



**Order under Section 69 / 88.2
Residential Tenancies Act, 2006**

Citation: MAJC DEVELOPMENT CORP. v Zhang, 2023 ONLTB 62445

Date: 2023-09-18

File Number: LTB-L-075192-22

In the matter of: MAIN FLOOR, 163 BAKER AVE
RICHMOND HILL ON L4C1X7

Between: MAJC DEVELOPMENT CORP.

Landlord

And

Yuanyuan Zhang

Tenant

MAJC DEVELOPMENT CORP. (the 'Landlord') applied for an order to terminate the tenancy and evict Yuanyuan Zhang (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

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

MAJC DEVELOPMENT CORP. (the 'Landlord') **also** applied for an order requiring Yuanyuan Zhang (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

NSF charges are also requested.

This application was heard by videoconference on September 7, 2023.

The Landlord's Representative Adeela Alvez and Agent Daniel Pan and the Tenant, and her Representative Cuiwen Hu, and her interpreter Kwokaoh Tang, attended the hearing.

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.

2. Therefore, I will order eviction, payment of utilities and NSF charges, and daily compensation.
3. The Tenant was in possession of the rental unit on the date the application was filed.

N8 Notice of Termination

4. On December 3, 2022, the Landlord gave the Tenant an N8 notice of termination deemed served on the same date.
5. The notice of termination contains the following allegations:
 - From 15 January 2021 to the 15 November 2021, rent was paid late 10x out of 11
 - From January 15, 2022 to 15 November 2022, rent was paid late 11x of 11.

Persistently Late

6. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 15 day of each month. The rent has been paid late 21x times in the past 23 months.
7. The Tenant did not dispute this evidence.
8. After the N8 Notice of Termination was served on December 3, 2022, the rent was paid late 8 x out of 10 months.
9. This, in spite of the fact that an interim order was made, LTB-L-006878-22-RV-IN, on December 8, 2022, requiring the Tenant to pay her lawful rent on time, on the 15th day of each month, starting from January 15, 2023, and every subsequent month, until the review application of an L1 Order in LTB-L-006878-22 was heard.
10. The Tenant did not comply with the Interim Order.
11. She has flouted the Order, and paid rent late for each month from January 15, 2023 to August 15, 2023, a total of 8x.
12. The Tenant testified.
13. She could give no plausible explanation for paying late.
14. Rent was late in January 2023, because January 15th was a Sunday, and the bank was closed, she stated. She should have paid on the Saturday the 14th then, to ensure her rent was on time.
15. She testified that she did not *intentionally* pay rent late since 2021.

16. Intention is none to the point. The Landlord need only prove the rent was late, not why she paid late.
17. She testified that she forgot, in March 2023, that the rent had increased to \$2,971.50, as per the notice served on her on December 13, 2022, more than 90 days before the rent increase. This is not a reasonable explanation. The Landlord fulfilled their duty in bringing the increase to the Tenant's attention and the Tenant was thereafter liable for the increase as of March 15, 2023.
18. She also argued that since the pandemic, she had been speaking to the Landlord, about late payment. The Landlord agreed, so she testified, to partial payments. She gave no dates for such an arrangement, no documents were produced, no particulars of this arrangement.
19. I find that the Tenant has failed to prove any binding variation on the terms of the lease for payment of rent on the 15th day of the month.
20. She argued that she had stopped paying the rent since September 2021, because she had an argument with the Landlord about the rent, and lease of the basement.
21. This issue was not properly before me on this L2 application. In fact, the Landlord's request for the L1 and L2 applications to be joined was rejected by the LTB on January 23, 2023. The Tenant has filed no evidence in this matter other than a ledger which agrees with the Landlord's ledger as to late payment.
22. Testifying that she forgot to pay on time also does not assist her, on May 16, and July 16, 2023. Forgetting in this situation is not a justification, especially as she was under an Order from the LTB to pay on time.
23. I find that the Landlord has proved, on a balance of probabilities, that the rent has been paid late, persistently.

