



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

Citation: Capreit Limited Partnership v Wolfson, 2023 ONLTB 73761

Date: 2023-11-15

File Number: LTB-L-044876-23

In the matter of: 704, 355 ST CLAIR AVE W
TORONTO ON M5P1N5

Between: Capreit Limited Partnership Landlord

And

Harvey Wolfson and Patricia Tennant Tenants

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Harvey Wolfson and Patricia Tennant (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on October 26, 2023.

Only the Landlord's Legal Representative, Jason Paine, attended the hearing.

As of 9:54 AM, the Tenants was 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:

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Nonpayment 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 \$3,493.76. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$114.86. This amount is calculated as follows: \$3,493.76 x 12, divided by 365 days.
5. The Tenants has not made any payments since the application was filed.
6. The rent arrears owing to October 31, 2023, are \$17,468.80.
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 \$3,493.76 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 \$71.55 is owing to the Tenants for the period from January 1, 2023, to October 26, 2023.

Section 83

10. Section 83 requires that we consider all the circumstances, including the Tenant's and the Landlord's situations to determine if it would be appropriate to grant section 83 relief from eviction.
11. The Landlord's representative advised that the Landlord has tried to reach out to the Tenant for a repayment plan, without success. The Landlord's representative was not made aware of any children or other relevant issues for consideration under s.83.
12. There are substantial arrears owing and the Tenant did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination under s. 83.
13. We have considered all of the disclosed circumstances in accordance with subsection 83 of the *Residential Tenancies Act, 2006* (RTA), including whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$21,148.56 if the payment is made on or before November 26, 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 has paid the full amount owing as ordered plus any additional rent

that became due after November 26, 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 November 26, 2023**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$13,582.09. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$114.86 per day for the use of the unit starting October 27, 2023, until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before November 26, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 27, 2023, at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 26, 2023, then starting November 27, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 November 27, 2023.

November 15, 2023

Date Issued

Peter Nicholson

Member, Landlord and Tenant Board

Kevin O'Brien

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 May 27, 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.

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 November 26, 2023**

Rent Owing To November 30, 2023	\$20,962.56
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total the Tenants must pay to continue the tenancy	\$21,148.56

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$16,961.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$3,493.76
Less the amount of the interest on the last month's rent deposit	- \$71.55
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$13,582.09
Plus daily compensation owing for each day of occupation starting October 27, 2023	\$114.86 (per day)