

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

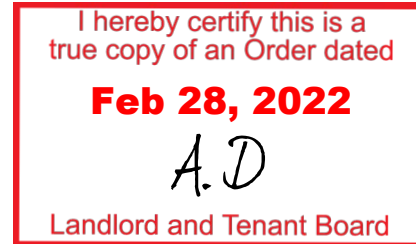
**File Number:** TNL-32465-21

**In the matter of:** 19828 YONGE STREET  
HOLLAND LANDING ON L9N1A9

**Between:** Yuqiao Hu

**and**

Xiao Liu



Landlord

Tenant

Yuqiao Hu (the 'Landlord') applied for an order to terminate the tenancy and evict Xiao Liu (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 14, 2022.

The Landlord's agent, Nicole Ye and the Tenant attended the hearing. The Landlord was represented by Rong Wei Yu. The Tenant was assisted by Frank Fan who translated between the English and Mandarin languages. The Tenant spoke to Tenant Duty Counsel prior to the hearing on February 14, 2022.

**Determinations:**

PROCEDURAL HISTORY

1. By way of background, this matter came before the Board on July 30, 2021 where it was adjourned due to the unavailability of sufficient time.
2. The parties appeared before me on two separate occasions: on January 19, 2022 where I heard the evidence with respect to the arrears and the Tenant's section 82 claims; and on February 14, 2022 where I heard the Landlord's response to the section 82 claims and closing submissions from both parties.

PRELIMINARY ISSUES

Landlord's Claim in Excess of Board's Jurisdiction

3. At the hearing on January 19, 2022, the amount of arrears outstanding exceeded the \$35,000.00 monetary jurisdiction of the Board.
4. The Landlord was made aware of the fact that by proceeding with this application, all rights the Landlord may have in excess of the Board's monetary jurisdiction are extinguished once the Board issues its order.

5. The Landlord opted to proceed with their claim for rent arrears at the Board.

#### Tenant's Adjournment Request

6. At the hearing on January 19, 2022, this application was scheduled during the 1:00pm hearing block. At 2:30pm, when I called the matter forward, the Tenant sought an adjournment as he was not able to bring a translator to the hearing, despite trying since January 18, 2022 (the day before the hearing). The Tenant states this was because of the delay in receiving the Landlord's L1/L9 update sheet but was unable to articulate further on the relationship between him having a translator and receiving the Landlord's update sheet late – although he did not dispute the quantum of the arrears claimed by the Landlord.
7. The Landlord opposed the Tenant's request to adjourn as the notice of hearing had been mailed to the parties mid-December and the Tenant had approximately 1 month to seek translation services. The quantum of arrears were already in excess of the Board's jurisdiction so granting an adjournment would be prejudicial for the Landlord as further arrears would accrue.
8. I denied the Tenant's adjournment request as it was unclear to me why the Tenant, having known about the hearing since mid-December, failed to make arrangements to have a translator present at the hearing on January 19, 2022, or request accommodation from the Board for this hearing date; further, as the Landlord pointed out, the quantum of arrears were already in excess of the Board's jurisdiction.
9. However, I held the matter down for 15 minutes to accommodate the Tenant in providing him time to find a translator.
10. The next time this matter was brought forward on January 19, 2022, the Tenant was ready to proceed with his translator, Frank Fan, who was his employee but was not being paid to provide translation services.
11. I proceeded to hear the merits of the application.

#### L1 APPLICATION

12. The Tenant has not paid the total rent the Tenant was required to pay for the period from March 15, 2021 to August 14, 2021. Because of the arrears, the Landlord served a Notice of Termination effective April 29, 2021.
13. The Tenant is in possession of the rental unit.
14. The lawful monthly rent is \$4,600.00 and is due on the 15<sup>th</sup> of each month.
15. The Tenant made no payments since the application was filed.
16. The Landlord collected a rent deposit of \$4,600.00 from the Tenant and this deposit is still being held by the Landlord.

17. Interest on the rent deposit is owing to the Tenant for the period from May 10, 2020 to April 29, 2021.
18. The arrears and costs owing to February 14, 2022 total \$49,786.00.
19. The Landlord seeks a standard, voidable, eleven-day order.

Tenant's Evidence & Section 82 Claim

20. The Tenant does not dispute the amount of arrears as claimed by the Landlord. He explains that while he does not reside in the rental unit, he maintains possession of it and has three trailers parked in the yard.
21. The Tenant testified that the reason he did not pay his rent was because of the asbestos that he discovered in the rental unit which the Landlord failed to address; the Tenant sought to raise this issue as part of his claim pursuant to section 82 of the Act which states:

82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,

(a) complies with the requirements set out in subsection (2);

...

