



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

**Citation:** Zhao v Anca International Holding Group Inc., 2023 ONLTB 76922

**Date:** 2023-12-08

**File Number:** LTB-L-040820-23

**In the matter of:** 32 ARJAY CRES  
NORTH YORK ON M2L1C7

**Between:** Hongna Zhao Landlord

**And**

Yuqing Tang Tenants  
Anca International Holding Group Inc.

Hongna Zhao (the 'Landlord') applied for an order to terminate the tenancy and evict Anca International Holding Group Inc. and Yuqing Tang (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on October 11, 2023.

The following people attended the hearing:

The Landlord  
The Landlord's legal representatives, Leon Li and Edward Zhou.  
The Landlord's witnesses, Pei Fei Tsao, Celia Chen, and Monica Tsao.  
The Landlord's interpreter, Renee Xu.  
The Landlord's support person's, Jennifer Fang and Yingtao Xu.

The Tenants' legal representative, Stefan Juziw.  
The Tenants' agent, Michael He.

**Determinations:**

Preliminary Issue 1- Adjournment request

1. The Tenants' legal representative made an adjournment request at the outset of the hearing on behalf of the Tenants. The reason for this request was because the Tenants had just flown to China for the individual, Kai Wu, to attend medical care for a head injury and were both unable to participate in the hearing. The Tenants' legal representative provided copies of plane tickets as proof that they will be outside the country on October 11, 2023.

2. The Tenants' legal representative further submitted a medical note dated October 3, 2023, which shows that a doctor recommended the Tenant, Kai Wu, to "go overseas" for faster medical treatment. I inquired as to why the other Tenant, Yuqing Tang, could not attend and was informed that she was accompanying the other Tenant at a medical appointment in China. I asked what time it was in China at the current moment, and I was informed that it was close to midnight. There was also no proof submitted of a medical appointment that the Tenants were attending.
3. Even if the Tenants were overseas, there was no reason why the Tenants or at least one Tenant could not participate virtually over the internet using the Zoom application.
4. After hearing submissions on the adjournment request, the Tenants' legal representative asked for some time to contact his client and gain instructions on having someone else come to speak on their behalf. When the hearing was reconvened, the Tenants' legal representative advised that the Tenants had elected for a close friend to act as agent for them in the hearing. The agent had personal knowledge of the Tenants' financial matters.
5. There was no objection from the Landlord to have this agent present. The adjournment request was denied for the above reasons.

#### Preliminary Issue 2- section 82 issues

6. At the hearing, the Tenants' legal representative sought to raise several issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenants legal representative acknowledged that they did not provide the Landlord or the Board with a written description of each issue they intended to raise under section 82 as required under section 82 of the Act and Rule 19.4 of the Board's Rules of Procedure. The Tenants' legal representative, not their agent, provided no evidence that they were unable to comply with the disclosure requirements and as a result, the Tenants were not permitted to raise any issues under section 82 of the Act. The Tenants may still have an opportunity to bring their own application against the Landlord to address the issues they sought to raise at this hearing under section 82.

#### Preliminary Issue 3- The Request to Amend the Landlord's Application

7. At the hearing, the Landlord's legal representatives requested an amendment to the application to add two individuals by the name of Yuqing Tang and Kai Wu on the basis that these two individuals were the Tenants and not Anca International Holding Group Inc. which is a corporation run by these two individuals.
8. The Tenants' legal representative opposed this request and indicated that the residential lease agreement was signed between Anca International Holding Group Inc. and the Landlord and therefore, the application should not be amended to reflect the current occupants of the unit as the tenancy is commercial in nature.
9. I granted the request to amend the application for the following reasons.

