



## Order under Subsection 135 Residential Tenancies Act, 2006

**Citation:** Tian v Yang, 2023 ONLTB 65183

**Date:** 2023-09-28

**File Number:** LTB-T-008377-23

**In the matter of:** 211, 39 PEMBERTON AVE  
NORTH YORK ON M2M4L6

Tenant

**Between:** Xiu Tian

**And**

Ping Yang

Landlord

Xiu Tian (the 'Tenant') applied for an order determining that Ping Yang (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on September 20, 2023.

Only the Tenant attended the hearing. The Tenant declined to speak to Tenant Duty Counsel prior to the hearing.

As of 1:35 pm, the Landlord 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 Tenant's evidence.

### **Determinations:**

1. As explained below, the Tenant proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenant the sum of \$1150.00.

Compensation for N12 Notice Owing

2. The Landlord gave the Tenant a notice of termination under section 48/49 of the *Residential Tenancies Act, 2006* (the 'Act') and did not pay the Tenant the compensation required by the Act.
3. The tenancy commenced September 1, 2021.
4. The monthly rent was \$1150.00.



## Tenant's Uncontested Evidence

5. The Tenant testified at the commencement of the tenancy being September 1, 2021, she paid the Landlord a first and last month rent deposit.
6. The Tenant testified that rent was due on the 1<sup>st</sup> day of the month.
7. She testified the Landlord sent her a message advising her that she needed to move out of the rental unit sometime in August 2022. The Tenant advised the Landlord that she did not want to move out and that she wanted to stay. She also advised the Landlord that if Landlord wanted her to move out that he was required to serve her an N12 notice of termination.
8. The Tenant testified that on August 26, 2022, the Landlord placed a letter on the main door of her rental unit. The letter advised the Tenant that she needed to move out at the end of the existing contract being August 31, 2022, as the Landlord was selling the residential complex. The letter further stated the Tenant could stay until September 30, 2022, to give her more time.
9. The Tenant testified that on August 29, 2022, she emailed written notice to the Landlord that stated she would be vacating the rental unit on or before September 30, 2022, pursuant to the letter left on her door on August 26, 2022. The email also notified the Landlord that she expected her last month rent deposit and key deposit to be returned as well as the one month's compensation the Landlord was required to pay the Tenant. She stated that she also texted the Landlord the content of the email in case the Landlord did not regularly check his email.
10. She further testified that she paid the Landlord her lawful monthly rent for the rental period of September 1, 2022 to September 30, 2022.
11. She testified that on September 30, 2022, she vacated the rental unit and sent a message to the Landlord that she had vacated the rental unit and the keys were left on the kitchen table.
12. She testified that on October 1, 2022, she received the last month rent deposit in the amount of \$1150.00 and the key deposit in the amount of \$300.00 from the Landlord, however, did not receive the required one month's compensation.
13. The Tenant testified she tried to contact the Landlord again regarding the one month's compensation, however, the Landlord did not respond.
14. The Tenant testified she believes the Landlord re-rented the rental unit on October 2, 2022. She states she found the rental unit advertisement on a website [www.51.ca](http://www.51.ca). She states the advertisement stated the rental unit was available immediately. The Tenant provided a copy of the rental unit advertisement.

## Analysis

15. I am persuaded by the Tenants uncontested testimony and evidence that the Landlord posted a letter on the Tenants door on August 26, 2022, that advised the Tenant that she needed to vacate the rental unit at the end of the existing contract being August 31, 2022, as the Landlord was selling the residential complex, however she could stay until September 30, 2022, to give her more time.
16. I find that the letter the Landlord posted on the Tenants door on August 26, 2022, does not give the Tenant the required 60-day notice to vacate the rental unit. The Landlord and Tenants were in a 12-month lease agreement for the period of September 1, 2021 to August 31, 2022. Even if I was to consider the termination date of September 30, 2022, there was still not proper notice given to the Tenant.
17. I also find that the letter the Landlord posted on the Tenants door on October 26, 2022, states that he intends to sell the rental unit and makes no mention that the Landlord has already sold the rental unit. As the Landlord has not yet sold the rental unit there is no way to determine if a Purchaser will even require the rental unit. This letter does not provide the Tenant with any information as to whether the Landlord has already secured a Purchaser for the rental unit that will require the rental unit.
18. While the Landlords letter does not meet the requirements under the Act for the required notice period and does not provide the Tenant with a clear understanding as to whether the Landlord has already secured a Purchaser that requires the rental unit, I am persuaded by the Tenants uncontested testimony that she vacated the rental unit on September 30, 2022, pursuant to the letter posted on her door on August 26, 2022.
19. I accept that the notice was not provided on an N12 notice of termination form, however, I find that the Landlord's intention of the letter was equivalent to the Landlord serving the Tenant an N12 notice of termination.
20. I am also persuaded by the Tenant's uncontested testimony that the Landlord has not paid the Tenant the required one month's compensation.
21. I accept the uncontested testimony of the Tenant that on October 1, 2022, she received her last month rent deposit in the amount of \$1150.00 and the key deposit in the amount of \$300.00 from the Landlord.
22. I accept the Tenants uncontested testimony that she paid the Landlord her lawful monthly rent owing for the last month of her tenancy being September 1, 2022 to September 30, 2022.
23. Therefore, I find that the amount of \$1150.00, that was paid to the Tenant on October 1, 2022, was not for the required one month's compensation, but rather for the return of the Tenants last month rent deposit as this amount was not applied to the lawful rent owing on September 2, 2022, as the Tenant paid the rent for this month to the Landlord.
24. This order contains all reasons for the decision. No other reasons will be issued.

**It is ordered that:**

1. The total amount the Landlord shall pay the Tenant is \$1150.00.. This amount represents:
  - o \$1,150.00 for the compensation owing.
2. The Landlord shall also pay to the Tenant \$53.00 for the cost of filing the application.
3. The Landlord shall pay the Tenant the full amount owing by October 9, 2023.
4. If the Landlord does not pay the Tenant the full amount owing by October 9, 2023, the Landlord will owe interest. This will be simple interest calculated from October 10, 2023 at 7.00% annually on the balance outstanding.

**September 28, 2023**  
**Date Issued**

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**Trish Carson**  
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.