



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

Citation: Ho v Ho, 2026 ONLTB 46306

Date: 2026-06-15

File Number: LTB-L-010502-25

In the matter of: 409, 280 Simcoe Street
Toronto Ontario M5T2Y5

Between: Ulla Ho Applicant

And

Beverly Ho Respondent

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

This application was heard by videoconference in parts on August 20, 2025, January 16, 2026 and on April 22, 2026.

The Applicant's Agent, Andrew Ho, the Applicant's Legal Representative, Derek Yaromich, and the Respondent attended all parts of the hearing.

The Applicant's Witness, Paul Chung-Kyu Kim, attended the hearing on January 16, 2026.

Determinations:

Preliminary Issue – Capacity of Andrew Ho to Bring This Application

1. The Applicant's Agent, Andrew Ho, brings this application on behalf of the Applicant, Ulla Ho. Andrew Ho is Ulla Ho's son, and was named as Ulla Ho's attorney pursuant to a continuing power of attorney executed on November 6, 2022 (the "CPOA").
2. It was not disputed that Ulla Ho no longer has capacity. The Respondent disputed the CPOA was valid, as in the Respondent's view, Ulla Ho did not have capacity when the CPOA was executed.
3. The *Substitute Decisions Act*, 1992, S.O. 1992, c. 30 (the "SDA") governs the execution and validity of continuing powers of attorney. Section 2(1) of the SDA provides that it is presumed a person of at least eighteen years has capacity to contract. Section 8(1) provides the specific requirements as to whether a person is capable of giving a continuing power of attorney. Section 10 of the SDA provides that a continuing power of attorney shall

be executed in the presence of two witnesses, and excludes certain categories of people from acting as witnesses.

4. The CPOA is executed by Ulla Ho as well as two witnesses. I am satisfied, and it was not disputed, that those witnesses are not parties barred from serving as witnesses pursuant to section 10(2) of the SDA.
5. I heard evidence from Andrew Ho, and Paul Chung-Kyu Kim surrounding the execution of the CPOA and Ulla Ho's state at the time of signing. I also heard evidence from the Respondent in respect to why she did not believe the Ulla Ho had capacity to execute the CPOA on November 6, 2022. I note that while the Respondent is Ulla Ho's daughter, she acknowledges she had not had regular direct contact with Ulla Ho since 2016.
6. After hearing this evidence from both sides, I am satisfied based that Ulla Ho had capacity to execute the CPOA on November 6, 2022 in accordance with the SDA. As such, I find that Andrew Ho has capacity to bring this application on behalf of Ulla Ho.

Does the Residential Tenancies Act, 2006 Apply?

7. Based on the evidence before me, I am satisfied on a balance of probabilities that the Act does not apply to the rental unit.
8. The Applicant submits that the Act applies as in their view the Respondent has had exclusive control of the rental unit since 2003, or 2004, and has been paying condo fees for the rental unit since 2017 or 2018 when Ulla Ho asked the Respondent to pay for maintenance. The Respondent paid no amounts in respect to the rental unit prior to this time.
9. While these condo fees are paid directly to the condominium corporation, the Applicant submits this constituted an agreement under which a tenancy was formed and the Respondent paid this amount as rent, or as other consideration for occupation of the rental unit. The Applicant submits that even if this amount is not rent, this arrangement qualifies as a tenancy agreement under the Act in the form of a license to occupy pursuant to section 2 of the Act.
10. The evidence of Andrew Ho in regard to discussions surrounding an agreement for the Respondent to pay the condominium fees for the rental unit were all second hand, as he was not present for these conversations. This evidence amounts to essentially that he was told the Respondent agreed to make payments for the condominium fees in return for continuing to stay in the rental unit.
11. The Respondent submits that they have been living in the rental unit pursuant to a familial relationship since they moved in. The Respondent testified there was never an agreement between herself and Ulla Ho related to payments in return for staying in the rental unit.
12. The Respondent's position was that as a family home, any member of the family would still be entitled to move into the rental unit with her if they wished to do so.
13. The Respondent testified in 2018 that automatic payments for common element fees were bouncing. The Respondent believes this was due to her mother's cognitive decline. The

