



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

Citation: Capreit Limited Partnership v Edward Day, 2023 ONLTB 37364

Date: 2023-05-18

File Number: LTB-L-058818-22

In the matter of: 403, 1221 SIMCOE ST
OSHAWA ON L1G4X2

Between: Capreit Limited Partnership Landlord

And

Edward Day Tenant

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Edward Day (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 25, 2023.

The Landlord's Legal Representative, J. Paine and the Tenant attended the hearing.

Determinations:

1. 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. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,306.98. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$42.97. This amount is calculated as follows: \$1,306.98 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$10,332.40.
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 \$1,275.12 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.
9. Interest on the rent deposit, in the amount of \$10.04 is owing to the Tenant for the period from January 1, 2023 to April 25, 2023.

Relief from eviction

10. The Tenant testified that he cannot pay the amount outstanding. He testified that he wants to vacate the unit and is asking for 90 days to vacate. He testified that he needs that time to clear out all his possessions. He testified that no rent has been paid because he his income changed due to the rate of exchange. He testified that he has been looking at other places, but he cannot find anything affordable to him.
11. The Landlord is seeking a standard order. The Landlord submits that there has been no rent paid since September 2022, even though the Tenant has had an income.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties and 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. I do not find that it is reasonable to delay the eviction for 90 days. The Tenant has made no payments to the Landlord in seven months, even though he has had an income. Although I sympathise with the Tenant's difficulty in finding another unit, I do not find that any further delay is warranted.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:
 - \$11,825.38 if the payment is made on or before May 29, 2023. See Schedule 1 for the calculation of the amount owing.
3. 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 May 29, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. 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 May 29, 2023
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$9,000.51. 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.

6. The Tenant shall also pay the Landlord compensation of \$42.97 per day for the use of the unit starting April 26, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before May 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 30, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before May 29, 2023, then starting May 30, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 30, 2023.

May 18, 2023 _____ Date Issued

Emily Robb

, 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 30, 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 to void the eviction order and continue the tenancy if the payment is made on or before May 29, 2023

Rent Owing To May 31, 2023	\$11,639.38
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 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 the Tenant must pay to continue the tenancy	\$11,825.38

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

Rent Owing To Hearing Date	\$10,099.67
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	- \$1,275.12
Less the amount of the interest on the last month's rent deposit	- \$10.04
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	\$9,000.51
Plus daily compensation owing for each day of occupation starting April 26, 2023	\$42.97 (per day)