



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

Citation: NOVIELLI v HUNT, 2025 ONLTB 89066

Date: 2026-01-09

File Number: LTB-L-095751-25-SA

In the matter of: Lower Unit, 65 Long Island Cres
Scarborough ON M1C 5E4

Between: Emilia Novielli Landlord

And

Austin Hunt Tenant

Emilia Novielli (the 'Landlord') applied for an order to terminate the tenancy and evict Austin Hunt (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the order issued by the LTB on September 8, 2025 with respect to application LTB-L-046147-25.

The Landlord's application was resolved by order LTB-L-095751-25, issued on November 19, 2025. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-095751-25.

This motion was heard by videoconference on December 18, 2025.

The Landlord, the Landlord's representative Carlo Gazze and the Tenant attended the hearing.

Determinations:

The Breach

1. There is no dispute that the Tenant failed to meet a condition specified in the order issued by the LTB on September 8, 2025 with respect to application LTB-L-046147-25. The Tenant failed to pay the rent on November 1, 2025 and also failed to pay \$1,000.00 towards arrears on November 1, 2025.

The surrounding circumstances

2. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-095751-25.

3. The evidence before me is that the Tenant paid the rent short after midnight on November 2, 2025 because it slipped his mind, but he paid it as soon as he remembered. Although the Tenant doesn't recall exactly when he paid, and thought it was before midnight on November 1, 2025, it is agreed he paid by e-transfer, and that the automatic deposit e-transfer was received at 12:29 a.m. November 21, 2025.
4. However, the Landlord provided no evidence to conclude that she was prejudiced by the 29-minute late payment, such as a mortgage payment missed. Instead she agrees she did not produce documents regarding her mortgage, and she testified she has overdraft on her account, but it was not necessary to use in this case.
5. I find therefore that there was no prejudice to the Landlord for the late payment. The lateness was of a minor nature, insufficient to warrant termination of the tenancy. I say this despite the history of this tenancy, which I have considered. I also do not disregard that the Tenant paid December rent early and has since paid all arrears
6. In cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue.
7. There are no such clear or compelling circumstances in this case. As I am satisfied it would not be unfair to set aside the eviction order, the Tenant's motion will be granted.

It is ordered that:

1. The motion to set aside Order LTB-L-095751-25, issued on November 19, 2025, is granted.
2. Order LTB-L-095751-25, issued on November 19, 2025, is set aside and cannot be enforced.

January 9, 2025
Date Issued

Julie Broderick
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.