



**SEP 21, 2022**

**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Zhang v Waterman, 2022 ONLTB 2406

**Date:** 2022-09-21

**File Number:** LTB-L-001636-22

**In the matter of:** Basement, 367 PAISLEY BLVD W  
MISSISSAUGA ON L5B2S6

**Between:** Rongling Zhang Landlord

**And**

Richard James Campbell Tenants  
Troy Donavin Waterman

Rongling Zhang, (the 'Landlord') applied for an order to terminate the tenancy and evict Richard James Campbell (first named Tenant), Troy Donavin Waterman (second named Tenant) (collectively known as the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on July 18, 2022.

The Landlord, the Landlord's representative Sayed Bukhari and the second named Tenant, Troy Donavin Waterman attended the hearing.

The first named Tenant, Richard James Campbell was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded in his absences.

**Preliminary Issue:**

Section 82

1. Pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'), a Tenant is permitted to raise any issue that could be the subject of an application if the Tenant complies with the disclosure requirements or provides an explanation satisfactory to the Board explaining why the Tenant could not comply. Section 82(2) requires a Tenant to give advance notice to the Landlord of the Tenant's intent to raise the issue at the hearing in writing and in compliance with the Board's rules. Rule 19.4 states that at least 7 days before the hearing the tenant shall provide the landlord and the Board: (1) a written description of each issue the tenant intends to raise; and a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

2. The Tenant wanted to an issue under section 82, namely that he was advised that a stove would be provided in the rental unit. However, two weeks after the Tenant moved into the rental unit the stove was removed. It was the Landlord's evidence that a stove was not provided in the unit and was indicated and signed off by the Tenant. The Landlord provided the rental agreement which showed an additional clause that the unit was not provided with a stove and the Tenant had signed off on it.
3. While the Tenant has not provided a list of section 82 issues they want to raise or the supporting evidence, I find based on the evidence before me that the Landlord has not breached any obligations owing to the Tenant under the Act with respect to the stove. The rental agreement signed by the Tenant indicates that no stove will be provided.

**Determinations:**

4. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
5. Both Tenants were still in possession of the rental unit on the date the application was filed.
6. The lawful rent is \$1,500.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$49.32. This amount is calculated as follows:  $\$1,500.00 \times 12$ , divided by 365 days.
8. The Tenant has made payment of \$5,000.00 toward the arrears since the application was filed.
9. The Landlord's evidence is that the rent arrears owing to July 31, 2022 are \$8,060.00.
10. The second name Tenant disputed the amount of the arrears. He submitted that he should be only paying his share of \$700.00 of the \$1,500.00 monthly rent. He also asserted that his share of the arrears is \$200.00. He essentially argued that this is a tenancy in common and that arrears belong to the first name tenant vacated the rental unit two days before the hearing date due to the section 82 issue noted above.
11. The Landlord contested this evidence and set out the tenancy was joint tenancy. The Landlord submitted the tenancy agreement signed by both Tenants and based on this agreement; I find it was a joint tenancy where all the tenants share a single undivided interest in the tenancy. An important feature of a joint tenancy is the co-Tenants do not have separate shares up the rent. They are jointly and severally liable to the Landlord for the entire rent, meaning that if the rent is not paid, the landlord may pursue any of them for the full amount. The Board has consistently held joint Tenants to be jointly and severally liable for the whole rent because the Tenants share an interest in the entire tenancy rather than holding partial shares of it.
12. Any agreement between the joints Tenants with respect to how the will divide up the rent does not effect the Landlord's right to pursue both Tenants for any arrears. The first named

Tenant's decision to vacate the rental unit does not excuse him of the liability to pay rent or the arrears of rent.

13. Therefore, I accept the Landlord's evidence respecting the rent arrears.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord collected a rent deposit of \$1,300.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
16. Interest on the rent deposit, in the amount of \$4.69 is owing to the Tenants for the period from May 1, 2021 to July 18, 2022.

Relief from eviction

17. At the hearing, the Landlord's representative provided two proposals to address the arrears of rent. The first proposal offered the Tenant to waive one half of the arrears bringing the total amount to outstanding to July 31, 2022 to \$4,123.00.00 providing that the Tenants vacate the rental unit in 30 days. The Tenant refused this offer as he maintained that it was not his arrears.
18. The Landlord's representative offered another proposal of waiving the entire amount of arrears to July 31, 2022 \$8,246.00 providing the Tenants vacate the rental unit in 30 days. The Tenant refused this offer as he indicated he had filed his own application against the Landlord and that he should not be evicted due to the Landlord's actions. In addition, the Tenant stated that he liked his home and would have a difficult time finding a new place within 30 days.
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$11,246.00 if the payment is made on or before September 30, 2022. See Schedule 1 for the calculation of the amount owing.

**OR**

- \$12,746.00 if the payment is made on or before October 2, 2022. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after October 2, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
  4. **If the Tenants do not pay the amount required to void this order the Tenant must move out of the rental unit on or before October 2, 2022**
  5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$6,314.78. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
  6. The Tenants shall also pay the Landlord compensation of \$49.32 per day for the use of the unit starting July 19, 2022 until the date the Tenant moves out of the unit.
  7. If the Tenants do not pay the Landlord the full amount owing on or before October 2, 2022, the Tenants will start to owe interest. This will be simple interest calculated from October 3, 2022 at 3.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before October 2, 2022, then starting October 3, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
  9. 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 October 3, 2022.

**September 21, 2022**  
**Date Issued**

  
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Camille Clyne  
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 3, 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.

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before September 30, 2022**

Rent Owing To September 30, 2022	\$16,060.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$5,000.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$11,246.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before October 2, 2022**

Rent Owing To October 31, 2022	\$17,560.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$5,000.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$12,746.00</b>

**C. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$12,447.76
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$5,000.00
<b>Less</b> the amount of the last month's rent deposit	- \$1,300.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$18.98
<b>Total amount owing to the Landlord</b>	<b>\$6,314.78</b>
Plus daily compensation owing for each day of occupation starting July 19, 2022	\$49.32 (per day)