors set out in *M. v. H.* 1999 CanLII 686 (SCC), in which the Supreme Court of Canada adopted a list of factors for determining whether a relationship is conjugal, as set out in *Molodowich v. Penttinen*, 1980 CanLII 1537 (ON SC). While this order is not binding upon me, I find it to be persuasive. The list of factors set out include:

(1) SHELTER:

- (a) Did the parties live under the same roof?
- (b) What were the sleeping arrangements?
- (c) Did anyone else occupy or share the available accommodation?

(2) SEXUAL AND PERSONAL BEHAVIOUR:

- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?

- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?
- (3) SERVICES:
What was the conduct and habit of the parties in relation to:
 - (a) Preparation of meals,
 - (b) Washing and mending clothes,
 - (c) Shopping,
 - (d) Household maintenance,
 - (e) Any other domestic services?
- (4) SOCIAL:
 - (a) Did they participate together or separately in neighbourhood and community activities?
 - (b) What was the relationship and conduct of each of them towards members of their respective families and how did such families behave towards the parties?
- (5) SOCIETAL:
What was the attitude and conduct of the community towards each of them and as a couple?
- (6) SUPPORT (ECONOMIC):
 - (a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?
 - (b) What were the arrangements concerning the acquisition and ownership of property?
 - (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?
- (7) CHILDREN:
What was the attitude and conduct of the parties concerning children?

10. Further, in [*Browne v. Henley Crescent*](#), 2026 ONSC 455, the Divisional Court recently held that the LTB had erred in finding that section 3(2) of O.reg 516/06 did not apply to protect the spouse of a tenant who had vacated the rental unit and had given a notice of termination 5 months after they vacated. The Court held, at paragraph 39, that section 3 is “designed to offer the spouses of tenants who occupy a rental unit that is their principal residence protection in the event that the tenant spouse is no longer around – either because they have died or because they have vacated the unit.” The Court held that an interpretation that allows the vacating spouse in those circumstances to terminate the tenancy after they have vacated would undermine the protection afforded by section 3 and be inconsistent with legislative intent: see paragraph 40.

11. There are a number of differences between the facts in *Browne* and the facts in this application. However, in my view the Court’s analysis in *Browne* is informative as to the specific point in time in which the LTB is to assess whether WM and RK are or were spouses living in a conjugal relationship as defined by the Act. As noted in *Browne*, section 3(2) is designed to offer protection to non-tenant spouses in cases where their spouse is “no longer around”. I think it is more likely than not that the Legislature contemplated the provision operating in many cases where one spouse is vacating as a result of a breakdown in the spousal relationship. In many of these cases, it may be that the

relationship breakdown is the reason for the spouse leaving. As a result, limiting the assessment of whether a spousal relationship exists to the period at which the vacating spouse left would lead to an absurd result: occupants whose spouses vacated following the breakdown of the relationship, who section 3(2) is designed to protect, would not be protected.

12. In my view, to give effect to Legislative intent underlying section 3(2), the LTB must examine whether a spousal relationship existed at the time the tenancy was entered into and/or whether a spousal relationship was created during the tenancy but before one of the two alleged spouses vacated. Of course, that is not to say that section 3(2) would apply if, as an example, the spousal breakdown occurs several years before the tenant vacates. However, that did not happen here.
13. In this case, I am satisfied that RK has discharged their burden of demonstrating, on a balance of probabilities, that she was in a conjugal relationship with WM such that section 3(2) applies. In this case, I accept RK's evidence that the parties lived together in the rental unit until the Tenant vacated in March 2025. I am further satisfied that she and the Tenant were engaged as of 2022, that she has been listed as a spouse under the Tenant's health benefits and co-owned a vehicle together with the Tenant. In my view, these factors establish that RK and WM were in a conjugal relationship and cohabited for at least one year. For the reasons given above, I do not find that section 3(2) would be inapplicable in this case even if the spousal relationship broke down at some point before or after WM vacated.
14. I was satisfied based on the evidence before me that the RK and the Tenant were spouses for the purposes of section 3(2) of the O. Reg. 516/06. I further find that as a result of WM vacating, RK became a tenant of the rental unit. There was no evidence suggesting that any of the exceptions in sections 3(3)-(4) applied, and as a result I am satisfied that RK falls under the definition of a spouse.
15. The Landlord's application must be dismissed as a result.

It is ordered that:

1. The Landlord's application is dismissed.

March 23, 2026
Date Issued

Christopher Lin
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.