



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

Citation: Rathwell v Hillier, 2026 ONLTB 18323

Date: 2026-03-18

File Number: LTB-L-003537-26-SA

In the matter of: A, 31 ELIZABETH ST
BAYFIELD ON N0M1G0

Between: Dan Rathwell Landlord

And

Jordan Hillier Tenant

Dan Rathwell (the 'Landlord') applied for an order to terminate the tenancy and evict Jordan Hillier (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 mediated settlement signed by the parties on November 19, 2025 with respect to application LTB-L-075496-25.

The Landlord's application was resolved by order LTB-L-003537-26, 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-003537-26.

This motion was heard by videoconference on February 25, 2026.

The Landlord, the Landlord's Legal Representative Matthew Armstrong and the Tenant attended the hearing.

Determinations:

1. As explained below, after considering all of the circumstances, I find that it would not be unfair to set aside the *ex parte* eviction order.

There was a breach of the previous order LTB-L-075496-25

2. On January 13, 2026, the Landlord claimed by way of L4 application that the Tenant failed to meet a condition specified in the consent order issued on November 19, 2025 with respect to application LTB-L-075496-25. The order was based on a mediated settlement.
3. The consent order required the Tenant to pay \$6,654.50 to the Landlord for arrears of rent owing to November 30, 2025 and costs by way of monthly instalments. From December 1, 2025 until October 1, 2026, the Tenant would pay \$554.54 on the 1st day of the month, and on November 1, 2026 she would make a final payment of \$554.56.

4. The Tenant was also required to pay the lawful rent on time and in full as it came due on the 1st day of each month.
5. There is no dispute that the Tenant did not pay the December 2025 and January 2026 arrears payments on time. That is why the Landlord sought an eviction under section 78 of the Act, without notice to the Tenant, pursuant to the terms of the order. On January 19, 2026, an ex parte order issued, terminating the tenancy as of January 30, 2026.
6. The Landlord's evidence is that the Tenant paid:
 - \$922.00 on December 2, 2025 (December 2025 rent)
 - \$555.00 on December 12, 2025 (December 2025 arrears instalment)
 - \$555.00 on January 22, 2026 (January 2026 arrears instalment)
7. On January 28, 2026, the Tenant filed a motion to set aside the *ex parte* order.
8. The parties agree that the Tenant then paid to the Landlord:
 - \$922.00 on January 30, 2026 (January 2026 rent)
 - \$922.00 on January 30, 2026 (February 2026 rent)
 - \$555.00 on February 20, 2026 (February 2026 arrears instalment)
9. The Landlord pointed out that the Tenant has been underpaying the rent – he claims a shortfall of 50 cents each time. He acknowledges that the Tenant has overpaid the arrears instalments by 46 cents for the past three months.
10. The Landlord neither served nor filed a proper ledger of the Tenant's rent account nor served and filed an L1/L9 Update for the Board's consideration.

The surrounding circumstances of the breach

11. The Tenant contends that she has acted in good faith in making the required payments although financial struggles have prevented her from making the payments on time.
12. The Tenant has lived in the rental unit for almost 10 years. This Landlord has been the landlord the entire time. The Tenant parents two children, aged 11 yrs. and 10 yrs.
13. In her motion she asserts that "statements made by the Landlord has contributed to a temporary loss of child support and my ability to pay rent." She explained that she and her former spouse (previously an occupant of the rental unit until the couple separated) are engaged in highly contentious family court proceedings.
14. At the hearing, she revealed that in December 2024 there was a water leak in the unit. She stated that family court documents disclose that the Landlord reported to her former spouse that the unit was unsafe for the children because of disrepair. Her evidence is that, on that basis, her former spouse kept the children and stopped paying child support; the situation was rectified when the court ordered the children returned to her care.
15. She says a loss of employment due to injuries preventing her from working also significantly contributed to her financial distress. Additionally, she said, she managed to buy a vehicle but the insurance cost turned out to be much higher than expected.

16. She applied and was approved for Ontario Disability Support Plan benefits, which she has been receiving for a couple of months now.
17. Specific to the breach, she explained that she did not receive the \$1,000.00 child support payment in December 2025 that her former spouse was to pay. She relayed that in December 2025 she had to pay \$1,300.00 to the hydro company because the electricity supply was suspended for non-payment. She acknowledges her responsibility for the cost of utilities for the rental unit.
18. She asserts that she had to wait for her CTB payment on the 20th of the month before she could make the January 2026 and February 2026 arrears instalments. She then paid those amounts immediately.
19. While all of the above factored into her inability to follow the payment plan, she maintains that it was not her intention to breach the order.
20. The Tenant confirmed that she receives monthly ODSP benefits of \$1,970.00 and a monthly child tax benefit (CTB) of \$1,200.00; she expects to receive ongoing child support.
21. She is confident that she can adequately budget for, and comply with, paying future rent and arrears payments but an extended payment plan would be helpful. She noted that at mediation during the original hearing she asked for 16 to 18 months to pay but the Landlord would not agree.
22. The Landlord asks the Board to consider that, after the consent order was issued, the Tenant immediately defaulted on the payment plan. M.A. acknowledged that the Landlord presented no evidence to demonstrate that he was suffering financial distress because of the situation. The Landlord's position is that he has had to chase the Tenant to make rent payments over many months, that he cannot continue to pursue the Tenant and so the tenancy is no longer sustainable.

