



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

File Number: LTB-L-105317-25-SA

In the matter of: 246 BAYVIEW FAIRWAYS DR
MARKHAM ON L3T2Z5

Between: NICOLAS SCHOUERI Landlords
Mona Gebrael

And

Howard Shore Tenant

NICOLAS SCHOUERI and Mona Gebrael (the 'Landlords') applied for an order to terminate the tenancy and evict Howard Shore (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 July 9, 2025 with respect to application LTB-L-073196-24.

The Landlords' application was resolved by order LTB-L-105317-25, issued on January 12, 2026. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-105317-25.

This motion was heard by videoconference on May 7, 2026.

The Landlords' Legal Representative, A. Nahhab, one of the Landlords, Nicolas Schoueri (NS), and the Tenant attended the hearing.

Determinations:

1. At the outset of the hearing, the Tenant asserted that the order, LTB-L-105317-25, issued on January 12, 2026 contains the determinations that the December 2025 rent and the arrears payment was not made on or before December 13, 2025. However, the Tenant states that the Landlord's L4 application was filed on the same date, December 13, 2026. The Tenant asserts that given he had until the end of the day to make the payments, this determination is incorrect.
2. The Landlords' Legal Representative confirmed that the Landlord's L4 application was filed on December 13, 2025 and submitted that it alleged all of the payments that were due in the previous order were not met including the payments due on November 13, 2025 which was the reason the L4 application was made. However, he also submitted that the Tenant

did not make the December's rent and arrears payment on or before December 13, 2025 as well.

3. NS stated that the Tenant paid the December's rent and arrears payment of \$142.00 on December 14, 2025 around 1:49 a.m. He also stated that the Tenant never made any payments on or before the 13th of each month, as they were all made after midnight on the 13th of each month.
4. The authority to determine this motion falls under subsection 78(11) of the *Residential Tenancies Act, 2006* (the 'Act') which provides that:

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.

5. As per subsection 78(11) (b) of the Act, the LTB shall set aside the order if satisfied, having regard to all the circumstances, that it would not be unfair to set aside the order.
6. For the following reasons, I find that it would not be unfair to set aside the order.
7. The order, LTB-L-105317-25, issued on January 12, 2026 made the following determinations at paragraph 2:

“2. I find that the Tenant has not met the following conditions specified in the order:

The Tenant failed to pay the lawful monthly rent due on December 13, 2025.

The Tenant also failed to pay \$142.00 towards the arrears on or before December 13, 2025.”

8. The order, LTB-L-105317-25, issued on January 12, 2026 also made the following determination at paragraph 5:

“5. Since the date of the previous order, the Tenant has failed to pay the full rent that became owing for the period from December 13, 2025, to January 12, 2026.”

9. The LTB's record confirmed that the L4 application was filed on December 13, 2026, and that the Landlord also filed two amended L4 applications on December 13, 2026 (DOC-6984440 & DOC-6984650). These two amended applications appear identical except for the latter highlighting the city for the rental unit as "Thornhill" and having no information under the section for the "rent deposit."

10. The LTB's record also confirmed that the Landlord uploaded two more amended applications on December 23, 2025 and December 26, 2025, respectively, labeled as "evidence and submissions" (DOC-7039948 & DOC-7044713) but both applications remained dated and signed on December 13, 2025. The latter one titled "L4 – Final Amended Application," had the following changes from the original application:

- Address of rental unit, city now listed as "Markham."
- Under calculation of amount owing the addition of \$4,344.50 in the box for "If you are applying under Reason 2 above, add any rent that came due after the date of the mediated settlement or order that the tenant has not paid."
- Under "Declare that the tenant did not meet the following condition(s) of the mediated settlement or order" the following is written:

"1. A Conditional Order dated July 9, 2025 required the tenant to pay the full monthly rent and arrears on or before the 13th day of each month.

2. The tenant failed to comply with this condition. Since the issuance of the Order, the tenant has not paid the rent and arrears on or before the 13th in any month.

3. In each month, the rent and arrears remained unpaid as of the 13th and was paid only on the 14th. The most recent payments were on the 14th of November, 2025.

