



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

Citation: Rubenstein v Wallen, 2026 ONLTB 44548

Date: 2026-06-09

File Number: LTB-T-031549-26

In the matter of: 328 Maple Grove Avenue
Bradford ON L3Z1V7

Between: Cory Rubenstein Applicant

And

Dave Wallen Landlords
Anne Wallen

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

This application was heard by videoconference on May 6, 2026 at 9:33 a.m.

The Applicant Cory Rubenstein, the Landlords Anne Wallen and Dave Wallen, the Landlord's representative Kimberley Teel, licensed paralegal attended the hearing. Kathryn Wallen also attended the hearing as a witness for the Landlords.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order.

Determinations:

1. Based on the evidence before me, I am satisfied on a balance of probabilities that *the Act* does not apply. Below are my reasons.

Agreed upon facts

2. The Applicant moved into the unit in June 2025 together with his partner, Ms. Kathryn Wallen ("KW"), and their child.
3. The Applicant occupied the unit from June 2025 to the date of the hearing, and KW occupied the unit from June 2025 to March 22, 2026.
4. The Landlords did not reside at the property at any time from June 2025 to the date of the hearing.

5. KW is the daughter of the Landlords, Mrs. Anne Wallen ("AW"), and Mr. Dave Wallen ("DW").

Applicant's evidence

6. The Applicant submits that he is a tenant within the meaning of the *Residential Tenancies Act, 2006* (the "Act") and that the exemption contained in section 5(i) of *the Act* does not apply.
7. The Applicant testified that while the parties never entered into a written tenancy agreement, the rent amount was negotiated and agreed upon, thus an implied oral tenancy agreement was in place, and this is substantiated by his occupancy, and that the Applicant made regular rent payments to the Landlords.
8. The Applicant further testified that he paid monthly rent of \$1,500.00 directly to the Landlords and entered into evidence bank records showing 8 ongoing rent payments between August 1, 2025 and March 31, 2025. The Applicant also relies on correspondence dated June 11, 2025 between the Applicant and KW in which KW writes to the Applicant that they are paying rent.
9. The Applicant further testified that the circumstances changed on March 22, 2026, when KW left the home following an incident. The Applicant claimed that from that point forward the Landlords' daughter no longer resided in the unit, and the Applicant remained the sole occupant, while continuing to pay the rent in full after March 22, 2026. Entered into evidence was correspondence dated March 7, 2026 between the Applicant and the Landlord, AW, where the Landlord requests the Applicant transfers 'rent'. The Applicant claims that this correspondence corroborates his position that the Landlord acknowledges that these payments are for 'rent' and not simply compensation for household expenses.
10. The Applicant denied that the exemption in section 5(i) of *the Act* applied because he and KW were common-law partners. They shared a bedroom, kitchen, bathroom, and all other living facilities within the home and submits that the arrangement was not one in which he was merely sharing accommodation with the Landlords' daughter; rather, they jointly occupied the entire premises together as a family unit.
11. The Applicant further claimed that even if an exemption may previously have existed, this such exemption ceased to apply once KW moved out of the unit on March 22, 2026, and that he thereafter became entitled to the protections of *the Act*.

Landlord's evidence

12. The Landlords submit that *the Act* does not apply because the living accommodation falls within the exemption set out in section 5(i) of *the Act*.
13. The Landlord, AW testified that the property was made available to her daughter, KW, her grandson, and the Applicant after KW contacted her in distress and required housing. AW further testified that she and her husband, DW postponed plans to sell the property in order to provide accommodation to their daughter and her family. AW further testified that

no tenancy agreement, written or oral, was ever created and that the arrangement was intended as a family accommodation arrangement rather than a tenancy.

14. KW, acting as a witness for the Landlords, testified she shared all living facilities with the Applicant including the bathroom, kitchen and bedroom. Entered into evidence were photographs showing the shared areas of the home. The Landlord's representative submitted that because the Landlord's daughter, continuously occupied the premises together with the Applicant until March 22, 2026 and that during that period, the Applicant shared all living facilities with the Landlords' daughter and therefore fell squarely within the exemption contemplated by section 5(i).
15. The Landlord further submits that KW's departure from the property on March 22, 2026, was neither voluntary nor permanent. KW testified that she left the home because of a domestic conflict with the Applicant and because police advised that she and the child should stay elsewhere. KW further testified that she wished to return to the property and would have continued living there if the relationship had not broken down and that she currently resides in temporary accommodations with her aunt, sleeping with her son in an office space. Entered into evidence was a police report arising from the March 22, 2026 incident.
16. The Landlord's representative claimed that the Applicant cannot create rights under *the Act* through conduct that effectively excluded the Landlords' daughter from the home and that KW's temporary absence, caused by the breakdown of the parties' relationship and concerns for her safety, did not transform an exempt living arrangement into a tenancy governed by *the Act*.

