



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Capreit Limited Partnership v Douglas Rossiter, 2023 ONLTB 37675

Date: 2023-05-18

File Number: LTB-L-006672-23

In the matter of: 232-2345 Truscott Drive
Mississauga, ON L5J 2B1

Between: Capreit Limited Partnership Landlord

And

Douglas Rossiter Tenant

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Douglas Rossiter (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant did not meet a condition specified in the mediated settlement signed by the parties on June 21, 2021 with respect to application CEL-96695-20.

The matter was directed to hearing as there was a discrepancy regarding the last month's rent deposit.

This application was heard by videoconference on April 17, 2023.

The Landlord's Legal Representative Gabriela Quaresma and the Tenant attended the hearing. The Tenant met with Tenant Duty Counsel prior to the hearing.

Determinations:

Adjournment Request

1. Prior to the start of the hearing, the Tenant requested an adjournment in order to continue trying to work with the Region of Peel to re-pay his arrears. The Landlord opposed the request on the basis that the arrears are already quite high, and that the Landlord has not heard from the Region of Peel about any proposed re-payment of the Tenant's rent arrears.
2. The Tenant testified that he had contacted the Region back in October yet still needed additional time in order to provide evidence. On this basis, I had found that the Tenant had a reasonable amount of time to provide the information to both the Landlord and the Board and the adjournment request was denied.

Landlord's Application

3. The mediated settlement provides that the Landlord can apply to the LTB under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant does not meet certain condition(s) in the mediated settlement. This application was filed within 30 days of the breach.
4. I find that the Tenant has not met the following condition specified in the mediated settlement:
 - a) The Tenant failed to pay the lawful monthly rent for January 2023 by January 1, 2023.
 - b) The Tenant failed to pay the arrears payment of \$280.00 that was due by January 1, 2023.
5. The previous application includes a request for an order for the payment of arrears of rent and the mediated settlement requires the Tenant to make payments by specific due dates. Accordingly, in addition to eviction, the Landlord is entitled to request an order for the payment of arrears owing.
6. The Tenant was required to pay \$9,347.99 for rent arrears and the application filing fee in the previous mediated settlement. The amount that is still owing from that mediated settlement is \$5,534.57 and that amount is included in this order.
7. The Tenant acknowledged the arrears and testified that he had agreed to get a job in order to get caught up with arrears, but COVID-19 affected his income.
8. The Tenant testified that he is currently receiving a pension from OAS and CPP for a total income of \$2,000.00 per month. The Tenant also testified that he has an agreement in principle with the Region of Peel to get caught up on the arrears. The Tenant testified that his income is approximately \$3,500.00 per month, while his expenses tallied roughly \$600.00 per month other than rent.
9. The Tenant further testified that he intended on getting the arrears repaid in their totality by the end of April.
10. The Landlord's Legal Representative submitted that the Tenant's behaviour towards the agreement since 2021 has been inconsistent, having never paid the rent in full or on time and has only been paid via scattered payments. Since the application, the Tenant paid \$1,000.00 on January 23, 2023, \$600.00 on February 3, 2023, \$3,500.00 paid in March and \$440.00 paid on April 6, 2023.

Analysis – s. 83 Considerations

11. On a balance of probabilities, I am not satisfied that the Tenant has a viable plan in order to repay the arrears or to pay the regular rent on time.
12. Despite receiving nearly \$3,500.00 per month, the Tenant continues to make scattered payments towards rent and his arrears. This is prejudicial to the Landlord.

13. The Tenant failed to provide any evidence of his income or his dealings with the Region of Peel, despite having worked with them since October of 2022.
14. I have considered all of the disclosed circumstances in accordance with s. 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to s. 83(1) of the Act. Eviction will be postponed until June 2, 2023.

Daily Compensation

15. The Landlord is entitled to daily compensation from the day after this order is issued to the date the Tenant moves out of the unit at a daily rate of \$57.76. This amount is calculated as follows: \$1,756.91 x 12, divided by 365 days.
16. The Landlord collected a last month's rent deposit of \$1,756.91 and this deposit is still being held by the Landlord.
17. Interest on the rent deposit is owing to the Tenant for the period from May 1, 2022 to May 22, 2023.

It is ordered that:

18. Order CEL-96695-20 issued on June 21, 2021 is cancelled and replaced with this order.
19. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 2, 2023.
20. If the unit is not vacated on or before June 2, 2023, then starting June 3, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
21. 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 3, 2023.
22. The Tenant shall pay to the Landlord \$5,503.33*. This amount represents the rent owing up to May 22, 2023.
23. The Tenant shall also pay to the Landlord \$57.76 per day for compensation for the use of the unit starting May 23, 2023 to the date the Tenant moves out of the unit.
24. If the Tenant does not pay the Landlord the full amount owing on or before June 2, 2023, the Tenant will start to owe interest. This will be a simple interest calculated from June 3, 2023 at 6.00% annually on the balance outstanding.

May 18, 2023
Date Issued

Jagger Benham
 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 December 3, 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.

* Refer to the attached Summary of Calculations.

Summary of Calculation**Amount the Tenant must pay the Landlord:**

Reason for amount owing	Period	Amount
Amount owing from previous mediated settlement + new arrears	Up to May 22, 2023	\$7,291.48
Less the rent deposit		-\$1,756.91
Less the interest owing on the rent deposit	May 1, 2022 to May 22, 2023	-\$31.24
Plus daily compensation owing for each day of occupation starting May 23, 2023		\$57.76 (per day)
Total the Tenant must pay the Landlord:		\$5,503.33 + \$57.76 per day starting May 23, 2023

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