



## Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

**Citation:** High Park Bayview Inc operating as Livmore High Park c/o GWL Realty Advisors Res v Jordan, 2023 ONLTB 57192  
**Date:** 2023-08-29 **File Number:** LTB-L-053564-22-RV

2023 ONLTB 57192 (CanLII)

**In the matter of:** 318, 55 QUEBEC AVE  
TORONTO ON M6P0B5

**Between:** High Park Bayview Inc operating as Livmore High Park c/o GWL Realty Advisors Res Landlord

**And**

Nigel Collin Jordan Tenant

### Review Order

High Park Bayview Inc operating as Livmore High Park c/o GWL Realty Advisors Res (the 'Landlord') applied for an order to terminate the tenancy and evict Nigel Collin Jordan (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-053564-22 issued on June 6, 2023.

On June 14, 2023, the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved.

On June 16, 2023, interim order LTB-L-053564-22-RV-IN was issued, staying the order issued on June 6, 2023.

This review hearing was heard in by videoconference on August 3, 2023.

Only the Landlord's Legal Representative Martin Zarnett and the Landlord's Agent Carlo Tobia attended the hearing.



**Determinations:**

1. The Landlord seeks a review of order LTB-L-053564-22 issued on June 6, 2023 on the basis that the order contains multiple serious errors in law including:
  - A determination that the Landlord had not established that the Tenant has persistently failed to pay the rent in full on the date it became due notwithstanding evidence to the contrary;
  - A determination that the Landlord was seeking termination and eviction on the N8 solely on the basis of non-payment of rent;
  - By conflating applications that might be made pursuant to section 58 and 59 of the Act;
  - A determination that the tenancy could not be terminated because of the Legislature's intent to provide tenants with an opportunity to avoid and even void termination of their tenancies by paying their outstanding arrears of rent and amounts owing in accordance with section 58 of the Act;
  - A determination that the Act ought to be interpreted such that a non-voidable notice and order should (not) issue where the sole issue is no rent payments have been made;
  - A determination that if a tenant is in arrears of rent that section 58 of the Act be interpreted in such a way that prevents a Landlord from obtaining an order, whether an eviction order or a conditional order requiring on-time payments;
  - With respect to paragraph 20 of the order that a determination that the landlord could choose to deny the tenant the opportunity to avoid termination or void the notice of termination by paying the arrears of rent owing by serving the tenant with an N8 notice;
  - A determination that by filing an L2 application based on an N8 notice that the landlord would deny the tenant's rights under section 74(11) of the Act or otherwise discontinue the application or void the eviction order earlier if payment is made earlier;



- A determination that a landlord may only have recourse to an L2 application pursuant to section 58 when all amounts have been paid by the tenant;
  - With respect to paragraph 22 of the Order that section 58 of the Act must be read as applying to situations where a payment has been made late before it gives rise to a cause for termination;
  - With respect to paragraph 23 of the Order that the only allegations in issue to this application were for non-payment of rent.
2. Requests to review are addressed at Board Interpretation Guideline 8, *Review of an Order*. While it is not binding on me, I do find it informative, useful and choose to follow it. The Landlord's request to review asserts the Member's interpretation of the Act and that her determinations constitute a serious error in law. With respect to the ground of serious error, Guideline 8 states:

The Board will not exercise its discretion to review an order interpreting the *Residential Tenancies Act, 2006* (the 'Act') unless the interpretation conflicts with a binding decision of the Courts or is clearly wrong and unreasonable.

3. I find that the Member's interpretation of section 58 and 59 of Act, including how those sections fit within the Act's clear intention to provide tenants with an opportunity to void termination notices and orders based on non-payment of rent, is not clearly wrong or unreasonable. The Member provided clear and cogent reasons for her interpretation of the relevant sections of the Act, and the order addresses most, if not all, of the arguments made by the Landlord in this review request
4. I am not aware of any binding Court decisions that directly speak to the issues raised in the request for review. I note that on the same day of the review request hearing the Divisional Court released its decision in *Tataw v. Minto Apartment L.P.*, 2023 ONSC 4238, which concerned a landlord who brought an L1 application for termination of the tenancy after having already received an eviction order based on an N8 notice alleging persistent late payment of rent. The parties before me did not have an opportunity to make submissions on *Tataw*, but I do not find that this decision stands for the proposition that non-payment of rent should also be considered as late payment of rent as asserted by the Landlord in this review request. At paragraph 19 of its decision, the Court explained that:



Late payment and non-payment are related but different problems, and usually lead to different remedies before the LTB. These distinct processes are longstanding LTB practices and are directed to addressing distinct problems in distinct ways.

5. I recognize that there are inconsistent Board orders on this issue - some consider that nonpayment of rent does constitute persistent failure to pay when it's due and others do not.
6. In the decision TNT-95222-17 (Re), 2017 CanLII 142681 (ON LTB), the Member found the Landlord's N8 notice to be invalid. At paragraph 37:

In my view, non-payment is not the same as late payment. An N8 notice is appropriate where a tenant has been paying rent, at least intermittently, but has not been paying it by the first day of each month.

7. In order LTB-L-058760-22 issued June 30, 2023, the Member stated at paragraph 11 that:

There is an argument that if the issue is one of *non-payment* of rent as opposed to *late* payment of rent, then the only appropriate notice to be served one under section 59 of the Act. I disagree with this argument...

8. While there are different views on this issue at the Board, I am not satisfied that the order under review is clearly wrong and unreasonable. The order's interpretation is reasonable and well-explained.
9. In addition, as noted by the Member, the Court of Appeal for Ontario has stated on several occasions that the Act must be interpreted in a manner that has regard to its "tenant protection focus". See for example: *Honsberger v. Grant Lake Forest Resources Ltd.*, 2019 ONCA 44, para. 19. The interpretation adopted by the Member in the order under review is consistent with a "tenant protection focus", whereas arguably the same is not true with respect to the interpretation submitted by the Landlord. If accepted, the Landlord's interpretation would result in tenants who are in rent arrears being denied the opportunity to void the termination of the tenancy, as provided for in the Act, if their landlord chooses to serve an N8 notice as opposed to an N4 notice.
10. On the basis of the submissions made in the request and at the hearing, I am satisfied that the order under review offers a persuasive and contextual interpretation of the Act. Accordingly, it cannot be found to contain a serious error.
11. This order contains all of the reasons within it and no further reasons will be issued.



**File Number:** LTB-L-053564-22-RV

**It is ordered that:**

1. The request to review order LTB-L-053564-22 issued on June 6, 2023 is denied. The order is confirmed and remains unchanged.
2. The interim order LTB-L-053564-22-RV-IN issued on June 16, 2023 is cancelled. The stay of order LTB-L-053564-22 is lifted immediately.

**August 29, 2023**

**Date Issued**

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Heather Chapple

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.