



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

Citation: Mokbel v Investments, 2026 ONLTB 24458

Date: 2026-03-27

File Number: LTB-L-012829-26-SA

In the matter of: PH201, 8 SCOLLARD ST
TORONTO ON M5R1M2

Between: Movin Mokbel Landlord

And

Kiwi Investments Tenants
Ian Heerdegen

Movin Mokbel (the 'Landlord') applied for an order to terminate the tenancy and evict Kiwi Investments and Ian Heerdegen (the 'Tenants') because the Tenants did not meet a condition specified in the order issued by the LTB on February 4, 2025 with respect to application LTB-L-069973-24.

The Landlord's application was resolved by order LTB-L-012829-26, issued on February 17, 2026. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-012829-26.

This motion was heard by videoconference on March 18, 2026.

The Landlord, the Tenant Ian Heerdegen and the Tenants' Legal Representative Dan Schofield attended the hearing.

Determinations:

1. The Tenant disputes that he failed to meet a condition specified in the order issued by the LTB on February 4, 2025 with respect to application LTB-L-069973-24.
2. This order requires the Tenant to pay the Landlord the lawful monthly rent on the first business day of each month between March 1, 2025 and February 1, 2026.
3. It was not disputed that when order LTB-L-069973-24 was issued on February 4, 2025, the lawful monthly rent was \$3,536.00.

The Lawful Rent and Did the Tenant Breach

4. The Landlord testified that on June 27, 2025 he served the Tenant an N1 Notice of Rent Increase to the Tenant by email. A copy of the email was included in the Tenant's evidence submitted for the hearing and it was also provided by the Landlord. Both copies of the email are the same and show the Landlord is advising the Tenant of the attached N1 Notice. The email clearly shows an attachment labeled:
8ScollardPH201N1FormJune2025.pdf
5. A copy of the N1 Notice of Rent Increase was also submitted into evidence. The N1 notice advises the Tenant the rent will increase by 18% effective October 1, 2025 but also stipulates that the Landlord is applying to the Board for an above guideline increase, verbiage that is also included in the body of the Landlord's email to the Tenant on June 27, 2025.
6. Paragraph 3 on page 2 of the N1 Notice contains the following information:

If the rent increase needs approval by an order under the *Residential Tenancies Act, 2006* the tenant is not required to pay more than the guideline increase until the order is issued. If the tenant only pays the guideline increase, the tenant may owe the landlord once the order is issued.
7. The guideline increase in 2025 was 2.5%. The Landlord's position was that since he served the Tenant the N1 Notice of Rent Increase to the Tenant on June 27, 2025, then the lawful monthly rent the Tenant was required to pay as of October 1, 2025 was \$3,624.40 which represents the old rent of \$3,536.00 plus the 2.5% guideline amount the Tenant was required to pay as stated on page 2 of the N1 Notice in paragraph 3. This represents an increase to the monthly rent of \$88.40.
8. The Landlord testified that the Tenant did not pay the lawful increase amount of \$88.40 on February 1, 2026 and as of the hearing date this amount for February 2026 remains unpaid. or at any time as of the hearing date. The Landlord acknowledged he is in possession of a cheque from the Tenant in the amount of the previous monthly rent but that this cheque has not been cashed. The Landlord's position was the Tenant breached order LTB-L-069973-24 by failing to pay the entire lawful monthly rent of \$3,624.40 for February 2026. I note Febauray1, 2026 fell on a Sunday and in accordance with the original order, the lawful monthly rent was due on February 2, 2026, the first business day of the month.
9. The Landlord testified that the Tenant told him in June, July and August 2025 that he had not received the N1 Notice of Increase. The Landlord did immediately resend the N1 Notice to the Tenant in June 2025, stating the Tenant has been very difficult over the course of the tenancy and routinely denies receiving documents.
10. The Landlord was opposed to the Tenant's motion to set aside the February 17, 2026 eviction order citing ongoing issues the two have had with each other. The Landlord's position was that since the Tenant breached the original order, he was entitled to terminate the tenancy and evict the Tenant. The Landlord's submissions opposing the motion were largely related to the obviously poor relationship between himself and the Tenant and not any significant prejudice the missing \$88.40 had on him.

