



Order under Section 74(14) Residential Tenancies Act, 2006

Citation: HERSZ PROPERTIES LIMITED v MILLS, 2026 ONLTB 47079

Date: 2026-06-19

File Number: LTB-L-106170-25-VO

In the matter of: 801, 2089 LAWRENCE AVENUE WEST
TORONTO ON M9N1H8

Between: HERSZ PROPERTIES LIMITED

Landlord

And

PATRICIA MILLS
CALRENCE MILLS

Tenant

PATRICIA MILLS and CALRENCE MILLS (the 'Tenant') filed a motion to set aside order LTB-L-106170-25 because, before the eviction order was enforced, the Tenant paid the amount required under subsection 74(11) of the *Residential Tenancies Act, 2006* (the 'Act') to void the order.

This motion was heard by videoconference on June 12, 2026.

The Landlord's Representative, Matt Anderson, the Landlord's Agent Treana Caswell, and the Tenant, Patricia Mills, attended the hearing.

The Tenant's Witness, Chantol Hall, and the Landlord's Witnesses, Iboro Essien, and Elena Occhino, attended the hearing.

Determinations:

1. The Tenant has not previously made a motion under subsection 74(11) of the Act to set aside an eviction order during this tenancy.
2. The Tenant made a motion to the LTB on June 2, 2026, alleging to have paid all of the arrears. The Tenant alleged that the Sheriff enforced the order after the motion to void was made.
3. The Landlord presented a Notice of Vacant Possession to the LTB showing that the Sheriff had enforced this order as of 2:25pm on June 1, 2026. Based on the testimony of Chantol Hall (CH) and Treana Caswell (TC), I am satisfied that the Tenant was aware of the eviction that had taken place as of June 1, 2026.
4. It was not contested that the Tenant would have paid enough to void the order as of either June 1, 2026, at 11pm, or June 2, 2026, as of 1:30am. Although there was a discrepancy

as to when the funds were paid, it does not change the fact that the payments made to void the order occurred after the Sheriff had given vacant possession of the rental unit to the Landlord.

5. Section 74(11) of the *Residential Tenancies Act*, 2006 (the 'Act') states:

A tenant may make a motion to the Board, on notice to the landlord, to set aside an eviction order referred to in subsection (3) if, after the order becomes enforceable **but before it is executed**, the tenant pays an amount to the landlord or to the Board and files an affidavit sworn by the tenant

6. Based on the evidence before me, I am satisfied that the Tenant did not void the order as of June 1, 2026, at 2:25pm. Although it is not disputed that the Tenant did pay all of the arrears and the sheriff fee after the enforcement of the order, it should also be noted that the Landlord, by virtue of order LTB-L-106170-25, was entitled to this amount.
7. However, this is not the only analysis required. Even though the voiding of the order may have occurred too late, the Board has the jurisdiction pursuant to section 23(a) of the *Statutory Powers Procedures Act*, (the 'SPPA') and in consideration of section 202(a) of the Act which allows the LTB to consider the "real substance" of all transactions and activities to consider if the motion to void should be granted despite what section 74(11) of the Act states.
8. Sections 23(a) of the SPPA and 202(a) of the Act both allow for the LTB to consider what is fair above what the Act states. However, for it to do so, the LTB needs to be satisfied that there was an abuse of process that occurred and resulted in the late payment. In other words, the LTB must be satisfied that the Tenant was not interfered with or misdirected by the Landlord to give the Landlord an unfair advantage in the enforcement of this order.
9. The Tenant testified that they had tried to contact several employees of the Landlord, however, did not explain why they needed additional aid in paying rent arrears when it appears they were well aware of how to pay the rent to the Landlord, as they had made payments to the Landlord prior to the voiding of the order without issue or challenge.
10. Both TC and Elena Occhino (EO) testified to having talked to each other on May 29, 2026, regarding a delay of payment from the Tenant and whether to delay the Sheriff, in addition to the conversation between CH and TC on June 1, 2026, after the Sheriff enforced the order. Neither conversation suggested the Landlord tampered with the Tenant's ability to pay rent to the Landlord. Nor was there any indication that the Landlord told the Tenant that they would reverse their decision, despite enforcement having occurred, If they received the remaining arrears and the sheriff fee.
11. Furthermore, the Tenant had testified that a RESP was required to be cashed to pay these arrears. If this was the case, then it appears the delay was solely caused by the Tenant as it is unclear how the Landlord could have caused delay in the Tenant being able to access these funds.
12. Based on the evidence before me, I am not satisfied that the Landlord engaged in an abuse of process. As of the Sheriff enforcement of the order on June 1, 2026, at 2:26pm, it would not be reasonable to believe that the Landlord could anticipate a payment of all the arrears.

13. For this reason, it would not be fair to grant this motion. Granting this motion would not just be prejudicial to the Landlord, who should be able to rely on the statute that governs their business, but would set a dangerous precedent that the statute can arbitrarily be altered to the benefit of the opposing party.
14. For the reasons stated above, I am not satisfied that the Tenant voided the order pursuant to section 74(11) of the Act, nor am I satisfied that the Landlord acted in bad faith throughout the process.
15. For this reason, the Tenant's motion to void is denied.

It is ordered that:

1. The Tenant's motion to void order LTB-L-106170-25 is denied.
2. The stay issued on LTB-L-106170-25-VO-IN and by virtue of the notice from the Board is lifted immediately.

June 19, 2026
Date Issued

Robert Brown
Vice Chair, 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.