



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

Citation: Capreit Limited Partnership v Burk, 2023 ONLTB 14674

Date: 2023-01-13

File Number: LTB-L-073239-22

In the matter of: 311, 135 EIGHTH ST ETOBICOKE
ON M8V3C8

Between: Capreit Limited Partnership Landlord

And

Hayley Burk Tenants
Jacob Scott

Capreit Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Hayley Burk and Jacob Scott (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 September 9, 2022, with respect to application LTB-L-012330-22.

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 does 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 to the Landlord the lawful rent on or before October 1, 2022. The Tenants also failed to pay to the Landlord \$500.00 on or before October 1, 2022, towards arrears of rent.**
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 \$8,997.04 for rent arrears and the application filing fee in the previous order. The amount that is still owing from that order is \$2,997.04 and that amount is included in this order. This order replaces order Ltb-l-012330-22.
5. Since the date of the previous order, the Tenants have failed to pay the full rent that became owing for the period from October 1, 2022, to October 31, 2022.
6. The Landlord collected a rent deposit of \$1,535.42 from the Tenants and this deposit is still being held by the Landlord.
7. Interest on the rent deposit is owing to the Tenants for the period from February 01, 2020, to January 13, 2023.
8. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenants are required to pay.
9. 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 \$50.48. This amount is calculated as follows: \$1,535.42 x 12, divided by 365 days.

It is ordered that:

1. Order LTB-L-012330-22 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 January 24, 2023.
3. If the unit is not vacated on or before January 24, 2023, then starting January 25, 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 January 25, 2023.
5. The Tenants shall pay to the Landlord \$6,673.32***(Less any payments made by the Tenant after this application was filed on October 18, 2022)**. This amount represents the rent owing up to January 13, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
6. The Tenants shall also pay to the Landlord \$50.48 per day for compensation for the use of the unit starting January 14, 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 January 24, 2023, the Tenants will start to owe interest. This will be a simple interest calculated from January 25, 2023, at 5.00% annually on the balance outstanding.

January 13, 2023

Date Issued

Ian Speers
Associate Chair, Landlord and Tenant Board

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

The Tenants have until January 23, 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 January 23, 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 July 25, 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:

Reason for amount owing	Period	Amount
Amount owing from previous order	Up to September 30, 2022	\$2,997.04
New Arrears	October 1, 2022, to January 13, 2023	\$5,262.50
Less the rent deposit:		-\$1,535.42
Less the interest owing on the rent deposit	February 01, 2020, to January 13, 2023	-\$50.80
Plus daily compensation owing for each day of occupation starting January 14, 2023		\$50.48 (per day)
Total the Tenants must pay the Landlord:		\$6,673.32 +\$50.48 per day starting January 14, 2023

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