



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

Citation: Herzberg v Clifton, 2026 ONLTB 645

Date: 2026-01-08

File Number: LTB-L-092978-25-SA

In the matter of: 111 Connelly Dr
Kitchener ON N2N2T9

Between: Lorena Herzberg Landlord

And

Thomas Clifton Tenants
Danielle Wideman

Lorena Herzberg (the 'Landlord') applied for an order to terminate the tenancy and evict Thomas Clifton and Danielle Wideman (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants did not meet a condition specified in the order issued by the LTB on October 8, 2025 with respect to application LTB-L-079126-25.

The Landlord's application was resolved by order LTB-L-092978-25, issued on December 10, 2025. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-092978-25.

This motion was heard by videoconference on December 16, 2025.

The Landlord's legal representative Brittany Colley and the Tenant Thomas Clifton attended the hearing. Mr. Clifton was authorized to represent both Tenants at the hearing.

Determinations:

There was a breach of the previous order

1. The Tenants failed to meet a condition specified in the order issued by the LTB on October 8, 2025 with respect to application LTB-L-079126-25.
2. The parties agree that the Tenants did not make the agreed-to payment of \$492.00 toward the arrears on or before October 20, 2025. This payment was made on October 23, 2025. They also agree that the rent payment that came due on November 1, 2025, was not paid in full and on time. This rent was still owing as of the date of the hearing.

The surrounding circumstances

3. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-092978-25.
4. As of the hearing date, the Tenants had not paid the rent for November 2025 or December 2025. I asked Mr. Clifton why these payments were not made and no reasonable explanation was provided.
5. Mr. Clifton testified about his financial situation at the hearing. He testified that he earns approximately \$2,800.00 per month from his employment, that Ms. Wideman earns approximately \$1,600.00 per month, that his mother-in-law (who resides in the rental unit) receives OAS payments, that he receives \$530.00 from the Child Tax Benefit, and that his wife is receiving a caregiving benefit.
6. I asked Mr. Clifton about his monthly expenses in an attempt to understand whether the unit was, in fact, unaffordable for the Tenants. His testimony was unclear. He testified to monthly expenses of approximately \$940.00 in addition to the rent of \$2,500.00.
7. In brief, the income testified to is more than adequate to pay the rent on an ongoing basis but the Tenants have chosen not to do so. Per Mr. Clifton's testimony, the Tenants' income exceeds their monthly expenses by hundreds of dollars. When asked on cross-examination where his income has gone when not paying the rent, Mr. Clifton said it went to "other bills" but could not articulate what, precisely, the money was spent on.
8. I find that Mr. Clifton's opaque testimony about his finances is not internally consistent. No reasonable explanation was offered as to why the rent was unpaid. It would be unfair to the Landlord to set aside the ex parte order in these circumstances.
9. I have also taken into consideration the fact that the Tenants reside with three children – ages 8, 10 and 18 – and Ms. Wideman's mother, who suffers from dementia. While these circumstances justify a delay in the lifting the stay – as explained below – it would be unfair to the Landlord to permit the tenancy to continue in all of the circumstances.

The stay is lifted on January 31, 2026

10. The stay of order LTB-L-092978-25 is lifted on January 31, 2026.
11. Given the number of individuals residing in the rental unit – including three children and an elderly dependent – I acknowledge that the Tenants may require some additional time to secure new housing. Therefore, I have delayed the lifting of the stay until January 31, 2026. Any further delay to the termination of the tenancy would be unduly prejudicial to the Landlord, who is entitled to full and prompt payment of the rent.

It is ordered that:

1. The motion to set aside Order LTB-L-092978-25, issued on December 10, 2025, is denied.
2. The stay of order LTB-L-092978-25 is lifted on January 31, 2026.

3. Order LTB-L-092978-25 is unchanged.

January 8, 2026
Date Issued

Jeremy Henderson
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.