Analysis

17. Section 5(i) provides that *the Act* does not apply with respect to:

"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."

Period between June 2025 to March 22, 2026

18. I am satisfied that from June 2025 until March 22, 2026, the Applicant resided in the unit together with KW, the daughter of the Landlords. The evidence on this point is not in dispute. The Applicant's own testimony is that he and KW moved into the property together and shared a bedroom, kitchen, bathroom, and all other living facilities. KW also testified that they occupied the entire home together as a family.
19. The purpose of the exemption is to exclude from *the Act* living arrangements where an occupant shares living facilities with specified family members of the owner. During this period, the Applicant unquestionably shared the kitchen and bathroom facilities with the Landlords' daughter. Therefore, I find this relationship and living arrangement fit squarely into the exemption.

20. I also considered the Applicant's position that he was a common-law partner of KW and occupied the unit together as a family. I accept this evidence; however, that fact does not assist the Applicant. The issue before me is not whether the Applicant met the definition of 'spouse', but whether the living accommodation was subject to *the Act*. As the evidence establishes that the accommodation was shared with the Landlord's daughter, it therefore falls within the exemption in section 5(i), meaning KW herself was not occupying the premises pursuant to a tenancy governed by *the Act*. Accordingly, the Applicant cannot then acquire rights under *the Act* through his relationship with KW that neither she nor the living arrangement itself possessed in the first place.
21. Further, it is immaterial given these circumstances whether the Landlords themselves also resided in the unit.
22. Accordingly, I find that the exemption in section 5(i) applied to the living accommodation from June 2025 until March 22, 2026. During that period, *the Act* did not apply.

The Period after March 22, 2026

23. The more difficult question is whether the legal characterization of the arrangement changed after KW left the unit on March 22, 2026.
24. The Applicant submits that once KW ceased residing in the unit, the factual basis for the exemption disappeared and a tenancy governed by *the Act* came into existence.
25. I do not accept that submission.
26. The evidence establishes that KW's departure was directly connected to the breakdown of the parties' relationship and the incident that occurred on March 22, 2026. The police report dated March 22, 2026, writes that KW left because she did not feel safe and because police recommended that she and the child stay elsewhere. KW further testified that she wishes to return to the property and would still be living there but for the break down in the parties' relationship.
27. I find this evidence credible and consistent with the surrounding circumstances. Nothing in the evidence suggests that KW permanently surrendered her occupancy of the home or abandoned any intention of returning. Rather, the evidence supports a finding that her absence was temporary and arose solely because of the incident between her and the Applicant.
28. In my view, the Applicant's position would require a finding that a living arrangement that was exempt from *the Act* for approximately nine months was instantaneously transformed into a tenancy governed by *the Act* solely because the Landlords' daughter temporarily left the premises following a dispute. Such a result would be inconsistent with both the factual circumstances and the purpose of the exemption.
29. The parties' legal relationship did not materially change on March 22, 2026 as no new agreement was entered into between the Landlords and the Applicant. No new rights were

granted. No new consideration was exchanged. The Applicant simply remained in possession of the same premises after the family relationship underlying the arrangement had broken down.

30. The Board has consistently recognized that the existence of a tenancy depends upon the true nature of the parties' arrangement and not solely upon temporary changes in occupancy. Here, the accommodation was originally provided as housing for the Landlords' daughter, the child, and the Applicant as a family unit. The subsequent temporary absence of the Landlords' daughter due to a conflict does not, in my view, create a new tenancy relationship where none previously existed.

31. I also considered and place considerable weight on the fact that KW expressed a continuing desire to return to the property and that her current living arrangements are plainly temporary in nature. Her absence was a consequence of the relationship breakdown rather than evidence that the original exempt arrangement had permanently come to an end.

32. For these reasons, I find that the Applicant has not established that a tenancy subject to *the Act* came into existence after March 22, 2026 and therefore, the living accommodation remains outside the scope of *the Act*.

33. Therefore, I find on a balance of probabilities that the exemption contained in section 5 (i) of the *Residential Tenancies Act, 2006* applied to the parties' living arrangement from the commencement of occupancy in June 2025. I further find that KW's departure from the property on March 22, 2026 was a temporary absence arising from a dispute and did not fundamentally alter the existing arrangement or create a new tenancy governed by *the Act*.

34. Accordingly, the Applicant has not established that *the Act* applies to the living accommodation.

It is ordered that:

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

June 9, 2026
Date Issued

Greg Witt
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.