



Order under Section 31 Residential Tenancies Act, 2006

File Number: LTB-T-077558-23

In the matter of: 22, 176 MARGUERITE D'YOUVILLE ST
CORNWALL ON K6H7H4

Between: Nicole Lavigne Tenant

And

Logement Marguerite d'Youville Inc. Landlord

Nicole Lavigne (the 'Tenant') applied for an order determining that Logement Marguerite d'Youville Inc. (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on April 10, 2026.

The Landlord's legal representative, D. Sabourin and the Tenant and the Tenant's legal representative, A. Alzameli attended the hearing.

Determinations:

Procedural History

1. The parties were before the Board on October 29, 2025, where they settled all, except one issue, in the Tenant's application, by way of consent. An interim order capturing the terms of the consent was issued on November 13, 2025, by Member Xiao.
2. The parties were scheduled for a hearing to determine a single issue that was not settled by consent. The issue that is to be determined is whether the side area in dispute forms part of the Tenant's rental unit with exclusive use as a patio or is it a common area walkway that provides access to the back yard. (Determinations- Para 3 of LTB-T-077558-23-IN)

Tenant's position

3. The Tenant has lived in the rental unit since 2005. The Tenant testified that when she moved into the unit in 2005, she was told that the area directly outside her main entrance door is her patio area. The Tenant lives in a complex of town houses and her entrance is at the side and there is a unit in front of her unit and their entrance is at the front.
4. The Tenant testified that she is responsible for snow removal in her patio area. Over the years, the Tenant has used that area to set up a swing or other outdoor furniture. Periodically, the Tenant has stored stuff in that area.
5. The Tenant disagrees with the Landlord's position that the area outside the Tenant's main entrance is a common area walkway that provides access to other Tenants to the open green space behind the complex. The Tenant testified that the Landlord has structured access to the communal greenspace at the back side of her shared driveway. They built a railing so that it is accessible for people who may require mobility assistance. She testified that the area outside her main door is not accessible, as it has a step up and step down in the middle of the alleged walkway.

Landlord's position

6. The Landlord submitted a site plan (DOC-7405879). The Landlord submits that the site plan categorizes the area in question as an "asphalt walkway". As such, it is a common area.
7. The Landlord's property manager testified. She has been a property manager since October 2025. She testified that she has no knowledge of conversations that would have taken place at the commencement of the tenancy. The property manager did not know when the site plan was issued, and assumes it was when the complex was built. She does not know if the site plan has ever been modified. She testified that she has had no discussions with the Tenant about the use of the area in question.

Analysis

8. Based on the evidence before me, I am not satisfied, on a balance of probabilities, that the area in question is a common area walkway.
9. I am not persuaded by the Landlord's submissions with respect to the site plan. The site plan describes the area in question as an asphalt walkway. I have no evidence to suggest that that means it is a common area walkway.
10. Section 202 of the *Residential Tenancies Act*, 2006 states:

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.

11. In this circumstance, the Tenant has lived in the unit for 21 years. The Tenant testified, and it was not contested, that for the majority of those years, she used the area in question as her own space and that it was not a common area walkway that was used by others to access the shared greenspace. This is further supported by the Landlord's action of constructing a railing at the rear of the Tenant's driveway to facilitate access to the shared greenspace. Moreover, the area in question does not appear to be accessible as a common walkway as there is a step up and a step down, in front of the Tenant's door, in order to pass through to get to the shared green space.
12. I am satisfied that the area in question forms part of the Tenant's unit and is not a common area walkway.

It is ordered that:

1. The side area is part of the Tenant's unit and is not a common area walkway.

June 4, 2026
Date Issued

Emily Robb
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.