

Order under Section 69  
Residential Tenancies Act, 2006

File Number: TNL-08727-18

In the matter of: 40 TANBARK CRESCENT  
NORTH YORK ON M3B1N6

I hereby certify this is a true copy of the Order  
(Name of Document)

Between: Xiuqin Chen



(Signature of Staff Member)

Landlord

and

MAR 27 2019

Marian Barnick Carthew

Landlord and Tenant Board

Tenant

Xiuqin Chen (the "Landlord") applied for an order to terminate the tenancy and evict Marian Barnick Carthew (the "Tenant") because the Tenant did not pay the rent that the Tenant owes.

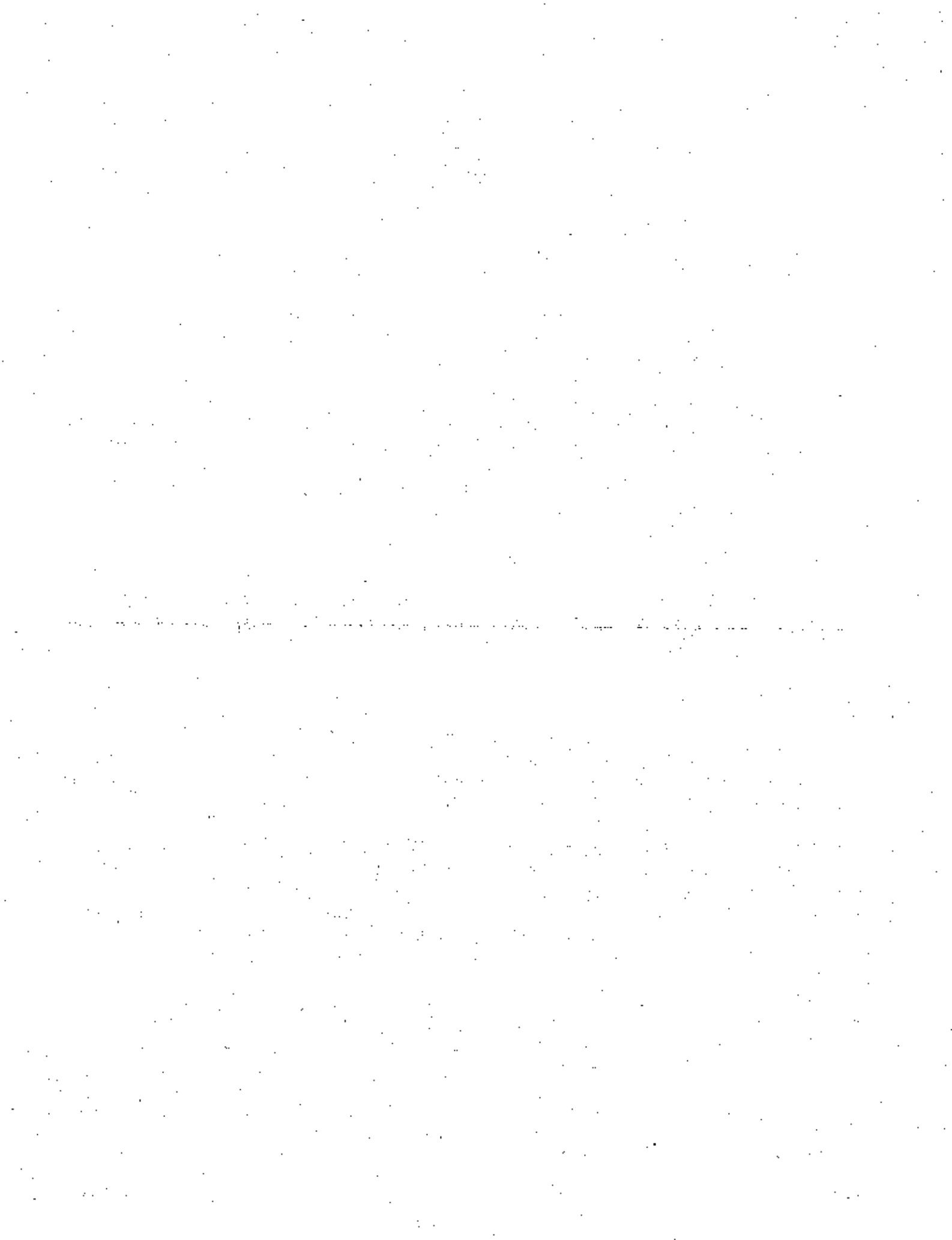
This application came before the Board in Toronto on October 16, 2018. The Landlord's representative, Rong Wei Yu, and the Tenant attended at the Board.

