



Order under Section 69 Residential Tenancies Act, 2006

Citation: Nicol v Martin, 2025 ONLTB 95818

Date: 2026-01-07

File Number: LTB-L-061886-25

In the matter of: Upper (Unit 2), 40 Old Soo Rd.
Lively ON P3Y1C4

Between: The Estate of Elvina Martin Landlords
Erma Nicol in her capacity as Estate Trustee
Paul Martin in his capacity as Estate Trustee

And

Ray Martin Tenant

Erma Nicol and Paul Martin (the 'Landlords') applied for an order to terminate the tenancy and evict Ray Martin (the 'Tenant') because:

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

The application is amended to include the Estate of Elvina Martin in order to reflect the legal ownership of the residential complex and to add the legal capacities of the Estate Trustees.

This application was heard by videoconference on October 28, 2025.

Only the Landlord Erma Nicol (an Estate Trustee), Landlords' agent David Nicol, and Landlords' witness Mary Wideman attended the hearing.

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 Landlords' evidence.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the Landlords and the Tenant is terminated effective January 18, 2026.

2. The Tenant was in possession of the rental unit on the date the application was filed.

Background

3. The residential complex is a house which was owned by the late Elvina Martin. Ms. Martin died February 22, 1995. Paul Martin and Erma Nicol were named in her Will as Estate Trustees (DOC 6335778).
4. There are seven individual beneficiaries to the Estate who are family members, and one charitable entity. The assets of the Estate, with the exception of the residential complex, have been distributed.
5. The Tenant, Ray Martin (RM), is one of Ms. Martin's sons and is entitled to one eighth of the estate as a beneficiary. RM lived with Ms. Martin in the residential complex until her death. After her death, the residential complex was split into an upper and lower unit, and RM has resided in the upper unit since Ms. Martin's death. The lower unit is rented to another (non-related) tenant.
6. Following Ms. Martin's death, a written tenancy agreement was prepared on September 29, 1995 for a month-to-month tenancy between the Estate and the Tenant, but it was never signed by the Tenant. Since Ms. Martin's death in February 1995, however, the Tenant has paid rent to the Estate on the 1st day of the month until he ceased paying rent altogether in February 2025.
7. Over the thirty-year period, the monthly rent increased from \$300.00 per month to \$435.00 per month. Some sample rent receipts were entered into evidence (DOC 6679511 and DOC 657518). The Tenant received income from the Ontario Disability Support Program (ODSP), and at one time, rent was paid directly to the Estate by ODSP. The Tenant is now 68 years old and supported by Old Age Security and CPP.

Is there a tenancy?

8. The circumstances of the application are somewhat unusual, but I am satisfied based on the evidence that there is a residential tenancy covered by the *Residential Tenancies Act, 2006* (the "Act") for the reasons below.
9. A tenancy agreement can be an oral, written, or implied agreement between a tenant and landlord for occupancy of a rental unit. In this case, there is an unsigned written agreement between the Estate and the Tenant, but also an implied agreement. The Tenant paid money on the first of the month from 1995 until February 2025 in exchange for occupancy of the rental unit. For some time, this money was directly paid by ODSP as rent.
10. A "landlord" is defined under the Act to include:
 - (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,
 - (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent

11. The Estate of Elvina Martin is a landlord, as the Estate is the legal owner of the residential complex. The Estate Trustees are the Estate's legal representatives and are therefore landlords.

12. A "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

13. As noted above, Ray Martin paid the Estate rent in exchange for living in the rental unit. The final asset of the Estate, the residential complex, has not yet passed from the Estate to the beneficiaries, and therefore the beneficiaries (including the Tenant) do not yet co-own the residential complex in which the unit is located.

14. Based on the facts before me about the current ownership status, Ray Martin is not excluded from the definition of "tenant" as he is not a co-owner.

N8 Notice of Termination – Persistently Late

15. David Nicol (DN) is the husband of one of the Estate Trustees and provided evidence on behalf of the Landlords. He took rent from the Tenant and provided receipts. He testified that the Tenant has some mental health challenges, and all of the family member beneficiaries were content for him to live in the rental unit as long as possible.

16. The Estate Trustees are now in their eighties and wish to finalize distribution of the Estate after 30 years.

17. Around January 2025, the Estate Trustees informed the Tenant that they needed to sell the residential complex to finalize the Estate. The Tenant became upset and stopped paying rent. He informed them that he is not moving, and DN stated that the Tenant doesn't accept the authority of the Estate Trustees to sell the property.

