



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

Citation: Thomas v Thomas, 2025 ONLTB 54404

Date: 2025-07-21

File Number: LTB-L-038282-25

In the matter of: 141 Stedman Street
Ottawa ON K1T0B4

Between: Henry Thomas

And

Vanessa Thomas
Virginia Thomas Kuklinski

I hereby certify this is a
true copy of an Order dated

JUL 21, 2025

Landlord and Tenant Board

Landlord

Tenants

Henry Thomas (the 'Landlord') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard by videoconference on June 23, 2025.

The Landlord, the Landlord's Legal Representative, Lisa Duchene, the Tenants' Legal Representative, Michel Thellend, and the Tenants attended the hearing.

Preliminary Issue: Multiple Tenancies

The Tenants submitted as a preliminary issue that this application was not properly brought as there are multiple tenancies and not a singular tenancy, and therefore this application should have been brought as two different applications rather than one to address each of the Tenants' distinct relationship with the Landlord.

Section 9 of the *Residential Tenancies Act, 2006* (the "Act"), under which the Landlord has made this application states:

9 (1) A landlord or a tenant may apply to the Board for an order determining,

(a) whether this Act or any provision of it applies to a particular rental unit or residential complex;

(b) any other prescribed matter.

While most applications before the LTB must be brought individually in relation to separate tenancies, section 9(1)(a) specifically identifies that an application may be brought to determine whether the Act applies to a residential complex. I find that this wording denotes that a singular application can be brought for a determination related to multiple tenancies, so long as they are in the same residential complex. I find that this application is an application to determine whether the Act applies to the residential complex as a whole, and on that basis that it is irrelevant for the

purposes of determining whether this application was brought properly whether there was a singular or multiple tenancies, and the application is properly constituted.

Determinations:

1. Based on the evidence before me, I am satisfied on a balance of probabilities the Act does not apply to the residential complex as the exemption under 5(i) of the Act applies.
2. The Landlord and Tenants are siblings. They all moved not the residential complex in September, 2013, and share the kitchen facilities in the residential complex. Section 5(i) of the Act provides:

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;

3. The Tenants did not dispute that the Act did not apply to the tenancy initially and for the first number of years the parties lived in the residential complex as they acknowledge:
 - a. That the Landlord is the owner of the residential complex; and
 - b. That the Landlord and Tenants shared the kitchen facilities of the residential complex and this was contemplated when all parties moved into the residential complex in September, 2013.
4. What is disputed is whether the exemption under section 5(i) of the Act continues to apply.
5. The Tenant submits that the exemption under 5(i) of the Act no longer applies as:
 - a. The parties entered into tenancy agreements in 2021; and
 - b. The Tenants allege that the Landlord left the residential complex and stopped residing there for a lengthy period of time, and that in doing so the exemption under section 5(i) of the Act was lost.

Tenancy Agreements

6. The Landlord and each of the Tenants entered into two separate tenancy agreements using Ontario standard form leases in 2021.
7. There was no allegation that living situation in the residential complex or the use of the shared kitchen facilities changed at this time when the leases were signed.

8. I find that entering into leases in Ontario's standard form does not result in the loss of an exemption that otherwise applies to a tenancy based on its factual circumstances. Section 4(1) of the Act provides that a provision in a tenancy agreement that is inconsistent with the Act or the regulations is void. Therefore, even if the standard form lease entered into specifies that the Act applies, if that is inconsistent with the factual circumstances establishing an exemption under 5(i) of the Act, that provision is void.

Did the Landlord Stop Residing in the Residential Complex?

9. The parties agree that the Landlord left the residential complex from March 15, 2024 to May 2, 2024 to travel to British Columbia. The Landlord testified that this was a vacation to British Columbia to spend time with his girlfriend. The Tenants did not dispute that this was a vacation or testify they believed he had moved out at that time. I find the exemption under 5(i) of the Act continued to apply during this vacation period. There is no legal basis to find that a party leaving on a vacation, even a lengthy vacation, would change the nature of the legal obligations in their tenancy arrangement.
10. The parties dispute what happened after the Landlord returned from British Columbia with his girlfriend.
11. The Landlord testified that his girlfriend originally had intended to stay in the residential complex with him for approximately a month, but after conflict arose she moved out earlier. The Landlord's girlfriend moved out initially into an AirBnB. The Landlord paid for this AirBnB including some extensions of its booking, as his girlfriend was still looking for employment in Ottawa. The Tenant's girlfriend eventually moved into a more permanent apartment in July, 2024.
12. The Landlord testified that he would sleep at his girlfriend's AirBnB, and later her apartment, a few nights a week, but that he maintained his residence at the residential complex. The Landlord testified he stayed at the residential complex the remainder of the time other than a short vacation in October, 2024, and that on nights he was staying over at his girlfriend's place he only took clothes and a toothbrush in a backpack. The remainder of his items stayed at all times in residential complex, including his remaining clothes and personal belongings, as well as his furniture, including his bed.
13. The Landlord testified that in April, 2025 his girlfriend made the decision to move back into the house with him.
14. In support of the proposition that the Landlord continued to live in the rental unit and treat it as his permanent residence, the Landlord supplied some documentary evidence, including:
- a. A copy of his driver's license, issued on September 17, 2024 that lists the residential complex as his address;
 - b. A copy of his vehicle's registration with an effective date of March 26, 2025 that lists the residential complex as his address; and

- c. Copies of invoices related to amazon deliveries showing that the Landlord ordered packages to the residential complex in September, 2024 and March, 2025.
15. The Tenant, Virginia Thomas, testified that the Landlord stayed in the rental unit only about 10 days when he returned from British Columbia and then moved out with his girlfriend. She testified that the Landlord never slept at the residential complex for the period of nearly a year until his girlfriend moved back into the residential complex in April, 2025. Ms. Thomas acknowledged the Landlord's furniture remained in the residential complex. Ms. Thomas testified that the Landlord came to visit his nephews, she thought a few times a month, and otherwise was never in the residential complex between May 15, 2024 and April, 2025.
16. The testimony of the parties in regard to whether the Landlord continued to live in the residential complex was directly conflicting. I prefer the evidence of the Landlord on this point on the basis that it is supported by the documentary evidence provided showing he had packages delivered to the residential complex during the time period the Tenants alleged he did not live there and also showing his address remained listed on his driver's license and vehicle registration as the residential complex when these items were renewed during the period in which the Tenant alleges the Landlord did not live in the residential complex.
17. I find on this basis the Landlord continued to live in the residential complex at all relevant times, and therefore that he has met his burden to establish the exemption under section 5(i) of the Act continues to apply to the residential complex as it has since the parties moved into it in September, 2013.

It is ordered that:

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

July 21, 2025
Date Issued

Benjamin Seigel
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.