22. I found the Tenant met the requirements pursuant to subsection 82(2) and proceeded to hear this claim.
23. The Tenant describes the rental unit as a single-detached house with more than twelve bedrooms. There is a workshop that is between 1,000 and 1,500 square feet which is in the detached garage in the backyard that the Tenant uses to store items. The Tenant rents the whole house and moved into the rental unit on May 15, 2020.
24. The Tenant testified that on December 29, 2020, the Tenant hired a professional inspector (Sam Wang) who found asbestos in the workshop and at the back of the property; afraid for his safety, the Tenant vacated the rental unit the same day, leaving his trailers behind.
25. When the Tenant notified the Landlord on either December 30 or 31, 2020, the Landlord did not address his concern but wanted the Tenant to move out so that they could sell the property. After 3-4 months, around March or April 2021, the Landlord attended the premises without notice and conducted an inspection which found no evidence of asbestos at the unit. The Tenant told the Landlord that their inspection was not deep enough.
26. The Tenant submitted two certificates of analysis, one dated December 29, 2020 and the other dated July 22, 2021. While there was no witness present to testify to its

interpretation and significance, on the face of these certificates, it appears that in the December 29, 2020 sample from the workshop floor waste, 25-50% of chrysotile was present; one of the July samples from the insulation and dust and utility room detected no asbestos while the other sample from the same room detected 25-50% chrysotile and less than 0.5% amosite.

27. The Tenant testified that the impact of the asbestos on his health included discomfort and excessive coughing – although no medical documentation was submitted in support of this assertion.
28. The Tenant submits that he should not be held responsible for the rent or the utilities for the period he was not living at the house due to his concerns of asbestos which were not addressed by the Landlord.
29. The Tenant sought to admit audio recordings into evidence of conversations between him and the Landlord's agent, NY, in the Mandarin language, however, this request was denied as the videos were not accompanied by a certified transcript. However, I permitted the Tenant to testify and describe his communication in these recordings.
30. The Tenant stated that when he raised the issue with the Landlord, he encouraged the Landlord to conduct their own inspection, but the Landlord's agent indicated they did not want to invest more money into this property.
31. The Tenant seeks to return to the rental unit and reside there; the remedies the Tenant seeks under this application include the following: that the rent be waived from December 29, 2020 when he discovered asbestos to the hearing date; an order requiring the Landlord to reimburse the Tenant the estimated cleaning fees of \$30,000.00 and \$70,000.00 so that the Tenant can address the asbestos issue; and finally, an order requiring the Landlord to pay the Tenant \$5,700.00 for the legal fees, inspection fees and utilities.
32. On cross-examination, the Tenant confirmed that the samples were collected by him and that he sent them with the inspector to the lab; the Tenant further confirmed that he never met the Landlord so he never heard her say she did not want to invest money at the property.

#### Landlord's Evidence With Respect To The Section 82 Claim

33. The Landlord's witness, Nicole Ye (NY), testified that they first became aware of the issue of asbestos on December 30, 2021 (after the Tenant vacated the rental unit) when the Landlord contacted the Tenant asking for the rent because the cheque provided had returned as non-sufficient funds. The Tenant mentioned that the asbestos was found in the workshop but did not provide further description of its location or any other details for the Landlord to inspect, despite the Landlord's numerous requests. The Tenant also did not provide a copy of his report to the Landlord until June 29, 2021.
34. The Landlord proceeded to hire a professional company to inspect the rental unit and workshop who took samples as well. A copy of the certificate of bulk asbestos analysis

dated April 23, 2021 was submitted into evidence showing no evidence of asbestos in the three samples collected from the workshop.

35. After receiving the December certificate of analysis from the Tenant, the Landlord also booked asbestos removal service from their inspection company and incurred costs of \$2,898.45 for the cleanup in the workshop that took place July 14, 2021. The Landlord had provided the Tenant notice for this service two days in advance and told the Tenant to show the technician the area where he picked up the samples; on the day of the clean up- the Tenant failed to attend the rental unit. The technicians went ahead to clean the workshop and found no traces of asbestos.
36. The Landlord submits that the Tenant has been uncooperative in the Landlord's investigation of the issue raised by the Tenant; further, the Tenant has withheld rent using the issue of asbestos as an excuse. The Landlord seeks that the Tenant's claim pursuant to section 82 be dismissed.
37. On cross-examination, NY confirmed that from her communication with Sam Wang, the inspector that the Tenant brought to the property in December 2020, she found that SW did not attend the premises to inspect the property for asbestos as SW said the Tenant called him to the property about potential future renovations; SW also confirmed that the Tenant picked the samples and gave it to him to test.

