



## Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

**Citation:** WMV HOLDINGS INC. v Kaczmarzyk, 2023 ONLTB 31350

**Date:** 2023-04-13 **File Number:**  
LTB-L-019919-22-RV

**In the matter of:** 81A GRAND RIVER ST N PARIS  
ON N3L2M3

**Between:** WMV HOLDINGS INC. Landlord

**And**

Leesa Marie Kaczmarzyk Tenant

### Review Order

WMV HOLDINGS INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Leesa Marie Kaczmarzyk (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed charges related to NSF cheques.

This application was resolved by order LTB-L-019919-22 issued on March 3, 2023. The Tenant did not attend the hearing of the application.

On March 7, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 9, 2023, interim order LTB-L-019919-22-RV-IN was issued, staying the order issued on March 3, 2023.

The Tenant's review hearing was held by videoconference on March 27, 2023. The Landlord's Agent, Walter Verhey, the Landlord's Legal Representative, Fred Suter, and the Tenant attended the hearing. The Tenant declined the opportunity to speak with Duty Counsel prior to the hearing.

### **Determinations:**

#### Request to review granted

1. Based on the submissions at the hearing, I was satisfied that the Tenant was not reasonably able to participate in the February 21, 2023 hearing due to technical issues with her internet and phone service provider. Accordingly, the Tenant's request to review was granted and the matter was heard de novo.

#### Adjournment request denied

2. After the Tenant's request to review was granted, the Tenant sought an adjournment of the hearing in order to retain counsel and file documents. For the following reasons, the Tenant's adjournment request was denied.
3. The LTB is obligated to adopt the most expeditious method to determine the issues in a proceeding that affords parties an adequate opportunity to know the issues and be heard on the matter: section 183 of the *Residential Tenancies Act, 2006* (the 'RTA'). Tenant acknowledged receipt of the Notice of Review hearing on February 17, 2023. I was not satisfied that the Tenant exercised due diligence in retaining counsel. Since receiving the notice, the Tenant reached out to 2 lawyers both of whom were not available at the hearing. The Tenant made no other efforts to retain counsel. I also note that the Tenant declined the opportunity to speak with Duty Counsel prior to the hearing. Additionally, the issues in the application were not complex. They relate to non-payment of rent. The alleged arrears were close to the LTB's jurisdictional limit and the Landlord would be highly prejudiced by further delay if the adjournment was granted.

#### L1 and L2 application

4. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice) and a valid N8 Notice for persistently failing to pay the rent when it is due. The Tenant 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.
5. As of the hearing date, the Tenant was still in possession of the rental unit.
6. The lawful rent is \$1,950.00. It is due on the 6th day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$64.11. This amount is calculated as follows: \$1,950.00 x 12, divided by 365 days.
8. The Tenant has not made any payments since the application was filed.

9. The rent arrears owing to April 5, 2023 are \$33,100.00.
10. In the last 12 months the Tenant has not paid rent in full by the first of the month 12 times.
11. The Tenant has persistently failed to pay the rent on the date it was due.
12. The NSF cheque charges were not substantiated at the hearing. Therefore, the claim was denied.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$1,950.00 from the Tenant 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.
15. 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 April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
16. The Tenant testified that she would be able to pay the amount owing within 30 days from the hearing date. The Tenant says she represents a number of publicly traded companies and has several potential contracts in the works approximating \$15,000.00 per contract. The Tenant also says she can borrow money from her children if the contracts don't materialize.
17. After a lengthy hearing, the parties consented to the order below allowing the Tenant the ability to void the order by April 30, 2023, and if the Tenant does void the order, the Tenant agreed to pay the lawful rent on time for a period of 12 months. I was satisfied that the parties understood the consequences of the consent.

**It is ordered that:**

1. The interim order issued on March 9, 2023 is cancelled.
2. The request to review order LTB-L-019919-22, issued on March 3, 2023, is granted. The order is cancelled and replaced by the following.
3. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
4. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - **\$35,236.00** if the payment is made on or before April 30, 2023. See Schedule 1 for the calculation of the amount owing.
5. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent

that became due after April 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.

6. If the Tenant voids the order, then commencing May 6, 2023 and for a period of 12 consecutive months thereafter, the Tenant shall pay the lawful monthly rent on or before the 6<sup>th</sup> business day of the month.
7. If the Tenant fails to comply with the conditions set out in paragraph 5 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
8. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before April 30, 2023**
9. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$30,716.64. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
10. The Tenant shall also pay the Landlord compensation of \$64.11 per day for the use of the unit starting March 28, 2023 until the date the Tenant moves out of the unit.
11. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.
12. If the unit is not vacated on or before April 30, 2023, then starting May 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
13. 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 May 1, 2023.

**April 13, 2023**

**Date Issued**

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Khalid Akram

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 November 1, 2023 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before April 30, 2023**

Rent Owing To May 5, 2023	\$35,050.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<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 Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$35,236.00</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$32,523.01
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,950.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$42.37
<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 Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$30,716.64</b>
Plus daily compensation owing for each day of occupation starting March 28, 2023	\$64.11 (per day)