



Order under Section 78(11) Residential Tenancies Act, 2006

Citation: Gateway Co-operative Homes Inc. v Eliason, 2026 ONLTB 43407

Date: 2026-06-17

File Number: LTB-C-007096-26-SA

In the matter of: 717, 90 EDGEHILL DR
BARRIE ON L4N7N1

Between: Gateway Co-operative Homes Inc. Co-op

And

Curt Eliason Co-op Member

Gateway Co-operative Homes Inc. (the 'Co-op') applied for an order to end the occupancy of the member unit and evict Curt Eliason (the 'Co-op Member') and for an order to have the Co-op Member pay the regular monthly housing charges they owe because the Co-op Member failed to meet a condition specified in the order issued by the LTB on with respect to application LTB-C-064938-25.

The Co-op's application was resolved by order LTB-C-007096-26, issued on February 17, 2026. This order was issued without a hearing being held.

The Co-op Member filed a motion to set aside order LTB-C-007096-26.

This motion was heard by videoconference on April 28, 2026.

The Co-op's legal representative Cassandra Weatherston, the Co-op's agent J.C. Stephens, the Co-op Member's legal representative Mark Stoute, and the Co-op Member's agent Natasha Brown attended the hearing. The Co-op Member briefly attended the hearing by telephone.

Determinations:

Preliminary Issue

Parties to the Motion/Orders

1. The Co-op Member's representative made submissions that the Co-op Member's spouse is not listed on the underlying orders requested that the Co-op Member's spouse Natasha Brown (NB) be added to the application as a Co-op Member.
2. The Co-op Member's representative asserted that NB pays the monthly housing charges from her ODSP payments in support of the proposition that NB should be added as a party.

3. The Co-op's representative made submissions that NB is an occupant of the member unit and is not a signatory to the lease agreement. Further submissions were made that the NB has not made a formal request to become a member of the co-op.
4. The *Residential Tenancies Act* (the RTA) defines a co-op member as:

“member”, except in the phrase, “members of his or her household”, means a member as defined in the *Co-operative Corporations Act* or a person whose membership and occupancy rights in a co-operative have terminated or expired in accordance with that Act;
5. Further, the *Co-operative Corporations Act* (the CCA) defines a co-op member as:

“member” means a person who is a member of a co-operative pursuant to the provisions of this Act or the articles and by-laws of the co-operative governing membership;
6. The CCA sets out general provisions in relation to membership in a co-op and how membership is obtained at sections 60 and 61.
7. Despite both Tenants testifying in relation to previous leases and occupancy agreements, NB did not produce any documentation to show that she is a member of the co-op, and the payment of regular monthly housing charges does not establish membership at the co-op.
8. While the definition of Tenant in the RTA is broad and includes “a person who pays rent in return for the right to occupy a rental unit”, the provisions of the RTA and the CCA provide a narrower definition of “member” that does not include considerations relating to payment of regular monthly housing charges.
9. Further, this issue was not raised at the first hearing of this matter, and no review of that decision was filed. Accordingly, I do not find that NB is a co-op member, and it would not be appropriate to amend the motion or the underlying orders to add them as a party.
10. Despite the determination that the NB will not be added as a party to the application, the Co-op Member filed an authorization permitting NB to act in the capacity of an agent at the hearing. Therefore, even though the NB was not added as a party to the application she was fully able to participate in the hearing and provided evidence for the Co-op Member in accordance with the authorization filed by him.

Adjournment Request

11. The Co-op Member's representative requested an adjournment because the Co-op Member is incarcerated, and NB had been unable to retrieve, serve, or file documents in support of their position.
12. The Co-op Member's representative made submissions that NB has disabilities and has been alone in the member unit without a caregiver leaving her with little ability to gather evidence since the Co-op Member's incarceration.

