



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

**Citation:** Nishnawbe Homes Inc v Bailey, 2022 ONLTB 13907

**Date:** 2022-12-07

**File Number:** LTB-L-033165-22

**In the matter of:** 303, 244 CHURCH ST  
TORONTO ON M5B1Z3

**Between:** Nishnawbe Homes Inc Landlord

**And**

Alec Bailey Tenant

Nishnawbe Homes Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Alec Bailey (the 'Tenant') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex; and
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.

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

This application was heard by videoconference on November 24, 2022.

The Landlord's Agent, Cathi Porciello, the Landlord's Legal Representative, Carrie Aylwin, attended the hearing. Robert Pike (RP) appeared as a witness for the Landlord.

As of 1:30 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on December 12, 2022.
2. The residential complex is a congregate living rooming house consisting of 60 units.
3. The Tenant was in possession of the rental unit on the date the application was filed.

N6 and N7 Notices of Termination*Illegal Acts and Serious Impairment of Safety*

4. The Landlord's application is preceded by an N6 notice of termination and an N7 notice of termination ('N6 and N7 Notices'), both deemed served on June 7, 2022 in accordance with the *Residential Tenancies Act, 2006* (the 'Act'). The termination date on the N6 and N7 Notices is June 30, 2022.
5. The Landlord's N6 and N7 Notices rely on identical schedules in which the Landlord alleges that between April 7, 2022 and April 16, 2022, the Tenant committed the illegal acts of intimidation by watching and abetting, criminal harassment, failure to comply with a release order (four counts), and threat of bodily harm.
6. As both the N6 and N7 Notices rely on essentially the same alleged facts, they will be considered together.
7. The Landlord's witness, RP, testified he is employed by the Landlord as a Tenant Support Worker. He testified the Tenant is aggressive and has threatened and sexually harassed staff members on multiple occasions.
8. R.P. testified that on April 7, 2022, the Tenant approached a female staff member at the reception desk in the residential complex. He testified the Tenant cornered her by a wall and sexually harassed her. He testified the police were contacted and attended at the residential complex. He testified the Tenant was subsequently arrested and charged with criminal harassment and intimidation by watching and abetting. He added the Tenant's release conditions include that he is not to attend at the residential complex without a police escort.
9. The Landlord's Legal Representative submitted a copy of the Tenant's release order as evidence which includes seven charges against the Tenant and the conditions of his release.
10. R.P. testified the Tenant did return to his rental unit on August 11, 2022 with a police escort to retrieve his mail. He testified the Tenant advised he would return on another day to retrieve his belongings from the rental unit. R.P. stated the Tenant has not returned to the residential complex since August 11, 2022.
11. Based on the evidence presented by R.P., the Landlord's Legal Representative requested that the Board order termination of the tenancy and evict the Tenant.
12. This was also based on R.P. confirming the Tenant committed illegal acts, specifically the above-described sexual harassment, and it occurred at the residential complex in accordance with section 61(1) of the Act, which states:

A landlord may give a tenant notice of termination of the tenancy if the tenant or another occupant of the rental unit commits an illegal act or carries on an illegal trade, business or occupation or permits a person to do so in the rental unit or the residential complex.

13. In terms of considering if this is an “illegal act” and N6 Notices, the Board often turns to its Interpretation Guideline 9: Evict for an Illegal Act or Business.
14. Under the heading “Illegal Act or Business, it states:  
  
*“The term “illegal” is not defined in the RTA but would include a serious violation of a federal, provincial or municipal law. If the illegality is trivial or technical, the act or business or occupation might not be considered serious enough to warrant eviction. An illegal act will be serious if it has the potential to affect the character of the premises or to disturb the reasonable enjoyment of the landlord or other tenants. The seriousness of this ground can be seen in the fact that there is no opportunity in section 61 for the tenant to avoid termination by rectifying the illegal act.”*
15. And section 66(1) of the Act states:  
  
A landlord may give a tenant notice of termination of the tenancy if,
  - (a) An act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and
  - (b) The act or omission occurs in the residential complex.
16. In this case, the allegations of impaired safety are with respect to the Tenant’s aggressive and harassing behaviour and conduct towards the member of the Landlord’s staff.
17. The case law establishes that to warrant eviction under Section 66, there must be some actual impairment of safety. As held in *SOL-26261-12, 2012 LNONLTB 2628*, it is not necessary that anyone has actually been hurt or injured. It is sufficient that it is foreseeable that the act or omission could have resulted in or may result in a serious impairment of safety. The impairment of safety must be serious. Given the serious consequences of this ground, including short notice, immediate application, no opportunity to correct behaviour, priority eviction by the Sheriff, this ground is intended for the most serious of situations.
18. After considering the uncontested testimony of the Landlord’s witness and the evidence submitted by the Landlord’s Legal Representative, on the balance of probabilities, I am persuaded that the Tenant committed illegal acts and has seriously impaired the safety of another person.
19. In this case, the Landlord’s Legal Representative and the Landlord’s witness were able to present a direct account supported by compelling evidence that the Tenant committed illegal acts and impaired the safety of another person.
20. It is clear that sexual harassment and intimidation fits the definition described above of illegal acts; it has the potential to affect the character and disturb the reasonable enjoyment of the residential complex by the Landlord. The crime in question therefore is serious and does impact the Landlord and risks harmful effects to it.

21. Therefore, the Landlord's request to end the Tenant's tenancy and evict the Tenant is granted.
22. This order contains all the reasons for the decision. No other reasons will be issued.

### Daily compensation

23. Based on the Monthly rent, the daily compensation is \$17.42. This amount is calculated as follows: \$530.00 x 12, divided by 365 days.
24. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
25. There is no last month's rent deposit.

### Section 83 considerations

26. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
27. The Landlord's Legal Representative submitted the Landlord is seeking termination of the tenancy due to the Tenant's criminal activity and stated the safety of the other residents is paramount. The Landlord is seeking an 11-day expedited eviction order.
28. When considering relief from eviction it is incumbent on the Board to consider all the circumstances. In this case the Tenant was not present to give me any of his circumstances to consider, therefore I am only able to consider what was presented to me at hearing all of which points to the Tenant being aggressive, harassing, and impairing the safety of others. I find it would be far more prejudicial to the Landlord to allow the Tenant any extra time in the unit due to his criminal and harassing behaviour.

### It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before December 12, 2022.
2. If the unit is not vacated on or before December 12, 2022, then starting December 13, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after December 13, 2022. **The Sheriff is requested to expedite the enforcement of this order.**
4. The Tenant shall pay the Landlord compensation of \$17.42 per day for the use of the unit starting July 1, 2022 until the date the Tenant moves out of the unit.

5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before December 12, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 13, 2022 at 4.00% annually on the balance outstanding.

**December 7, 2022**

**Date Issued**

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Susan Priest

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on June 13, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.