



Order under Section 69 and Section 88.2 of the Residential Tenancies Act, 2006

Citation: Yang v Chan, 2023 ONLTB 50487

Date: 2023-07-19

File Number: LTB-L-027426-23

In the matter of: 12 COPPERSTONE CRES
RICHMOND HILL ON L4S2C5

Between: Xiao Yun Yang Landlords
Qi En Lin

And

Jessica Chui Yin Chan Tenants
Kui Kwan Yu

Xiao Yun Yang and Qi En Lin (the 'Landlords') applied for an order to terminate the tenancy and evict Jessica Chui Yin Chan and Kui Kwan Yu (the 'Tenants') because the Tenants did not pay the rent that the Tenant owes.

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant;
- the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also applied for an order requiring the Tenants to pay the Landlords reasonable out-of-pocket expenses that are the result of the Tenants failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

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

The Landlord's Agent, Yuhui (a.k.a. Bella) Lin, the Landlord's Legal Representative, Harry Luo, and the Tenant, Kui Yu, attended the hearing.

Determinations:

Rent arrears

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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 Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,600.00. It is due on the 1st day of each month.
4. The Tenants have not made any payments since the application was filed.
5. The rent arrears owing to June 30, 2023 are \$28,600.00.

Tenants' issues

6. The Tenants raised the following issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act'):
 - Shower leak in the master bedroom;
 - Leak in the kitchen island;
 - Ceiling leak
 - Mold in the attic
7. The Tenant's claims under section 82 of the Act are dismissed for the following reasons.
8. According to the Tenants, the shower leak began July 23, 2018, and was resolved in September 2021. The leak in the kitchen island and ceiling began in June and July 2018, and were resolved in January 2020. These claims are not brought within one year after the day the alleged conduct giving rise to the claim occurred as required by subsection 29(2) of the Act.
9. With respect to the mold in the attic, the Tenants did not lead sufficient evidence to satisfy me that there is mold in the attic. The Tenants produced a picture of the attic which they say shows the mold. The picture evidence alone does not establish a mold problem. A report from a professional indicating the presence or extent of the mold was not provided.

Substantial interference - failure to pay utilities

10. On February 22, 2023, the Landlord gave the Tenant an N5 notice of termination. The notice of terminate alleges that the Tenants have substantially interfered with the Landlords' lawful rights, interest or privilege by failing to pay for the utilities since moving into the property.
11. The Tenants did not stop the conduct or activity or correct the omission within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5

notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

12. The Tenants do not dispute they failed to pay the water costs that they were required to pay under the terms of the tenancy agreement. As a result of the Tenants' failure to pay the utility costs, the Landlords incurred reasonable out-of-pocket expenses of \$10,015.80. These are payments the Landlords have paid to the municipality for the water charges.
13. The Tenants failure to pay the water charges substantially interferes with the Landlords' rights under the lease agreement. It also interferes with their interests as the outstanding water charges are often added to the property tax bill.
14. The total owed in outstanding arrears and claimed water charges exceeds the LTB's monetary jurisdiction of \$35,000.00 by \$980.00: See Schedule 1. The Landlords waive \$980.80 of their claim to attorn to the Board's monetary jurisdiction of \$35,000.00.
15. The Tenants submission that they should not be ordered to pay the penalties charged to the Landlords' is irrelevant. I say this because the Landlords are already waiving the penalties by attorning to the Board's monetary jurisdiction.

Landlords' own use

16. As the tenancy is terminated on the basis of arrears and substantial interference, I make no determination on the Landlords' own use application.
17. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
18. The Landlords collected a rent deposit of \$2,600.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
19. Interest on the rent deposit, in the amount of \$221.39 is owing to the Tenants for the period from March 1, 2018 to June 27, 2023.

Relief from eviction

20. 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 Landlords attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
21. While the Tenants proposed a 24-month payment plan, the amount owing by the Tenants is substantial. The Tenants have not made any good faith payments to the Landlords. The Tenants' income is insufficient to continue with their obligations under the lease agreement and maintain the payment plan. The Landlords have already waived a portion of their monetary claim to attorn to the LTB's jurisdiction. The Tenants have known since February

22, 2023 that their tenancy was being terminated. They have had 4 months to move. Under these circumstances, it would be unfair to grant further relief.

22. This order contains all of the reasons for the decision within it and no further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before July 31, 2023.
2. The Tenants shall pay to the Landlords \$35,000.00. This amount includes rent arrears owing up to the date of the hearing, compensation for the water charges and the cost of filing the application. The rent deposit, interest the Landlords owe on the rent deposit, and the excess of the LTB's monetary jurisdiction are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlords the full amount owing on or before July 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 1, 2023 at 6.00% annually on the balance outstanding.
4. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after August 1, 2023.

July 19, 2023
Date Issued

Khalid Akram

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 January 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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenants must pay as the tenancy is terminated

Rent Owing To Hearing Date	\$28,600.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,600.00
Less the amount of the interest on the last month's rent deposit	- \$221.39
Plus the amount the Tenants owe the Landlords for out-of-pocket expenses related to unpaid utilities	\$10,015.80
Less the amount in excess of the LTB's monetary jurisdiction	\$980.80
Total amount owing to the Landlord	\$35,000.00