



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

Citation: Sivakumar v Gocsal, 2026 ONLTB 2128

Date: 2026-01-05

File Number: LTB-L-086688-25-SA

In the matter of: 35 NEELANDS CRES
SCARBOROUGH ON M1E0B6

Between: Sujitha Sivakumar Landlord

And

Andrea Gocsal Tenant

Sujitha Sivakumar (the 'Landlord') applied for an order to terminate the tenancy and evict Andrea Gocsal (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 March 17, 2025 with respect to application LTB-L-097922-24.

The Landlord's application was resolved by order LTB-L-086688-25, issued on October 22, 2025. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-086688-25.

This motion was heard by videoconference on November 20, 2025.

The Landlord was represented at the hearing by Tom Thiru. The Tenant was represented by Janent Bracujapa.

Determinations:

Procedural History

1. On March 17, 2025, the parties agreed to resolve application LTB-L-097922-24 by way of a consent order requiring the Tenant to pay \$300.00 on the 15th day of each month toward rental arrears, while continuing to pay rent in full and on time until the arrears were paid in full.
2. On July 25, 2025, the Landlord filed application LTB-L-058638-25 alleging the Tenant failed to pay \$378.45 in rent due July 1, 2025. In the order issued September 18, 2025, the Board determined the Tenant was not in breach of the March 17, 2025, order.

3. The Landlord's request to review the September 18, 2025 decision was denied by order dated October 3, 2025. Subsequently, the Landlord filed a motion to terminate the tenancy on the basis that the Tenant did not pay the arrears installment due September 15, 2025. On October 22, 2025, the Board issued an ex-parte eviction order. The Tenant filed a motion to set aside that order.

Was there a breach?

4. Although the September 18, 2025, order did not expressly reinstate the arrears schedule, the Tenant's obligation to pay arrears was not extinguished. The arrears existed independently of ongoing application before the Board. It would not have been reasonable for the Tenant to assume that the arrears obligation was cancelled simply because the Landlord's application for eviction was set aside.
5. The Tenant also submits the review order issued October 3, 2025, dealt with the missed payment September 15, 2025. I find the Tenant to have misunderstood the October 3, 2025, review order. The issue of the September 15, 2025, breach was not before the Member who reviewed the September 18, 2025, order.
6. At the hearing, I conducted a thorough review of the Tenant's payment history since March 17, 2025, based on the evidence and the parties' submissions, I find the Tenant has paid \$2,250.00 toward the arrears since March 17, 2025, which is \$150.00 short of the amount required as of the hearing date. Accordingly, I find that the Tenant breached the order issued March 17, 2025.

The surrounding circumstances

7. Section 78(11) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Board to consider all the relevant circumstances to determine whether or not it would be unfair to set aside the order.
8. The Act is remedial legislation, and the courts have determined that evicting a tenant is a remedy of last resort. In the 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."

9. In considering the circumstances, I find it would not be unfair to set aside the order based on the Tenant's \$150.00 shortfall. The Tenant has consistently made payments under the arrears plan and was actively attempting to comply with the order. The missed amount is minimal and arose in the context of overlapping Board applications that understandably created confusion.
10. I further find the Landlord contributed to that confusion by improperly attempting to address unpaid utilities through an application based on a breach of a previous Board order in an attempt to circumvent an application for unpaid utilities under section 88.2 of the Act.

11. I also find the Landlord was the cause of the Tenant's confusion by bringing the previous application before the Board based on an unpaid utility bill trying to circumvent the Board's separate process for eviction based on unpaid utilities.
12. I find the prejudice to the Landlord is limited because arrears can continue to be repaid under a payment plan. In contrast, the Tenant resides with a disabled son and elderly mother and risks homelessness. The prejudice to the Tenant would therefore be significantly greater. Based on the remedial nature of the Act, I find the prejudice to the Tenant would be greater should her motion be denied.
13. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-086688-25.
14. The Tenant will be required to pay \$300.00 per month toward the arrears beginning January 15, 2026. If the Tenant has not paid their rent due December 1, 2025, and January 1, 2026 they will be required to do so by January 14, 2026.

It is ordered that:

1. The motion to set aside Order LTB-L-086688-25, issued on October 22, 2025, is granted. The order is set aside and replaced as follows:
2. The Tenant shall pay to the Landlord \$5,419.28, which represents the arrears of rent and costs outstanding for the period ending November 30, 2025.

Date Payment Due	Payment Amount
The 15 th day of each month beginning January 15 2026, and ending May, 2027	\$300.00
June 15, 2027	\$319.28

3. The Tenant shall pay the rent due December 1, 2025, and January 1, 2026 on or before January 14, 2026.
4. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period February 1, 2026, to June 30, 2027, or until the arrears are paid in full, whichever date is earliest.
3. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the

Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after November 30, 2025.

January 5, 2026

Date Issued

Bryan Delorenzi

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.