



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

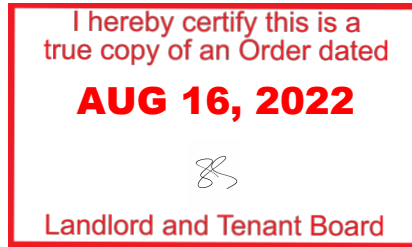
**File Number:** SOT-27247-22

**In the matter of:** LOT ML06, 6478 FIFTH LINE  
FERGUS ON N1M2W5

**Between:** Gregory Ellig

**and**

Maple Leaf Acres Member’s Association



Tenant

Landlord

Gregory Ellig (the 'Tenant') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard by video conference on July 27, 2022.

The Tenant Gregory Ellig, the Tenant’s Legal Representative Shaun Harvey (the Tenant), the Landlord’s Legal Representative Cynthia Davis, and the Landlord’s Agent Al Dias (the 'Landlord') attended the hearing.

**Determinations:**

1. The issue to be determined by the Board is whether the tenancy agreement between the parties is bound by the *Residential Tenancies Act, 2006* (the “Act”). The Tenant asserts that the Act applies while the Landlord takes the position that the tenancy is exempt.
2. Throughout the hearing I referred to the parties as Landlord and Tenant as a means of easily identifying the party speaking or being called upon. The titles used were not a reflection of any predeterminations I had made.
3. At the hearing, the parties agreed on the following:
  - a. Maple Leaf Acres Members Association is a not for profit corporation without share capital and is the owner of the property.
  - b. The Tenant in this application is a member of the association and has been since May 25, 2016, when the remainder of a 21 year less one day lease agreement was assigned to him. The lease expires on April 30, 2024.

- c. The association has a board of directors and these directors must be members. The Tenant as a member has the right to sit on the board if elected.
  - d. The board puts forward an annual budget that the membership votes upon and the result of this vote determines the annual fees paid by the residents to satisfy their lease agreements.
  - e. Members of the association vote on leases, bylaws, rules and regulations on behalf of the association
  - f. If the corporation were to be wound up, the proceeds would be equally distributed across the membership once any liabilities are satisfied.
4. The Tenant's evidence was the mobile home he owns is on the site detailed in his lease agreement. He resides there and currently pays \$338.00 per month to the corporation. His evidence was it is a maintenance fee and he also described it as his rent.
  5. The Tenant testified that he owns no part of the land his mobile home is situated upon.
  6. The Landlord submitted a copy of the lease and the assignment documents the Tenant signed on May 25, 2016. The document, *Assignment of Members Interest in a Lease* identifies the parties as Landlord and Tenant. At the time the agreement was signed the corporation was known as Maple Leaf Acres Tenants Association. There was no dispute at the hearing that the corporation changed their name in 2017 to Maple Leaf Acres Member's Association.
  7. Schedule B of the Lease submitted and agreed to by the parties defines "base fee" which is the money paid to the corporation by the lease holder. It reads as follows:

**Base Fees:** means the Fees charged for the exclusive right to occupy and use the Demised Site, for access to and use of the Common Areas, for the use and benefit of the services, infrastructure and for all other services, facilities, privileges, accommodations and things the Corporation provides from time to time to the Members and other Occupants holding leases with the Corporation in respect of or in any way connected with the Member's occupation of the Demised Site. It includes, inter alia, the "Member's Proportionate Share" of the Corporation's administrative, legal and accounting costs, maintenance and operating costs, fixture taxes if assessed, property taxes assessed against parts of the Campground Property, and utility costs including, but not limited to, any hydro, water charges which are not separately metered, maintenance costs including but not limited to snow removal, grass cutting, sewage repair and maintenance, road maintenance, garbage container service and removal, maintenance of all common facilities including but not limited to the docks, swimming pools, lease payments to the GRCA and any adjustment or allowance increases in these amounts.

8. *The Residential Tenancies Act, 2006* (the ACT) defines “rent” in section 2(1) as:

“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, but “rent” does not include,

(a) an amount paid by a tenant to a landlord to reimburse the landlord for property taxes paid by the landlord with respect to a mobile home or a land lease home owned by a tenant, or

(b) an amount that a landlord charges a tenant of a rental unit in a care home for care services or meals

9. The Landlord’s evidence was the association incorporated in 1982 and currently has 520 members.

10. Section 2(1) of the Act defines tenant as:

“tenant” includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being,

(a) a co-owner of the residential complex in which the rental unit is located,  
or

(b) a shareholder of a corporation that owns the residential complex

11. The position of the Landlord was the agreement between the parties does not have the hallmarks of a typical landlord and tenant relationship as the Tenant has a vote on the monthly fees paid, the rules of the property and can sit on the board as a director if elected to their board. The Tenant would benefit from the future value if the corporation is dissolved pursuant to section 150(1) of the *Not-for-Profit Corporations Act, 2010*

12. The Landlord’s position is also that a member of a non profit corporation without share capital is akin to a shareholder and is therefore not a tenant under the Act pursuant to the definition of tenant found in section 2(1) of the Act.

13. The Landlord in support of this position submitted technical interpretation #2011-0415831E5 from the Canada Revenue Agency which stated they believe “member” is contained within the definition of shareholder for the purposes of section 15(1) of the

*Income Tax Act*. The Canada Revenue Agency would expect a member to report any proceeds they received as income in the event a non profit corporation was wound up.

