



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

Citation: Wu v Zhou, 2023 ONLTB 60281

Date: 2023-08-31

File Number: LTB-L-045468-22

In the matter of: Basement Room 1, 69 Holmes Ave Toronto
ON M2N4M1

Between: Anzhu Wu and Tom Wu Landlords

And

Biyang Zhou Tenants
Yao Fu

Anzhu Wu (the 'Landlords') applied for an order to terminate the tenancy and evict Biyang Zhou and Yao Fu (the 'Tenants') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building.

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

This application was heard by videoconference on January 25, 2023.

The Landlords, the Landlord's legal representative Hagan Turan, witness Tom Yan and interpreter Alex Feng attended the hearing.

As of 10:07 a.m., the Tenants were 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 Landlord's evidence.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on September 11, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N7 Notice of Termination

3. On August 9, 2022, the Landlord gave the Tenant an N7 notice of termination deemed served on August 9, 2022. The notice of termination contains the following allegations:

Date/Time	Details of the Events
01/08/2022 - 09/08/2022	YOU HAVE WILLFULLY BROKEN THE DOOR KNOB OF THE GARAGE & ANOTHER BASEMENT ROOM AND OCCUPIED IT ILLEGALLY. YOU ALSO BROKE AND STOLEN TWO CAMERAS AND BROKE MAIL BOX AND DAMAGED VEHICLE.
4/02/2022 - CURRENT	YOU HAVE ILLEGALLY PARKED YOUR RV IN THE DRIVEWAY. WE HAVE RECEIVED A NOTICE FROM THE CITY INDICATING THAT RV COULD NOT BE PARKED AT THE DRIVEWAY.
08/08/2022 AND 09/08/2022	YOU HAVE YELLED AND SCREAMED, SWORN, THREATENED THE LANLORD AND HIS SON, THROW CHAIRS. YOU HAVE BEEN INTERFERING WITH REASONABLE ENJOYMENT OF LANDLORD & OTHERS. POLICE WERE CALLED

4. While the Landlords filed their L2 application noting all possible reasons as included on the N7 notice; the Tenant was provided notice only on the basis of three allegations as follow: Serious Impairment of Safety, Undue damage, Substantial Interference. As such only these allegations are addressed as follow.

Serious Impairment of Safety

5. Anzhu Wu submitted that he faces significant issues concerning his own and now former tenants' safety because the Tenant, Yao Fu owns and uses a pellet rifle on the property, using it frequently shooting at the sunroom and other areas on the property.

6. The Landlord said that he has been the victim of assault as inflicted upon him by Yao Fu, specifically that he has been kicked and shoved on several occasions where police have attended at the property.
7. One such incident happened on September 2, 2022 at 11:00 p.m. when the Landlord was asking the Tenant to disconnect an electrical cable to the RV trailer, the Tenant was displeased and resorted to hitting the Landlord. Police were called and attended at the property.

Undue Damage

8. The Landlords evidenced a number of photos in the Board's record where it was shown that the Tenant used black paint on the walls of the basement rental unit in a manner consistent with graffiti. Messages written presumed to be for the Landlord and his son in a foreign language which can be translated to mean "bastard son."
9. Photos also demonstrate damage as caused to the sunroom screening where it is evident that the Tenant was utilizing the room as what can be described as target practice with his pellet rifle. Lastly, the photos depicting damage to cabinets were also evidenced – missing counter, missing doors or drawers that appeared to be removed or torn off.
10. The Landlords submitted that surveillance cameras were also damaged by the Tenant.

Inconsistent Use

11. The Landlord has not provided the Tenant notice that he has used the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that has caused or can reasonably be expected to cause significant damage. As such the application is dismissed on this ground.

Substantial Interference

12. The Landlord submitted that he at one time lived in the rental property and that his son still resides there, and that the rental property unit is comprised of 6 rental rooms in the basement and upstairs living areas.
13. As the building has more than three residential units, the Landlord was not entitled to serve a N7 notice of termination under section 65 of the *Residential Tenancies Act, 2006*, the application must be dismissed on this ground.

Daily compensation

14. The Tenant was required to pay the Landlord \$6,233.42 in daily compensation for use and occupation of the rental unit for the period from August 21, 2022 to January 25, 2023.
15. Based on the Monthly rent, the daily compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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

ANALYSIS

Serious impairment of safety

18. The “serious impairment of safety” ground for termination, which forms the basis of the Landlord’s application for eviction is set out in section 66 of the Act. That provision states:

A landlord may give a tenant notice of termination of the tenancy if,

(a) An act or omission of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant seriously impairs or has seriously impaired the safety of any person; and

(b) The act or omission occurs in the residential complex

19. In order to be successful on this ground, the Landlord must establish that the effect of the Tenant’s actions threatens the well being or physical integrity of another person to such a degree that termination of the tenancy is reasonable in order to ensure the safety of others.

20. Based upon the uncontested testimony, I am satisfied that the Tenant seriously impaired the safety of others. As of the time of the hearing Yao Fu is the only remaining Tenant in the basement, allegedly because others were forced to vacate based on his actions. The Landlords evidenced photos of the rifle owned by the Tenant, there is extensive damage to the sunroom only caused by continuous use of the rifle. Based on the submissions of physical assault on the Landlords and possible propensity for future violence, I am satisfied on a balance of probabilities that the Tenant seriously impaired the safety of others by discharging his rifle on a continuous basis on the grounds of the rental property.

Undue Damage

21. Section 63 of the Act provides:

... a landlord may give a tenant notice of termination of the tenancy that provides a termination date not earlier than the 10th day after the notice is given in the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex,

(a) Wilfully causes undue damage to the rental unit or the residential complex.

22. Based on the uncontested testimonies and my review of the photographs, I find on a balance of probabilities that the Tenant wilfully caused undue damage to the rental unit, both in the basement and to the sunroom/ attached shelter to the home.
23. The damage of the holes in the screening and wood siding were visibly caused by the firing of the pellet rifle, and in my view were done wilfully. This is an obvious inference based on the nature of the damage. The removal of counter in the basement, cabinet doors and spray painting of graffiti messaging are also intentionally done. This damage was undue.

Relief from eviction

24. 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. The Tenant failed to attend the hearing to provide evidence of their circumstances and the Landlord's representative submitted that they are unaware of any circumstances that would cause me to delay or deny an eviction.
25. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 11, 2023.
2. If the unit is not vacated on or before September 11, 2023, then starting September 12, 2023, 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 12, 2023. The Sherriff is requested to expedite the enforcement of this order.
4. The Tenant shall pay to the Landlord \$6,233.42, which represents compensation for the use of the unit from August 21, 2022 to January 25, 2023, less any amount paid.
5. The Tenant shall pay the Landlord \$39.45 as daily compensation for each day from January 25, 2023 to the date he vacates the rental unit, less any amounts already paid.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$6,419.42, less any amounts paid.

8. If the Tenant does not pay the Landlord the full amount owing on or before September 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 12, 2023 at 6.00% annually on the balance outstanding.

August 31, 2023

Date Issued

Alicia Johnson

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 6, 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.