



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Pan v Jenkins, 2023 ONLTB 63463

**Date:** 2023-09-21

**File Number:** LTB-L-076527-22

**In the matter of:** 1806, 18 YORKVILLE AVE  
TORONTO ON M4W3Y8

**Between:** Xiaoshu Pan Landlord  
  
**and**  
  
Lucas robert Jenkins Tenant

Xiaoshu Pan (the 'Landlord') applied for an order to terminate the tenancy and evict Lucas robert Jenkins (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on May 11, 2023 and adjourned as set out in Interim Order LTB-L-076527-22-IN issued May 25, 2023 (the 'Interim Order')

At the return on September 11, 2023, the Landlord's Legal Representative, Han Hao, and the Landlord's Agent, Wayne Ping, attended the hearing.

As of 9:24 a.m. the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB (also referred to as the 'Board'). The Landlord's Representative also testified he had mailed the Tenant the Notice of Hearing on August 29, 2023. There was no record of a request to adjourn the hearing.

### Determinations:

1. At the outset of the hearing on May 11, 2023, the Tenant requested an adjournment and raised as a preliminary issue that he had not received the Notice to End Tenancy Early for Non-payment of Rent ('N4 Notice'). The adjournment was ultimately granted on terms as provided in the Interim Order.

#### Service of the N4 Notice on the Tenant

2. Under subsections 191(1) and (3) of the *Residential Tenancies Act, 2006* (the 'Act') a notice or document is deemed to have been sufficiently given on the fifth day after mailing.
3. As upheld by the Divisional Court in *Toronto Community Housing Corp. v. Zelsman*, 2017 ONSC 5289, the issue of service with respect to a notice is not whether the Tenant received a notice, but whether the Landlord served it.

4. The Landlord's Representative testified he mailed the N4 Notice to the Tenant at the rental unit on November 21, 2022. This accords with the Landlord's Certificate of Service filed with the Board and I found this credible.
5. The Landlord's Representative also testified he emailed the N4 Notice to the Tenant; however, the lease does not provide for service of notice via email to the Tenant and the Tenant testified he never received the N4 Notice so I have not considered this evidence further with respect to the issue of service of the N4 Notice.
6. The possibility remains that where service is deemed, on the facts of a case it may be proven service was not actually effected; however, the evidence must be sufficient to rebut the presumption of deemed service.
7. Here, the Tenant did not deny the N4 Notice was mailed to him; instead he testified he had never been provided with a key to the mailbox at the rental unit. In essence claiming he had not been able to receive the N4 Notice due to the actions of the Landlord.
8. The Tenant testified he signed a document when he moved in that said the Landlord did not have the mailbox or locker key for him at that time. The Tenant also testified it was known to the Landlord he did not have a mailbox key as he had messaged the Landlord advising them of this. Why the Tenant would need to or did message the Landlord advising he did not have a mailbox key given he testified he signed a document from the Landlord acknowledging they did not have such a key for him was not explained.
9. The Tenant further testified he did not generally receive mail at the rental unit as his mail goes to his family's address in Georgetown. I took this as his explanation for why the alleged lack of a mailbox key was not a pressing concern. Nonetheless, the Tenant testified he had asked the front desk for a key and was told they needed the permission of the Landlord to provide him with a key.
10. Finally, the Tenant testified he asked the front desk to open the mailbox for him after receiving an email about this application to see if he had received any communications from the Board and when they did so, the mailbox was empty.
11. At the hearing on September 11, 2023, the Landlord's Agent testified he personally gave a copy of the mailbox key to the Tenant after the Tenant signed the lease. A copy of a signed receipt for keys was submitted into evidence and the Landlord's Agent testified he saw the Tenant sign this document. I note this receipt indicates a locker key was not provided but shows a mailbox key was provided.
12. The Landlord's Agent further testified that because the Tenant had raised the issue of not having a mailbox key at the hearing on May 11, 2023, he provided the Tenant with another copy of the mailbox key on May 30, 2023 and a copy of a signed receipt for the receipt of this key was also submitted into evidence. Notably, this receipt specifically indicates that what was provided to the Tenant was a second mailbox key.

### Analysis

13. While the Tenant testified he had supporting documentation demonstrating he had not received the mailbox key, before the return of the hearing on September 11, 2023, he did not provide a copy of any document that said the Landlord did not have a copy of the

mailbox or locker key for him, nor did he provide a copy of messages he testified he sent to the Landlord regarding his alleged lack of a mailbox key.

