



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** 1260 Marlborough Court Holdings Ltd. v Wu, 2023 ONLTB 51161

**Date:** 2023-07-27

**File Number:** LTB-L-035568-22

**In the matter of:** 716, 1260 MARLBOROUGH CRT  
OAKVILLE ON L6H3H5

**Between:** 1260 Marlborough Court Holdings Ltd. Landlord

**And**

Yan Wu Tenant

1260 Marlborough Court Holdings Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Yan Wu (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes ('L1 Application').

The Landlord also applied for an order to terminate the tenancy and evict the Tenant because the Tenant has persistently failed to pay the rent on the date it was due.

This application was heard by videoconference on June 27, 2023.

Only the Landlord's legal representative, Bryan Rubin ('BR'), and the Landlord's agent, Adita Maharaj, attended the hearing.

As of 9:50 a.m., the Tenant 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 Landlord's evidence.

### **Determinations:**

#### L1 Application

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$1,272.13. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$41.82. This amount is calculated as follows: \$1,272.13 x 12, divided by 365 days.
5. The Tenant has paid \$14,893.32 to the Landlord since the application was filed.

6. The rent arrears owing to June 30, 2023 are \$2,637.32.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$1,199.71 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$82.86 is owing to the Tenant for the period from February 1, 2019 to June 27, 2023.

### L2 Application

10. On May 10, 2022, the Landlord served the Tenant with an N8 notice of termination of tenancy because the Tenant persistently failed to pay the rent by the date it was due. The N8 notice alleged that the Tenant failed to pay the rent by the date it was due for each month from January 2021 to May 2022.
11. Based on the uncontested evidence before me, I find that the Tenant persistently failed to pay the rent by the date it was due. The Tenant failed to pay the rent by the date it was due for 17 months in a row, from January 2021 to May 2022.

### Relief from Eviction

12. BR said that the situation with respect to failing to pay the rent by the date it is due has not improved, and the Tenant has failed to pay the rent by the due date for every month since the application was filed in June 2022. This means the rent has not been paid by the date it is due for 30 months in a row, from January 2021 to June 2023.
13. BR said that both he and the Landlord have attempted to reach out to the Tenant to arrange a payment plan for the rent arrears. Most recently, BR sent a letter to the Landlord for this purpose on June 20, 2023 together with hearing information for today's hearing, but there has been no response from the Tenant.
14. BR was not aware of any other circumstances that should be considered with respect to whether eviction should be delayed or denied. The Landlord sought a non-voidable order terminating the tenancy and an order that the Tenant pay the rent arrears.
15. 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 that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

### **It is ordered that:**

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before August 7, 2023.

2. The Tenant shall pay to the Landlord \$1,397.76. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. The Tenant shall also pay the Landlord compensation of \$41.82 per day for the use of the unit starting June 28, 2023 until the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before August 7, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 8, 2023 at 6.00% annually on the balance outstanding.
5. If the unit is not vacated on or before August 7, 2023, then starting August 8, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 August 8, 2023.

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**July 27, 2023**  
**Date Issued**

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Mark Melchers  
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 February 8, 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 because the tenancy is terminated**

Rent Owing To Hearing Date	\$17,387.65
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	- \$14,893.32
<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	- \$1,199.71
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$82.86
<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 amount owing to the Landlord</b>	<b>\$1,397.76</b>
Plus daily compensation owing for each day of occupation starting June 28, 2023	\$41.82 (per day)

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