



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

Citation: Lockie v Malcolm, 2026 ONLTB 24879

Date: 2026-03-30

File Number: LTB-T-000786-26

In the matter of: 32 Hillcrest Lane
Kitchener On N2K1S8

Between: Jordan Malcolm Applicant

And

Wendy Lockie Respondent

Jordan Malcolm (the 'Applicant') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

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

The Respondent and the Applicant attended the hearing.

Determinations:

1. Based on the evidence before me, I am satisfied on a balance of probabilities that the Act does not apply to the rental unit or residential complex.

Background

2. Many facts are not in dispute.
3. The Applicant is the Respondent's son. He did not have a place to stay and moved into this rental unit owned by his mother in 2024.
4. There is no dispute that there is no written lease or sublease agreement.
5. There is no dispute that the Applicant never paid rent to the Respondent. There is no dispute that he did not personally provide any other consideration in lieu of rent.
6. There is dispute whether a third party ('Trish' who is the Applicant's grandmother and the Respondent's mother) may have prepaid some of the Applicant's rent to the Respondent in 2025.

7. The Respondent's mother lived in the rental unit. She did not pay rent to the Respondent but there was exchange of consideration. Trish had paid for the Applicant's tuition, and the Respondent was reimbursing her by giving her free rent. In this way Trish had "prepaid" rent up to April 2025.
8. The Applicant played a recording of his call with Trish in February 2026 in which he asks her to explain her understanding of the arrangement between the parties. In that recording Trish confirms that the plan was to have him take over her space for free until April 2025 – the date to which she had prepaid rent. She was looking to vacate the unit in October 2024, and the Applicant wanted to come back to Kitchener and couldn't afford rent. Trish believed that the Applicant's mother agreed to let him stay for free until the end of 2025.
9. Parties met to discuss continuation of the tenancy. They were unable to agree on any of the fundamental terms including rent.
10. The Respondent sent the Applicant a letter asking him to vacate the unit.
11. The Applicant took the position that he is a tenant within the meaning of the Act.
12. This application was brought to determine whether the Act applies.

Evidence about the nature of the relationship

13. The Applicant testified that Trish was starting to vacate the rental unit in the Summer of 2024. Her rent had been prepaid. He was offered an opportunity to move into the unit. He understood this to be a sublet.
14. He met with the Respondent in November 2024 and spoke about the terms of the tenancy. He was told that rent was prepaid, and he could stay for free until the end of 2025 and parties agreed that they would sit down and discuss terms after that.
15. The Applicant's direct testimony implied that rent was prepaid until the end of 2025, but this was not the case, even based on his own evidence. Rent was only "prepaid" until Spring of 2025.
16. Applicant's document 7406853 that he himself prepared and gave the Respondent in 2024 makes no reference of the Act. It includes topics that clearly pertain to the parties' relationship as mother and son rather than as landlord and tenant, including statements like the following: "My emotional and financial decisions are mine; unsolicited advice will be met with a reminder to keep opinions private".
17. There is no record of rent being pre-paid, offered, demanded or otherwise payable in the Summer of Fall of 2025.
18. The Applicant's document 7406853 addresses rent as follows: "After the opportunity of a year of **free rent**, what financial expectations or arrangements should we consider ensuring I can manage my responsibilities going forward?" [emphasis added]
19. The Applicant's document makes no mention of any rent being "prepaid" as the Applicant argued at the hearing.

20. 7406856 contains the parties' correspondence starting when the Applicant moved in. It includes correspondence about repairs, improvements, and entry into the unit. The Applicant argues that these messages establish a landlord-tenant relationship, but I am unable to agree. I find them to be at least as consistent with a parent-child relationship where a child lives in a property the parent owns.
21. In October 2025 parties were planning to meet again to discuss next steps.
22. There was an issue between the Applicant and another person around the same time. The issue escalated with parties accusing each other of various misconduct.
23. Page 30 of the Applicant's document 7406856 contains a copy of the message from the Respondent where she once again talks about free rent: "I agreed to let you stay in the apartment for free because I am your MOM and you are my son and I want to help you get out of debt..." [emphasis in the original].
24. This is the first time on the record that the Respondent asks for rent: "... calling me Wendy is disrespectful. If I am Wendy to you then you are a tenant to me and can start to pay me \$2000 a month and respect the rule of no pot smell in the house."
25. The Respondent sent a further voice note saying that "**if I am a landlord to you**, then you are expected to pay me rent in the amount of \$2000 starting immediately and going forward. If that is not something that you are going to be able to do, then you have 60 days to find yourself a new place to live. I am really sorry that it's come to this..." [emphasis added]
26. The Applicant gave the Respondent a written statement outlining his concerns and asking for her signature. She returned it with a handwritten note: "I do not think any of this applies anymore as you have not paid rent as requested in my audiotext so 60 days was given. I expect you will have a new place by Jan 1."
27. The Applicant argues that this note confirms a landlord-tenant relationship and proves that rent was payable. I disagree for the reasons below.
28. Parties then exchanged some messages in which the Applicant argues that the Act applies and the Respondent argues that it does not (7406868, 7332526, 7406870).
29. The Respondent testified that in 2024 her son was living in his car, it was getting colder, and she wanted to help him out.
30. They didn't get along very well at the time, so she approached this issue through her mom. Trish would have had to start paying rent April 1, 2025 had she stayed at the rental unit.
31. The Respondent confirmed that the Applicant was allowed to stay until the end of December 2025 for free. The relationship did not work out and she asked him to vacate the rental unit as a result.

