



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Paradis v Griffiths, 2023 ONLTB 41161

**Date:** 2023-06-02

**File Number:** LTB-L-042330-22

**In the matter of:** 128 TOPHAM TERR  
ORLEANS ON K4A5B7

**Between:** Jennifer Paradis Landlord  
  
and  
  
James Griffiths Tenant

Daniel Nixon and Jennifer Paradis applied for an order to terminate the tenancy and evict James Griffiths (the 'Tenant') because:

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

This application was heard by videoconference on May 16, 2023.

The Landlord and the Tenant attended the hearing. Daniel Nixon, spouse of the Landlord, initially attended at the outset of the hearing to serve as agent for the Landlord but ultimately testified as a witness for the Landlord. The Tenant spoke with Duty Counsel prior to the start of the proceeding.

**Determinations:**

*Preliminary Issue*

1. At the outset of the hearing, the Tenant raised whether Daniel Nixon could attend as agent for the Landlord.
2. The Tenant cited the findings in order LTB-L-025309-22 issued May 5, 2023, from a related application for termination and eviction for failure to pay rent that was dismissed as abandoned, where the Member found:

Only the Landlord's Agent, Daniel Nixon (DN) attended the hearing. DN is a property manager who's employed by multiple landlords. DN is not a licensee of the Law Society of Ontario (LSO) nor does he fall under the exemptions of an authorized representative. There was no record of written authorization from the Landlord for DN to act on her behalf and the Landlord was not present to provide oral authorization. Despite giving DN an opportunity to contact the Landlord for direction, he requested the application be withdrawn because they only seek the cost of the application.

3. In response to the Tenant, Mr. Nixon advised he is the common law spouse of the Landlord and written authorization for him to act on her behalf in this application was filed the morning of the hearing. Mr. Dixon also confirmed he deals in property management and is employed by a building owner aside from the Landlord.
4. Ultimately, whether Mr. Nixon could attend on behalf of the Landlord was moot as the Landlord attended and Mr. Nixon was excused from the proceeding until it was time for him to testify.
5. During the above preliminary issue, I also noted the application named Mr. Nixon as a landlord and was signed by him. The Tenant submitted he had had no dealings with Mr. Nixon for the past 4 years until he fell into arrears.
6. The definition of landlord under the Act includes:

s. 2 "landlord" includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit, ...

7. While Mr. Nixon denied he was a landlord, he also advised that as of January 2022 he had full authority to deal with the rental unit including permitting occupancy.
8. When the Landlord attended she confirmed the within application was hers and testified Mr. Nixon had been representing her for some years on this property.
9. In the above circumstances, I was satisfied the Board had jurisdiction to proceed with the application and have removed Mr. Nixon as a party to the application.

### *N8 Notice of Termination*

10. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. The Landlord did not seek eviction but instead sought an order requiring the Tenant to pay his rent on time, failing which they could bring an application for eviction under s. 78 of the *Residential Tenancies Act, 2006* (the 'Act'). For the reasons below, I was satisfied this was appropriate and have ordered the Tenant to pay on time for a period of 9 months commencing July 1, 2023.

11. The Tenant was in possession of the rental unit on the date the application was filed.
12. On July 21, 2022, the Landlord gave the Tenant an N8 notice of termination. The notice of termination alleges the Tenant persistently paid rent late each month commencing April 2021 up to and including July 2022. The N8 Notice alleged the average delay in payment was 56 days.
13. The Landlord testified because of the late payments she is charged extra fees, that it is a headache, and it is a hassle to always wonder when the rent will be paid.
14. The rent is due on the 1<sup>st</sup> day of each month. The evidence supports finding the Landlord consistently had N4 Notices served on or about the 2<sup>nd</sup> of the month where rent had not yet been received by the time the N4 Notice was prepared.
15. The Tenant admitted he was late paying rent during the 16 months as alleged by the Landlord in the N8 Notice.
16. As a result, I find the Tenant persistently failed to pay his rent on the date it was due.
17. The Tenant testified he fell into arrears and behind on his payments towards rent due to the circumstances when he tried to expand his business in April 2021.
18. The Landlord admitted the Tenant is not currently in arrears. However, the Landlord testified the Tenant has continued to pay his rent late since service of the N8 Notice and copies of her relevant account statements were submitted into evidence. The statements submitted show the Tenant's rent was paid late for August 2022 up to and including April 2023.
19. The Tenant testified, with the exceptions discussed below, he has paid rent on the 1<sup>st</sup> of each month since the N8 Notice. In support of oral evidence, the Tenant submitted copies of emails from his bank with date and time stamps advising his rent payments were deposited to the Landlord's account.
20. The Tenant's records show the Tenant paid rent to the Landlord on the 1<sup>st</sup> of August, September, October, and November 2022, and May 2023.
21. In December 2022, and January and February of 2023, the Tenant paid rent on the 2<sup>nd</sup>. In March 2023 the Tenant paid rent on the 6<sup>th</sup> and in April 2023 the Tenant paid the majority of the rent, \$1,500.00, on the 1<sup>st</sup> and the remaining \$255.82 on the 3<sup>rd</sup>.
22. There were consistent discrepancies of a day or so between the date of the Tenant's emailed receipts and the appearance of the funds paid by the Tenant on the Landlord's bank account statements. The reason for this discrepancy was unknown. The Landlord had no evidence to dispute the veracity of the records provided by the Tenant.
23. In the above circumstances, I find the Tenant paid rent on the dates recorded on his bank's email receipts and not on the date the Landlord's statements show the rent was deposited.

24. As a result, I find after the N8 Notice the Tenant paid rent on time for 5 of the following 10 months. That said, for another 3 months rent was received on the 2<sup>nd</sup> and once on the 3<sup>rd</sup>. For the last month, rent was received on the 6<sup>th</sup>.
25. The Landlord sought a conditional order that the Tenant pay on time. Based on the evidence of the Tenant, I do not find the issues that led to the pattern of behaviour recorded on the N8 Notice remain of concern. However, since the N8 Notice, the Tenant has only paid rent on time half of the time. The timing and clearance of payments from the Tenant's clients are not the Landlord's concern. That said, in all but one occasion, the time by which the Tenant missed paying rent on time was not more than a day or two.
26. In consideration of the above disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), I find it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. As this order is being issued after June 1, 2023, I have started the condition for the Tenant to pay on time on July 1, 2023.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall pay to the Landlord the lawful rent in full and on time for each consecutive month it comes due commencing on July 1, 2023, and continuing through to March 1, 2024.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the amount owing under paragraph 4 of this Order on or before June 13, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 14, 2023, at 6.00% annually on the balance outstanding.

**June 2, 2023**  
**Date Issued**

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Rebecca Case

Vice Chair, 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.