

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: YUCHENG MAO, Appellant/Respondent on Motion

AND:

PI-YUN LIAO, Respondent on Appeal /Moving Party

BEFORE: Davies J.

COUNSEL: *Yucheng Mao*, self-represented

Arvin Ross, for the Respondent/Moving Party

HEARD: In chambers, in writing

ENDORSEMENT

[1] On October 5, 2023, the Landlord and Tenant Board terminated Mr. Mao’s tenancy and ordered that he vacate his rental premises, which is owned by Ms. Liao, by October 16, 2023 unless he paid the rental arrears.

[2] The Board found that Mr. Mao owed over \$62,000 in rent as of October 30, 2023. The Board also found that Mr. Mao’s monthly rent was \$1,350. Mr. Mao did not pay the amount ordered by the Board. Rather, on November 3, 2023, Mr. Mao asked the Board to reconsider its decision. The Board’s October 5, 2023 eviction order was stayed pending the reconsideration. Mr. Mao’s reconsideration request was dismissed on January 18, 2024.

[3] Mr. Mao has appealed the Board’s decisions and reconsideration decision to this court. He obtained a certificate of stay of the eviction order pending the hearing of his appeal. Mr. Mao’s appeal is scheduled to be heard on May 13, 2024.

[4] Ms. Liao has brought this motion for an order lifting the stay of eviction. For the following reasons the motion is granted and the stay of eviction is lifted.

[5] To understand my decision, I need to set out the case management history of this appeal in some detail.

[6] On February 13, 2024, Justice Matheson directed Mr. Mao to confirm that his rent is \$1,350 a month and that he owes more than \$62,000 in arrears, as the Board found. Justice Matheson also directed Mr. Mao to provide the Court with the amount he says is owing if he disputes the Board's findings. Mr. Mao did not respond to Justice Matheson's directions.

[7] A case conference was held before me on February 21, 2024. I permitted the landlord to be represented at the case conference by Frank Alfano, who held himself out as an articling student for counsel of record, Arvin Ross.

[8] During the case conference, Mr. Mao took the position that he is not required to pay rent and has not been required to pay rent since 2019 because the landlord refused to give him a written lease agreement. Following the case conference, I gave the following direction:

Mr. Mao is required to pay his rent of \$1,350 on the 20th day of each month pending the hearing of his appeal starting March 20, 2024. In addition, on the 1st day of each month starting March 1, 2024, Mr. Mao is to pay \$1,350 towards the rental arrears. Mr. Mao is to make the rent payments and the payments towards the rental arrears electronically to the Landlord's counsel so there will be a record of the payments.

The Landlord's lawyer is to provide Mr. Mao with their electronic banking information within 48 hours so he can set up electronic payments starting March 1, 2024.

If Mr. Mao fails to pay, the respondent landlord may move in writing to have the automatic stay of eviction lifted.

[9] On March 3, 2024, the landlord brought a motion in writing to lift the stay of eviction issued by the registrar of this court. The landlord alleged that Mr. Mao had not made the payment towards the rental arrears as required on March 1, 2024.

[10] On March 12, 2024, I dismissed the landlord's motion without prejudice to her ability to renew the motion in writing at a later date. I dismissed the motion because the landlord did not comply with my February 21, 2024 direction. Rather than giving Mr. Mao information to deposit the payments into counsel's trust account, Mr. Mao was given information for the landlord's personal account. Mr. Mao claimed he could not make a deposit into the account with the information provided.

[11] In my endorsement dismissing the landlord's motion, I wrote the following:

Because the landlord did not comply with my earlier direction, I am now directing Mr. Mao to make all rent and arrears payments **through his bank (not by mail) to the Accountant of the Superior Court of Justice** to the credit of this proceeding. The March 1, 2024 payment towards arrears shall be paid forthwith and in any event no later than March 20, 2024. Subsequent payments toward the arrears shall be paid on the 1st of each month. All future rent payments, starting on March 20, 2024, shall also be paid to the Accountant of the Superior Court of Justice.

[12] I also ordered the parties to attend a further case conference before me because Mr. Mao raised concerns in his response to the landlord's motion that Mr. Alfano was improperly providing legal services as a paralegal or was improperly holding himself out as a student-at-law.

[13] A second case conference was held on March 26, 2024.

[14] Mr. Ross attended the case conference personally and confirmed that he is counsel for the landlord and that Mr. Alfano is his articling student. Mr. Ross also confirmed that Mr. Alfano appeared at the February 21, 2024 case conference on his instructions and under his supervision. I understand that Mr. Alfano may have outstanding disciplinary proceedings before the Law Society of Ontario. Nonetheless, I accept Mr. Ross's representations, as an officer of the court, that Mr. Alfano was acting as his articling student when he appeared before me on February 21, 2024.

[15] In advance of the second case conference, Mr. Mao filed confirmation that he made one payment of \$1,350 to the Accountant of the Superior Court of Justice on March 19, 2024. He did not make a second payment as required on March 20, 2024. He claims the Accountant would not accept his second payment because he does not have a formal order from this Court.

