



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Capreit Limited Partnership v Manners, 2023 ONLTB 35939

**Date:** 2023-05-10

**File Number:** LTB-L-044085-22

**In the matter of:** 719, 500 MURRAY ROSS PKY  
TORONTO ON M3J2Z3

**Between:** Capreit Limited Partnership Landlord

**And**

Aaron Manners Tenant

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Aaron Manners (the 'Tenant') and Shanyka M. Braithwaite-McSween (the 'Former Tenant') because the Tenant and the Former Tenant did not pay the rent that the Tenant and Former Tenant owes.

This application was heard by videoconference on March 1, 2023.

The Landlord attended the hearing. The Landlord was represented by Jason Paine. The Tenant attended the hearing and was self-represented.

### PRELIMINARY MATTERS

(a) Amending the application to remove the Former Tenant as a party to the matter

1. The application is amended to remove the Former Tenant as a party to the application.
2. The Tenant informed the Board that the Former Tenant vacated the unit in May 2022 leaving the Tenant as the sole occupant living in the rental unit under the tenancy agreement. The Landlord's legal representative submits that the Landlord was not aware that the Former Tenant had vacated the unit and, in their view, the Former Tenant would still be liable for the arrears claimed under the tenancy agreement.
3. Subsection 2(1) of the *Residential Tenancies Act, 2006* (the 'Act') defines a 'tenant' to include a person who pays rent in return for the right to occupy a rental unit and includes the tenant's

heirs, assigns and personal representatives, but 'tenant' does not include a person who has the right to occupy a rental unit by virtue of being: (a) a co-owner of the residential complex in which the rental unit is located; and, (b) a shareholder of a corporation that owns the residential complex.

4. I prefer the direct evidence of the Tenant. He testified that after the Former Tenant vacated the unit in May 2022, he continued to live in the unit as the sole tenant responsible for the rent payment obligations under tenancy agreement.
5. On the other hand, the Landlord's legal representative did not call as witnesses any of its employees who would have had interactions with the Tenant or Former Tenant during the relevant time period. It's only evidence was that of its legal representative. I give very little weight to the legal representative's hearsay evidence and prefer the direct evidence of the Tenant. In these circumstances I am satisfied on a balance of probabilities that the Former Tenant vacated the unit leaving the Tenant as the sole occupant and tenant. I accept that a landlord cannot be expected to know that a tenant has vacated a unit on the day that they vacate, or even months thereafter in some cases. However, in this case, the Former Tenant vacated approximately months ago. The Tenant has provided unchallenged evidence which demonstrates that the Former Tenant vacated the unit in May 2022.
6. Based on the forgoing, I am satisfied that the Former Tenant ceased being a 'tenant' who pays rent to the Landlord in return for the right to occupy the rental unit as defined under subsection 2(1) of the Act as of May 2022. As such, I find that the Board does not have jurisdiction to include the Former Tenant as a party to the matter and the application will be amended accordingly.

(a) Adjournment Request

7. The Tenant made a request to adjourn the hearing so that he could prepare for the hearing. This request was denied.
8. The Tenant stated that he suffered a mental health crisis several months ago and, as such, was unable to prepare for the hearing and requests time to do so. In response to questions posed by the Board, the Tenant was unclear as to the nature of his mental health issues, nor restrictions, limitations or accommodations he may require.
9. The Landlord's legal representative opposed the adjournment request stating that the Tenant had an adequate opportunity to prepare for the hearing and that further delays would be prejudicial to the Landlord given the significant arrears that are claimed in the application.
10. Section 183 of the *Residential Tenancies Act*, 2006, (the 'Act') requires the Board to adopt the most expeditious methods of determining the questions arising in a proceeding. I am not satisfied that the Tenant did not have sufficient time to prepare for the hearing. Moreover, given that the Landlord filed their application almost 8 months earlier, in my view, delaying the

hearing any further would be unduly prejudicial to the Landlord. For these reasons the request was denied.

11. During the course of the hearing, the parties before the LTB consented to the following order:

**It is ordered on consent that:**

1. The Tenants shall pay to the Landlord \$20, 752.48 for arrears of rent up to March 31, 2023 and costs.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

Payment	Due Date
\$1,000.00	May 17, 2023
\$1,000.00	May 24, 2023
\$2,000.00	May 31, 2023
\$1,000.00	June 7, 2023
\$1,000.00	June 14, 2023
\$1,000.00	June 21, 2023
\$1,000.00	June 28, 2023
\$1,000.00	July 5, 2023
\$1,000.00	July 12, 2023
\$1,000.00	July 19, 2023
\$1,000.00	July 26, 2023
\$1,000.00	August 2, 2023
\$1,000.00	August 9, 2023
\$1,000.00	August 15, 2023
\$1,000.00	August 23, 2023
\$2,000.00	August 30, 2023
\$1,000.00	September 6, 2023
\$1,000.00	September 13, 2023
\$752.48	September 20, 2023

3. The Tenant shall pay to the Landlord new rent on time and in full as it comes due and owing for the period June 1, 2023 to September 1, 2023, or until the arrears are paid in full, whichever date is earliest.
4. The Tenant shall also pay to the Landlord rent due for April 2023 and May 2023 on or before May 31, 2023, if not already paid.

5. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after March 31, 2023.

**May 10, 2023**

**Date Issued**

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Emile Ramlochan

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.