10. The rental unit is a 7-bedroom, 8-bathroom, 9,200 square-foot residential home located in the Bridlepath area of Toronto. The corporation, Anca International Holding Group Inc. is a company run by the two individuals named above that provides consulting services to other companies. The registered address for the corporation is not the address of the rental unit.
11. The Landlord's legal representatives submitted a copy of a residential lease agreement dated March 16, 2022 which was signed between the Landlord and the Tenant, Yuqing Tang. The lease does not mention the use of the unit being commercial in nature.
12. The Landlord's legal representatives further submitted a copy of text messages between the Tenants' real estate agent and the Landlord's real estate agent that shows the Tenants' real estate agent agreeing on behalf of the Tenants to a proposed rent increase on the condition that a new lease is entered into under the corporation's name for tax purposes.
13. The Landlord's legal representatives then submitted a copy of a second lease dated February 24, 2023 which was signed between the Landlord and Anca International Holding Group Inc. The provisions in the lease agreement are identical to the original lease mentioned above except for an additional provision that states: "*The property will be only used for the family of Tang, Yuqing. No any kind of business use for the property.*" This provision was initialed by Yuqing Tang.
14. The following sections of the Act are relevant in this case:

#### Exemptions from Act

5. This Act does not apply with respect to,

(j) premises occupied for business or agricultural purposes with living accommodation attached if the occupancy for both purposes is under a single lease and the same person occupies the premises and the living accommodation;

#### Findings of Board

202. (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

15. The parties do not agree on the nature of the tenancy, or on how the Tenants are using the unit. The Tenants' agent says that the Tenants run their business from home and therefore it must be considered commercial in nature. The Landlord does not dispute that this could be true, but the Landlord does dispute that this is new information to them and they had never been notified of this.
16. Nevertheless, when a party asserts that a tenancy is commercial in nature and falls within subsection 5(j) of the Act, the caselaw on the predominant purpose test applies. The test is outlined in *Hahn v. Kramer*. The court reasoned as follows:

The exemption clause specifies that the premises be occupied for business purposes with living accommodation attached. To me, the wording of the section seems to indicate that the business purposes should predominate. The Act appears to specifically and carefully proceed in a manner which emphasizes the business use to be made of the combined premises so as to take them outside the definition of residential purposes.

17. *Hahn* establishes that for the impugned tenancy to fall under the exemption, the Tenants' business use of the unit must be the primary use of the space. In other words, the Tenants' business of the space outweighs their residential use of it. The Tenants' agent was unable to provide me with any evidence that the Tenants carry on any business in the unit, or that if they do, that they use the majority of the space for that purpose. The undisputed description and photos of the unit show that the unit is a living space, or a home. There does not appear to be a segregated area where the public is invited to attend. At best, the Tenants are using an office space as a workspace. However, their use of the unit in this manner is incidental; in other words, the space is mostly a home, and not a commercial space.
18. There was also no dispute of the following findings: The Landlord does not charge HST; Rent increase is not subject to BOMA calculations (which is often used for corporate/business entities); The Tenants were required to obtain tenant insurance which was personal rather than business; Lastly, there're no covenants in the rental agreement against residential use. These factors are not consistent with a commercial tenancy.
19. Although this issue was not raised by the parties, I will note that the N4 Notice of termination included Anca International Holding Group Inc., Yuqing Tang and Kai Wu listed as Tenants and therefore find the N4 Notice of termination to be valid.
20. Having considered all these factors related to the tenancy, Section 202 of the Act requires the Board to ascertain the real substance of a transaction. I find the real substance of the tenancy agreement is for residential occupation and not commercial or mixed use as the Tenants imply. The intentions of the parties when the tenancy started was for all intended purposes for residential occupation.
21. However, I do not find that the individual, Kai Wu, is a tenant within the meaning of the Act and merely an occupant as they are not listed on the original lease. I am satisfied that there was no agreement between the parties to make Kai Wu as a Tenant.

22. Therefore, I find the Act applies and the application is amended to reflect the Tenants' names, Yuqing Tang and Anca International Holding Group Inc.

#### N4 Notice

23. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.

24. As of the hearing date, the Tenants were still in possession of the rental unit.

25. The lawful rent is \$15,375.00. It is due on the 1st day of each month.

26. Based on the Monthly rent, the daily rent/compensation is \$505.48. This amount is calculated as follows: \$15,375.00 x 12, divided by 365 days.