Daily compensation, NSF charges, rent deposit

24. The Tenant was required to pay the Landlord \$23,047.37 in daily compensation for use and occupation of the rental unit for the period from February 15, 2023 to September 7, 2023. The Tenant is entitled to deduct any rent paid during this period, from the per diem compensation.
25. Based on the Monthly rent, the daily compensation is \$97.69. This amount is calculated as follows: \$2,971.50 x 12, divided by 365 days.
26. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
27. There is no last month's rent deposit.
28. The Landlord has claimed and proven NSF charges of \$80.00, with documentary evidence.

Compensation for unpaid utilities

29. The Tenant failed to pay water costs, that they were required to pay under the terms of the tenancy agreement.
30. The water bill is presently at \$5,742.70.
31. The water bills as a utility were not raised on the L2 Application.
32. However, the Landlord's Representative served the Tenant with a copy of her submissions, where the utility issue was raised, in a timely manner before this hearing.
33. The Landlord requested an amendment to the L2 application to include the utility charges.
34. There is no prejudice to the Tenant here. They had time to reply, and consider the matter before the hearing.
35. The water bill has been added to the Landlord's taxes as a result of non-payment by the Tenant. The tax documents were served on the Tenant in proof of this.
36. The amendment is allowed.
37. The Tenant argued she had paid \$2,000 in utilities for water, without proof.
38. I prefer the Landlord's evidence, with tax documents, setting the total amount owed.
39. The Tenant stated that she did not receive the water documents. Even if that is true, she is clearly liable under the lease. She now knows the amount the Landlord has had to pay.
40. I find that the Landlord has incurred reasonable out-of-pocket expenses of \$5,742.70 as a result of the Tenant's failure to pay water costs, being the water bills.
41. I find that she is clearly liable for these fees under the lease.

Relief from eviction

42. The arrears in the L1 application exceed \$35,000 and stand closer to \$37,000.
43. The Tenant testified that she tried to pay on time since January 2023. I find the evidence points the other way. She has clearly not attempted to meet her rent obligations under the Interim Order.
44. It was argued that the Landlord launched this L2 application as some sort of revenge, because the Tenant tried to enforce her rights in the L1 application, which is under review to be heard in December 2023.
45. I reject this contention.
46. The Tenant has been paying late since 2021. The Landlord could have launched this application at the end of 2021.
47. The Tenant requested a pay on time order, with a s. 78 clause.

48. The Tenant is already under an order to pay her rent on time, and she has failed, without any reasonable excuse, to do just that. The Interim Order was not complied with and I see no reason to force the Landlord to yet another application when arrears stand at \$37,000.
49. The Tenant has done nothing to rectify this situation.
50. She knows her rent was raised on March 15, 2023, that she is under order to pay, and yet she continues to refuse to pay the full amount owing, even to the hearing date.
51. No personal circumstances were raised by the Tenant requiring further consideration.
52. She requested 60 days to move.
53. I am not prepared to accede to this request.
54. With arrears at \$37,000, and late payment for the third year straight, I can see no plausible reason to provide relief from eviction in this case by way of time to move.
55. If the Tenant had complied with the Interim Order, I would have allowed time to move here. But as noted above, the Tenant continues to pay late and continues to pay short.
56. All of her rent for 2022 is late/outstanding, and continues to be late each passing day. She has made no effort to pay even a portion of this rent, pending the review.
57. 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 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. The Tenant must move out of the rental unit on or before September 29, 2023.
2. If the unit is not vacated on or before September 29, 2023, then starting September 30, 2023, 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 September 30, 2023.
4. The Tenant shall pay to the Landlord \$23,047.37, which represents compensation for the use of the unit from February 15, 2023 to September 7, 2023, less any rent that has already been paid by the Tenant.
5. The Tenant shall also pay the Landlord compensation of \$97.69 per day for the use of the unit starting September 8, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$5,742.70, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.

7. The Tenant owes \$80.00 in NSF fees.
8. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
9. The total amount the Tenant owes the Landlord is \$29,056.07.
10. If the Tenant does not pay the Landlord the full amount owing on or before September 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 30, 2023 at 6.00% annually on the balance outstanding.

September 18, 2023

Date Issued

James Campbell
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 March 31, 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.