13. The Co-op Member's representative further submitted that NB intended to produce medical documentation of her disabilities to explain the late payments, and proof of payments to dispute the Co-op's calculations.
14. The Co-op Member's representative also submitted that despite having representation NB is reliant on others and has issues gathering evidence because of her disabilities.
15. The Co-op Member connected to the proceedings while incarcerated and testified that he was charged and incarcerated on March 10, 2026.
16. NB testified that the Co-op Member's bail has been denied and was unsure as to how long the Co-op Member would be incarcerated.
17. The adjournment request was denied for multiple reasons. The ex-parte order was issued on February 17, 2026, and the set aside motion was not filed until after the Co-op Member's incarceration on March 26, 2026. The Co-op Member did not act diligently in filing their motion and would have had ample opportunity to gather evidence prior to their incarceration.
18. Despite having sufficient time after the ex-parte order was issued to gather any evidence intended to be relied upon, NB has been responsible for paying the regular monthly housing charges and assumed payment of the arrears since the Co-op Member was incarcerated.
19. The Co-op Member's representative submitted that NB pays the regular monthly housing charges from ODSP entitlements, and the Co-op Member is reliant on NB to pay the housing charges while he is incarcerated.
20. Since NB regularly paid the regular monthly housing charges and paid the arrears payments since at least the Co-op Member's incarceration, she would have access to these documents and payment records. It was later disclosed during the hearing that NB's ODSP direct payments for the regular monthly housing charges only began in February 2026 however, this information was not provided at the time the adjournment request was being decided.
21. The Co-op Member sent an agent with authorization who was in the best position to retrieve evidence and give testimony in relation to payments made. The Co-op Member's motion was filed on March 26, 2026, and NB had over a month to obtain the necessary evidence.
22. Submissions were also made that despite the Co-op Member's representative filing the motion to set aside, the representative disengaged from representing the Co-op Member after filing the motion. The Co-op Member's representative explained that it would be easier for the Co-op Member to seek other representation from a legal clinic if he was no longer retained.
23. Ultimately, the same representative that filed the Tenant's set aside motion, and then disengaged from representation, was the same representative who appeared at the hearing representing both the Co-op Member and NB.

24. Some of the delay in obtaining or retrieving relevant evidence may be attributable to the changes in representation however, this is not a sufficient basis to grant the adjournment request. Further, the Tenant's representative did submit some payments receipts and their own ledger calculations which were accepted at the hearing.

25. The Board's Interpretation Guideline 1: Adjourning and Rescheduling Hearings provides:

Where the Member is satisfied that the party has received sufficient notice of the hearing and has been provided with an adequate opportunity to prepare their evidence and submissions, summons witnesses and obtain counsel ahead of the hearing date, an adjournment is not usually granted unless there are exceptional circumstances.

The specific factors the Member may consider in deciding whether to grant an adjournment include:

1. the reason for the adjournment and position of the parties;
 2. the issues in the application;
 3. any prejudice that may result from granting or denying the request;
 4. the history of the proceeding including other adjournments or rescheduling;
 5. the LTB's obligation to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.
6. When considering the factors set out in Guideline 1 an adjournment was not appropriate, and I do not find there are exceptional circumstances.
7. Accordingly, it was not appropriate or necessary to adjourn the hearing and the adjournment request was denied.

There was a Breach of the Previous Order

8. NB testified that she paid the regular monthly housing charges for January 2026, and the arrears payment however, when recounting the payments made in January 2026, NB acknowledged that they made two payments on January 12, 2026, which are reflected in the Co-op's ledger. The rent and arrears payments for January 2026 were not made on the dates required by the order.
9. Accordingly, I am satisfied that the Co-op Member failed to meet a condition specified in the with respect to application LTB-C-064938-25.

The Surrounding Circumstances

10. The Co-op submitted a ledger showing the Co-op Member's payment history from January 2026, up to the date of the hearing. When considering the evidence in relation to the dates payments were made, and applying those payments to the earliest outstanding balance, the following is the Co-op Member's payment history as determined by the evidence at the hearing:

Payment Due Date	Rent	Arrears	Paid?
January 1, 2026	\$1,221.00		LATE- Paid January 12, 2026
January 20, 2026		\$987.25	LATE- Paid March 3, 2026
February 1, 2026	\$1,221.00		LATE- Paid February 2, 2026
February 20, 2026		\$987.25	LATE Paid March 3, 2026
March 1, 2026	\$1,221.00		LATE- Paid March 3, 2026
March 20, 2026		\$987.25	LATE- Paid March 24, 2026
April 1, 2026	\$1,221.00		Paid; on time.
April 20, 2026		\$987.25	LATE- Paid April 20, 2026 and April 23, 2026.