27. The Tenant has paid \$30,000.00 to the Landlord since the application was filed.

28. The rent arrears owing to October 31, 2023 are \$77,250.00. The amount of money the Tenants must pay if they wish to preserve the tenancy, as set out in paragraph two below, exceeds \$35,000.00. While the Board's monetary jurisdiction is \$35,000.00, the Divisional Court recently confirmed in *Galaxy Real Estate Core Ontario LP v. Kirpichova et al.*, 2023 ONSC 4356, that the pursuant to section 74(3)(a) of the *Residential Tenancies Act, 2006* ("Act"), the full amount of rent arrears owing must be paid by the tenant to void the order. Therefore, the amount of money the Tenants must pay to void the order and continue the tenancy is not subject to the Board's monetary jurisdiction.

**29. The Landlord understands that by accepting the Board's monetary jurisdiction limit, they cannot pursue the Tenants for any amount owing over \$35,000.00 in any other application or court proceeding if the tenancy is terminated.**

30. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

31. There is no last month's rent deposit.

#### Relief from eviction

32. The Tenants do not dispute the arrears owing. The Tenants seek to preserve the tenancy and their agent proposed a payment plan of \$4,000 per month towards the arrears, in addition to the full rent owing each month, until the arrears are paid off.

33. The Landlord is seeking a standard termination order. The Landlord states that the non-payment of rent has caused financial and emotional stress and they have had to use their personal credit to make the mortgage payments. The Landlord stated that the arrears of rent are substantial and the proposed payment plan of approximately 20 months is not reasonable and is prejudicial to the Landlord.

34. The Tenants' agent testified that due to an injury of the Tenant, Kai Wu, there was a slow down in business and they could not afford the rent which resulted in the arrears. The

Tenants' agent testified that their monthly income would potentially be \$50,000 per month starting November 1, 2023. This income is comprised of a monthly gift from the Tenants' parents of \$20,000.00 and an anticipated increase in revenue for their business in the amount of \$30,000.00.

35. The Tenants' agent testified to the Tenants' expenses. The monthly expenses of the Tenants total, on the low end, \$35,075.00 which does not include the monthly rent. If we include the monthly rent, the amount equals \$50,450.00.
36. The problem with the Tenants' request for relief is that the evidence indicates they cannot afford the rental unit unless they reduce their expenses, and if they do that as they propose (by reducing the \$1,500 monthly budget for their children's clothes), they still cannot afford the repayment plan they proposed. So, the evidence supports the conclusion that if the Board puts in place the repayment plan they request, the Tenants will not be able to comply with it and the Landlord will be facing additional financial difficulties and legal proceedings and that would be unfair to the Landlord.
37. In the alternative, the Tenants' agent asked for the eviction to be postponed until the end of November 2023. Given that the date of this order is for December 8, 2023, the eviction date is past the postponement requested by the Tenants. I have provided the Tenants until January 3, 2024 as a delayed eviction date. No further postponement will be granted.
38. Based on the above, 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 January 3, 2024 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$108,186.00 if the payment is made on or before December 31, 2023. See Schedule 1 for the calculation of the amount owing.

**OR**

  - \$123,561.00 if the payment is made on or before January 3, 2024. 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 January 3, 2024 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 January 3, 2024**

5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$35,186.00. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$505.48 per day for the use of the unit starting October 12, 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 January 3, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 4, 2024 at 7.00% annually on the balance outstanding.
8. If the unit is not vacated on or before January 3, 2024, then starting January 4, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 January 4, 2024.

**December 8, 2023**  
**Date Issued**



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Colin Elsby  
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 July 4, 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.

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2023**

Rent Owing To December 31, 2023	\$138,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$30,000.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$108,186.00</b>

**B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 3, 2024**

Rent Owing To January 31, 2024	\$153,375.00
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	- \$30,000.00
<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	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$123,561.00</b>

**C. Amount the Tenants must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$97,435.28
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$30,000.00
<b>Less</b> the amount the Tenants paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$0.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00



<b>Less</b> the amount of the credit that the Tenants are entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$35,186.00</b>
Plus daily compensation owing for each day of occupation starting October 12, 2023	\$505.48 (per day)

2023 ONLTB 76922 (CanLII)