



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

**Citation:** Wierzbicki v Breen, 2026 ONLTB 15461

**Date:** 2026-02-18

**File Number:** LTB-L-001422-26-SA

**In the matter of:** 10, 740 Barrydowne Rd  
Sudbury ON P3A3T5

|                 |                          |          |
|-----------------|--------------------------|----------|
| <b>Between:</b> | Benjamin John Wierzbicki | Landlord |
|                 | <b>and</b>               |          |
|                 | Jacob Breen              | Tenant   |

Benjamin John Wierzbicki (the 'Landlord') applied for an order to terminate the tenancy and evict Jacob Breen (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 20, 2025 with respect to application LTB-L-064522-25.

The Landlord's application was resolved by order LTB-L-001422-26, issued on January 14, 2026. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-001422-26.

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

The Landlord and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

### **Determinations:**

1. The previous 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 the Tenant did not meet certain conditions specified in the order.
2. Pursuant to section 78(11) of the Act, the issues are as follows:
  1. Did the Tenant breach the mediated agreement? If the answer to that question is "NO"; then the motion must be granted and the eviction order set aside;
  2. If the Tenant did breach the mediated agreement, the issue becomes whether or not the Board is satisfied, having regard to all the circumstances, that it would not

be unfair to set aside the eviction order. If the Board determines that it would not be unfair to set aside the eviction order, the motion must be granted, and the eviction order must be set aside. Pursuant to s.78(12), the Board may then amend the previous mediated agreement if it is deemed appropriate to do so;

3. If the Board is not satisfied that it would not be unfair to set aside the eviction order, then the Board must decide whether or not to delay lifting the stay of the eviction order.

#### *Breach*

3. There is no dispute that the Tenant did not pay the lawful rent for January 2026 on or before January 1, 2026.

#### *Set Aside*

4. Pursuant to section 78(11)(b) of the Act, the Board may make an order setting aside the ex parte order issued if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order.
5. The Tenant testified that he works part time at a pub, and they were closed down for Christmas and New Years and due to a flood, so he had a lapse in income due to this. The Tenant testified that he has not caught up on his payments due to his income, as it has been slow at work, so he has been unable to make enough money to afford the rent and payments. He testified that he anticipates an increase in income as they have several large functions coming up at the pub. The Tenant submits that he filed the set aside primarily to have more time to re-home his cats and set up a place for his belongings.
6. Considering all of the circumstances, I find that it would be unfair to set aside the eviction order. Based on the Tenant's won evidence, he cannot afford the rent, let alone payments towards the arrears. The tenancy is no longer viable.
7. The Tenant requests that lifting of the stay be delayed 30 days. The Landlord was not opposed to the Tenant's requested delay. Therefore, considering the above and that the Landlord was amenable to a 30-day delay, I find delaying lifting the stay 30 days is reasonable in the circumstances. Therefore, the stay will be lifted on March 18, 2026.

#### **It is ordered that:**

1. The motion to set aside Order LTB-L-001422-26, issued on January 14, 2026, is denied.
2. The stay of order LTB-L-001422-26 is lifted on March 18, 2026.

**February 18, 2026**  
**Date Issued**

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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.