The application was heard in Toronto on February 12, 2019.

The Landlord's property manager, Yan Yang, and the Landlord's representative, Rong Wei Yu, attended the hearing. The Tenant and the Tenant's representative, Lawrence Pomfret, attended the hearing.

**Preliminary Issue:**

1. At the October 2018 hearing, the Tenant raised issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the "Act"). The hearing of the application was adjourned, and an interim order was issued requiring the Tenant to provide disclosure to the Landlord, and pay the rent to the Board until the matter is resolved.
2. At the hearing on February 12, 2019, the Tenant's representative, requested an adjournment as he was only recently retained on February 8, 2019.
3. The Landlord opposed the adjournment request and submitted that the Tenant breached the interim order by not paying the rent to the Board and did not provide disclosure to the Landlord. The Landlord also submitted that the arrears are considerable and over \$31,000.00.
4. After considering the adjournment request, I denied the request. I did so because the Tenant and sufficient time since the last hearing date to retain counsel. She should not have waited just prior to the hearing date to do so.
5. I also considered that the Tenant breached the interim order by not paying the rent to the Board. As stated at the hearing, I proceeded to only hear the Landlord's L1 application and the Tenant can file her own application with the Board.



6. Pursuant to subsection 207(1) of the Act, a party whose claim exceeds \$25,000.00 must make an election: to proceed with their claim to a court of competent jurisdiction; or abandon the excess over \$25,000.00 and accede to the jurisdiction of the Board.
7. At the hearing, the Landlord's representative acknowledged the monetary jurisdiction of the Board and requested to proceed at the hearing.

**Determinations:**

1. The Tenant has not paid the total rent the Tenant was required to pay for the period from May 1, 2018 to February 28, 2019. Because of the arrears, the Landlord served a Notice of Termination effective September 13, 2018.
2. The monthly rent as of the date of the hearing is \$3,300.00.
3. It was the evidence of the Tenant that due to maintenance issues in the unit, she could no longer live in the unit as of September 7, 2018. The Tenant moved out of the unit, but the tenancy was not terminated. The Tenant did not provide the Landlord with any notice to terminate the tenancy.
4. The Tenant submitted into evidence a Work Order from the City of Toronto, dated October 16, 2018.
5. It was the evidence of the Landlord that they have been working with the City of Toronto, and have complied with most of the Work Order.
6. The Tenant claims she had to move out of the unit because the rental unit was not habitable. However, I will not determine whether due to maintenance issues the Tenant had to move out of the unit because this would have been considered pursuant to the Tenant's section 82 claims. The Tenant was given the opportunity to raise her section 82 claims, but she failed to comply with the interim order. As such, I did not consider her section 82 claims.
7. The Landlord did not dispute that the Tenant is owed an abatement of rent, pursuant to Orders TNT-04165-18 (\$3,043.20) and TNT-07360-18 (\$3,045.00). As such, the amount of \$6,088.20 will be deducted from the arrears the Tenant owes the Landlord.
8. Based on the evidence adduced at the hearing, and my review of the October 2018 Work Order and the February 11, 2019 email from the City Inspector, I am not of the view that the Landlord is currently in serious breach of the Landlord's obligation under the Act, and this warrants refusal of the application pursuant to subsection 83(3)(a) of the Act.
9. The Landlord collected a rent deposit of \$3,300.00 from the Tenant and this deposit is still being held by the Landlord.
10. Interest on the rent deposit is owing to the Tenant for the period from June 10, 2015 to September 13, 2018.



11. The Tenant owes to the Landlord \$31,175.00, which represents the arrears of rent to February 28, 2019, and the application filing fee.
12. The Landlord accedes to the Board's monetary jurisdiction. This means that the arrears are \$25,000.00, less the abatement of rent \$6,088.20 (order TNT-04165-18 & TNT-07360-18), plus the application filing fee for a total of \$19,086.80.
13. It was the evidence of the Tenant that she lives in the unit with her young son (12 years old), who has many medical issues. The Tenant is self-employed as a kinesiologist and has a monthly income that averages \$7,500.00.
14. The Tenant proposed to pay a \$1,000.00 towards the arrears until the arrears are paid in full.
15. The Landlord requested a standard order and opposed the Tenant's payment plan.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I say this because the Tenant has not paid the full rent in over 10 months and is in substantial arrears. I find that the length of the payment plan is not reasonable. The Landlord should not have to wait for approximately 19 months for the arrears to be paid in full, considering that the Tenant has been withholding the rent due to her maintenance issues.

