



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** The Sportsman Apartments v Abramek, 2023 ONLTB 42100

**Date:** 2023-06-07

**File Number:** LTB-L-022196-22

**In the matter of:** 303, 3130 JAGUAR VALLEY DR  
MISSISSAUGA ON L5A2J3

**Between:** The Sportsman Apartments Landlord

**And**

Arkadiusz Abramek Tenants  
Mee Yee Lam

The Sportsman Apartments (the 'Landlord') applied for an order to terminate the tenancy and evict Arkadiusz Abramek and Mee Yee Lam (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (the 'L1 application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because:

- the Tenants have been persistently late in paying the Tenants rent.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date (the 'L2 application').

This application was heard by videoconference on March 8, 2023.

The Landlord attended the hearing. The Landlord was represented by David Ciobotaru.

As of 11:51 a.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

### **Determinations:**

#### L1 Application – Non-Payment of Rent

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$1,561.97. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$51.35. This amount is calculated as follows:  $\$1,561.97 \times 12$ , divided by 365 days.
5. The Tenants have paid \$19,790.23 to the Landlord since the application was filed.
6. The rent arrears owing to March 31, 2023 are \$134.38.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,400.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$74.55 is owing to the Tenants for the period from June 1, 2019 to March 8, 2023.

#### The L2 Application – Persistent Late Payment of Rent

10. The tenancy is a month-to-month tenancy in which rent is due on the first day of the month. The tenancy has been in place since June 1, 2019.
11. The Tenants were in possession of the rental unit on the date the application was filed.
12. The Landlord's L2 application is based on an N8 notice of termination that was delivered to the Tenants on April 19, 2022, which identified a termination date of June 30, 2022. The notice of termination alleged that the Tenants had been persistently late in paying the rent 17 times during the period beginning on September 1, 2019 through to since April 1, 2022.

#### Evidence

13. The Landlord's legal representative did not call any witnesses to provide oral testimony at the hearing.
14. The Landlord's legal representative directed the Board to the Notice to End your Tenancy at the End of the Term (N8 Notice) which demonstrates that beginning on September 1, 2019 and continuing to April 1, 2022, the Tenants had persistently made their rent payments late 27 of the 32 months in this period. The legal representative entered into evidence a summary of payments beginning on and around September 1, 2019 through to April 1, 2022 indicating that the Tenants had made payments on various dates for each month throughout this range of time, most of which were not made on the 1<sup>st</sup> of each month.
15. In response to questions posed by the Board, the Landlord's legal representative asserted that any delays in an eviction would be prejudicial to the Landlord given the magnitude of arrears to date, and the risk that further arrears would accumulate given the payment history which would be further exacerbated by the expected delays enforcing an eviction. The legal representative informed the Board that attempts were made to make payment arrangements with the Tenants which were unsuccessful.
16. Based on the uncontested evidence before me, I find that the Tenants has been persistently late making their rent payments for the 1st of each month in 27 months

between September 1, 2019 to April 1, 2022. This conclusion is supported by the uncontested submissions of the Landlord's legal representative and documentary evidence submitted as part of the Landlord's evidence which lists the late payments.

### Relief from Eviction

17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act. Given the significant payments made since the application was filed, I am satisfied that the Tenants would benefit from additional time to satisfy the arrears to preserve the tenancy.

### **It is ordered that:**

#### L1 Application – Non-Payment of Rent

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenant voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$5,006.29 if the payment is made on or before June 30, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$6,568.26 if the payment is made on or before July 31, 2023. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after July 31, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
4. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before July 31, 2023.**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$2,305.34. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenants \$51.35 per day for compensation for the use of the unit starting March 9, 2023 until the date the Tenants moves out of the unit.
6. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

8. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after August 1, 2023.

L2 Application – Persistent Late Payment of Rent

9. If the Tenants void the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue on the following terms.
10. The Tenants shall pay the Landlord the monthly rent due on or before the first day of the month for the period August 1, 2023 to July 1, 2024.
11. If the Tenants fail to make any of the payments in paragraph 10 above, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') within 30 days of the breach and without notice to the Tenants, for an order terminating the tenancy and evicting the Tenant.

**June 7, 2023**  
**Date Issued**

\_\_\_\_\_  
Emile Ramlochan  
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on February 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before June 30, 2023**

Rent Owing To June 30, 2023	\$24,610.52
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$19,790.23
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$5,006.29</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before July 31, 2023**

Rent Owing To July 31, 2023	\$26,172.49
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$19,790.23
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$6,568.26</b>

**C. Amount the Tenants must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$18,773.44
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$19,790.23
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,400.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$74.55
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00

<b>Less</b> the amount of the credit that the Tenants is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$(2,305.34)</b>
Plus daily compensation owing for each day of occupation starting March 9, 2023	\$51.35 (per day)

2023 ONLTB 42100 (CanLII)