The motion is granted

23. Based on the evidence and submissions before the Board, I accept that the Tenant fell behind due to unexpected income disruption but that she subsequently caught up the missed installments. She is current with the ongoing rent, having substantially remedied the shortfall (she still owes 12 cents for rent) before the motion hearing.
24. The Tenant's evidence satisfies me, on the balance of probabilities, that it would not be unfair to set aside the eviction order. I exercise my discretion accordingly.
25. The Tenant asked for a feasible payment plan to eliminate the balance of arrears. I find it appropriate to revise the terms of the original order, reducing the arrears payment amount and extending the payment plan over a period of 17 months.
26. The Tenant must be attuned to the fact that she must continue to prioritize paying rent and utilities costs in full and on time if she is committed to preserving her housing for herself and the children. This may be her final opportunity to avoid eviction based on arrears.
27. Any shortfall in future may attract further eviction applications by the Landlord, particularly if she has not informed the Landlord, on the rare occasion when it may occur, of an issue arising outside of her control which might interfere with her compliance with the payment

plan. Of course, where that happens, landlords are expected to reasonably consider giving the tenant an opportunity to make a delayed payment.

The existence of two concurrent ex parte orders

28. In his submissions, M.A. pointed out that there are two existing *ex parte* orders for this tenancy: LTB-L-003547-26 and LTB-L-003537-26.
29. In an unusual move and for unknown reason, the Landlord filed two L4 applications with the Board on January 13, 2026, within minutes of each other, each seeking eviction.
 - The first ex parte order LTB-L-003547-26 issued on January 19, 2026
30. In the first L4 application LTB-L-003547-26, the Landlord claimed that the Tenant breached order LTB-L-025820-26 (based on the N8 notice of termination for persistent late rent payments) by failing to pay the rent on time on January 1, 2026.
31. The Board issued an *ex parte* order on January 19, 2026, terminating the tenancy on January 30, 2026.
32. When I asked about the status of the enforcement of the order, M.A. indicated that the Landlord did not intend to file the order with the Sheriff pending the outcome of this motion.
33. The Tenant's evidence is that she did not receive the *ex parte* order in LTB-L-003547-26 and so she had not made a request to the LTB to grant her an extension of time to file a motion to set aside by the date of this hearing.
 - The second ex parte order LTB-L-003537-26 issued on January 19, 2026
34. In the second L4 application, LTB-L-003537-26, an *ex parte* order was issued by a different duty Member on the same day – January 19, 2026 – as the *ex parte* order in LTB-L-003547-26; the tenancy was similarly terminated on January 30, 2026.
35. The Landlord had claimed that the Tenant breached the terms of consent order LTB-L-075496-25 (based on an N4 notice of termination for non-payment of rent). That *ex parte* order forms the grounds for this motion.
36. The Landlord could have applied for an *ex parte* eviction order solely under LTB-L-075496-25 regarding rent arrears. That order required the Tenant to both pay the rent on time and in full and to obligated the Tenant to make arrears payments. In actuality, the Landlord has claimed that the Tenant defaulted on both.

Resolution of rent issues

37. This order is intended to resolve all current rent arrears issues arising in this tenancy, including those in LTB-L-003547-26, the application based on the N8 notice of termination.
38. An order will issue accordingly, requiring the Tenant to pay the rent on time and in full going forward for the duration of the payment plan ordered.

Late issue about a conflict of interest in legal representation

39. Just before the hearing concluded, the Tenant commented that the Landlord's lawyer M.A. is or was her former spouse's lawyer in the adversarial family court proceedings to which the Tenant is a party.

