



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

**Citation:** Zou v Wambu, 2024 ONLTB 15095

**Date:** 2024-02-26

**File Number:** LTB-L-045741-22

**In the matter of:** Room 03, Basement, 111 PLEASANT VIEW DR  
NORTH YORK ON M2J3R3

**Between:** Congyan Zou Landlord

**And**

Moses Wambu Tenant

Congyan Zou (the 'Landlord') applied for an order to terminate the tenancy and evict Moses Wambu (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on March 13, 2023, March 31, 2023, June 12, 2023 and July 24, 2023.

The Landlord Legal Representative Michelle (Xiaohong) Chen and the Landlord Agent Allan Zou assisted by a mandarin interpreter Yan Yan Su attended the hearing.

The Tenant Legal Representative Amanda Richards and the Tenant attended the hearing.

**Determinations:**

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$560.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$18.41. This amount is calculated as follows: \$560.00 x 12, divided by 365 days.
5. The Tenant has paid \$4,240.00 to the Landlord since the application was filed.
6. The rent arrears owing to July 31, 2023 are \$3,600.00.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$520.00 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.
9. Interest on the rent deposit, in the amount of \$62.97 is owing to the Tenant for the period from December 2, 2015 to July 24, 2023.

## Section 82 Issues

### Water and Bathroom Access

10. Board order LTB-L-045741-22-IN issued on March 14, 2023, directed the Landlord to restore full access to the Tenant to use his own private bathroom and to restore a vital service: water. Board order LTB-L-045741-11-IN2 issued on April 17, 2023, confirmed that the Landlord had complied with the previous interim board order.
11. It was uncontested that the Tenant had been denied access to their washroom and a vital service water from June 20, 2022, until access was restored on March 13, 2023, for a total of nine months.

### Loss of Power

12. The Tenant testified that the Landlord had cut power, water and internet on July 16, 2023 for a week. The Tenant had received a text message from the Landlord stating that since rent is not being paid that these things will be cut off.
13. The Landlord testified that no services were cut off, that because it is a house, everything is connected and cannot just turn one thing off. He testified that when there was an issue with internet access that he provided the Tenant with a passcode so he could use it. The Landlord testified that water was off for a few days because there was a blockage.
14. The relationship between the parties has been acrimonious for some time. There were allegations that the Landlord wanted to evict the Tenant to raise rent to \$1,100.00 per room; or that the Landlord insurance would only permit a single tenancy and not the 3 that the Landlord had. This led to interactions with the police when services were cut off, interactions with the Electrical Safety Authority (ESA), and the Landlord's efforts to comply with the ESA order.
15. I found that the Tenant was credible and unwavering in his testimony. He was able to clearly set out what had been going on between the parties and the impact that had on him.
16. Conversely, I did not find the Landlord's testimony to be as reliable. The Landlord denied that he had ever cut off any services to the Tenant. The Landlord testified for example that the police report was incorrect about what the Landlord had told the police during one of their visits. The Landlord first testified that his insurance company had advised that they would not provide insurance with 3 tenants; and yet the Landlord was able to find other

coverage for that. The Landlord testified that even after found insurance coverage still evicted some tenants and continued to attempt to evict this Tenant. The Landlord was also evasive regarding compliance with the ESA order.

17. I have carefully listened to and considered each of the witnesses' testimony and demeanour at the hearings. I found that the credibility of the Landlord was lacking. His testimony was more self-serving in that he refused to admit that he had not complied with the ESA order and that the police report had errors. The Tenant was clear and consistent throughout his testimony and cross-examination.
18. Although there is a discrepancy in the testimony of the Landlord and the Tenant regarding the loss of services, I prefer and accept the evidence of the Tenant. Remedies
19. The Tenant is seeking a rent abatement for the issues outlined above.
20. The Tenant was also seeking General Damages for his anguish, pain, suffering and other emotional injuries.
21. At the conclusion of the July 24, 2023 hearing the parties agreed to provide written submissions. I have reviewed those submissions. Before those submissions were completed the Landlord's legal representative withdrew their services.
22. The Tenant also made specific submissions in support of their request that the Landlord be ordered to pay a fine.
23. The Landlord submitted that the bathroom lockout was for safety reasons. The Landlord still insists that the Tenant must vacate for this reason. They otherwise deny the allegations of the Tenant.
24. The Tenants submitted that the Landlord testimony regarding safety was contradictory. The Landlord testified that he received the ESA compliance order but that it was not followed up and no enforcement action taken because it was just a recommendation, and his own unnamed electricians stated everything was "ok". However, the Tenant was still locked out of his bathroom for nine months.
25. The Tenant testified that while he was locked out of his bathroom that he was forced to commute to a local community centre to shower and to use local gas station washrooms. He submitted that he felt like a homeless person, and that he had endured substantial interference with his reasonable enjoyment, threatening behaviour and intimidation by the actions of the Landlord.
26. I am satisfied that in all the circumstances an abatement of rent is appropriate for the nine months that the Tenant was locked out of his bathroom. The Tenant requested an abatement equivalent to 50% of monthly rent. I am cognizant that the Tenant was advised that he should pay his rent on time while this matter was ongoing, that he was unlikely to receive a 100% abatement. The Tenant made some payments but did not consistently pay rent in full or on time during the 5 months that the 4 hearings dates occurred. Therefore, an abatement of 35% amounting to \$1,764.00 shall be ordered.

