



**Order under Section 87 and 89 of
the Residential Tenancies Act, 2006**

Citation: Xuan Jun Bu v Bai Cheng, 2023 ONLTB 47222

Date: 2023-06-30

File Number: LTB-L-030190-22

In the matter of: 59 The Fairways
Markham, ON L6C 2A4

Between: Xuan Jun Bu Landlord

And

Bai Cheng Former Tenant

Xuan Jun Bu (the 'Landlord') applied for an order requiring Bai Cheng (the 'Former Tenant') to pay the rent and daily compensation that the Former Tenant owes.

The Landlord also applied for an order requiring the Former Tenant to pay the Landlord's reasonable out-of-pocket costs that the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused willfully or negligently by the Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

This application was heard by videoconference on May 18, 2023.

The Landlord, the Landlord's Legal Representative Yun Tao Li, the Former Tenant and the Former Tenant's Legal Representative Barrington Lue Sang attended the hearing.

Determinations:

Adjournment Request – Preliminary Motions

1. The Former Tenant's Legal Representative submitted that the Landlord's application should be summarily dismissed on the basis that the Landlord is currently in arrears with the Former Tenant as a result of an award given to the Former Tenant by a previous Board order.
2. In the alternative, the Former Tenant's Legal Representative requested an adjournment of the matter in order for the Landlord to pay the Former Tenant what is owed first.

3. On the basis of the submissions of both parties, the request for an adjournment was denied. While the Landlord may owe the Former Tenant money, the Landlords application is separate and apart from that application and deals with different issues as alleged in this application.

Landlord's Application

4. As explained below, the Landlord has proven on a balance of probabilities the allegations contained in the application. Therefore, the Former Tenant must pay the Landlord **\$1,048.50** by July 11, 2023.
5. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing in accordance with subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the 'Act') and Rules 3.3 and 5.8 of the Board's *Rules of Procedure*.
6. The Former Tenant vacated the unit on October 3, 2021.
7. The application was filed within one year after the Former Tenant ceased to be in possession of the rental unit.

Rent & Daily Compensation Owing

8. The lawful rent was \$3,015.00. It was due on the 15th day of each month.
9. The Former Tenant vacated the unit on October 3, 2021. The Landlords testified that the Former Tenant had failed to "top up" his last month's rent deposit by \$65.00 when the rent was increased in early 2021.
10. While the Former Tenant's Legal Representative submitted that the N1 Notice of Rent Increase was confusing, the Former Tenant did pay the rent increase for a period prior to vacating the unit.
11. Therefore, I am satisfied on a balance of probabilities that the Former Tenant owes outstanding rental arrears in the amount of **\$65.00**.

Damage Claim - Cleaning

12. The Landlord is claiming cleaning expenses in the amount of \$1,000.00. Entered into evidence was a letter from First Class Cleaning dated June 3, 2022, that outlined that on October 4, 2021 the unit was in "quite a dirty condition, especially the kitchen and bathrooms...".
13. The Landlord testified that the unit had been fully furnished when the tenancy commenced, including kitchenware that was also provided. Entered into evidence were photos of the unit's stove, carpeting, fridge, bathtub, and bathroom cabinets.
14. Also entered into evidence were photos of what the Landlord testified was left over garbage in the garage. The Landlord also entered into evidence photos of what is alleged to be the condition of the unit before it had been rented to the Former Tenant.

15. The Landlord also entered into evidence screenshots of a text message thread between the Landlord and the Former Tenant dated September 30, 2021, in which the Former Tenant had agreed with the Landlord to retain a professional cleaner and had agreed to allow the Landlord to retain a cleaner of their choice.
16. The Former Tenant testified that the garbage in the garage was in fact recycling which could have been picked up by the City of Markham. Further, photos were entered into evidence alleging to show the unit after the Former Tenant had cleaned the unit before vacating. The Former Tenant testified that his wife and mother assisted with cleaning the unit prior to it being vacated.
17. The Former Tenant's Legal Representative submitted that the Landlord's claim for cleaning did not include the removal of garbage and should not be included in this part of the claim.
18. The Former Tenant's Legal Representative relies on s. 33 of the Act which states that a tenant is responsible for the ordinary cleanliness of a rental unit and submitted that the unit was left in a "broom swept" condition, which doesn't require the unit to be pristine.
19. Having reviewed the photographs and the evidence of both parties, I am satisfied on a balance of probabilities that the Former Tenant is partially responsible for the Landlord's cleaning costs. The Former Tenant did permit the Landlord to hire someone of their choosing to clean the unit as despite the Former Tenant's best efforts, it appears as though the house was left in a somewhat untidy state as demonstrated by the dirty stove and the bags of garbage left in the garage
20. That said, I find on a balance of probabilities that most of the cleaning required was as a result of normal wear and tear and would not be the responsibility of the Former Tenant to rectify.
21. I find on a balance of probabilities that the Former Tenant's reasonable portion of the cleaning expenses is **\$250.00**, and the Former Tenant will be ordered to pay that amount.

