



Order under Section 77(8) Residential Tenancies Act, 2006

Citation: Anna Moore Group Inc. on behalf of Matthew Ward v Neimeyer-Mackenzie, 2026
ONLTB 41743

Date: 2026-05-26

File Number: LTB-L-010232-26-SA

In the matter of: UNIT B, 111 ESSA RD
BARRIE ON L4N3K8

Between: Anna Moore Group Inc. on behalf of Landlord
Matthew Ward

And

Kissondra Neimeyer-Mackenzie Tenant

Anna Moore Group Inc. on behalf of Matthew Ward (the 'Landlord') applied for an order to terminate the tenancy and evict Kissondra Neimeyer-Mackenzie (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-010232-26, issued on February 9, 2026. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-010232-26.

The motion was heard by videoconference on April 20, 2026.

The Landlord's legal representative Jennifer Fiegehen and the Tenant attended the hearing.

Determinations:

Tenant's Evidence

1. The Tenant testified that on January 6, 2026, "Kerry" came to the Tenant's door in the evening and provided an N4 Notice to Terminate the Tenancy for rent arrears. The Tenant's evidence is that she also discussed with Kerry signing an N11 agreement to terminate the tenancy and Kerry said she would return the following day with documents prepared.
2. The Tenant gave evidence that on January 7, 2026, Kerry returned with the documents and provided an N13 Notice in an envelope. The Tenant signed the N11 Agreement to Terminate and subsequently requested an extension of the termination date to February 1, 2026, resulting in a subsequent N11 being signed on January 20, 2026.

3. The Tenant gave testimony that she subsequently found the N13 envelope while packing and realized that she had different options. After obtaining advice, the Tenant believes they were not given all of the information to make the appropriate choice.
4. During cross-examination, the Tenant acknowledged that she was given an N4 notice showing rent arrears of approximately \$19,000.00. The Tenant disagreed with the amount owing at the hearing but conceded that she did not challenge the amount of arrears with Kerry during their discussions.
5. The Tenant also testified that as part of the N11 Agreement to Terminate, the Landlord agreed to waive the rent arrears, and also agreed to the request for an extension of the termination date.
6. The Tenant agreed that she voluntarily signed the N11 agreements to terminate based on the waiver of rent arrears but testified that the N13 prompted her to realize that she had options and wanted to explore the potential of having a different unit offered to her, and the requirement for compensation.

Landlord's Evidence

7. The Landlord's agent Samuel Ataikiru (SA) testified that he is a property manager for the Landlord and that in addition to being involved in the decision-making process in relation to the N11 Agreement to Terminate, he was privy to the discussions between Kerry and the Tenant.
8. SA gave evidence that when the property management company began overseeing operations of the residential complex, one of the goals was to address rent arrears. SA testified that the Landlord could have proceeded with an N4 notice for rent arrears to terminate this tenancy however, the decision was made to waive arrears based on the N11 agreement to terminate.
9. SA also gave evidence that the Tenant's request to extend the termination date was agreeable but when the Tenant failed to vacate in accordance with the agreement the sheriff was engaged to enforce the eviction.
10. SA further testified that the Landlord intends to demolish the rental unit and intends to add 20 affordable unit in conjunction with the City, which is what prompted the contemporaneous service of the N13 Notice.

Analysis

11. The facts in this matter are largely undisputed. The Landlord's agent approached the Tenant on January 6, 2026, and served an N4 notice for rent arrears. There was a discussion about waiving rent arrears in exchange for terminating the tenancy.
12. The parties formalized this arrangement with a signed N11 Agreement to Terminate the Tenancy. The Tenant requested an extension of the termination date and a second N11 Agreement to Terminate was signed on January 20, 2026.

13. The Tenant did not testify that they tried to revoke the first N11 Agreement and instead, signed a second N11 Agreement to Terminate on January 20, 2026. The Tenant was in possession of the N13 notice when they signed the second N11 Agreement, and had ample opportunity to review the document or seek any necessary advice. The Tenant's failure to take adequate steps to seek advice does not serve to invalidate the agreement.
14. Here, the testimonies and evidence establish, on a balance of probabilities, the parties entered into a mutual agreement to terminate the tenancy on January 31, 2026, with consideration being exchanged by way of a substantial waiver of rent arrears.
15. For there to be a binding contract, such as an agreement to terminate a tenancy, it is necessary that the parties, in fact, enter into an agreement. This means that the various elements of a contract must be established on a balance of probabilities, namely, an offer, an acceptance, meeting of the minds or an intention to create legal relations, and consideration: A. Swan, *Canadian Contract Law*, 2d ed. (Markham, ON: LexisNexis Canada, 2009) at 218, §4.8.
16. In this matter all of the essential elements of a contract are present, including consideration that was to be given for the delivery of vacant possession of the unit by the Tenant.
17. The circumstances given in evidence by the Tenant came after the initial agreement and do not change the initial premise that the parties had an agreement to terminate the tenancy.
18. The Board's decision in TEL-92321-18-SA also examines relevant considerations as to whether an agreement to terminate should be set aside:

“Generally speaking a contract will not be set aside except in a limited number of circumstances: common mistake, fraud, duress, misrepresentation, lack of capacity or unconscionability. With respect to motions like this, the Board may also set aside an eviction order in instances where something that could not have been anticipated occurred after the agreement was entered into that made it impossible for a party to comply with the agreement. “
19. The Tenant's evidence does not support a finding that any of these circumstances were present and accordingly, I find that the Landlord and the Tenant entered into an agreement to terminate the tenancy as of January 31, 2026. The Tenant did not move out of the rental unit by the termination date set out in the agreement.

Section 77(8)(b)

20. Section 77(8)(b) of the Act provides:

(8) If the respondent makes a motion under subsection (6), the Board shall, after a hearing,

(b) make an order setting aside the order under subsection (4), if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to do so;

21. The Tenant testified that she is currently on maternity leave and receives unemployment income. The Tenant moved into the rental unit on February 1, 2025, and resides there with her three children and a dog.
22. The Tenant acknowledged that she has not made any rent payments since January asserting that arrears of rent were waived however, the Tenant relies on a waiver of rent that was contingent on her vacating the rental unit.
23. The Tenant gave evidence that she wanted options and could figure out payment of the arrears with the assistance of rent banks and other funding. The Tenant did not submit any evidence that she was able to pay the arrears or had sought any funding assistance from outside sources.
24. The Tenant also testified that she has not been “solidly” looking for a new residence since January despite signing the N11 agreement in the same month.
25. The Landlord submits that they are working with the municipality to add 20 affordable units but are bound by various requirements and deadlines. The Landlord’s evidence is that they relied on the signed N11 agreement to terminate to their detriment and could have proceeded with the N4 notice or the N13 notice.
26. The Tenant has significant rent arrears and did not articulate a confirmed plan to address outstanding arrears. The Landlord relied on the signed agreement to terminate and now faces prejudice by the continued non-payment of rent, and further delays in their plans to demolish the residential complex. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-010232-26.
27. The Tenant’s motion is dismissed. When considering the prejudice to both parties, a very brief delay in lifting the stay is appropriate. The stay of order LTB-L-010232-26 is lifted on May 31, 2026.

It is ordered that:

1. The motion to set aside Order LTB-L-010232-26, issued on February 9, 2026, is denied.
2. The stay of Order LTB-L-010232-26 is lifted on May 31, 2026.
3. Order LTB-L-010232-26 is unchanged.

May 26, 2026
Date Issued

Kyle McGraw
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.