



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** 118 Pembroke Holdings Ltd. v Desaulnier, 2023 ONLTB 27361

**Date:** 2023-04-11

**File Number:** LTB-L-022123-22

**In the matter of:** 2, 120 PEMBROKE ST  
TORONTO ON M5A2N8

**Between:** 118 Pembroke Holdings Ltd. Landlord

**And**

Nicole Desaulnier Tenant

118 Pembroke Holdings Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Nicole Desaulnier (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application) and because the Tenant has been persistently late in paying the Tenant's rent (L2 Application).

This application was heard by videoconference on March 7, 2023.

The Landlord's Representative Victoria Orlandi, the Landlord's Agent Bob Horniblow, and the Tenant attended the hearing.

### **Determinations:**

#### Closure of the Hearing Room

1. The Tenant requested an order limiting the public's access to the hearing. The Tenant made that request because she wanted to provide testimony that involved intimate personal details.
2. Hearings at the Tribunal are generally open to the public, in accordance with section 9 of the *Statutory Powers Procedure Act* ("SPPA") and the open court principle: see *Toronto Star v. AG Ontario*, 2018 ONSC 2586 at para. 6.
3. As open hearings are protected by s. 2(b) of the *Charter of Rights and Freedoms*, excluding the public from a hearing will be exceptional. The Tribunal may hold the hearing

in the absence of the public only in very limited circumstances set out in s. 9(1) of the SPPA, where the tribunal is of the opinion that:

- (1) matters involving public security may be disclosed; or
  - (2) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.
4. Rule 7.7 of the Landlord and Tenant Board rules of practice and procedure reflects s. 9(1) of the SPPA and permits the Tribunal to restrict public access to the hearing on the same grounds.
  5. The test established by the Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII) for discretionary limits on court openness provides further guidance when considering whether to override the principle that tribunal hearings should be open to the public. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:
    - (1) court openness poses a serious risk to an important public interest;
    - (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
    - (3) as a matter of proportionality, the benefits of the order outweigh its negative effect.
    - (4) The person seeking to restrict access has the onus to displace the general rule of openness. The open court principle takes primacy over privacy interests; exceptions to openness must be proven on a case-by-case basis: *Toronto Star* at para. 91.
  6. The reason that the Tenant wanted the closure of the hearing room is because she wanted to provide intimate personal details. The Landlord was not opposed to the closure of the hearing room.
  7. Pursuant to section 9(1)(b) of the SPPA I am satisfied that the testimony the Tenant sought to give involved such intimate details that the desirability of avoiding disclosure outweighed the desirability of adhering to the principle that hearings be open to the public. There was no less restrictive way of protecting the confidentiality interest as the bulk of the hearing concerned the Tenant's request for relief from eviction and her personal circumstances that justify that. The Tenant lead no evidence regarding the sum of the outstanding rent arrears and did not contest that she has paid her rent persistently late. As such, the

hearing centered around the Tenant's request for relief from eviction, and that request involved the Tenant's intimate personal details.

8. For the reasons set out above, the hearing was conducted in the absence of the public. The prejudice of closing the hearing to the public is minimal as the basis of the application and the Order itself will be publicly available.

### Adjournment Request

9. The Tenant sought an adjournment in order to secure a legal representative. The adjournment request was heard in the open hearing room prior to the Tenant's request for the closure of the hearing room.
10. The Tenant testified that she reached out to a legal aid clinic when she received the notices of termination but was told to come back when she had a hearing date. The Tenant testified that when she received the notice of hearing she reached out to the legal aid clinic again, but the clinic had no availability for her until after the hearing date on March 16, 2023. The Tenant testified that she wanted to seek assistance to file tenant issues pursuant to section 82 of the *Residential Tenancies Act, 2006* ('the Act') and to gather information to put forth a payment plan.
11. The Landlord was opposed to the adjournment request because nearly \$22,000.00 in arrears are outstanding and they submitted that the Tenant did have enough time to prepare for the hearing.
12. Section 183 of the Act directs the Board to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter.
13. The adjournment request was denied because I was not satisfied that the Tenant did not have adequate time to prepare for the hearing. The notices of termination were served at the end of March 2022 and since the time the Tenant has been on notice that an application is likely pending with the Board. There was over 11 months between when the notices of termination were served and the hearing date. While I accept the Tenant's evidence that the legal aid clinic she contacted did not have availability to see her until after the hearing date, that does not satisfy me that the Tenant had inadequate time to prepare for the hearing. Additionally, the right to counsel is not absolute and the Tenant did have the opportunity to speak with Tenant duty counsel on the day of the hearing. I also note that my ruling does not prohibit the Tenant from pursuing her tenant issues as a separate tenant application.

