



Order under Section 69 Residential Tenancies Act, 2006

Citation: Mortimore v McKittrick, 2026 ONLTB 38086

Date: 2026-05-15

File Number: LTB-L-009519-26

In the matter of: 93 BOTANY HILL RD
SCARBOROUGH ON M1G3K6

Between: Lynn Mortimore Landlords
Paul Alexander Kelly Kotyk

And

Vernon McKittrick Tenants
Nora McKittrick

Lynn Mortimore and Paul Alexander Kelly Kotyk (the 'Landlords') applied for an order to terminate the tenancy and evict Vernon McKittrick and Nora McKittrick (the 'Tenants') because:

- the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

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

The Landlords' Legal Representative, Khurram Daniyal, the Landlords and the Tenants attended the hearing.

Preliminary Issue:

1. I brought up a preliminary issue regarding the ownership of the rental property due to information set out in Mr. Kotyk's declaration. The declaration stated that he was a co-owner of 93 Botany Hill Road with his aunt, Lynn Mortimore after his aunt added his name to the property. This was done to assist her with her estate planning. The declaration further stated Ms. Mortimore's will set out that Mr. Kotyk and his sister will be inheriting the house.
2. The Tenants provided me with a copy of the parcel register for 93 Botany Hill Road and a copy of the transfer instrument, registered as AT6909841 showing that the unit was transferred on September 25, 2025 from Lynn Mortimore to Lynn Mortimore and Paul

Kotyk as trustees of the property. Further this transfer was completed with consideration of \$2.00.

3. Due to the fact that the rental property is being held by trustees, I requested submissions from both parties on whether or not the trustees were landlords.
4. The Landlords' Legal Representative, Khurram Daniyal stated the definition of a landlord includes "the heirs, assigns, personal representatives and successors in title of a person" who is a landlord. He submitted that based on that definition, trustees are to be considered landlords.
5. Paul Kotyk stated that his aunt, who is his godmother, does not have any children of her own and that he is very close with her. He stated that this property is to be inherited by him and his sister and they have their own agreement regarding how their interests will be handled.
6. Mr. Kotyk stated that as he is not Ms. Mortimore's son, he is not able to move into the residential unit under the Act. He explained that this was why his aunt's accountant suggested that this transfer should be done which would also assist his aunt with her estate planning. Mr. Kotyk and his wife plan to move into the residential unit as quickly as possible so that he is closer to his job.
7. The Tenants stated they felt that the Landlords were attempting to circumvent the rules and they did not feel that this was fair.
8. Trustees act as administrators of a trust for the benefit of the beneficiaries. The trustees in this case are obligated to do what is best for the beneficiaries who include Paul Kotyk and his sister.
9. Trustees of a property have no ownership interest or personal interest in the property that they are administering. Based on the transfer document provided, Paul Kotyk has a zero percent interest in 93 Botany Hill Road property. Although we know that Ms. Mortimore is the true owner of the house, this transfer now refers to her as a trustee too.
10. Regarding Mr. Khummar's submission that the definition of a landlord includes heirs, assigns, successors or personal representatives and that trustees fall in that category, I disagree. Due to the fact that trustees have no personal interest or personal ownership in the property and they are simply administrators of the property, they are not comparable to heirs, assigns, successors or personal representatives and they are not landlords.
11. Therefore, this property is being held by two trustees who are not considered landlords under the Act.
12. Section 48(1) of the Act states that "A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by, the landlord, the landlord's spouse or the landlord's child or parent..."
13. Although I appreciated Mr. Kotyk's candid answer regarding why this action was taken, I am satisfied that the trustees were attempting to circumvent section 48(1) of the Act.

Section 48(1) of the Act only allows applications whereby a landlord, a child, a parent or caregiver for one of those people to move into the rental unit.

14. The trustees are not Landlords which prevents them from making this type of application. As such, this application must be dismissed.
15. Note that I have not changed the titles of Paul Kotyk and Lynn Mortimore throughout this order and I have left them as Landlords simply for ease of reference. But to be clear, the trustees, Paul Kotyk and Lynn Mortimore, are not Landlords under the Act.

It is ordered that:

1. The Landlords' application is dismissed.

May 15, 2026
Date Issued

Carrie Bertrand
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.