



Order under Sections 31 and 69 Residential Tenancies Act, 2006

File Numbers: LTB-T-088565-23
LTB-L-045503-24

In the matter of: 507, 4689 Jane Street
Toronto ON M3N2T6

Between: Sherwin Gordon Tenants
Keena Gordon

And

Lyndon Chapman Landlord

Sherwin Gordon and Keena Gordon (the 'Tenants') applied for an order determining that Lyndon Chapman (the 'Landlord') altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenants replacement keys, substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household, and harassed, obstructed, coerced, threatened or interfered with the Tenants (LTB-T-088565-23, hereafter referred to as the 'T2 Application').¹

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants did not pay the rent that the Tenants owe (LTB-L-045503-24, hereafter referred to as the 'L1 Application').²

On September 18, 2024, the T2 Application and the L1 Application were directed to be heard together.³

The T2 Application and the L1 Application were heard by videoconference on April 20, 2026.

Although the parties had not received a notice of hearing with respect to the L1 Application, both the Landlord and the Tenants confirmed that they were prepared to proceed with both applications on April 20, 2026.

The Tenants Sherwin Gordon, the Tenants' Legal Representative, Hanson Sone, the Landlord, the Landlord's Legal Representative, Stuart Gordon, and the Landlord's Witness, Malik Nelson, attended the hearing.

¹ Section 31 of the *Residential Tenancies Act, 2006*.

² Section 69 of the *Residential Tenancies Act, 2006*.

³ Rule 1.6c) of the Board's *Rules of Procedure*.

Determinations:

Procedural History

1. The T2 Application started to be heard by the Board on January 4, 2024.⁴
2. Pursuant to the Endorsement date October 21, 2024, the Tenants and the Landlord were advised that the Board Member who had started to hear the T2 Application on January 4, 2024, was unable to complete the proceedings.
3. The T2 Application was therefore directed to be heard *de novo*, alongside the L1 Application.
4. For greater clarity, a matter being heard *de novo* (i.e. heard anew) "*is treated as if no previous decision had been made: there is no presumption of the correctness or validity of any prior finding, recommendation, or conclusion.*"⁵
5. As such, the T2 Application would be considered independently, *without deference to any earlier analysis about the matter.*⁶

Board's Jurisdiction

6. At the start of the hearing, the Landlord raised a preliminary issue with respect to the Board's jurisdiction, and ability to hear the applications, as they submit that the *Residential Tenancies Act, 2006* does not apply to the relationship between the Landlord and the Tenants in light of the Landlord's child and the Tenants living in accommodations requiring them to share a kitchen and bathroom.⁷

a) Landlord's Evidence

7. The Landlord testified that they are the owner of the rental unit, which they acquired during the month of June 2001.
8. The Landlord described the rental unit, at the time of the purchase, as being a 2-bedroom unit, equipped with one (1) bathroom and one (1) kitchen. In 2019, the Landlord renovated the rental unit to add a bedroom.
9. The Landlord stated that they resided in the rental unit following its acquisition in 2001, and that their child, Malik Nelson (hereafter referred to as 'M.N') proceeded to move into the rental unit with them in 2004.
10. The Landlord indicated that since 2004, M.N has continuously resided in the rental unit. The Landlord, however, moved out at some point in 2019.
11. The Landlord stated that in addition to their child residing in the rental unit, they also rent the other two (2) bedrooms individually.

⁴ Interim order LTB-T-088565-23, issued on February 16, 2024.

⁵ *Black's Law Dictionary*, 12th edition, Thomson Reuters, 2024, "*de novo*."

⁶ *Black's Law Dictionary*, 12th edition, Thomson Reuters, 2024, "*de novo*."

⁷ Section 5i) of the *Residential Tenancies Act, 2006*.