27. The Tenant requested a 20% abatement for the loss of services for the one week. I am satisfied that this is a reasonable amount, and therefore a further abatement of \$112.00 shall be ordered.
28. The Tenant was also seeking \$15,000.00 in their initial issues submissions and subsequently amended that to \$20,000.00 and reduced the submission to \$5,000.00. I have not considered the higher amount because the Landlord had not been put on notice that the Tenant would seek a higher amount, and it would be unfair to do so.
29. The Tenant did not provide direct testimony regarding the impact that the Landlord's actions has had on him, no do the closing submissions address this. He testified about having to commute to the local community centre and of using public washrooms. The Tenant was able to enforce his rights by calling the police and by contacting the ESA. The Tenant did endure threats of eviction, lockout, and loss of services, and demands for increased rent. The Tenant submissions set out that the Landlord actions "were deliberate and premeditated and should be considered as obstruction, intimidation, harassment and coercion".
30. I am satisfied that the Landlord did harass and threaten the Tenant and that resulted in interference with his reasonable enjoyment. The Tenant referred the Board to *Mejia v. Cargini*, 2007 CanLII 2801, as authority to award general damages. The Tenant also referred the Board to *Taft v. Whitesands Apartments* [2009] O.J. No. 3198 as authority to award damages for mental distress. The Tenant also referred the Board to decisions of the Board in this regard.
31. In the absence of evidence and argument regarding the impact specifically to the Tenant, I must determine what is an appropriate award for general damages. Some compensation for general damages is appropriate and in reviewing Board decisions where compensation has been awarded, I am satisfied that an award \$1,500.00 is appropriate in all the circumstances and shall be ordered.

### Fine

32. The Tenant requested that the Landlord be ordered to pay a fine on the basis that the conduct of the Landlord was particularly egregious. The Board's Interpretive Guideline 16 entitled Administrative fines states that a fine should be considered to deter the Landlord and others from taking matters in their own hands in this fashion.

An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act, 2006* (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations.

33. The Landlord locked the Tenant out of his own bathroom, engaged in threatening behavior and made things difficult for the Tenant in seeking an unlawful rent increase or to coerce the Tenant to vacate. All of this is egregious conduct.
34. The Landlord rents out 3 rooms in their basement and should be aware of the legal obligations under the Act.
35. I have considered the Board decision referenced by the Tenant and other decisions of the Board where a fine has been imposed. In this instance, the Landlord also attempted to raise rent to \$1,100.00, an increase of \$540.00 almost a doubling of the rent. As a result, I am satisfied that a fine in the amount equivalent to 6 months rent at the higher rate is appropriate. Therefore, an amount of \$6,600.00 shall be awarded.
36. In accordance with Section 196 of the Act, where a party does not pay to the Board money owing, the Board may refuse any applications filed or may stay any proceedings until the amount owing is paid. In effect, the Landlord may not file applications, continue any application, or appear before the Board until the costs, as ordered, are paid to the Board.

Xiao Hong (Michelle) Chen

37. On August 4, 2023, the Landlord legal representative advised the Board that they have withdrawn from representation. They did not provide any reason for withdrawing their services.
38. The Boards Rules of Procedure Rule A9.3 provides that the Board may issue directions to ensure fairness to all parties.

Where a representative begins or ceases to act for a client, the representative must immediately advise the tribunal and the other parties in writing and provide up-to-date contact information for the party and any new representative. Where a representative ceases to act for a client, the tribunal may issue directions to ensure fairness to all parties and to prevent undue delay of proceedings.

39. The Board's Practice Direction on Representation provides that the Board may determine that a representative cannot remove themselves from the proceedings.

In certain cases, the LTB may determine that a representative cannot remove themselves from the proceeding.

40. The Law Society Rules of Conduct at Rule 3.08(1)(2) sets out that a representative should seek directions from a tribunal before they withdraw their services.

3.08 (1) A paralegal shall not withdraw from representation of a client except for good cause and on reasonable notice to the client.  
(2) Subject to subrules (7), (8) and (9) and the direction of the tribunal, a paralegal may withdraw if there has been a serious loss of confidence between the paralegal and the client.

41. The Board had conducted hearings over 4 days over 5 months and at the last hearing date the parties consented to written submissions in lieu of further hearing time and agreed to a timetable for submissions. The Tenant submissions were due on August 7, 2023, and the Landlord's responding submissions were due on August 21, 2023. The representative withdrew their services without seeking directions or consent from the Board.
42. The Landlord proceeded as a self-represented party to complete their own submissions. Although the Landlord did not seek an extension of time to find a legal representative, it is likely that no legal representative would have taken on a client at the post-hearing stage to make written submissions where they had not participated in any of the 4 hearings. This has likely put the Landlord at a disadvantage in being able to respond to the submissions or conduct legal research to determine if there was any jurisprudence in their favour.
43. I have had to take this into consideration in my deliberations and in making my findings and awards in order to balance the interests of the parties.
44. The Board's Interpretation Guideline 3 entitled Costs provides that the Board may award costs not on notice, and for failing to take the necessary steps in the Rules to seek instructions before withdrawing their services.