4. Because the rent was not paid by the deadline set out in the Order, this constitutes non-payment of rent when required under the Order.

5. The tenant also failed to pay the current monthly rent on time, as both the regular rent and the arrears were paid after the required date.

6. This breach is continuous and repeated. The tenant has not complied with the Conditional Order even once.

7. The tenant was previously granted leniency in a prior L4 proceeding but immediately resumed the same non-compliant conduct.

8. As a result, the tenant has failed to meet the conditions of the Conditional Order, and the landlords are entitled to seek termination and eviction under section 78 of the Residential Tenancies Act, 2006.

9. Please see Appendix A attached for further details of the tenant's non compliance."

My Emphasis

11. Additionally, despite the Landlord's declaration in the "L4 – Final Amended Application" at #9 stating "Please see Appendix A attached for further details of the tenant's non compliance," there is no attachment provided with this upload and the only "Schedule A" attachment upload was provided with the original application filed on December 13, 2025

(DOC-6982974). The only information relevant in the “Schedule A” with respect to the condition(s) of the order allegedly not met by the tenant were the following paragraphs:

2.The tenant has never complied with the Conditional Order. In every month since July 9, 2025, the rent and arrears installments have not been paid on or before the thirteenth day of the month.

3.All payments have been made after the 13th day of the month. As of 12:00 a.m. on the 14th the rent remains unpaid, which constitutes non-payment at the required time rather than mere lateness.

4.The following post-midnight payment times are confirmed by the landlord’s video recordings and emails:

a) July 14, on the amount of \$3,000.00 (E-transfer)

b) July 14, on the amount of \$1,000.00 (E-transfer)

August 14, 2025

c) August 29, 2025, on the amount of \$202.50 (E-transfer)

d) October 14, 2025

e) November 14, 2025, consisting of two e-transfers \$1,344.50 and \$3,000.00 totalling \$4,344.50.

12. Rule 15.1 of the *Landlord and Tenant Board’s Rules of Procedure* (the “Rules”) provides that:

A request to amend an application before the hearing must be:

- a. in writing;
- b. served with the amended application to all other parties; and
- c. filed with LTB with the amended application and a completed Certificate of Service.

13. However, an application filed pursuant to section 78 of the Act is made without notice to the tenant and may result in an order being issued without a hearing. Given this, I was not satisfied that Rule 15.1 necessarily applies in this case. However, I was satisfied that a request to amend an application must clearly set out the amended portions of the application and be properly filed with the LTB. In this case, a document titled “L4 – Final Amended Application” was simply uploaded to the portal as “evidence and submissions” by the Landlords’ former Legal Representative, did not clearly identify the amended portions, and was still signed and dated on December 13, 2025, although submitted on December 26, 2025.

14. If it were accepted that the original L4 application, dated December 13, 2026, is the basis for order, LTB-L-105317-25, issued on January 12, 2026. Then, a determination that the Tenant breached the previous order by failing to pay the lawful rent for December 2025 and an arrears payment of \$142.00 on or before December 13, 2026 would be absurd and/or incorrect as this breach could not have been determined until December 14, 2025.
15. If it were accepted that the Landlord's L4 application was amended and filed on December 26, 2025, then whether a breach occurred on December 13, 2025 could be determined, but the Landlord's claim that rent is owing for the period of December 13, 2025 to January 14, 2026 contradicted the declaration in that amended application which stated at paragraph 5 "The tenant also failed to pay the current monthly rent on time, as both the regular rent and the arrears were paid after the required date," (see paragraph 10 above) (My Emphasis).
16. Consequently, given that the Landlords L4 application was either filed incorrectly or provided incorrect information which led to the order LTB-L-105317-25 being issued on January 12, 2026, and that the order itself contains incorrect and/or unfair determinations, I find that the order must be set aside.

It is ordered that:

1. The motion to set aside Order LTB-L-105317-25, issued on January 12, 2026, is granted.
2. Order LTB-L-105317-25, issued on January 12, 2026, is set aside and cannot be enforced.

May 14, 2026
Date Issued

Lisa Del Vecchio
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.