40. The Tenant's former spouse is not a party to these proceedings.
41. The Tenant's comment was in the form of an interjection when M.A. suggested that the Tenant's claims about not receiving child support should be dismissed or given minimal weight because she misrepresented the facts. He asserted that the Tenant has not had any children living with her for some time. He noted that child support is not payable when children are not in the actual care of the support recipient.
42. When asked, M.A., acknowledged acting for the former spouse "for a period of time". He did not dispute that his retainer with the former spouse overlapped with his retainer with, and representation of, the Landlord.
43. M.A. did not voluntarily disclose this information at the commencement of the hearing. Had he done so, I would have given serious consideration to disqualifying M.A. from participating in this proceeding.
44. I say this because the omission raises a red flag about whether M.A. has a conflict of interest under the Law Society of Ontario's Rules of Professional Conduct (LSO Rules')¹ which would disadvantage the Tenant in these proceedings or tend to demonstrate an apprehension of unfairness.
45. I accept the Tenant's evidence about the loss of child support and the Landlord's contributions to her loss of care of the children as disclosed in family court documents prepared by M.A., her former spouse's family law lawyer at the time.²
46. The Board is troubled by the fact that the Landlord disclosed the Tenant's personal, private information to her former spouse, either directly or through M.A., and that M.A. may have asked for and/or received from the Landlord confidential, private information about the Tenant's situation.
47. Facts about income, support, household stability and other housing issues, and facts relating to a landlord's personal knowledge about a tenant's activities, whereabouts and conduct may overlap across simultaneous family and tenancy proceedings. That is because information the landlord provides to the former spouse has the real potential to influence the family court's determinations about support, custody and other issues.
48. Plus, there is the remote but plausible possibility that if the Landlord and the former spouse conspired to deprive the Tenant of her housing, and if the Tenant is evicted, the changes to her financial and housing stability may directly impact her claims in the family law case. The Tenant alleges that the Landlord and her former spouse did conspire against her, causing her significant financial hardship and exposing her to eviction.
49. The LSO Rules prohibit lawyers from using confidential information given from one client to advantage another client. The lawyer would likely have a professional duty to decline to act for, or to withdraw from, one or both matters.
50. Knowing in advance of this hearing that the Tenant in her motion as filed had alluded to the Landlord interfering with her child support, at the beginning of this hearing M.A. ought

¹ [Rules of Professional Conduct - Lawyer | Law Society of Ontario](#) (Counsel); specifically Rules 2.1, 3.3 and 3.4.

² LTB-L-025820-25 was referred to by both parties at the hearing. Upon review of the LTB record in LTB-L-025820-25, the Tenant submitted a text message she sent to the Landlord in April 2025, asking him that very question.

properly to have advised me that he represented, or had been retained by both the Landlord in these proceedings and by the Tenant's former spouse in the family law matter.

51. I have also considered that M.A. did not serve, file or provide any evidence to document his retainers or to show that his retainer with the former spouse has indeed terminated.
52. Even if no confidential information was presented here, the significant and plausible risk of improper information disclosure and perception of manifest unfairness to the Tenant warrants procedural intervention to protect the integrity of these proceedings.
53. Pursuant to Rules A8.1 and 1.6(u) of the *LTB Rules of Procedure* and subsection 204(1) of the *Residential Tenancies Act, 2006*, an order shall issue (i) removing Matthew Armstrong as counsel of record, and (ii) that the Landlord must retain a new, unconflicted licensed representative (or unconflicted agent) or proceed self-represented for any future steps in this proceeding and in all future LTB proceedings relating to this Tenant.
54. Any claim the Tenant may have about M.A.'s professional conduct may be addressed separately through the Law Society of Ontario's complaints and disciplinary process.

It is ordered that:

1. The motion to set aside Order LTB-L-003537-26, issued on January 19, 2026, is granted.
2. Order LTB-L-003537-26 is set aside and cannot be enforced.
3. Matthew Armstrong is removed as counsel of record for the Landlord. He is prohibited from further acting for the Landlord (a) in relation to this proceeding, (b) with respect to any future proceedings relating to this tenancy or (c) in relation to any aspect of this tenancy.
4. Unless otherwise expressly permitted by law, the Landlord and the Landlord's employees or agents are prohibited from disclosing the Tenant's personal and private information, including details about her tenancy, to Matthew Armstrong and to any other person who has no direct or authorized role in the tenancy, without the Tenant's advance written consent.
5. Order LTB-L-075496-25, issued on November 19, 2025, is cancelled and replaced as follows.
6. The tenancy between the Landlord and the Tenant shall continue, subject to the conditions as set out in this order.
7. The Tenant shall pay to the Landlord \$4,989.50 (representing \$6,654.50 in rent arrears owing to February 28, 2025 and costs, minus \$1,665.00 the Tenant paid to the Landlord towards the rent and arrears as of February 20, 2026).
8. The Tenant shall pay the amount set out in paragraph 7 of this order in accordance with the following schedule:
 - (1) \$300.00 per month on the 21st day of each month starting **April 21, 2026**, and continuing each consecutive month after until July 21, 2027 (16 months), and
 - (2) a final payment of \$189.50 on August 21, 2027.
9. If the Tenant has not already done so, **the Tenant shall pay the lawful rent due for March 2026 in the amount of \$922.50, on or before March 22, 2026.**

10. The Tenant shall also pay to the Landlord lawful rent **on time and in full** as it comes due and owing **on the 1st day of each month** for the period **April 1, 2026 to August 1, 2027** or until the arrears are paid in full, whichever is earliest.
11. If the Tenant fails 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 Tenant to the Landlord pursuant to paragraph 7 of this order shall become immediately due and owing.
12. If the Tenant fails to make any one of the payments in accordance with this order, the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach 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.

March 18, 2026
Date Issued

Elle Venhola
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.