



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

Citation: Wiwchar v Mcphee, 2023 ONLTB 36691

Date: 2023-05-18

File Number: LTB-L-031141-23

In the matter of: 4, 1774 EGLINTON AVE W
YORK ON M6E2H6

Between: Teresa Lynne Wiwchar Landlord

And

Akeem Mcphee Tenant

On April 18, 2023, Teresa Lynne Wiwchar (the 'Landlord') applied for an order to terminate the tenancy and evict Akeem Mcphee (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 order issued by the LTB on February 23, 2023, with respect to application LTB-L-038697-22.

This application was decided without a hearing being held.

Determinations:

1. The order 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 order. This application was filed within 30 days of the breach.
2. I find that the Tenant has not met the following condition specified in the order:

The Tenant failed to pay to the Landlord \$1,421.45 on or before March 31, 2023, towards arrears of rent.

The Tenant also failed to pay the lawful monthly rent in full, on or before April 1, 2023.

3. The previous application includes a request for an order for the payment of arrears of rent and the order 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.
4. The Tenant was required to pay \$5,685.79 for rent arrears and the application filing fee in the previous order. The amount that is still owing from that order is \$2,132.15 and that amount is included in this order. This order replaces order LTB-L-038697-22.
5. The Landlord collected a rent deposit of \$995.00 from the Tenant and this deposit is still being held by the Landlord.
6. Interest on the rent deposit is owing to the Tenant for the period from January 1, 2019, to May 18, 2023.
7. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.
8. 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 \$33.43. This amount is calculated as follows: $\$1,016.89 \times 12$, divided by 365 days.

It is ordered that:

1. Order LTB-L-038697-22 is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 29, 2023.
3. 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.
4. 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.
5. The Tenant shall pay to the Landlord \$1677.74 ***(Less any payments made by the Tenant after this application was filed on April 17, 2023)**. This amount represents the rent owing up to May 18, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenant shall also pay to the Landlord \$33.43 per day for compensation for the use of the unit starting May 19, 2023, to 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 a simple interest calculated from May 30, 2023, at 6.00% annually on the balance outstanding.

May 18, 2023

Date Issued

Kimberly Parish

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

The Tenant has until May 28, 2023, to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the tenant files the motion by May 28, 2023, the order will be stayed, and the LTB will schedule a hearing.

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.

* 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 order	Up to February 28, 2023	\$2,132.15
New Arrears	May 1, 2023, to May 18, 2023	\$601.74
Less the rent deposit:		-\$995.00
Less the interest owing on the rent deposit	January 1, 2019, to May 18, 2023	-\$61.15
Plus daily compensation owing for each day of occupation starting May 19, 2023		\$33.43 (per day)
Total the Tenant must pay the Landlord:		\$1,677.74 + \$33.43 per day starting May 19, 2023

2023 ONLTB 36691 (CanLII)