[16] To avoid any more delays or complications, I issued new directions after the second case about how Mr. Mao was to make his rent payments and payments towards the rent arrears. I directed Mr. Mao to make all required payments by e-transfer to Mr. Ross's trust account. In my March 26, 2024 directions I wrote the following:

Mr. Mao is directed to send an e-transfer in the amount of \$1350 to Mr. Ross's trust account (law@alvinross.com) **no later than 12noon on March 27, 2024**. The payment on March 27, 2024 is for Mr. Mao's March rent which was due on March 20, 2024. I explained to Mr. Mao he is required to send \$1350 tomorrow even if he does not receive these written directions before the noon deadline. I confirmed Mr. Mao has Mr. Ross's email recorded properly. I also confirmed that Mr. Mao is able to make payments of \$1350 by e-transfer.

As previously directed, Mr. Mao is required to make an e-transfer in the amount of \$1350 on the 1st and the 20th of each month until his appeal to this Court is decided. The payments he makes on the 1st of each month are to be credited towards the rent arrears. The payments on the 20th of each month are his required monthly rent payments.

In other words, **Mr. Mao must make another payment of \$1350 on April 1st (arrears payment), April 20th (rent payment) and May 1st (arrears payment)**. Mr. Mao is required to make the payments on the 1st and the 20th of each month even if they fall on a holiday or a weekend. [emphasis in original]

[17] Again, I directed that if Mr. Mao failed to make any required payment, the landlord could renew her request in writing for an order lifting the stay of eviction.

[18] On March 31, 2024, the landlord renewed her request for an order lifting the stay of eviction. The landlord filed an affidavit from the manager of Mr. Ross's law firm which states that

they did not receive payment from Mr. Mao on March 27, 2024 and as of March 31, 2024, no payment was received.

[19] I gave Mr. Mao an opportunity to respond to the landlord's submissions. Mr. Mao filed a written response on April 4, 2024. For the first time in this court, Mr. Mao now claims he is experiencing financial difficulty and is suffering from poor health, which would make it difficult for him to find other accommodation. Mr. Mao again made allegations about Mr. Alfano in his response.

[20] When an appeal from a decision of the Landlord and Tenant Board is filed in the Divisional Court, the Board's eviction order is stayed pending the outcome of the appeal. A stay of the Board's eviction order ensures that the tenant can pursue their appeal and preserve their tenancy while they do so. The statutory stay is "intended to preserve the ability of this court to do justice – to both sides – at the conclusion of the case": *Jayaraj v. Metcap Living Management Inc.*, 2021 ONSC 503 at para. 23.

[21] But the statutory stay does not give Mr. Mao the right to live rent-free pending his appeal. The obligation to pay rent is a fundamental part of the landlord and tenant relationship. It is an abuse of process for a tenant to use an appeal to this court to continue to occupy a rental premise without paying rent. As Justice Corbett noted in *Jayaraj v. Metcap* at para. 23, tenants should expect the stay of eviction might be lifted if they do not keep their rent current pending their appeal. Of course, not every failure to pay rent will result in the stay being lifted and each case must be decided on its own facts.

[22] I am satisfied that it is appropriate to lift the stay of the Board's eviction order in this case. Mr. Mao has not paid rent since late 2019 and now owes more than \$70,000 in arrears.

[23] On February 21, 2024, I ordered Mr. Mao to pay his rent and make very modest payments towards the arrears pending the hearing of his appeal. Since I made that order, Mr. Mao should have made three payments of \$1,350 – on March 1, 2024, March 20, 2024 and April 1, 2024. Mr. Mao has only made one payment of \$1,350 on March 19, 2024. He was given a second chance to make the second \$1,350 payment, which should have been paid on March 20, 2024. I extended the deadline for the second payment to March 27, 2024 because of the difficulties he claims to have had paying the Accountant of the Superior Court of Justice.

[24] Even after several chances, Mr. Mao has still not fully complied with my order. I find that it would be an abuse of this court's process to allow Mr. Mao to continue to live without paying his rent and without contributing to the arrears.

[25] The landlord's motion to lift the stay of the Board's eviction order pending appeal is, therefore, granted. The stay is lifted effective immediately and the Sheriff is requested to enforce the eviction order of the Landlord and Tenant Board as soon as practicable. Counsel for the landlord shall provide the court with a draft order in Word format reflecting this direction and the

court will expedite issuance and entry of the order to facilitate execution of the eviction order by the Sheriff.

[26] Mr. Mao is, of course, entitled to continue his appeal even if the eviction is carried out. However, for his appeal to proceed on May 13, 2024 as scheduled, Mr. Mao must advise the landlord and the court, by email, **no later than 5:00 pm April 29, 2024**, if he intends to continue with this appeal. If Mr. Mao fails to comply with this condition, the appeal will be dismissed on request of the landlord by email.

Davies J.

Date: April 16, 2024