



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

Citation: Dehoop Construction Ltd. v Running, 2026 ONLTB 19743

Date: 2026-03-04

File Number: LTB-L-004975-26-SA

In the matter of: 116, 20 Elmwood St
Kingston ON K7M2Y5

Between:	Dehoop Construction Ltd.	Landlord
	and	
	Daniel Running Darren Running Kelly Harvey	Tenants

Dehoop Construction Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Running, Darren Running and Kelly Harvey (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants did not meet a condition specified in the order issued by the LTB on April 16, 2025 with respect to application LTB L 000999-25.

The Landlord's application was resolved by order LTB-L-004975-26, issued on January 26, 2026. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-004975-26.

This motion was heard by videoconference on March 3, 2026.

Only the Tenants, Kelly Harvey ('KH') and Darren Running ('DR'), attended the hearing.

As of 9:41am, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenants' evidence.

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 Tenants to terminate the tenancy and evict the Tenants if the Tenants 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 Tenants 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 Tenants 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. The Tenants do not dispute that they failed to pay the monthly rent in full on or before January 1, 2026 or that they failed to pay \$1,000.00 towards the arrears on or before January 15, 2026. KH conceded that there were some unexpected financial difficulties that lead to them having insufficient funds to cover the payments.

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. KH testified that her husband, DR, had a stroke so she had to go on sick leave in order to care for him in his recovery. She testified that she went on sick leave almost immediately, but it was a while before she received EI benefits.
6. The monthly rent is \$1,815.71. KH testified that the Tenants made a payment of \$800.00 on January 18, 2026, which is not accounted for in the Landlord's application. I accept KH's testimony that the Tenants paid an additional \$800.00. Based on the amount claimed in the application, less the additional payment of \$800.00, the total arrears owing for the period ending March 31, 2026 is \$14,653.65. The Tenants did not dispute the amount owing.
7. KH testified that they have \$3,800.00 saved as of the hearing date that they can put towards the arrears immediately and then they can continue to make the previously agreed upon payments of \$1,000.00 each month, on the 15th of the month until the arrears are paid in full.
8. This is the first motion by the Tenants to set aside an eviction order for breach of the previous order. The Landlord was not present at the hearing to provide any evidence or submissions with respect to any prejudice to the Landlord in allowing the tenancy to continue. Having regard to all of the circumstances, and in balancing the prejudice to the Tenants against any potential prejudice to the Landlord, I find that it would not be unfair to set aside the ex parte order and provide the Tenants a final opportunity to continue their tenancy, subject to the conditions set out below.

It is ordered that:

1. The motion to set aside Order LTB-L-004975-26, issued on January 26, 2026, is granted.
2. Order LTB-L-004975-26, issued on January 26, 2026, is set aside and cannot be enforced.
3. The previous order issued on April 16, 2025 with respect to LTB L 000999-25 is cancelled and replaced with this order.
4. The Tenants shall pay the Landlord \$14,653.65, which represents the arrears of rent and costs outstanding for the period ending March 31, 2026.
5. The Landlord's application for eviction of the Tenants is denied on the condition that:
 - (a) The Tenants shall pay \$3,800.00 on or before March 11, 2026.
 - (b) The Tenants shall pay installments of \$1,000.00 on or before the 15th day of the month for the ten (10) month period commencing March 15, 2026 to January 15, 2027.
 - (c) The remaining balance of \$853.65 shall be paid on or before February 17, 2027.
 - (d) For the period of April 2026 to February 2027, or until the arrears are paid in full, whichever date is earliest, the Tenants shall pay the Landlord the monthly rent in full and by the **first day** of each corresponding month.
6. If the Tenants fail 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 Tenants to the Landlord pursuant to paragraph 4 of this order shall become immediately due and owing. Also, the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the Act, for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay the amount due and owing under this order and any new arrears, NSF fees and related charges that became owing after March 31, 2026. The order that results from this section 78 application is usually issued without a hearing.

March 4, 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.