Respondent received letters related to this from the condominium management including that a lien would be put on the rental unit if they were unpaid, and contacted Ulla Ho in relation to this issue. When Ulla Ho returned the Respondent's call, she was upset and yelled at the Respondent. The Respondent testified that her sister was listening to the conversation, and stayed on the phone after Ulla Ho hung up, and told the Respondent she had to pay for these fees.

14. The Respondent has been paying the common element fees since this time, but considers these payments to be an informal loan to Ulla Ho, who the Respondent believes remains responsible. The Respondent assumed this was a temporary issue and her mother would resume paying these fees in a few months, but never did. The Respondent also acknowledges that there was never an agreement that this amount was a loan, that was just her view of these payments.
15. I found the Respondent to be credible in her direct evidence as to what occurred between the parties in 2018. I find this to be the best evidence before me as to these events and I am satisfied they are an accurate version of events. While Andrew Ho testified he understood there to be an agreement to pay the condominium fees, given he had no direct knowledge of these conversations, I find I cannot imply any agreement beyond the facts as testified to by the Respondent.
16. While the Applicant submitted that the payment of condominium fees was the payment of rent, I find this cannot be the case. In accordance with section 2(1) of the Act:

“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,...”

17. The consideration paid is required to be paid to the landlord or an agent of the landlord. I cannot find that the condominium corporation who was directly paid these fees was a landlord or agent of the landlord in this scenario.
18. Further, it makes sense with the statutory scheme that a payment such as this would not constitute rent. The Applicant's position in the hearing was that if the condominium fees were raised by a significant amount, the Respondent would be responsible for paying this full increase. This of course would be contrary to the Act if this amount constituted rent, as an increase above the rent increase guidelines. This definition is structured in a manner that prevents these kinds of contradictions.
19. However, this does not resolve the matter entirely. There is a tenancy between the parties if there is a tenancy agreement between the parties pursuant to the Act. Section 2(1) of the Act defines a tenancy agreement in the following manner:

“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; (“convention de location”)

20. This has been interpreted by the Divisional Court as including relationships where there are no monetary payments of rent given the inclusive definition and reference to licences to occupy a rental unit being included in it (see *Kizemchuk v. Kizemchuk*, [2000] O.J. No. 2763 paragraphs 2-4 and *Jeffrey v. Masek*, [2006] O.J. No. 5883).
21. The Divisional Court has recently affirmed the basic elements required of a tenancy agreement that must be agreed upon in *Fuamba et al. v. Irving et al.*, 2024 ONSC 4587 (“Fuamba”) at paragraph 13, being:

“(1) the parties;

(2) a description of the premises to be rented;

(3) the commencement of the term;

(4) the duration of the term;

(5) the rent (if any); and

(6) all the material terms of the contract not being matters incident to the relation of landlord and tenant, including any covenants, exceptions or reservations. (see for example Londos Investments Ltd. v. 353573 Ontario Ltd., [1988] O.J. No. 7 (Ont. H.C.).”

22. I am not satisfied that all of the elements described in Fuamba were agreed on based on the testimony of the parties as to the discussions, conduct and relationship of the parties over the many years the Respondent lived in the rental unit. Particularly, I am not satisfied that the parties came to an agreement as to the payment of rent, if any, and whether or not the Respondent was entitled to exclusive use of the rental unit.
23. I am also not satisfied that the parties intended to create any sort of legal relationship, including a tenancy agreement on the basis of a licence to occupy.
24. For many years the Respondent lived in the rental unit without an expectation of payment. This was not disputed. When the Applicant submits the expectation of payment arose, the best evidence I have before me is that there was no direct agreement between Ulla Ho and the Respondent as to paying the condominium fees in return for continuing to live in the property.
25. Instead, the evidence is that fees previously paid by pre-authorized payments were bouncing and this was brought up to the Ulla Ho. Ulla Ho was upset and screamed at the Respondent, and following this the Respondent’s sister told the Respondent she needed to pay these fees when Ulla Ho was no longer on the phone. I find this is also insufficient to imply a tenancy agreement between the parties in these circumstances. There has to be a meeting of the minds in order to reach an agreement, even on an implied basis. The parties must also have an intention to create legal relations.
26. I am not satisfied that either Ulla Ho or the Respondent ever had a meeting of the minds as to what these payments constituted, or that either intended the arrangement of the

