



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

Citation: Xu v Donaghy, 2023 ONLTB 27818

Date: 2023-04-03

File Number: LTB-L-060272-22

In the matter of: Basement, 254 EGERTON ST
LONDON ON N5Z2G7

Between: Ding Xu

And

Brittany Skinner

I hereby certify this is a
true copy of an Order dated
APR 03, 2023
Landlord and Tenant Board

Landlord

Tenant

Ding Xu (the 'Landlord') applied for an order to terminate the tenancy and evict Brittany Skinner and Mason Donaghy (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes; and, because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises; and because the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on February 23, 2023.

Only the Landlord Ding Xu (DX) and the Landlord's witnesses: Jo-Ann Piber (JP), Josefine Thatcher (JT) ad Jocelyn Hatfield (JH) attended the hearing.

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) on October 3, 2022. 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 \$1,050.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$34.52. This amount is calculated as follows: \$1,050.00 x 12, divided by 365 days.
5. The Tenant has paid \$2,100.00 to the Landlord since the application was filed.
6. The rent arrears owing to February 28, 2023 are \$3,150.00.
7. The Landlord is entitled to \$40.00 to reimburse the Landlord for administration charges and \$0.00 for bank fees the Landlord incurred as a result of 2 cheque given by or on behalf of the Tenant which was returned NSF.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,050.00 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.
10. Interest on the rent deposit, in the amount of \$26.97 is owing to the Tenant for the period from February 14, 2022 to February 23, 2023.

L2 Application

11. The Landlord served the Tenant with a Form N7 on October 3, 2022, with a termination date of October 14, 2022. The Landlord's notice of termination alleges the Tenant (or someone visiting/living the rental unit) has wilfully caused undue damage to the residential complex; and the Tenant (or someone visiting/living the rental unit) has seriously impaired the safety of another person within the residential complex. In particular, the Landlord DX alleges the Tenant's boyfriend impaired the safety of another person due to a stabbing incident that occurred in the rental unit on June 11, 2022. DX testified that although he was not at the building on the night in question, he was alerted to the incident by other tenants who identified the Tenant's boyfriend as the person who stabbed one of the Tenant's guests, causing injury.
12. The Landlord's testimony was supported by the direct evidence testimony of JT, a resident in the building, who stated she was woken up on the night in question as a result of the altercation that occurred in the rental unit. JT testified police and fire were called and she later observed the victim on the front lawn with a stab wound, as well as the Tenant's boyfriend driving away. JT also testified the Tenant was in distress, and repeatedly said to her boyfriend prior to his departure: "*you stabbed my friend*". Based upon JT's observations from the night in question and her identification of the aggressor as the Tenant's boyfriend, I find on a balance of probabilities the Tenant permitted a person in the residential complex who seriously impaired the safety of another person.
13. Although the Landlord additionally alleged that a neighbour was physically assaulted by one of the Tenant's guests in September 2022, this allegation was dismissed as it did not occur in the residential complex. I have also not considered the Landlord's allegations of "excess

parties” and “abnormal traffic” as the notice of termination did not provide sufficient particulars of these allegations. Pursuant to the Divisional Court’s decision in *Ball v. Metro Capital Property*, [2002] O.J. No. 5931, a notice of termination must inform a tenant with sufficient particulars so the tenant knows the case to be met and can decide whether or not to dispute the allegations before the Board. I find that insufficient details were provided to allow the Tenant to know the case to be met with respect to these allegations and thus, these allegations were not considered.

14. Lastly, the Landlord’s Form N7 also contains allegations of wilful damage, alleging “*property damage (windows/door/wall)*” was discovered in August 2022. The Landlord states that upon discovery of the damage, he was advised the cause was the Tenant’s guests trying to get into the building. At the hearing, the Landlord advised the Tenant has taken the necessary steps to repair the damage. Although not a requirement to prove one’s case, DX did not provide any documentary evidence or pictures to substantiate the allegations of wilful damage. Based upon the limited evidence presented in respect of these allegations, I do not find on a balance of probabilities the Tenant (or someone visiting/living at the rental unit) caused undue damage to the rental unit. Furthermore, as it was unclear how the purported damage occurred – and if it was caused “willfully” as required for this type of application – this allegation is dismissed.

Section 83

15. Section 83 requires that I consider all the circumstances, including the Tenant’ and the Landlord’s situations to determine if it would be appropriate to grant section 83 relief from eviction.
16. The L2/N7 incident is serious in nature, causing other residents in the building to understandably, be fearful. Further, with respect to the L1 Application, The Landlord advised it is a short-term tenancy and that the Landlord has tried to reach out to the Tenant regarding a repayment plan, without success. The Tenant did not attend the hearing, and thus did not provide any evidence that may be relevant to my determination under s. 83. 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.

It is ordered that:

L1 Application

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:**
 - \$5,476.00 if the payment is made on or before April 14, 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 April 14, 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 April 14, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,042.99. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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 Tenant shall also pay the Landlord compensation of \$34.52 per day for the use of the unit starting February 24, 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 April 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 15, 2023 at 5.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before April 14, 2023, then starting April 15, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 15, 2023.

L2 Application

11. In the event the Tenant voids the order as set out above, the tenancy between the Landlord and the Tenant is terminated on April 14, 2023.
12. If the unit is not vacated on or before April 14, 2023, then starting April 15, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

13. 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 15, 2023.



April 3, 2023
Date Issued

Peter Nicholson
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 October 12, 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

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 April 14, 2023

Rent Owing To April 30, 2023	\$7,350.00
Application Filing Fee	\$186.00
NSF Charges	\$40.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
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	\$5,476.00

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

Rent Owing To Hearing Date	\$4,993.96
Application Filing Fee	\$186.00
NSF Charges	\$40.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,100.00
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	- \$1,050.00
Less the amount of the interest on the last month's rent deposit	- \$26.97
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	\$2,042.99
Plus daily compensation owing for each day of occupation starting February 24, 2023	\$34.52 (per day)