



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

Citation: London Non-Profit Multicultural Residences c/o M. F. Arnsby Property Management v
Clarke, 2026 ONLTB 11730

Date: 2026-02-17

File Number: LTB-L-003573-26-SA

In the matter of: 18, 786 SHELBORNE ST
LONDON ON N5Z4Y5

Between: London Non-Profit Multicultural Residences Landlord
c/o M. F. Arnsby Property Management

And

Dezirae Clarke Tenant

London Non-Profit Multicultural Residences c/o M. F. Arnsby Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Dezirae Clarke (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 November 5, 2025 with respect to application LTB-L-071692-25.

The Landlord's application was resolved by order LTB-L-003573-26, issued on January 19, 2026. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-003573-26.

This motion was heard by videoconference on February 10, 2026. The Landlord's legal representative Gail Kukor Lang, the Tenant and the Tenant's support, Tami Mairs, attended the hearing.

Preliminary Issue:

1. At the outset of the hearing the Tenant requested an adjournment so that they could obtain legal advice. The Tenant stated she reached out to various community legal service providers and to legal aid a few days prior to the hearing but none could assist her on such short notice.
2. The Landlord was opposed to the Tenant's adjournment request. The Landlord's legal representative submitted that the Tenant filed their set aside motion on January 20, 2026, and ought to have sought legal assistance immediately.

3. The Tenant's request to adjourn the hearing was denied for the following reasons.
4. Pursuant to section 21 of the Statutory Powers Procedure Act (SPPA), an adjournment will only be granted if it is required to permit an adequate hearing to be held. Interpretation Guideline 1 entitled "Adjourning and Rescheduling Hearings" advises parties that the Board expects them to make any necessary arrangement to proceed with a hearing on the date set out in the Notice of Hearing.
5. The Guideline further states "the right to representation is not absolute and an adjournment is not automatically granted when it is request on this ground. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they became aware of the hearing date".
6. This is the Tenant's set aside motion. The Tenant ought to have sought legal advice as soon as they filed their motion. The Tenant provided no reasonable explanation as to why they waited until a few days prior to the hearing to seek out legal advice. The Tenant was assisted by a support person and was able to adequately participate in a hearing.

Determinations:

7. The Landlord filed an L1 application for non-payment of rent which was resolved by consent order LTB-L-071692-25 issued on November 5, 2025. The order provided that the Landlord could apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if they failed to make the arrears and rental payments specified in the order.

The Breach of the Order

8. There is no dispute that the Tenant breached the order by failing to pay \$105.00 towards the arrears by January 1, 2026, and failing to pay the full monthly rent on or before January 1, 2026.

The Tenant's Motion

9. This motion is brought pursuant to subsection 78(11) of the Act. As I am satisfied that the Tenant breached the order issued on November 5, 2025, the only issue before me is whether I am "satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order".
10. The Tenant was forthcoming about the circumstances of the breach. The Tenant testified her ODSP payment for December 2025 came earlier than usual due to the holidays. The Tenant received her ODSP payment on December 20, 2025, and prioritized purchasing Christmas gifts above paying her rent and arrears payment.
11. The Tenant's support, Tami Mairs (T.M.) testified she is working with the Tenant to assist her with proper budgeting techniques and is also prepared to pay of the Tenant's full arrears owing to the Landlord in order to prevent the Tenant from becoming homeless.

12. The Tenant testified she has nowhere to go if she is evicted. The Tenant does not have a relationship with her family and other than her support person she states she has no friends who can assist her. The Tenant has lived in the rental unit for 4 years. The Tenant lives with two animals; a dog and a cat.
13. The Landlord's legal representative submitted that the arrears to the end of February 2026, inclusive of the Landlord's costs are \$2,810.00. The Tenant's rent geared to income (RGI) subsidy has been revoked because the Tenant has not provided the necessary financial documents required following the latest assessment. The Tenant's rent has increased to market rent of \$830.00 as of January 1, 2026. The Landlord is opposed to the Tenant's set aside motion and requests that the stay of eviction be lifted immediately.
14. Despite the Tenant's poor judgment in failing to prioritize her housing costs, she now has access to the funds needed to pay the full arrears through her support person. Based on the direct testimony of T.M., I am satisfied that she has both the genuine intention and the ability to assist the Tenant by making the arrears payment.
15. I note that this Tenant is at serious risk of homelessness which is highly relevant when considering all of the circumstances.
16. A review of the Tenant's net monthly income and expenses revealed that, even without the information needed to reinstate her RGI subsidy, she still has enough income to pay the market rent, although with a very limited margin. While the Tenant's finances are clearly tight, I am satisfied that, with the support they now have in place, the Tenant can successfully prioritize their rent payments and remain current going forward.
17. Given all of the above, and after considering all of the circumstances, I find that it would not be unfair to set aside the eviction order and replace the original consent agreement with a conditional order requiring the Tenant to pay the full arrears and costs owing to the Landlord, subject to the Landlord's right to file an application for eviction in the event of a breach. An order will issue accordingly.

It is ordered that:

1. The motion to set aside Order LTB-L-003573-26, issued on January 19, 2026, is granted. The order cannot be enforced
2. The previous order issued on November 5, 2025, with respect to LTB-L-071692-25 is cancelled and replaced with the following order.
3. On or before February 17, 2026, the Tenant shall pay to the Landlord \$2,810.00 for arrears of rent up to February 28, 2026, and costs.
4. If the Tenant fails to make the payment 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 3 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the Board pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after February 28,

2026. The Landlord must make this application no later than 30 days after the Tenant's failure to make a payment.

February 17, 2026
Date Issued

Melissa Anjema
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.