



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

Citation: Xue v Ali, 2024 ONLTB 14234

Date: 2024-03-28

File Number: LTB-L-021670-23

In the matter of: BASEMENT UNIT ROOM 2, 80 MARKHAM ST TORONTO
ON M6J2G5

Between: Chun Yan Xue Landlord

And

Yusuf (Amaro) Ali Tenant

Chun Yan Xue (the 'Landlord') applied for an order to terminate the tenancy and evict Yusuf (Amaro) Ali (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on February 7, 2024.

The Landlord, Chun Yan Xue, and The Landlord's Representative, Yun Tao Li, attended the hearing. The Landlord's Witnesses Annabelle Zhang and Ming Chi Zhang also attended. Jeffrey Xue also attended as a translator

As of 10:49 am, 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:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, The Tenancy between the Landlord and Tenant is terminated effective April 30, 2024 and the Tenant must pay to the Landlord \$461.95.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On February 12, 2023, the Landlord gave the Tenant an N5 notice of termination deemed served on February 17, 2023. The notice of termination alleges that on four different occasions ranging from December 2021 to January 2023, the Tenant has either hosted late night disruptive parties, smoked cannabis in the rental unit, or both.
4. Based on the Landlord's evidence of further contraventions, discussed below, the Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006 (Act)*.
5. the residential complex is a house. The rental unit is a basement apartment with the Landlord, their family, and other tenants living above in the rest of the house. The Landlord called a total of two witnesses who testified as to the conduct of the Tenant. Annabelle Zhang, the Landlord's daughter testified that on December 6 2022, January 14, 2023 January 18 2023, and January 30 2023 the Tenant woke herself and others in the middle of the night by smoking such a quantity of cannabis that the smell pervaded the entire home. The Tenant was also listening to music loud enough to wake the witness on January 18, 2023.
6. It was the witness's evidence that the Tenant was informed by the Landlord that this behaviour was interfering with the reasonable enjoyment of the landlord and their family, but the Tenant continued to consume cannabis and allow the smoke to permeate the rest of the house.
7. It was the witness's evidence that this led her to move out of the home on February 1, 2023.
8. Ming Ci Zhang also testified. He is a current Tenant within the residential complex.
9. He testified that on February 19, 2023 the tenant was smoking cannabis and being very noisy, which disturbed Mr. Zhang. Mr. Zhang was sure it was the Tenant causing the disturbance as the Tenant is the only person residing in the basement of the residential complex.
10. It was Mr. Zhang's evidence that on February 21, 2023 the Tenant hosted a party in his rental unit, including loud music, noise, and consumption of cannabis which disturbed Mr. Zhang. The police were called on the Tenant during this occurrence, but as Mr. Zhang does not speak English, he does not know what transpired after they arrived. I accept this evidence, I am satisfied that the Tenant did not void the N5 notice.
11. Moreover, I accept that Landlord's evidence that on the dates alleged, the Tenant held late night parties and smoked cannabis in the unit such that smoke permeated other units in the

residential complex. I accept that this conduct has substantially interfered with the Landlord's and the other tenants' reasonable enjoyment of the residential complex.

Daily Compensation

12. The Tenant was required to pay the Landlord \$10,369.32 in daily compensation for use and occupation of the rental unit for the period from March 13, 2023 to February 7, 2024.
13. Based on the Monthly rent, the daily compensation is \$31.23. This amount is calculated as follows: \$950.00 x 12, divided by 365 days.
14. Since the termination date in the notice of termination, the Tenant paid the Landlord \$10,093.37 in rent.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. There is no last month's rent deposit.
17. 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 not be unfair to postpone the eviction until April 30, 2024 pursuant to subsection 83(1)(b) of the Act. It was the Landlord's position that there is no reason to delay or deny eviction as there are no children or persons with special needs living in the rental unit. However the landlord was open to a delayed termination date of April 30, 2024. Based on the Landlord's uncontested evidence I find that it would not be unfair to do so.
18. However, it would be unfair to deny eviction or delay it any further. Mr. Zhang testified that the Tenant continued to host loud parties in his rental unit on April 15, 2023, May 20, 2023 and in July and September of 2023. Mr. Zhang approached the Tenant on May 20, 2023 to ask him to lower the noise and the Tenant took his phone and threatened to assault him.
19. The Tenant was informed that excessive consumption of cannabis, and loud behaviour which disturbed other tenants would not be tolerated, however the Tenant continued this behaviour, including during the voiding period on February 19, 2023 and beyond.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 30, 2024.
2. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 May 1, 2024.

4. The Tenant shall pay to the Landlord \$275.95, which represents compensation for the use of the unit from March 13, 2023 to February 7, 2024.
5. The Tenant shall also pay the Landlord compensation of \$31.23 per day for the use of the unit starting February 8, 2024 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$461.95.
8. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.

March 28, 2024

Date Issued

Reid Jackson

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 of the Tenant expires on November 1, 2024 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.