Respondent paying condominium fees to constitute any sort of legal relationship, including a tenancy agreement. I note that I had no evidence before me as to the Respondent's sister having standing to act as an agent for Ulla Ho, and therefore that statements made by that party could not bind Ulla Ho to an agreement in any event.

27. I specifically make no findings as to what the payments made by the Respondent constituted. The parties have different positions in this respect, and I find given my other findings in this order it is both unnecessary to make that determination for the purposes of this order, and inappropriate to make such findings given my finding that the Board does not have jurisdiction over this relationship.
28. I am mindful in making the findings above that the definition of a tenancy agreement includes a licence to occupy pursuant to section 2(1) of the Act, and a licence is in essence a permission of use. However, in the context of a licence to occupy that qualifies as a tenancy agreement pursuant to the Act, I find that a licence still requires a certainty of terms agreed between the parties as described in *Fuamba*, an intention to enter into legal relations, and some form of consideration, even if that consideration is not in the form of monetary payments made directly to a landlord.
29. These are basic contractual principles, and whether a licence or not, section 2(1) of the Act requires tenancy agreements to be written, oral or implied agreements. Therefore, these contractual principles must be complied with to qualify under the definition. To find otherwise would result in absurdities.
30. For example, is a tenancy created by a parent telling their child they may stay for the week in their basement, which has its own bathroom and kitchen facilities, in exchange for cutting the lawn during their stay? If there is no requirement for an intention to create legal relations for a licence to occupy to qualify as a tenancy agreement, this would result in a tenancy subject to the Act. The terms are certain. None of the exceptions to the Act apply. Consideration is being given, though not in the form of a monetary payment. However, it is clear that generally in these circumstances the parties did not intend to create a tenancy. It cannot be correct that the child in this scenario is then entitled to stay in the basement for an indefinite period pursuant to a weekly renewing tenancy, so long as they cut the lawn.
31. By way of another example, if a homeowner's child or friend is experiencing a difficult time, and so that homeowner permits their child or friend to stay in that same basement equipped with a kitchen and bathroom for the period of a month, this is permission, or a licence, to occupy a residential unit. If nothing further were required for a licence to occupy to qualify as a tenancy agreement, this would then result in a tenancy subject to the Act. This tenancy would automatically renew for another term on an indefinite basis, and the landlord would be entitled to receive nothing, as it was clear there was no expectation of consideration. This is clearly wrong, and on reflection, I find that is because there must be a requirement for consideration and for an intent to create legal relations for a licence to occupy to qualify as a tenancy agreement under the Act.
32. These sorts of scenarios cannot be what the Legislature intended by their non-exhaustive definition of a tenancy agreement in section 2(1) of the Act. I find it was written broadly instead to provide protection to tenants by making clear that any contract that provides for the permission of use of land rather than a traditional leasehold interest in land will not

prevent the protections of the Act from applying. The fundamental terms of a tenancy agreement, consideration, and an intention to create legal relations must still apply in order for a licence to occupy to qualify as a tenancy agreement under this definition.

33. I find given the above, that the licence provided to the Tenant in this case does not meet the qualifications to be a licence to occupy that qualifies as a tenancy agreement under the Act.

It is ordered that:

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

June 15, 2026
Date Issued

Benjamin Seigel
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.