14. In making my determination to deny the adjournment request I also considered the significant prejudice to the Landlord that would result from an adjournment. The Tenant was in nearly \$22,000.00 of arrears at the time of hearing.

### The L1 Application

15. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). 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.
16. The Landlord's certificate of service indicates that the N4 Notice was mailed on March 23, 2022 by the Landlord's Representative. The Landlord's Representative also stated at the hearing that she mailed the document on that date. The Tenant testified that she never received the Landlord's mailed notice of termination and that the mail might have been lost or misplaced because the rental property has a shared mail area. The Tenant testified that she did receive an emailed copy of the notice of termination on April 28, 2022.
17. I found the Landlord's representative to be credible that she mailed the notice of termination on March 23, 2022 and as such provided sufficient notice under section 59(1)(b). Rule 3.9 of the Board's Rule's of Procedure states that a document is considered served on the fifth day after mailing. I also add that the notice of termination did come to the Tenant's attention by email.
18. As of the hearing date, the Tenant was still in possession of the rental unit.
19. The lawful rent is \$1,821.60. It is due on the 1st day of each month.
20. Based on the Monthly rent, the daily rent/compensation is \$59.89. This amount is calculated as follows:  $\$1,821.60 \times 12$ , divided by 365 days.
21. The Tenant has paid \$8,630.00 to the Landlord since the application was filed.
22. The rent arrears owing to March 31, 2023 are \$21,927.60.
23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
24. There is no last month's rent deposit.

### L2 Application – Persistent Late Payment of Rent

25. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1<sup>st</sup> day of each month. The rent has been paid late or not at all 24 times in the past 24 months. When rent payments are made, they are often made near the end of the month. Additionally, the outstanding arrears to the end of March 2023 are \$21,927.60. The Tenant does not contest that they have been persistently late in paying their rent.

26. Bob Horniblow is one of the owners of the rental property. He testified that the Tenant's persistent late payment and non-payment has resulted in difficulties for the Landlord to pay their own bills and resulted in the Landlords having to cover the Tenant's costs with their personal income.

### Relief from Eviction

27. The Tenant requested relief from eviction in the form of a repayment plan and testified that she may be able to get assistance from the Toronto rent bank and is currently looking for work. The Landlord is opposed to a repayment plan. I do not think it would be fair in the circumstances to impose a repayment plan as the Tenant is currently out of work and does not have the means or a specific timeline in which she can pay off the arrears. Additionally, I do not think it would be fair in the circumstances to grant relief from eviction from the persistent late payment application, with a conditional pay on time order, as the Tenant does not have the means to pay the monthly rent on time.

28. The Tenant made a request that even if a payment plan is not imposed that the eviction be denied. I do not think it would be fair in the circumstances to deny the eviction without a plan for repayment. The amount of outstanding arrears is extremely high and the prejudice to the Landlord of a denial of the eviction without a payment plan would be significant.

29. The Tenant also requested relief from eviction in the form of a postponed eviction until June 30, 2023 so that her child can finish the school year. The Landlord indicated that they were agreeable to a postponement of the eviction but only to April 30, 2023.

30. 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 May 31, 2023 pursuant to subsection 83(1)(b) of the Act. I make that determination in consideration of the personal circumstances of the Tenant, that the Tenant lost her job due to restructuring, the Tenant's testimony that finding a new place to live will be extremely difficult as she is currently out of work and paying below market rent, the Tenant's connection to the community, and that the Tenant's child attends school in the neighbourhood. However, I have declined to postpone the eviction any further than May 31, 2023 because of the large amount of outstanding arrears and because the Tenant does not have the ability to pay off the arrears in the foreseeable future.

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

1. For the reasons set out above, the hearing, but for the adjournment request, was conducted in the absence of the public.
2. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 31, 2023.

3. The Tenant shall pay to the Landlord \$20,897.23. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
4. The Tenant shall also pay the Landlord compensation of \$59.89 per day for the use of the unit starting March 8, 2023 until the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing on or before April 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 23, 2023 at 6.00% annually on the balance outstanding.
6. If the unit is not vacated on or before May 31, 2023, then starting June 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 June 1, 2023.

**April 11, 2023**

**Date Issued**

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Amanda Kovats

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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Hearing Date	\$29,341.23
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	- \$8,630.00
<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	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$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 amount owing to the Landlord</b>	<b>\$20,897.23</b>
Plus daily compensation owing for each day of occupation starting March 8, 2023	\$59.89 (per day)

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