However, if a party has received notice of a hearing and does not attend a hearing, or if a party's agent or legal representative is on the record as representing a party and does not attend a hearing, a Member may proceed to make an order for costs without notifying the person affected of the intention to do so, provided that the failure to attend the hearing delayed the process unnecessarily or caused unnecessary expense to the other party.

The Board expects parties and their paid representatives to act reasonably in pursuing their applications or defending their positions. This includes bringing applications only when there are substantial grounds. It also includes taking all required procedural steps, not taking unnecessary ones and acting in a courteous and orderly way at a hearing.

When a party or their agent or legal representative acts improperly or unreasonably in a proceeding, the Board may order one or more of them to pay to the Board an amount that will partly cover the expenses that the Board has incurred as a result of that conduct. If the unreasonable conduct was the fault of the party or the party's agent or legal representative, the Board will normally order that the party or the party's agent or the legal representative pay the Board's costs.

45. An order for a legal representative to pay costs is intended to discourage inappropriate practices by a legal representative.

In those rare situations in which a party or their agent or legal representative is responsible for unreasonable conduct, this power allows the Board to accomplish two objectives:

1. Recover some of the public's monies which funded the proceedings, and;
2. Discourage inappropriate practices and conduct by parties and parties' agents and legal representatives.

46. I am satisfied that the Legal Representative has acted inappropriately for failing to complete the hearing and make the submissions on behalf of their client and for failing to seek directions from the Board before doing so. I am satisfied that costs in the amount of \$700.00 to be paid by Xiao Hong (Michelle) Chen is appropriate in the circumstances.

47. In accordance with Section 196 of the Act, where a party does not pay to the Board money owing, the Board may refuse any applications filed or may stay any proceedings until the amount owing is paid. In effect, the Legal Representative may not file applications, continue any application, or appear before the Board until the costs, as ordered, are paid to the Board.

#### Relief from eviction

48. The Landlord submitted that the Board should refuse to grant eviction in accordance with section 83(3) of the Act.

#### **Circumstances where refusal required**

(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

- (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
- (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;

49. Although the Act does not define "serous" it is generally accepted that it must be egregious.

50. In this instance, the actions of the Landlord to lock the Tenant out of his bathroom and the ensuing harassment and intimidation constitute in my view egregious conduct. I note that the Tenant did complaint to the ESA and to the police in order to confirm the serous electrical safety issues and to protect their rights; however, this is an application for arrears of rent, which is the actions of the Tenant to fail to pay rent in full and on time; even after being encouraged by the Board to do so.

51. I am satisfied that it is appropriate to refuse eviction, to grant relief and direct that the Tenant shall pay the arrears of rent via a payment plan to the Landlord.

52. The total amount that the Tenant owes the Landlord after deducting the rebate and general damages is \$4330.00, less any amounts already paid since the last hearing of July 24, 2023.

53. The Tenant should be aware that all of the rent and arrears payments due dates are all “on or before” the date specified meaning that the Tenant must make sure that these payments are made by that date. The Tenant must also make sure that the payments are made in full by the due date. If the Tenant is late with a payment, does not make a payment or only makes a partial payment the Landlord can file paperwork with the Board that, if correct, would result in an order for eviction. If there may be an issue, the Tenant is encouraged to contact the Landlord prior to the default.
54. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

**It is ordered that:**

1. The Tenant shall pay to the Landlord \$4,330.00 for arrears of rent up to July 31, 2023 and costs less any payments made since July 24, 2023. See Schedule 1 for calculations.
2. The Tenant shall pay to the Landlord on or before the 15<sup>th</sup> day of each month \$250.00 until the arrears of rent are fully paid.
3. The Tenant shall also pay the lawful monthly rent in full and on time on or before the 1<sup>st</sup> day of every month until the arrears are paid in full.
4. If the Tenant fails to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after July 31, 2023.
5. If the parties agree that the Tenant does not owe any arrears once this order is received, the Landlord shall pay to the Tenant \$3,376.00, as follows:
  - Rent abatement of \$1,876.00; •
  - General damages of \$1,500.00.
6. If the Landlord owes the Tenant monies as a result of this order, it shall be paid in full on or before March 9, 2024. If the Landlord does not pay the Tenant the full amount owing on or before March 9, 2024, the Landlord will start to owe interest. This will be simple interest calculated from March 10, 2024, at 7.00% annually on the balance outstanding.
7. The Landlord shall pay a fine on or before March 9, 2024, to the Board in the amount of \$6,600.00.



8. The Legal Representative Michelle (Xiaohong) Chen shall pay on or before March 9, 2024, an administrative fine to the Board in the amount of \$700.00.

**February 26, 2024**

**Date Issued**

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Robert Patchett

Vice Chair, 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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

Rent Owing To February 29, 2024	\$11,760.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$4,240.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$3,376.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$4,330.00</b>