12. While the Landlord was travelling abroad, and as M.N was residing in the premises, they directed M.N to collect rent from the other Tenants, and deal with matters related to the tenancy and the rental unit, as it appears from a copy of the agreement between the Landlord and M.N dated October 1, 2016 (DOC-5010015, page 36 of 74; Exhibit 1).
13. The Landlord indicated that the Tenant Sherwin Gordon (hereafter referred to as 'S.G') proceeded to move into the rental unit during the month of March 2020. At the time, the Landlord's child and an individual named Bianca were also living in the rental unit.
14. The Landlord stated that the bedroom that was to become occupied by S.G became available as its previous occupant, an individual named Hayden, became ill and therefore had to vacate the premises by the end of the month of February 2020.
15. The Landlord indicated that, prior to moving into the rental unit during the month of March 2020, S.G resided in the same residential complex. The Landlord and the Tenants knew each other in passing but did not necessarily have a relationship with one another.
16. The Landlord stated that, prior to S.G moving into the rental unit, they had advised them that M.N was their child and would be residing in the premises as well.
17. Under cross-examination, the Landlord agreed that M.N was around twelve (12) years old when they moved into the rental unit in 2004.
18. Under cross-examination, the Landlord stated that they never entered into a written tenancy agreement with M.N.
19. Under cross-examination, the Landlord agreed that M.N had been arrested between 2019 and 2020 but disputed the Tenants' assertion that they had been incarcerated.
20. M.N testified that they are the child of the Landlord, and that they moved into the rental unit in 2004. They were twelve (12) years old at the time.
21. M.N stated that they have continuously resided in the rental unit since 2004, and were therefore already occupying the premises when S.G moved into the premises during the month of March 2020, as it appears from a copy of M.N's:
 - report card dated February 7, 2007 (DOC-5010015, page 34 of 74; Exhibit 2),
 - medical note dated July 20, 2017 (DOC-5010015, page 38 of 74; Exhibit 3),
 - *Canadian Imperial Bank of Commerce's* (CIBC) confirmation of transaction dated February 1, 2019 (DOC-5010015, page 40 of 74; Exhibit 4),
 - *Virgin Mobile* agreement dated October 21, 2020 (DOC-5010015, page 42 of 74; Exhibit 5),
 - Canada Revenue Agency Statement of Remuneration Paid for 2020, 2021, and 2023 (DOC-5010015, pages 44 and 45 of 74; Exhibit 6, *in bundle*),
22. M.N described the rental unit as being a 3-bedroom unit, equipped with one (1) kitchen and one (1) bathroom. They indicated that they have been sharing the kitchen and bathroom with the Tenants since they moved into the rental unit.

23. Under cross-examination, M.N did not recall the date that the Landlord moved out of the rental unit.
24. Under cross-examination, M.N stated that there had been multiple turnovers with respect to the other Tenants occupying the premises. While they could not recall the exact dates, they indicated that S.G moved in following the departure of the former Tenants Hayden, and that Keena Gordon moved in shortly thereafter, after the departure of the former tenant Bianca.
25. Under cross-examination, M.N agreed that they had been arrested in 2019. They were under probation, and therefore served no prison time.
26. The Landlord submits that as the Landlord's child was residing in the same accommodation as the Tenants, and as the Tenants and the Landlord's child were required to share communal areas such as the kitchen and the bathroom, the Act does not apply to the tenancy between the Landlord and the Tenants. They therefore seek for the T2 Application to be dismissed.
27. The Landlord clarified that they had only filed the L1 Application in the alternative that the Board concluded that the Act did apply. They expressed an intent to withdraw the L1 Application if the Board concluded that the Act did not apply.

b) Tenants' Evidence

28. S.G testified that they moved into the rental unit during the month of March 2020, and that M.N moved into the premises four or five months later.
29. S.G indicated that at the time they moved into the rental unit, another female tenant was also occupying one of the bedrooms. Keena Gordon proceeded to move into the unit upon the female tenant's departure.
30. S.G agreed that, following M.N's move into the premises, they were required to share a bathroom and kitchen with them.
31. Under cross-examination, S.G recognized that they had previously testified before the Board that they had moved into the rental unit during the month of May 2021. They indicated that they "may have [gotten] the dates and times wrong."
32. Under cross-examination, S.G reiterated that following M.N's move into the rental unit, they were required to share communal spaces with them, such as a kitchen and a bathroom.
33. Under cross-examination, S.G agreed that they were unable to enter other bedrooms of the unit which were not assigned to them.
34. Under cross-examination, S.G did not recall ever seeing M.N move in any personal belongings into the rental unit.
35. Under cross-examination, S.G agreed that they had previously been residing in the same residential complex, and therefore knew the Landlord in passing as the Landlord also resided in the complex.

36. Under cross-examination, S.G agreed that they knew that the Landlord had a child prior to moving into the rental unit.
37. The Tenants submit that, as a result of the time which has elapsed since the original filing of the T2 Application, there may have been some discrepancies with respect to the dates surrounding the events described by the Tenants.
38. Referring to *Cowie v. Bindlish*, the Tenants indicated that the fact that the Landlord's child moved into the rental unit after the Tenants had already moved in does not lead to the Act from ceasing to apply to the tenancy.⁸
39. Referring to *Wong v. Hsiao*, the Tenants further state that the unilateral decision by the Landlord to have their child move into the rental unit does not lead to the Tenants losing their protections under the Act.⁹

c) Analysis

40. Section 5i) of the Act reads as follows:

5 This Act does not apply with respect to,

(i) 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.