14. The Tenant's position was that the Act applies as no exemption was claimed under section 5 by the Landlord. The Tenant argued they are a separate and distinct entity from the Landlord and he pays a fee for the right to occupy the plot of land his mobile home is situated on. The submissions of the Tenant were that he and the Landlord meet the definitions of their respective roles as defined by the Act.

#### Analysis

15. I do not find the terms "member" and "shareholder" to be interchangeable. The technical interpretation from the Canada Revenue Agency was in relation to the interpretation of the *Income Tax Act* and not the *Residential Tenancies Act, 2006*. Further, had the legislature intended "members" of a corporation be excluded from the definition of tenant, they could have quite easily said so in the legislation. I am not prepared to find the legislature simply forgot to add the word "member" to section 2(1) of the Act and I prefer a plain reading of that section. As a result, I am not persuaded by the argument the Tenant's membership in the corporation is tantamount to being a shareholder. The Landlord submitted a 2007 decision for LTB file number SWT-000135. It was found in that case that a member was akin to a shareholder although it pointed out that a major difference was that shareholders have a reasonable expectation of financial benefit. Ultimately, the agreement between the parties in that case was not one covered by the Act as the main purpose for it was to provide recreational facilities. I did not find that decision helpful in deciding this application.
16. While a member and a shareholder may have similarities, that alone does not make them the same. I find the legislature's intent was to exclude persons that fall within the realm of owners from being tenants. In this case, the Tenant owns nothing apart from his mobile home. He has no tangible asset he can liquidate if he chooses to. He has a vote amongst 520 others on how things operate and the amount he pays. The possibility that one day he could receive an equal portion of the corporation's value, after liabilities, were it to dissolve or be wound up is not in my view an asset of consideration. There is no guarantee any value would ever come of it.
17. Section 202 requires to me to find the true intentions of the parties. It reads as follows:

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.

18. The Tenant signed an agreement to take over a lease in 2016 and become a member of the corporation. He was and is aware of the rights and obligations of this membership. He was aware he was entering into a group of people that self govern their living conditions under the umbrella of a non profit corporation. The Tenant knew he was not entering into a typical landlord and tenant relationship. He has a vote on his housing costs and the rules of the property. He himself, if elected to the board of directors could play an active role in the governance of the property. It is unlike that of a tenancy and it was known to him when he became a member and signed to take over the lease.
19. The Landlord's intentions in this relationship are obvious to me. They submitted a decision for file number SOT-59066-15 in which they were respondents in a similar application involving different residents. While they were successful in that case, I did not find the decision persuasive since at that time, lease holders at the property were shareholders whereas they currently are not. I did, however find the decision indicative of the Landlord's intentions in relation to an analysis based on section 202 of the Act. A year before the Tenant was assigned his lease and became a member the Landlord was arguing the circumstances were not a tenancy covered by the Act. I do not find that they changed their position a year later when the Tenant became a member and was assigned a pre existing lease agreement.
20. I find the intentions of the parties were the same when the relationship began. The corporation welcomed a new member that was fully aware of the circumstances he was entering into. That being, a member of a non profit corporation that self governs their living community with rights and obligations, including the proceeds from the sale of the property in the event one day the corporation is wound up. I do not find either party expected a tenancy covered by the Act.
21. Regardless of the parties' intentions at the time the relationship began, section 3(1) of the Act specifically states the Act applies with respect to rental units in residential complexes despite any other Act or agreement or waiver to the contrary. The Tenant pays a fee in exchange for the right to occupy the land his mobile home is situated on. I find the fee as described in the lease meets the definition of rent contained in section 2(1) of the Act. What the corporation and the Tenant call the fee is semantics. It is paid to the corporation and that corporation meets the definition of landlord contained in section 2(1) of the Act.
22. Notwithstanding the parties agreed to operate outside of the Act, section 3(1) clearly says they cannot. When the circumstances of their agreement are stripped away, I find a Tenant paying rent to a Landlord for the right to occupy a residential unit inside a residential complex. That in my view is the real substance of their agreement. There was no evidence

or argument at the hearing suggesting the Tenant was an “owner” under the definition of “tenant” contained in section 2(1) of the Act. There was no evidence presented as to the value of the Tenant’s lease or the amount the Tenant might receive if one day the corporation was wound up. Without any evidence of ownership, I am not prepared to draw an inference that the Tenant holds an ownership interest in the corporation.

23. The Tenant submitted a decision on LTB file numbers EAT-55915-16-IN and EAL-56910-16. In this case, the Tenant was found to not be a member as they had been in arrears and not in good standing. It was found in this decision that even if the Tenant was a member in good standing the Act would still apply when the real substance of the relationship and pattern of activity between the parties was considered. I found this reasoning persuasive.

24. The Tenant pays the Landlord money for the right to occupy his allotted space on the property. The Landlord expects the money from the Tenant in exchange for that right. While the corporation’s bylaws afford the Tenant a say in how the corporation is run, I do not find they elevate his position to that of a shareholder or an owner. On a balance of probabilities, I find he is a tenant under the Act.

**It is ordered that:**

1. The Act applies.

**August 16, 2022**  
**Date Issued**

Southern-RO  
119 King Street West, 6th Floor  
Hamilton ON L8P4Y7



---

**John Cashmore**  
Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.