14. I also note the Tenant's evidence had seeming internal inconsistencies that were left unexplained, and his evidence was provided in the face of significant mounting arrears, towards which he did not make any payments - as discussed in more detail below.
15. In contrast, the Landlord's Agent provided corroborating signed receipts with respect to his evidence he had personally given the Tenant the mailbox key on two occasions.
16. While I questioned comparison of the Tenant's signatures between the two receipts, I was not presented with any evidence the Tenant had not signed these receipts and note the specification on the second receipt that this was the second mailbox key provided to the Tenant was not crossed out or amended.
17. In the above circumstances, I find the Landlord's Agent's evidence more credible and prefer his evidence to that of the Tenant's.
18. I therefore find the Tenant was provided with a copy of the mailbox key at the outset of his tenancy. Further, given the Tenant's undisputed evidence that when he asked the front desk to open the mailbox for him they did so, I find it more likely than not that the Tenant was able to retrieve mail from his mailbox.
19. As it was not disputed the Landlord's Representative mailed the N4 Notice to the Tenant, and I have found the Tenant was able to access his mailbox, I find the Tenant has not provided sufficient evidence to rebut the deemed of service of the N4 Notice.
20. As a result, I find the Landlord served the Tenant with a valid N4 Notice.

#### *Remaining L1 Determinations*

21. 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.
22. As of the hearing date, the Tenant was still in possession of the rental unit.
23. The lawful rent is \$2,850.00.
24. The Tenant disputed rent was due on the 12<sup>th</sup> of each month. At the hearing on May 11, 2023, the Tenant testified he was looking at the tenancy agreement and on its face it stated that after the first month's payment on the 12<sup>th</sup>, rent was thereafter due on the 1<sup>st</sup> of each month.
25. In the Interim Order the Tenant was directed to pay rent on the 1<sup>st</sup>; however, as noted in that order, this was not a final determination of when rent was due.
26. At the hearing on September 11, 2023, the Landlord submitted a copy of the lease agreement into evidence. On the first page of the lease agreement at paragraph 3 it clearly provides rent is payable on the 12<sup>th</sup> day of each and every month. The Landlord's Agent also testified rent is due on the 12<sup>th</sup>. As a result, I find rent is due on the 12<sup>th</sup> day of each month.
27. Based on the Monthly rent, the daily rent/compensation is \$93.70. This amount is calculated as follows: \$2,850.00 x 12, divided by 365 days.

28. The Tenant has not made any payments since the application was filed.
29. The rent arrears owing to September 11, 2023, are \$28,500.00.
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.

*Section 83 Considerations*

32. The arrears are substantial. The Landlord sought a standard order for eviction.
33. At the hearing on May 11, 2023, the Tenant testified he had reached out to the Landlord after his initial wire transfer was bounced back and left numerous messages asking how this could be remedied and received no response except for a screen shot of his account and ultimately, advice of proceedings before the Board.
34. The Landlord's Representative testified after he was retained he reached out to the Tenant to clarify and requested payment, but the Tenant never paid any rent or proposed a payment plan.
35. At the hearing on May 11, 2023, the Tenant represented he could pay rent. He was provided with an email address where he could pay rent to the Landlord's Representative.
36. At the return of the hearing on September 11, 2023, the Landlord's Representative advised the Tenant had still not paid any rent. As the Tenant did not attend the hearing on September 11, 2023, no other circumstances were presented to me.
37. The Tenant has lived in the rental unit for less than a year and has not paid any rent – even after he represented to the Landlord and Board at the hearing on May 11, 2023, that he could and was provided with an opportunity to do so.
38. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant, and find it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$31,536.00 if the payment is made on or before October 2, 2023. 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 October 2, 2023 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 October 2, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$28,686.00. 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 \$93.70 per day for the use of the unit starting September 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 October 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 3, 2023 at 6.00% annually on the balance outstanding.
8. If the unit is not vacated on or before October 2, 2023, then starting October 3, 2023, 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 October 3, 2023.

2023 ONL TB 63463 (CanLII)

**September 21, 2023**  
**Date Issued**

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Rebecca Case  
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 3, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before October 2, 2023**

Rent Owing To October 11, 2023	\$31,350.00
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$31,536.00</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$28,500.00
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant 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>Total amount owing to the Landlord</b>	<b>\$28,686.00</b>
Plus daily compensation owing for each day of occupation starting September 12, 2023	\$93.70 (per day)