#### ANALYSIS

38. With respect to the Landlord's arrears application, I find that the arrears and costs owing to February 14, 2022 total \$49,786.00. This is undisputed by the parties.
39. The Tenant testified that if there is no asbestos found in the rental unit, he is able to pay the arrears in full; however, if there is asbestos in the rental unit, the Tenant seeks a repayment plan to pay off the arrears in installments until the unit is clear of asbestos. It is unclear why the Tenant's ability to pay the rent arrears owed to the Landlord would be affected by the presence or absence of asbestos.
40. With respect to the Tenant's section 82 claim for asbestos, subsection 20(1) of the Act says: A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
41. The jurisprudence addressing section 20 of the Act holds that in determining whether the Landlord has breached its obligations the Board should consider whether the Landlord responded reasonably in the circumstances (*Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477). If a landlord does not complete necessary repairs in a timely and effective manner, then an abatement of rent may be awarded.
42. Based on the evidence before me, I find that the evidence is insufficient to establish, on a balance of probabilities, that there was asbestos in the rental unit. I say this for the following reasons: firstly, the Tenant failed to summons the inspector who attended the premises to testify to the contents and interpretation of the certificates of analysis submitted to the Board; secondly, while the method of sample collection was questioned

at the hearing by the Landlord, no further evidence was led by the Tenant to clarify this. Third, even if what the Tenant is saying is true that there was asbestos in the unit and the Landlord did nothing, the inspection that was undertaken by the Landlord four months after the Tenant's discovery, would have yielded the presence of asbestos, but it did not.

43. Finally, I find that the Tenant's lack of cooperation with the Landlord resulted in the delay of acquiring information and the investigation by the Landlord. I do not find a reasonable tenant would withhold information or fail to respond to their landlord when their landlord is attempting to address a concern raised by the reasonable tenant. Thus, given the above, the Tenant's claim for asbestos in the rental unit and workshop is dismissed in its entirety.
44. With respect to the Tenant's request for relief, as the Tenant has indicated he is able to pay the amount in full, and given that no other submissions were provided with respect to the Tenant's circumstances, together with the quantum of rent arrears outstanding that are beyond the Board's jurisdiction, I find it appropriate under the circumstances to grant the Landlord's request for a standard order.
45. The Board's Interpretation Guideline 3 on Costs provides that costs may be ordered where: there is any misconduct at a hearing; asking for adjournments without justification; acting contemptuously toward the Member or showing a lack of respect for the process of the Board; failing to follow the directions of the Member or showing a lack of respect for the process of the Board; failing to follow the directions of the Member or upsetting the orderly conduct of the hearing. Although the Interpretation Guideline is not binding on a Member, I see no reason not to follow it in this instance.
46. At the hearing, I asked the Tenant for his submissions with respect to an order for Board costs due to the delay as a result of the Tenant's conduct which included joining the hearing room late on February 14, 2022; repeatedly asking the same questions 3-4 times despite my direction to move to the next question and then circling back to the same question; engaging in abusive language towards the Landlord's witness; and seeking adjournments for not being prepared despite knowing where the last hearing ended and correcting the Board's record in that regard.
47. The Tenant was apologetic and indicated he did not intentionally mean to do so and that this was his first hearing before the Board. I find it appropriate under the circumstances to let the Tenant off with a warning to refrain from this conduct at any Board proceedings in the future.
48. I have considered all of the disclosed circumstances in accordance with subsection 83 of the Residential Tenancies Act, 2006 (RTA), 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. The Landlord is unaware of any circumstances that would justify relief from eviction.
49. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. Unless the Tenant voids the order as set out below, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before March 11, 2022.
2. The Tenant shall pay to the Landlord \$35,000.00 (less any amount paid by the Tenants to the Landlord after the application was filed with the Board) \*, which represents the amount of rent owing and compensation up to February 28, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay to the Landlord \$151.23 per day for compensation for the use of the unit starting March 1, 2022 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing\* on or before March 11, 2022, the Tenant will start to owe interest. This will be simple interest calculated from March 12, 2022 at 2.00% annually on the balance outstanding.
6. If the unit is not vacated on or before March 11, 2022, then starting March 12, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 March 12, 2022.
8. Pursuant to subsection 207(1) of the *Residential Tenancies Act, 2006* (the 'Act') the Board may not order payment of an amount more than the monetary jurisdiction of the Small Claims Court, which is \$35,000.00. I do not believe this applies to the amount to be paid if the Tenant wishes to void the order, as this is an optional payment.
9. **If, on or before March 11, 2022, the Tenant pays the amount of \$54,386.00\*\* to the Landlord or to the Board in trust, this order for eviction will be void. This means that the tenancy would not be terminated and the Tenant could remain in the unit. If this payment is not made in full and on time, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.**
10. The Tenant may make a motion to the Board under subsection 74(11) of the Act to set aside this order if they pay the amount required under that subsection on or after March 12, 2022 but before the Sheriff gives vacant possession to the Landlord. The Tenant is only entitled to make this motion once during the period of the tenancy agreement with the Landlord.

**February 28, 2022**  
**Date Issued**



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Sonia Anwar-Ali  
Member, Landlord and Tenant Board

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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 September 12, 2022 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.