**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 April 7, 2019.
2. The Tenant shall pay to the Landlord \$18,911.80\*, which represents the amount of rent owing and compensation up to March 27, 2019, less the rent deposit and interest the Landlord owes on the rent deposit, less the abatement of rent and the monetary jurisdiction of the Board.
3. The Tenant shall also pay to the Landlord \$108.49 per day for compensation for the use of the unit starting March 28, 2019 to the date the Tenant moves out of the unit.
4. The Tenant shall also pay to the Landlord \$175.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing\* on or before April 7, 2019, the Tenant will start to owe interest. This will be simple interest calculated from April 8, 2019 at 3.00% annually on the balance outstanding.
6. If the unit is not vacated on or before April 7, 2019, then starting April 8, 2019, 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 April 8, 2019.
8. If the Tenant wishes to void this order and continue the tenancy, the Tenant must pay to the Landlord or to the Board in trust:
  - i) \$19,520.76 if the payment is made on or before March 31, 2019, or
  - ii) \$22,820.76 if the payment is made on or before April 7, 2019\*\*.If the Tenant does not make full payment in accordance with this paragraph and by the appropriate deadline, then the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 April 8, 2019 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.

**March 27, 2019**  
**Date Issued**

  
**Debbie Mosaheb**  
Member, Landlord and Tenant Board

Toronto North-RO  
47 Sheppard Avenue East, Suite 700, 7th Floor  
Toronto ON M2N5X5

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 October 8, 2019 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 section A on the attached Summary of Calculations.
- \*\* Refer to section B on the attached Summary of Calculations.





**Schedule 1  
SUMMARY OF CALCULATIONS**

**File Number: TNL-08727-18**

**A. Amount the Tenant must pay if the tenancy is terminated:**

<b>Reasons for amount owing</b>	<b>Period</b>	<b>Amount</b>
Arrears: (up to the termination date in the Notice of Termination)	May 1, 2018 to September 13, 2018	\$12,610.41
Plus compensation: (from the day after the termination date in the Notice to the date of the order)	September 14, 2018 to March 27, 2019	\$21,155.55
Less the rent deposit:		-\$3,300.00
Less the interest owing on the rent deposit:	June 10, 2015 to September 13, 2018	-\$190.67
Amount owing to the Landlord on the order date: (total of previous boxes)		\$30,275.29
Monetary jurisdiction of the Board		\$25,000.00
Less abatement of rent for orders: TNT-04165-18 & TNT-07360-18		-\$6,088.20
Balance owing:		<b>\$18,911.80</b>
Additional costs the Tenant must pay to the Landlord:		\$175.00
Plus daily compensation owing for each day of occupation starting March 28, 2019:		\$108.49 (per day)
<b>Total the Tenant must pay the Landlord if the tenancy is terminated:</b>		<b>\$19,086.80, + \$108.49 per day starting March 28, 2019</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy:**

**1. If the payment is made on or before March 31, 2019:**

<b>Reasons for amount owing</b>	<b>Period</b>	<b>Amount</b>
Arrears:	May 1, 2018 to March 31, 2019	\$34,300.00
Monetary jurisdiction of the Board		\$25,000.00
Less abatement of rent for orders: TNT-04165-18 & TNT-07360-18		-\$6,088.20
Per diem owing from March 28, 2019 to March 31, 2019		\$433.96
Balance owing:		\$19,345.76
Additional costs the Tenant must pay to the Landlord:		\$175.00
<b>Total the Tenant must pay to continue the tenancy:</b>	<b>On or before March 31, 2019</b>	<b>\$19,520.76</b>



## 2. If the payment is made after March 31, 2019 but on or before April 7, 2019:

Reasons for amount owing	Period	Amount
Arrears:	Up to March 31, 2019, and April, 2019 rent	\$22,645.76
Additional costs the Tenant must pay to the Landlord:		\$175.00
<b>Total the Tenant must pay to continue the tenancy:</b>	On or before April 7, 2019	\$22,820.76