18. The Estate Trustees rely on the rental income from the upper and lower units to help maintain the residential complex, which is an old house. The tenant in the lower unit understands that they need to sell the property. DN testified that they are running out of cash and must continue to pay utilities and insurance without any income from the Tenant's unit.

19. On June 25, 2025, the Landlords gave the Tenant an N8 notice of termination deemed served on June 30, 2025. The notice of termination contains the following allegations: the Tenant did not pay rent on the 1st of the month as required for the months of February to June 2025 inclusive. Since the notice was served, no rent payments have been made.

20. To the date of the hearing, nine months of rent were unpaid. This conduct of not paying rent by the date it is due is consistent with the wording of section 58(1)1 of the *Residential Tenancies Act, 2006* (the "Act"), which states:

58 (1) A landlord may give a tenant notice of termination of their tenancy on any of the following grounds:

1. The tenant has persistently failed to pay rent on the date it becomes due and payable. [emphasis added]

21. The Act does not use the words "late payment," but rather it refers to a persistent failure to pay rent by the day it came due. While it is not binding on me, I agree with the analysis in LTB-L-058760-22 that this section of the Act captures persistent late payment of rent, persistent non-payment of rent, and some combination of the two.

22. Vice-Chair Shea's analysis in LTB-L-074093-22 and LTB-L-072500-23 is consistent with this interpretation:

The 'typical' application based on paragraph 58(1)1 will involve a situation where the tenant has, over an extended period, paid the rent otherwise than on the date the rent was due and payable and LTB will typically consider how many months in the preceding, for example, 12 months, the tenant paid the rent late to determine whether that constitutes 'consistently failing' to pay the rent on time. However, it is, in my view, open to the LTB to consider under paragraph 58(1)1 circumstances where the tenant has failed to pay rent over a period of time—the failure of a tenant to pay rent over a period of time can constitute grounds for termination of the tenancy under paragraph 58(1)1 and section 59.

23. As the Member notes in LTB-L-058760-22:

If a notice under section 58(1)1 could only be given where a tenant persistently pays the rent late, and not when a tenant persistently fails to pay the full rent on the basis that section 59 is intended to allow tenants to void notices in such circumstances, then not paying any rent instead of paying rent late would effectively shield the tenant from receiving a non-voidable notice of termination.

24. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late five times in the past five months on the N8 notice, and then late for the four months to the date of the hearing because it was not received on the 1st day of the month.

Daily compensation, NSF charges, rent deposit

25. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.

26. There is no last month's rent deposit.

Relief from eviction

27. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
28. The Tenant is clearly unhappy that the Estate Trustees want to sell the residential complex and that he will have to move. It is also apparent that because of this, he does not intend to pay any rent.
29. It is equally clear that the Estate Trustees are elderly and that they, and the other beneficiaries, have accommodated the Tenant's needs for 30 years.
30. It is highly unusual for an Estate not to be settled for 30 years. The Estate Trustees have a right to settle and distribute the Estate according to the Will, and indeed they have a legal obligation to do so for the benefit of all of the beneficiaries. The residential complex must be sold in order for them to do so.
31. The Landlords submitted into evidence a document signed by the seven individual beneficiaries which states that they are willing to contribute proceeds of their shares in the property to the Tenant's housing (DOC 6629660).
32. I am certain, based on the Landlords' submissions, that the family's intention is not to leave the Tenant without a home and that they will assist him physically and financially with new housing. DN indicated that they will also attempt to engage with social services to assist him. Due to the date of this order, there has been some time during which preliminary inquiries could be made.
33. It would be manifestly unfair to the Estate Trustees and to all of the beneficiaries of the Estate to prevent the sale of the residential complex and prolong finalizing the Estate after a thirty year wait to do so. It would also be unfair to the Landlords and all of the beneficiaries to postpone the eviction any further.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 18, 2026.
2. If the unit is not vacated on or before January 18, 2026, then starting January 19, 2026, 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 January 19, 2026.
4. The Tenant shall pay to the Landlords \$186.00 for the cost of filing the application.
5. The total amount the Tenant must pay the Landlords is \$186.00.

6. If the Tenant does not pay the Landlords the full amount owing on or before January 18, 2026, the Tenant will start to owe interest. This will be simple interest calculated from January 19, 2026 at 4.00% annually on the balance outstanding.

January 7, 2026

Date Issued

Margo den Haan

Member, Landlord and Tenant Board

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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 July 19, 2026 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.