Furniture Damage

22. The Landlord is also claiming \$1,500.00 damage to a sofa. The Landlord testified that the sofa was purchased in 2015 for \$6,500.00. Photos of the damage were entered into evidence.
23. The Landlord is also claiming \$1,500.00 for damage to a dining room table. Pictures of the table before and after were entered into evidence. The Landlord testified that he had received the table from a friend's mother and believed the table may have been built in the 1950's. The Landlord assessed this amount of damage based on a similar table he had seen in a store.
24. The Landlord also claimed \$300.00 for damage to a tea table however, no picture of the alleged damage was entered into evidence.

25. Having reviewed the photos of the alleged damage and the evidence of both parties, I am not satisfied on a balance of probabilities that the Former Tenant is responsible for these costs.
26. The pictures of the alleged damage to the sofa offered very little to no insight as to what the actual damage was and how it could have been caused.
27. Further, the claim for damage to a dining room table that had been constructed in the 1950's makes no logical sense and the Former Tenant's Legal Representative accurately pointed out that Ontario Regulation 516/06 under the Act outlines a 10-year useful life for tables.
28. As such, I am not satisfied on a balance of probabilities that the Landlord has made out their claim for these damages.

Fridge

29. The Landlord alleges that the unit's fridge had been damaged as a result of the freezer having too much ice in it which resulted in a water leak that made its way into the unit's basement. The Landlord alleges that the Former Tenant never advised him about this issue and the fridge had to be replaced at a cost of \$2,100.00 however, the Landlord is only seeking \$420.00 from the Former Tenant for this expense.
30. While the Former Tenant's Legal Representative submitted that the invoice provided for these expenses did not expressly state that the Former Tenant was responsible for this damage, I note that due to the amount of ice in the freezer the defrost system needed to be replaced.
31. As such, on a balance of probabilities I am satisfied that the Landlord has made out their claim for this expense and the Former Tenant will be ordered to pay to the Landlord **\$420.00** for the repair of the fridge.

Back Yard

32. The Landlord alleges that the Former Tenant left the back yard in a mess and provided photos of same. The Landlord seeks to rely on the portion of the lease that states that the Former Tenant shall keep the lawn in good condition. The Landlord is seeking costs in the amount of \$1,500.00 as the Landlord was required to pay \$4,500.00.
33. Photos were entered into evidence showing before and after photos of the lawn prior to the tenancy commencing and when the tenancy ended.
34. Section 26(1) of Ontario Regulation 517/06 under the Act states that a landlord is responsible maintaining exterior common areas in a condition suitable for intended use and shall remove noxious weeds, dead, decayed or damaged trees, rubbish or debris and unsafe accumulations of ice and snow.

35. Section 4(1) of the Act states that a provision in a tenancy agreement that is inconsistent with the Act, or the regulations is void.
36. As such, on a balance of probabilities I am satisfied that this provision of the lease between the parties is of no force and effect in accordance with s. 4 of the Act and this portion of the Landlord's claim is dismissed.
37. Despite this, no evidence was provided to show how the Landlord determined the cost of \$4,500.00 for the work.

Paint & Repairs

38. The Landlord alleges that the Former Tenant's children damaged and scratched the walls and left paint on the walls that required the hiring of a handyman to repair. The Landlord is seeking \$1,450.00 for this expense.
39. Entered into evidence was a receipt dated October 6, 2021 for \$1,450.00 for painting and repairing the wall. Further entered into evidence was a written statement from "Mr. King" the Landlord's handyman dated June 6, 2022 in which he states that he and his wife painted part of the walls and repaired a broken screen door and vent panel.
40. The Landlord again relies upon the text message he received from the Former Tenant authorizing him to retain a handyman and to charge back the costs to him.
41. Photos of the walls, cabinets and the vent were entered into evidence. There is writing on the walls and cabinets with what appears to be water colour markers. The Landlord claims that the writing required more time than suggested to clean the marker while the Former Tenant's Legal Representative submitted that the marker could have simply been removed with soap and water.
42. Having reviewed the evidence of the parties with respect to this claim, it is inherently difficult to determine just how much work was done and just how the Former Tenant would have been responsible for same. While the marker was clearly on the walls and cabinets after the Former Tenant vacated the unit, I was provided no evidence as to the length of time required to clean them.
43. Further, the walls, while dirty, do not appear to have been damaged and/or dirtied beyond normal wear and tear and I do not find that the Former Tenant would be responsible for the entirety of those costs.
44. That said, it was clear from the photo provided that the vent cover was damaged, and the Landlord did have to clean the marker on the walls and cabinets.
45. Based on my assessment of the evidence and photographs, I am satisfied that the Former Tenant is responsible for approximately a quarter of the repair and painting costs in the amount of **\$362.50**.

Costs

46. The Landlord also incurred costs of **\$201.00** for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

- 47. The Former Tenant shall pay to the Landlord **\$65.00** which represents rent and compensation owing up to October 3, 2021.
- 48. The Former Tenant shall also pay to the Landlord **\$782.50**, which represents the reasonable costs the Landlord incurred as a result of the damage.
- 49. The Former Tenant shall also pay to the Landlord **\$201.00** for the cost of filing the application.
- 50. The total amount the Former Tenant owes the Landlord is **\$1,048.50**.
- 51. If the Former Tenant does not pay the Landlord the full amount owing on or before July 11, 2023, the Former Tenant will start to owe interest. This will be simple interest calculated from July 12, 2023 at 6.00% annually on the balance outstanding.

June 30, 2023

Date Issued

Jagger Benham

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.