



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

**Citation:** Capreit Limited Partnership v Scarpelli, 2023 ONLTB 36485

**Date:** 2023-05-16

**File Number:** LTB-L-032239-23

**In the matter of:** 506, 744 FANSHAWE PARK RD E LONDON  
ON N5X2L9

**Between:** Capreit Limited Partnership Landlord

**And**

Matthew Stephen Scarpelli Tenant

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Matthew Stephen Scarpelli (the 'Tenant') and for an order to have the Tenant pay compensation for damage they owe because the Tenant did not meet a condition specified in the previous order issued on October 6, 2022 with respect to application LTB-L-003318-22.

This application was decided without a hearing being held.

### **Determinations:**

1. 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.
2. I find that the Tenant has not met the following condition specified in the mediated settlement: **The Tenant failed to immediately stop alleged behaviour and ensure all issues previously detailed in the Form N5 notices do not occur.**
  - On April 2, 2023, between 5:00 am – 6:15 am, it was reported to the Landlord that the Tenant was banging, thumping, walking loudly, and chanting. The Tenant also posted a note on another tenant's door at 5:49 am, confirmed through video footage; and

- On April 4, 2023, between 1:45 am – 2:20 am, and again from 8:00 pm – 4:15 am, the Tenant was banging, pounding on the walls, dropping things and thumping.
- 2. The previous application includes a request for an order for compensation for damage and the mediated settlement requires the Tenant to pay an amount for damage. Accordingly, the Landlord is entitled to request an order for compensation for damage.
- 3. The Landlord collected a rent deposit of \$1,118.41 from the Tenant and this deposit is still being held by the Landlord.
- 4. Interest on the rent deposit is owing to the Tenant for the period from January 1, 2023, to May 16, 2023.
- 5. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.
- 6. 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 \$36.77. This amount is calculated as follows: \$1,118.41 x 12, divided by 365 days.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 27, 2023.
2. If the unit is not vacated on or before May 27, 2023, then starting May 28, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 28, 2023.
4. As of the date of this order, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the compensation for damage and the cost of filing the previous application the Landlord is entitled to by \$1,128.83.
5. However, the Landlord is authorized to deduct the following from the amount the Landlord owes the Tenant: \$36.77 per day for compensation for the use of the unit starting May 17, 2023, to the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**May 16, 2023**

**Date Issued**

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Kimberly Parish

Member, Landlord and Tenant Board

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

The Tenant has until May 26, 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 26, 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 28, 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:**

<b>Reason for amount owing</b>	<b>Period</b>	<b>Amount</b>
Amount of compensation for damages owing from previous mediated settlement		\$0.00
Less the rent deposit:		-\$1,118.41
Less the interest owing on the rent deposit	January 1, 2023, to May 16, 2023	-\$10.42
Plus daily compensation owing for each day of occupation starting May 17, 2023		\$36.77 (per day)
<b>Total the Tenant must pay the Landlord:</b>		<b>- \$1,128.83 +\$36.77 per day starting May 17, 2023</b>

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