



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

**Citation:** Capreit Limited Partnership v Brown, 2023 ONLTB 33826

**Date:** 2023-04-28

**File Number:** LTB-L-022612-23

**In the matter of:** 1410, 100 WELLESLEY ST E  
TORONTO ON M4Y1H5

**Between:** Capreit Limited Partnership Landlord

**And**

Madison Brown Tenants  
Mitchell Cowell

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Madison Brown and Mitchell Cowell (the 'Tenants') and for an order to have the Tenants pay the rent they owe because the Tenants did not meet a condition specified in the order issued by the LTB on November 9, 2022 with respect to application LTB-L-021037-22.

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 Tenants to terminate the tenancy and evict the Tenants if the Tenants do not meet certain condition(s) in the order. This application was filed within 30 days of the breach.
2. I find that the Tenants have not met the following conditions specified in the order: **The Tenants failed to pay the lawful monthly rent on or before March 1, 2023. Further, the Tenants failed to pay 638.29 towards the arrears, on or before February 15, 2023.**

3. The previous application includes a request for an order for the payment of arrears of rent and the order requires the Tenants 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 Tenants were required to pay \$13,828.29 for rent arrears, any NSF charges the Landlord incurred and the application filing fee in the previous order. The amount that is still owing from that order is \$6,628.29 and that amount is included in this order.
5. Since the date of the previous order, the Tenants have failed to pay the full rent that became owing for the period from November 1, 2022 to March 31, 2023.
6. The Landlord is entitled to daily compensation from the day after this order is issued to the date the Tenants move out of the unit at a daily rate of \$53.57. This amount is calculated as follows:  $\$1,629.32 \times 12$ , divided by 365 days.

**It is ordered that:**

1. Order LTB-L-021037-22 is cancelled.
2. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before May 9, 2023.
3. If the unit is not vacated on or before May 9, 2023, then starting May 10, 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 10, 2023.
5. The Tenants shall pay to the Landlord \$9,758.85\* (**Less any payments made by the Tenants after this application was filed on March 15, 2023**). This amount represents the rent owing up to April 28, 2023 and the cost of filing the previous application and unpaid NSF charges.
6. The Tenants shall also pay to the Landlord \$53.57 per day for compensation for the use of the unit starting April 29, 2023 to the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before May 9, 2023, the Tenants will start to owe interest. This will be a simple interest calculated from May 10, 2023 at 6.00% annually on the balance outstanding.

**April 28, 2023**

**Date Issued**

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Kimberly Parish

Member, Landlord and Tenant Board

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

The Tenants have until May 8, 2023 to file a motion with the LTB to set aside the order under s. 78(9) of the Act. If the tenants file the motion by May 8, 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 10, 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 Tenants must pay the Landlord:**

<b>Reason for amount owing</b>	<b>Period</b>	<b>Amount</b>
Amount owing from previous order	Up to October 31, 2022	\$6,628.29
New Arrears	November 1, 2022 to April 28, 2023	\$3,130.56
Plus daily compensation owing for each day of occupation starting April 29, 2023		\$53.57 (per day)
<b>Total the Tenants must pay the Landlord:</b>		<b>\$9,758.85 + \$53.57 per day starting April 29, 2023</b>

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