



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

Citation: Zavitz v Clodd, 2026 ONLTB 9819

Date: 2026-01-29

File Number: LTB-L-103637-25-SA

In the matter of: 2039 FIRST AVE
SELKIRK ON N0A1P0

Between: Billy Jo Zavitz Landlord

And

Crystal Clodd
Michael Poirier Tenant

Billy Jo Zavitz (the 'Landlord') applied for an order to terminate the tenancy and evict Crystal Clodd and Michael Poirier (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 October 21, 2025 with respect to application LTB-L-066893-25.

The Landlord's application was resolved by order LTB-L-103637-25, issued on December 11, 2025. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-103637-25.

This motion was heard by videoconference on January 26, 2026.

The Landlord and the Tenant, Crystal Clodd ("CC") and Michael Poirier, attended the hearing.

Determinations:

1. The first issue before the Board is whether there was a breach of the previous order issued by the LTB on October 21, 2025, with respect to application LTB-L-066893-25. There is no dispute that the Tenant did not pay the Landlord \$500.00 towards the arrears on or before November 30, 2025.
2. This means I must determine, having regard to all the circumstances, whether it would not be unfair to set aside the eviction order pursuant to section 78(11)(b) of the *Residential Tenancies Act, 2006* (the 'Act').
3. CC testified that she made a mistake with the dates and was under the impression that the arrears installments were due on the first of each month with the monthly rent and not the 30th day of the previous month as required by the order.

4. CC testified that the Tenant did not receive the order issued on October 21, 2025 as the Tenant had no access to the mailbox until January 9, 2026.
5. The Landlord denied withholding mail and testified that she hand-delivered mail to the Tenant. The Landlord opposed the motion submitting that the Tenant's late payments has caused her financial hardship.
6. While I am mindful of the Landlord's circumstances, the Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. I accept the Tenant's evidence that they genuinely thought the installments for the arrears were due was on the first of the month. This is supported by the fact that the Tenant paid the November 30, 2025 installment on December 1, 2025 and the December 30, 2025 installment on January 1, 2026. This is not a case where the Tenant blatantly disregarded the order or was excessively late or did not pay the Landlord at all.
7. Based on the evidence before the Board, I find it more likely than not that the Tenant is now aware of the dates they are required to pay the Landlord for the arrears and can comply with the balance of the order issued on October 21, 2025. I find that it would not be unfair under the present circumstances to set aside order LTB-L-103637-25 and grant the Tenant an opportunity to continue the tenancy. The Tenant has two children and has been making payments towards the arrears and paying the Landlord the ongoing rent. Prejudice to the Landlord is alleviated through the Landlord's ability to apply to terminate the tenancy under section 78 of the Act if there is another breach.

It is ordered that:

1. The motion to set aside Order LTB-L-103637-25, issued on December 11, 2025, is granted.
2. Order LTB-L-103637-25, issued on December 11, 2025, is set aside and cannot be enforced.
3. The previous order issued on October 21, 2025 with respect to LTB-L066893-25 remains in full force and effect.

January 29, 2026
Date Issued

Vicky Liu
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.