



Order under Section 31 Residential Tenancies Act, 2006

Citation: MCKINLAY v HOME TRUST COMPANY, 2026 ONLTB 47446

Date: 2026-06-26

File Number: LTB-T-059339-25

In the matter of: basement, 30 ELFORD CRES
Hamilton ON L8K5K9

Between: JOHN JOSEPH MCKINLAY Tenant
Sherrell P Smith

And

HOME TRUST COMPANY Landlord

T2 Application

JOHN JOSEPH MCKINLAY and Sherrell P Smith (the 'Tenant') applied for an order determining that HOME TRUST COMPANY (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.

T6 Application

JOHN JOSEPH MCKINLAY and Sherrell P Smith (the 'Tenant') applied for an order determining that HOME TRUST COMPANY (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing, or maintenance standards.

These applications were heard by videoconference on June 15, 2026.

The Landlord's legal representative, Jeffrey Kukla, and the Tenant, John McKinlay, attended the hearing.

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

Determinations:

Issue

1. The Landlord submitted that the living arrangement between the parties is exempt from the *Residential Tenancies Act, 2006* ("the RTA") under section 5(i) of the Act.
2. If the RTA does not apply, the Board lacks jurisdiction and the tenant's application must be dismissed.

Relevant Law

3. Section 5(i) of the RTA provides that the RTA does not apply where:

"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 or relative lives in the building."

Evidence

Landlord's Evidence

4. The landlord's legal representative submitted that the property was owner-occupied and not a residential complex subject to the RTA. In support, the following evidence was provided:
 - A statutory declaration dated November 26, 2021, from Mr. McKinlay stating that no tenant claim existed on the property.
 - An affidavit from Marsha Hamilton, Default Recovery Specialist at Home Trust Company, indicating that:
 - a) A statement of claim was served on Mr. McKinlay.
 - b) Mr. McKinlay stated he resided upstairs with the respondent, Sherrell Smith.
 - A statutory declaration from Sherrell Smith confirming the property is owner-occupied and not tenanted.
 - An appraisal dated August 5, 2025, describing the property as: A single-family residential dwelling; containing one kitchen; with a partially finished basement, consisting of a recreation room (used as a bedroom), and an unfinished area used for laundry, storage, and utilities.
 - The landlord asserted there is only one kitchen in the home, and that the basement area is not a self-contained rental unit.

Tenant's Evidence

5. The Tenant submitted that:
 - The previous landlord was his mother, who resided upstairs;
 - He resided in the basement;
 - There are two rooms in the basement used by him;

- His “kitchen” facilities consist of: a fridge, microwave, and hot plate located in the laundry room;
- A two-piece bathroom was on the main floor and a Full bathroom was on the second floor. There were no bathroom in the basement.
- He often ate out.
- The Tenant maintains this constitutes a separate rental unit.

Analysis

6. The determinative issue is whether the Tenant was required to share kitchen or bathroom facilities with the owner, thereby triggering the exemption under section 5(i).
7. The Landlord’s evidence is supported by multiple documents, including sworn declarations and third-party evidence.
8. The Tenant’s own evidence does not establish the existence of a self-contained rental unit but instead supports the conclusion that the basement was an extension of the family home.
9. The appraisal and other documentary evidence establish that the property is a single-family home with only one full kitchen. There is no evidence of a legally separate or fully equipped second dwelling unit in the basement.
10. As per the Tenant’s testimony, the basement does not contain a self-contained kitchen, but only limited food preparation appliances located in a laundry area, namely a hot plate, microwave, and fridge. This does not constitute a full kitchen.
11. On a balance of probabilities, I find that the Tenant was required to share the only kitchen facilities in the home with the previous Landlord (his mother). The fact that the Tenant may have chosen to infrequently use the kitchen facilities does not effect the application of section 5(i).
12. It is undisputed that the previous Landlord (the tenant’s mother) resided upstairs and the Tenant lived in the basement.
13. A parent-child relationship clearly falls within the category of relatives identified in section 5(i) which states: 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.
14. Based on the evidence adduced at the hearing, I find that the Tenant resided in a portion of a single-family home; the previous landlord (his mother) resided in the same dwelling. The tenant did not have exclusive use of a fully self-contained kitchen facility, and any cooking arrangements were limited and informal. Accordingly, the living arrangement falls within the exemption set out in section 5(i) of the RTA.

15. As the RTA does not apply to this living arrangement, the Board does not have jurisdiction over this matter.

16. The Tenant's application is therefore dismissed.

It is ordered that:

1. The Tenant's T2 and T6 Application is dismissed.

June 26, 2026

Date Issued

Teresa Hunt

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.