



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: CAPREIT LIMITED PARTNERSHIP v Bogard, 2023 ONLTB 76246

Date: 2023-11-27

File Number: LTB-L-051231-23

In the matter of: 1201, 95 FIDDLERS GREEN RD
LONDON ON N6H4T1

Between: CAPREIT LIMITED PARTNERSHIP Landlord

And

Raynaldy Bogard Tenant

CAPREIT LIMITED PARTNERSHIP (the 'Landlord') applied for an order to terminate the tenancy and evict Raynaldy Bogard (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 9, 2023.

The Landlord's legal representative A. Pearson and the Tenant attended the hearing.

Determinations:

1. There was no dispute that 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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. At the hearing, the Landlord submitted that the tenancy agreement was terminated as of July 31, 2023; therefore, the rent arrears should be calculated up to July 31, 2023
4. On the other hand, the Tenant argued that he moved out on July 1, 2023 and arrears should be calculated up to that date. He testified that on June 7, 2023, he visited the Landlord's property management office to communicate his intention to vacate. He signed N9 Tenant's Notice to End the Tenancy designating July 31, 2023 as the termination date. Additionally, the Landlord provided the Tenant a letter dated June 7, 2023 confirming the termination as of July 31, 2023.
5. However, the Landlord subsequently served the Tenant an N4 Notice of Termination the following date, on June 8, 2023. The Landlord filed this L1 application based on that N4 Notice.

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6. The LTB's Interpretation Guideline 11: Rent Arrears provides guidance about when rent arrears should be calculated up to when a landlord files an L1 application and the tenant vacates the rental unit before the hearing date. It states: "*In some cases, the evidence may establish that the tenant moved out of the rental unit after the L1 Application was filed, but before the hearing date. In that case, the LTB's order will generally include a determination that the tenancy ended on the date the tenant moved out. Further, the order will generally: (1) end the tenancy effective the date the tenant moved out of the rental unit without ordering enforcement through the Court Enforcement Office (Sheriff); and (2) require the tenant to pay rent arrears ending on the date the tenancy ended. Unlike orders for arrears and termination where the tenant is in possession of the unit on the hearing date, the order would not provide the tenant with an opportunity to continue the tenancy by paying all of the arrears by a specified date.*"
7. Although the interpretation guideline is not binding on me, I find it persuasive and find it appropriate to adopt this approach in the circumstances.
8. The Landlord served an N4 notice after the Tenant signed the N9 form. Even if the parties initially intended to terminate the tenancy in accordance with the N9 or through an agreement stemming from the N9, circumstances may have changed when the Landlord issued the N4 notice of termination.
9. There for I find the Tenant vacated the rental unit on July 1, 2023 in response to the N4 notice of termination. Rent arrears are calculated up to the date the Tenant vacated the unit.
10. The lawful rent is \$1,404.25. It was due on the 1st day of each month.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to July 1, 2023 are \$1,450.42.
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 \$1,404.25 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
15. Interest on the rent deposit, in the amount of \$5.96 is owing to the Tenant for the period from May 1, 2023 to July 1, 2023.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of July 1, 2023, the date the Tenant moved out of the rental unit.
2. The Tenant shall pay to the Landlord \$226.21. This amount includes rent arrears owing up to the date the Tenant moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.

3. If the Tenant does not pay the Landlord the full amount owing on or before December 8, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 9, 2023 at 7.00% annually on the balance outstanding.

November 27, 2023

Date Issued

Joy Xiao

Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

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

Rent Owing To Move Out Date	\$1,450.42
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,404.25
Less the amount of the interest on the last month's rent deposit	- \$5.96
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$226.21

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