

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

Citation: Liao v Mao, 2023 ONLTB 65465

Date: 2023-10-05

File Number: LTB-L-051208-22

In the matter of: 5209, 181 DUNDAS ST E
TORONTO ON M5A0N5

Between: Pi Yun Liao Landlord

And

Yucheng Mao Tenant

Pi Yun Liao (the 'Landlord') applied for an order to terminate the tenancy and evict Yucheng Mao (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 Application).

The Landlord also applied for an order to terminate the tenancy and evict Yucheng Mao (the 'Tenant') because the Tenant has been persistently late in paying the Tenant's rent (L2 Application).

Both these applications were heard by videoconference on September 20, 2023 at 09:00 am.

Only the Landlord Representative Ashley Friel attended the hearing.

As of 10:00 am, the Tenant 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 with only the Landlord's evidence.

Determinations:

L1 Application

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,350.00. It is due on the 20th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$44.38. This amount is calculated as follows: \$1,350.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.

6. The rent arrears owing to September 30, 2023 are \$62,000.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. The amount of rent arrears owing by the Tenant exceeds the monetary jurisdiction of the Board. Section 207(1) of the *Residential Tenancies Act, 2006* ("Act") limits the monetary jurisdiction of the Board to that of the Small Claims Court. At this time that amount is \$35,000.00, and proceeding with an application with the Board extinguishes any rights the Landlord may have to pursue the full amount owing at the Superior Court. The Landlord was made aware of the Board's monetary jurisdiction and chose to proceed with this application.
10. While the Board cannot order a person to pay more than \$35,000.00 in accordance with s. 207(1) of the Act, I find that this does not apply to the "stay and pay" option set out in paragraph 2 the order below. In the recent decision of *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, the Divisional Court confirmed that the Board's monetary jurisdiction does not apply to the amount the Tenants must pay if they choose to void the order and continue the tenancy in accordance with section 74(4) of the Act. Therefore, the Tenant must pay the full arrears owing, plus the Landlord's costs, if they want to void the order and continue this tenancy.
11. If the Tenant chooses not to pay the full amount owing and continue the tenancy then this order terminates the tenancy and requires the Tenants to pay the amount up to the Board's monetary jurisdictional limit of \$35,000.00 plus the cost of filing the application.

L2 Application

12. On August 16, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served on August 21, 2022. The notice of termination alleges the Tenant failed to make any payments towards the rent between October 20, 2019 up to and including August 19, 2022.
13. The Landlord Representative testified that since service of the N8 notice the Tenant had continued to fail to make any payments towards the rent up to and including September 20, 2023.
14. On the basis of the above testimony and evidence submitted I am not satisfied the Landlord has proven that the Tenant has persistently failed to pay the rent on the date.
15. In the recent decision of *Tataw v Minto Apartment LP*, 2023 ONSC 4238, the Divisional Court explained the difference between non-payment of rent and late payment of rent as follows:

[20] . . . "Late rent" ceases being "unpaid rent" when it is paid. But it remains "late." Persistent "lateness", where payment has been made, may still ground an eviction order, or other relief (such as an order for timely payment failing which an eviction order will be granted).

[21] I accept that there is factual overlap between issues of “late payment” and “non-payment”, but they are distinct concepts under the Act and have long had separate processes before the Board. If these issues were not treated distinctly, as they are, it would create a system where a tenant could stop paying rent in the face of a landlord’s application for persistent non-payment, and the landlord would not be able to do anything about it until its first application was decided on a final basis. . .

16. I understand the Court to be saying at paragraph 20 that for a payment to be considered late, a payment must have been made. In this case, no payments have been made.
17. The Court also recognized that the Act has different procedures in place for non-payment and late payments. N8 notices concerning late payment of rent and L2 orders are not voidable, whereas N4 notices concerning rent arrears and L1 orders are voidable. If a landlord were able to treat a non-payment as a late payment for the purpose of an N8 notice and an L2 application, then they would effectively by circumventing the voiding provisions available for tenants in an L1 application. The tenant would not have an opportunity to void the N4 notice by paying all the arrears, discontinue an application by paying the arrears before the L1 order has been issued, or void a final L1 order after it has been issued. This would result in a tenant being denied multiple opportunities to restore their tenancy to good standing when the issue is failure to pay rent, which would be inconsistent with the intent of the Act.
18. As a result, I find that while the Landlord has established that the Tenant is in arrears of rent, they have not established that the Tenant has been persistently late in paying the rent.

Relief from Eviction

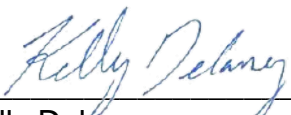
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
20. Specifically, given the amount owing I am satisfied that to grant any relief would be prejudicial to the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$63,536.00 if the payment is made on or before October 16, 2023 . See Schedule 1 for the calculation of the amount owing.

3. The Tenant 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 16, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before October 16, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$35,186.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$44.38 per day for the use of the unit starting September 21, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before October 16, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 17, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 16, 2023, then starting October 17, 2023, 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 17, 2023.
10. The L2 application is dismissed.

October 5, 2023
Date Issued



Kelly Delaney
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 17, 2024 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 October 16, 2023

Rent Owing To October 30, 2023	\$63,350.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$63,536.00

B. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$62,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$0.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord (maximum monetary jurisdiction)	\$35,186.00
Plus daily compensation owing for each day of occupation starting September 21, 2023	\$44.38 (per day)

