



**Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006**

**Citation:** Chen v Price, 2024 ONLTB 39957

**Date:** 2024-05-31

**File Number:** LTB-L-035790-23-RV

**In the matter of:** Upper Unit, 91 LIPPINCOTT ST TORONTO  
ON M5S2P2

**Between:** Wenji Chen Landlord  
Saihua Dong

**And**

Asher Price Tenant  
Luke De haas  
Dakota Van halteren  
Jesse Colling

**Review Order**

Wenji Chen and Saihua Dong (the 'Landlord') applied for an order to terminate the tenancy and evict Asher Price, Luke De haas, Dakota Van halteren and Jesse Colling (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-035790-23 issued on February 05, 2024. The matter was declared abandoned because the Landlord's Agent was not present when the matter was called at 4:20 pm.

On March 14, 2024, the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 14, 2024 interim order LTB-L-035790-23-RV-IN was issued, staying the order issued on February 05, 2024.

This application was heard in by videoconference on May 7, 2024.

The Landlord and the Tenant (Dakota Van halteren and Jesse Colling only for all) attended the hearing.

**Determinations:**

**Request for Review**

1. The Landlord claims that his representative had issues with their phone on the day of the hearing.
2. The record does indicate that the Landlord's Representative was at the hearing.
3. On the basis of the submissions made in the request, I am satisfied that the Landlord was not reasonably able to participate in the proceeding.
4. As a result, the request to review must be allowed.

**Landlord's L1 Application**

5. The next issue is the Landlord's L1 application.
6. 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.
7. As of the hearing date, the Tenant was still in possession of the rental unit.
8. The lawful rent is \$5,000.00. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$164.38. This amount is calculated as follows:  $\$5,000.00 \times 12$ , divided by 365 days.
10. The rent arrears owing to May 31, 2024 are \$10,000.00.
11. The Landlord incurred costs of \$244.00 for filing the application.
12. The Landlord collected a rent deposit of \$5,000.00 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.
13. Interest on the rent deposit, in the amount of \$263.70 is owing to the Tenant for the period from March 29, 2022 to May 7, 2024.

**Maintenance Issues.**

14. The Tenant admitted that they owe the Landlord \$10,000, but claim that are entitled to a rebate/set-off due to maintenance issues.
15. They did not pay the rent for February and April 2023, due to construction being carried out in the basement of the house by the Landlord.
16. The Tenant has occupation of main floor, and the first and second floors, and front yard.
17. Renovations began in the basement in January 2023. The Landlord was blasting out the concrete floor to make way for a basement unit with jackhammers.
18. On February 16, 2023, the Tenants were notified that the work would continue.
19. The renovations continued for 2 months. The jackhammering persisted from Monday – Saturday, 8 am – 5 pm.
20. The Tenant could not use the backyard for 2 months, or about 100 square feet.
21. On February 23, 2023, the Landlord had to put a hole in the house to remove rock from the basement. The result was the house would not heat for one month.
22. The renovations also caused the electricity to go off. It went off from February 28 to March 5. The food the Tenant had in the fridge spoiled.
23. The drilling in the basement also caused dust throughout the house.
24. The Tenant had to move out due to the disruption, and had to rent space from their parents.
25. Other Tenants had to work from the office, as opposed to working from home, and incurred travel costs.
26. The fence around the property was affected, and now homeless people could enter the property.
27. The Tenant seeks an abatement of \$10,000, the amount they owe the Landlord for 2 month's rent.
28. The Landlord claims he only dug for 4 weeks and changed pipes for the next 4 weeks. But the video of the noise produced by the Tenant was dated March 22, 2023, more than 4 weeks from when the drilling started on February 17, 2023.
29. The Landlord claims he gave the Tenant a portable heater.
30. He concedes that he owes \$5,000.
31. In my view the Tenant's claim for \$10,000 for 8 weeks of aggravation during basement renovations by the Landlord is reasonable. The drilling noise was unbearable. The dust was serious. The Tenant could not use the unit during the day time.

32. The Landlord's claim for arrears and costs is therefore dismissed by way of a set off to the Tenant's claim for an abatement of two month's rent.

**It is ordered that:**

**Request to Review**

1. The request to review order LTB-L-035790-23 issued on February 5, 2024 is granted. The order is cancelled, and replaced with this order.
2. The interim order is cancelled.
3. The Landlord's L1 application is dismissed.

**May 31, 2024**

**Date Issued**

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James Campbell  
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.