41. In *Cowie v. Bindlish*, the Divisional Court considered whether a landlord's intention to and subsequent move into a property after the start of a tenancy, such that the tenant was then required to share a bathroom and kitchen with them, could oust the application of the Act. The Court determined that the relationship between the landlord and tenant was characterized from the beginning of the tenancy and that a unilateral action could not change the terms of the tenancy.
42. In *Wong v. Hsiao*, the Divisional Court held that "occasional stays" did not equate to one using the premises as a "principal residence" and that such an occasional or transient occupation of the premises would not strip a tenant of their rights under the Act, as doing so would defeat the purpose of the Act.
43. I also note that in *McKnight v. Kirk*, the Divisional Court held the law in *Cowie* had been correctly applied as the terms at the outset of the tenancy were examined and it was found the Act did not apply while the tenant was required to share a kitchen and bathroom with the landlord's daughter.¹⁰

⁸ *Cowie v. Bindlish*, 2010 ONSC 2628 (CanLII), paragraph 16.

⁹ *Wong v. Hsiao*, 2022 ONSC 3253 (CanLII), paragraphs 6 and 7.

¹⁰ *McKnight v. Kirk*, 2022 ONSC 3617 (CanLII).

44. In this case, it is not in dispute that M.N is the Landlord's child and that the Tenants and M.N resided concurrently in the premises and shared communal areas, such as a kitchen and a bathroom.
45. The questions before me therefore become, when M.N moved into the premises, and whether or not the Act applied at the inception of the tenancy between the Tenants and the Landlord.
46. I accept the Landlord's position that the Landlord's child, M.N, has been consistently residing in the rental unit since 2004, and that the premises has represented their principal residence since their move-in. Indeed, the testimony from the Landlord and M.N was consistent and credible and supported by contemporaneous documentary evidence which reflected M.N's address throughout the years (Exhibits 2 to 6).
47. I note that the authenticity of these documents was not disputed (Exhibits 2 to 6), and while the Tenants sought to cast doubt as to their relevance, I find it unlikely that the Landlord and their child would have devised a plan to trick various companies and government agencies over the span of sixteen (16) years with the intent to retroactively seek to strip the application of the Act to the rental unit in case of a conflict or dispute.
48. Moreover, contrary to the Landlord and M.N, I note that the evidence led by S.G was riddled with inconsistencies, such as their account of their move in date changing no less than three (3) times (June 1, 2020, according to their T2 Application filed on November 7, 2023; May 2021 based on their testimony in prior proceedings before the Board, and March 2020).
49. The Tenants could not provide a reasonable explanation for such discrepancies, beyond pointing to the passage of time between the filing of the application and the matter being heard anew.
50. Furthermore, I find that the part of the Tenants' testimony with respect to never seeing M.N move belongings to the rental unit supports the Landlord's assertion that M.N was residing in the premises prior to the Tenants' move.
51. Although the Tenants sought to cast doubt with respect to M.N's testimony surrounding their arrest and potential incarceration, they limited their submissions to general statements that were not supported by any evidence or details. I find that the Tenants failed to meet the burden of proof to establish their claim that M.N only moved into the premises after their release.
52. On the basis of the evidence and submissions before me, I find – on a balance of probabilities – that the Landlord's child was occupying the rental unit as their primary residence prior to the Tenants moving in. This matter is therefore distinct from the facts and circumstances set out *Cowie v. Bindlish* and *Wong v. Hsiao*.
53. As it was not in dispute that the Tenants were required to share communal areas such as a bathroom and a kitchen with the M.N, I find that – in accordance with section 5i) of the Act - the Act does not apply to the tenancy between the Landlord and the Tenants.
54. Accordingly, the T2 Application and the L1 Application cannot proceed and shall be dismissed.

55. Subsidiarily, I note that the description of the use of the rental unit by both the Landlord and the Tenants reveals that the premises is being operated as a rooming house, with the Landlord renting each bedroom separately.
56. While S.G testified that they control the finances of Keena Gordon, the fact that they each rent an individual bedroom, moved into their respective bedroom within the span of a few months and are each responsible for rent associated to a singular bedroom is indicative of separate and distinct tenancies.
57. Neither application was filed as a multi-unit application, and as such could not proceed on the merits regardless as they conflated more than one tenancy. With that said, in the spirit of the Board adopting the most expeditious method of determining questions arising in a proceeding¹¹, I found it appropriate, under the circumstances, to address the question of the Board's jurisdiction.

It is ordered that:

1. The interim order LTB-T-088565-23-IN, issued on November 9, 2023, is cancelled.
2. The interim order LTB-T-088565-23-IN, issued on February 16, 2024, is cancelled.
3. The Tenants' T2 Application, LTB-T-088565-23, is dismissed.
4. The Landlord's L1 Application, LTB-L-045503-24, is dismissed.

June 2, 2026
Date Issued

Alexandre Traboulsi
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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

¹¹ Section 183 of the *Residential Tenancies Act, 2006*.