11. NB testified that she was told by “JC and Barb” that the Co-op would only accept money orders for payment and due to NB’s mobility issues, this caused her to be late with payments. NB testified that she has cerebral palsy which makes it challenging to get money orders to pay the Co-op.
12. Despite the previous evidence and submissions that NB has paid the regular monthly housing charges from her ODSP entitlements, the payments from ODSP only began in February 2026 and since then the regular monthly housing charges were paid late again in March 2026.
13. NB submitted evidence of four payments made by debit and money orders, and all of the payments made by NB have been reflected on the Co-op’s updated ledger.
14. NB testified that she is able to pay the amount required by the original consent order but may require some assistance from her mother-in-law. NB also gave evidence that if she does not have to pay by money order she would have no reason to be late with her payments.
15. NB confirmed on cross examination that the Co-op’s office is open weekdays between 9:00 a.m. and 5:00 p.m., but later changed her testimony to reflect office hours of 9:00 a.m. to 11:00 a.m., and 1:00 p.m. to 3:00 p.m. on weekdays. NB also confirmed that prior to the consent order being issued, payments to the Co-op were routinely made by debit.
16. NB also testified in relation to their household income and expenses.
17. J.C. Stephens (JCS) testified that he is a property management assistant and has attempted to accommodate NB and the Co-op Member in making their payments. JCS gave evidence that his shift is from 7:00 a.m. to 3:00 p.m. however, on numerous occasions he has stayed until 5:00 p.m. to give NB and the Co-op Member the opportunity to make their payments.
18. The Co-op’s representative referenced a receipt submitted by NB that has a time stamp of 5:15 p.m. asserting that this receipt corroborates the testimony of JCS.

19. JCS also testified that the Co-op accepts two methods of payment at the office: debit and cheque/bank draft. JCS denied telling NB that she has to pay by money order testifying that the Co-op has a debit machine for the purpose of accepting payments, and there is no charge to use the debit machine.

Analysis

20. NB and the Co-op Member's representative made submissions that the payment issues are late payment of the amounts required by the order, and not non-payment.
21. The Co-op's representative submits that NB and the Co-op Member's income and expenses shows that the occupancy of the member unit is not sustainable. When considering the Co-op Member and NB's income against expenses for regular monthly housing charges, arrears, and living expenses, the Co-op Member and NB have a monthly deficit of available funds.
22. Further, NB's evidence that payments were required by money order cannot be reconciled with the testimony of JCS, and her own recent receipt making a debit payment. Even when NB made a payment by debit the payment was made in two payments and paid late.
23. I find it is more likely than not that NB's payment issues are caused less by the need to pay by money order, her disability, or mobility issues, and are more likely the result of an inability to pay the required amounts on the date the payments are due.
24. Even prior to the Co-op Member's incarceration payments were not made in accordance with the order and while there are still payments being made, the Co-op Member and NB have consistently failed to make the payments on time.
25. Considering that payments required by the order have consistently been made late, the Co-op Member's monthly household deficit, and the Co-op Member's reliance on outside assistance to pay the regular monthly housing charges, the only conclusion that can be reached is that the Co-op Member and NB's occupancy of the member unit is not sustainable.
26. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-C-007096-26.

The Stay is Lifted on August 31, 2026

27. NB requested 90 days until the stay is lifted if their motion is denied. The Co-op's representative submitted that 30 days would be the appropriate delay in lifting the stay given NB's circumstances.
28. Based on the evidence before me, including consideration of NB's disability, the stay of order LTB-C-007096-26 is lifted on August 31, 2026. To delay for 90 days would be unduly prejudicial to the Co-op however, NB's circumstances are sufficient to support a delay to August 31, 2026.

Post Hearing Submissions

29. The Co-op Member's agent NB submitted unsolicited post-hearing submissions which were received on June 10, 2026. All of the evidence and submissions that are considered in this order were provided at the hearing and the post-hearing submissions are not accepted.

It is ordered that:

1. The motion to set aside Order LTB-C-007096-26, issued on February 17, 2026, is denied.
2. The stay of order LTB-C-007096-26 is lifted on August 31, 2026.
3. Order LTB-C-007096-26 is unchanged.

June 17, 2026
Date Issued

Kyle McGraw
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.