11. The Tenant's Legal Representative, Mr. Schofield, conceded that the Landlord sent the email on June 27, 2025 but that the Tenant did not see the attachment in it. No argument was made at the hearing that email was not a valid method of service for the N1 Notice of Termination.
12. Mr. Scholfield argued that the N1 Notice is defective because it stipulates an above guideline increase that the Landlord cannot claim. I disagree. Whether the Landlord is successful or not with his application for an above guideline increase will be determined by the Board when that matter is heard. Even if the Landlord has stipulated an amount greater than what the legislation permits, the document, on page 2 paragraph 3, clearly advises the Tenant the only increased amount he is required to pay is the guideline amount.
13. Since the higher AGI amount was never the amount the Tenant was required to pay and since the N1 Notice does set out that only the guideline increase is required, I am satisfied for the purposes of communicating a guideline increase to the Tenant, the N1 substantially complies with the requirements of the Act and that pursuant to section 212(2) of the Act, there is no significant prejudice to the Tenant's ability to participate in the hearing.
14. The Tenant testified that after the original order was issued on February 4, 2025, he wrote 12 post dated cheques for the monthly rent of \$3,536.00 and gave them to the Landlord to ensure his rent payments would be made on time for the period set out in order LTB-L-069973-24.
15. The Tenant himself testified that he did receive the June 27, 2025 email directing him to the attachment. His testimony was that the email did not contain an attachment. I confirmed with the Tenant that he was talking about the email I had already considered in evidence and I put the email on the screen for the Tenant to see. He confirmed this was the email he was referring to. I pointed out that the file 8ScollardPH201N1FormJune2025.pdf is clearly attached to the email.
16. At this point in the hearing, the Tenant stated that he would like to stand corrected. In my view, there is absolutely no doubt in my mind that the Landlord served the Tenant the N1 Notice by attaching it to the email the Tenant acknowledged receiving on June 27, 2025.
17. The Landlord must prove he served the N1 Notice to the Tenant at least 90 days before the increase is taken and I am satisfied on a balance of probabilities they have done so in this case.
18. The Landlord is not required to prove the Tenant received the N1 Notice. The Landlord is not required to re-serve a document that have been validly served because the Tenant claims they did not receive it. The date a document is served is not invalidated when a party refuses to re-serve the same document. The date a document is served is not reset when a party acquiesces to a request to re-serve the document.
19. In this case, I am satisfied the Landlord served the Tenant the N1 Notice in accordance with section 116 of the *Residential Tenancies Act, 2006* (the Act) on June 27, 2025 and as such, the lawful monthly rent as of October 1, 2025, was \$3,624.40.

20. The Tenant only paid \$3,536.00 towards the lawful monthly rent for February 2026 and as such, I find he did breach order LTB-L-069973-24, as determined by the February 17, 2026 *ex parte* order.

Discretionary Relief under s. 78(11)(b)

21. The Tenant testified at the hearing that he would respect the Board's finding concerning the lawful monthly rent and pay the amount going forward. The Tenant has lived in the unit for approximately five years and does not want to be evicted.

22. This motion was filed under section 78(11) of the Act which states:

If the respondent makes a motion under subsection (9), the Board shall, after a hearing,

(a) make an order setting aside the order under subsection (6), and any order made under subsection (7) or (7.1), if any of the criteria set out in subsection (1) are not satisfied;

(b) make an order setting aside the order under subsection (6), and any order made under subsection (7) or (7.1), if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order under subsection (6); or

(c) make an order lifting the stay of the order under subsection (6), and any order made under subsection (7) or (7.1), effective immediately or on a future date specified in the order.

23. Pursuant to subsection 78(11)(b) of the Act, the Board may make an order setting aside the original order if the Board is satisfied that having regard to all of the circumstances, that it would not be unfair to set aside the order. I have the discretion to grant relief to the Tenant notwithstanding that the Tenant has breached the original order.
24. Having regard to all the circumstances, I find it would not be unfair to the Landlord to set aside the eviction order and permit the tenancy to continue. The Tenant's breach occurred in the last month of a 12-month conditional order and related only to the rent increase amount in dispute. The evidence shows that the Tenant is willing to take proactive steps to prevent late payments by voluntarily giving the Landlord post dated cheques. I accept the Tenant's word that he will respect my decision that the monthly rent is \$3,624.40 and pay it going forward.
25. In my view, the Tenant has shown he can and will pay the monthly rent on time and in full going forward now that the amount of the lawful monthly rent has been determined. As such, I do not find it would be unduly prejudicial to the Landlord to permit the tenancy to continue. While the parties clearly have a strained relationship and while there may be other issues in the tenancy, these circumstances are not related to the subject matter of this case and are therefore not grounds to deny the Tenant's motion.

26. For the reasons provided here, the Tenant's motion to set aside the February 17, 2026 eviction order is granted.

27. This order contains all the reasons for it. No further reasons shall issue.

It is ordered that:

1. The motion to set aside order LTB-L-012829-26, issued on February 17, 2026, is granted.
2. Order LTB-L-012829-26, issued on February 17, 2026, is set aside and cannot be enforced.

March 27, 2026
Date Issued

John Cashmore
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.