



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

Citation: Avaneew Fund 2 Single Family Rental Gp Inc. v Maltese, 2026 ONLTB 15004

Date: 2026-02-13

File Number: LTB-L-000769-26-SA

In the matter of: 3B, 18 Linwood St
St Catharines ON L2R1H3

Between:	Avaneew Fund 2 Single Family Rental Gp Inc.	Landlord
	and	
	Nathan Maltese Emily Gibbons	Tenants

Avaneew Fund 2 Single Family Rental Gp Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Nathan Maltese and Emily Gibbons (the 'Tenants') because the Tenants did not meet a condition specified in the order issued by the LTB on December 9, 2025 with respect to application LTB-L-053314-25.

The Landlord's application was resolved by order LTB-L-000769-26, issued on January 12, 2026. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-000769-26.

This motion was heard by videoconference on February 11, 2026.

The Landlord's Legal Representative, Angie Gravelle, the Landlord's Agent, Marc Orticello, and the Tenant, Emily Gibbons ('EG'), attended the hearing.

Determinations:

The Breach

1. There is no dispute that the Tenants breached the order issued on December 9, 2025 because the Tenants failed to pay \$936.00 towards the out-of-pocket expenses on or before December 20, 2025.
2. The Landlord also alleged that the Tenants failed to remove all yard waste from the rental property on or before January 1, 2026. Although this was disputed by EG, she acknowledged in her oral testimony that there are a number of items still littered in the yard which she alleges are frozen to the ground and cannot be removed until the ground thaws.

3. Therefore, based on EG's own testimony, I am satisfied that the Tenants also breached the order issued on December 9, 2025 by failing to remove all yard waste from the rental property on or before January 1, 2026.

Set-Aside

4. As I am satisfied that the Tenants breached the previous order, the next issue before me is whether it would be unfair in all the circumstances to grant the Tenants' motion to set aside the eviction order. For the following reasons, I find that it would be unfair to grant the Tenants' motion.
5. EG initially testified that they did not make the payment because her co-tenant, Nathan Maltese ('NM'), didn't know where to send the payment. However, during cross-examination, she testified that she thought the debt would just accrue interest if it was not paid and was not aware that she could be evicted if they did not make the payment on time and in full.
6. While EG also testified that she made one payment of \$300.00 towards the amount owed by what she stipulates was an "overpayment", she did not provide any specifics of what the overpayment was, when it occurred, or how she came into having an alleged overpayment on her account. Although she referred to documents filed in a review of another file, she did not present those documents at this hearing, nor did she provide the Landlord with any evidence she intended to rely on prior to this hearing. I find the evidence was insufficient to establish that the Tenants made any payment at all to the Landlords towards the out-of-pocket expenses. In my view, it is more likely than not that the Tenants chose not to make the payment because they assumed the debt would just start to accrue interest.
7. EG initially testified that she could pay the outstanding amount immediately, then she testified that she could pay it by the end of the week and then, during cross-examination, she testified that she does not have the money to pay it. She also testified that NM would be paying it because it is his mess.
8. Considering all of the circumstances, I find that this is a situation where it would be unfair in all the circumstances to set aside the eviction order. I am not satisfied that the Tenants will pay out-of-pocket expenses if given another opportunity to do so. EG does not acknowledge responsibility for the amount owed or for the yard waste, which is in violation of the City by-law. While she states that NM will pay it, he has made no efforts or attempts to pay anything towards the amount owed as of the hearing date and he was not present at the hearing to give evidence as to when he would pay it or whether he has the funds to pay it. For the foregoing reasons, the set aside motion is denied.
9. The Tenant requests that the lifting of the stay be delayed two months. The Landlord requests that the stay be lifted immediately. MO, the director of the Landlord in this matter, testified that City by-law is actively monitoring the property, and the Landlord is at great risk of incurring further fines due to the condition of the yard, which remains an issue.
10. I find that any delay with respect to lifting of the stay is unreasonable and would be prejudicial to the Landlord. While the Tenants will experience some prejudice, NM has already moved out of the rental unit, and EG has had nearly a month since order LTB-L-

000769-26 was issued to look for new living accommodations. Therefore, the stay will be lifted immediately.

It is ordered that:

1. The motion to set aside Order LTB-L-000769-26, issued on January 12, 2026, is denied.
2. The stay of order LTB-L-000769-26 is lifted immediately.

February 13, 2026

Date Issued

Candace Aboussafy

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.