Law and analysis

32. Section 1 sets out the purpose of the Act: "The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to

establish a framework for the regulation of residential rents, to **balance the rights and responsibilities of residential landlords and tenants** and to provide for the adjudication of disputes and for other processes to informally resolve disputes.” [emphasis added]

33. S. 2(1) of the Act provides defines some relevant terms:

“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;

“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 occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing, but “rent” does not include,

(a) an amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord with respect to a mobile home or a land lease home owned by a tenant, or

(b) an amount that a landlord charges a tenant of a rental unit in a care home for care services or meals;

“subtenant” means the person to whom a tenant gives the right under section 97 to occupy a rental unit;

“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, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being,

(a) a co-owner of the residential complex in which the rental unit is located, or

(b) a shareholder of a corporation that owns the residential complex;

34. Under 97(1) A tenant may sublet a rental unit to another person with the consent of the landlord.
35. Under 97(4) If a tenant has sublet a rental unit to another person,
- (a) the tenant remains entitled to the benefits, and is liable to the landlord for the breaches, of the tenant's obligations under the tenancy agreement or this Act during the subtenancy; and
 - (b) the subtenant is entitled to the benefits, and is liable to the tenant for the breaches, of the subtenant's obligations under the subletting agreement or this Act during the subtenancy.
36. Under s 95 (1) Subject to subsections (2), (3) and (6), and with the consent of the landlord, a tenant may assign a rental unit to another person.
37. The consequences of assignment under s. 97(8) are: If a tenant has assigned a rental unit to another person, the tenancy agreement continues to apply on the same terms and conditions and,
- (a) the assignee is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Act, if the breach or obligation relates to the period after the assignment, whether or not the breach or obligation also related to a period before the assignment;
 - (b) the former tenant is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Act, if the breach or obligation relates to the period before the assignment;
 - (c) if the former tenant has started a proceeding under this Act before the assignment and the benefits or obligations of the new tenant may be affected, the new tenant may join in or continue the proceeding.
38. Under s. 202(1) of the Act, 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.
39. I find the parties' conduct to be inconsistent with requirements of s. 97. No rent was paid after April 1, 2025, and Trish was completely uninvolved with the rental unit. I also find that the parties' conduct is inconsistent with an assignment.

40. Based on the totality of the record, I find that it is more likely than not the relationship has always been a mother-son relationship and not a landlord-tenant or landlord-subtenant/assignee relationship.
41. The Applicant was never a tenant. He never paid rent or any other consideration. He always stayed at the unit rent-free. First, by the grace of his grandmother who allowed him to live in her unit for free, and then by the grace of his mother, who let him live in her unit for free between April and December 2025.
42. The Respondent never demanded rent or other consideration during this rent-free period. There are no communications indicating rent was payable or owed. Parties' communications are much more consistent with a mother helping out a son by providing him with a completely free living space, than with a landlord-tenant relationship with some rent-holiday or pre-paid rent.
43. Parties were planning to potentially change the nature of their relationship to a landlord-tenant relationship after December 2025, but they never agreed to do so. There was never a meeting of the minds whether written, oral or implied. The fundamental terms of the agreement were still to be discussed. The Applicant himself clearly believed rent to be negotiable rather than set pursuant to an existing tenancy agreement between his mother and his grandmother or between himself and his mother. The Respondent appeared to be operating under the same assumption until late 2025 when she felt offended and demanded market rent if she is to be treated as the Applicant's landlord.
44. Based on the totality of the evidence, I find that the Act does not apply to this mother-son relationship.

It is ordered that:

1. The *Residential Tenancies Act, 2006* does not apply.

March 30, 2026
Date Issued

Vladimir Nikitin
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.