



**Order under Section 31  
Residential Tenancies Act, 2006**

**Citation:** He v Chen, 2023 ONLTB 33734

**Date:** 2023-05-23

**File Number:** LTB-T-073804-22/ SWT-45223-20

**In the matter of:** 15 CHEPSTOW GATE  
LONDON ON N6G3S6

**Between:** Jiayi He Tenant

**and**

Meizhu Chen Landlords  
Yingli Lin

**Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-T-073804-22.**

Jiayi He (the 'Tenant') applied for an order determining that Yingli Lin and Meizhu Chen (the 'Landlords') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.

This application was heard by videoconference on October 27, 2022.

The Tenant and the Landlords attended the hearing. The Tenant was represented by Sofia D'Amico and Barbara Warner, and called as a witness: Rongyou Jiang ('Oliver'). Helen Chen acted as the Tenant's interpreter. The Landlords testified on their own behalf and were represented by Aleksei Grachev. Min Xu acted as the Landlords' interpreter.

**Determinations:**

1. This application is about a student who shared the rental unit with three other students. They signed a tenancy agreement for a one-year fixed term commencing September 1, 2018. At the end of the school year in May of 2019, they scattered for the summer. The Tenant went home to China. When the students returned in August to get ready for the coming school term, the Tenant discovered some of her possessions were missing. She seeks compensation for the missing items.
2. The issues between the parties are almost entirely factual. The Tenant alleges one or more of the Landlords or one of their agents disposed of her possessions. The Landlords deny knowing anything about the Tenant's possessions. They did not see them, touch them, or move them and have no idea who might have done so. They argue the Tenant

has not even proven the bags of her possessions even exist, and if they did exist, they say the Tenant has failed to prove the value of their contents.

3. For the reasons that follow I am satisfied that the Tenant's evidence establishes she left possessions in the rental unit over the summer of 2019, some of those possessions went missing during the course of the tenancy, and the Landlords are liable to the Tenant for that loss. I assess the reasonable replacement cost of the disposed of possessions to be \$\$7,613.74.

#### PRELIMINARY ISSUES

4. The application is amended to name both Landlords as respondent Landlords. They are mother and daughter. The second-named Landlord above is on title so she meets the definition of "landlord" under the Act, but she played no role in the tenancy. Her mother, the first-named Landlord above, is not on title but performed all of the functions of a landlord and rent was payable to her personally under the terms of the written tenancy agreement. So she also meets the definition of "landlord" under the Act.
5. In these reasons, the singular "Landlord" is a reference to the second-named Landlord above as she is the individual who dealt personally with the tenants.

#### FINDINGS OF FACT

6. In May of 2019 the Tenant prepared to return home to vacation and visit family in China. She had decided she did not want to live in the rental unit after the end of the lease term, so she packed her belongings. She did so because it meant she did not have to do it at the end of August, 2019 when she returned for the new school term. She placed her belongings in the living room because it would make it easier to move them. All of her roommates were also leaving for the summer.
7. The Tenant entered into evidence photographs of how she left her belongings packed up and in the living room. The photographs show a few small cardboard boxes, a suitcase, two or three plastic bins with lids, a handful of small furnishings like a rack, and nine "Rona" paper bags – the kind used to dispose of yard waste. Eight of the nine Rona bags appear to be quite full and closed shut; but one is draped loosely over a standing item which the Tenant says is a lamp. She used the Rona bags because she did not have enough luggage, boxes, or plastic bins.
8. One of the Tenant's roommates, Oliver, testified. He says he left for the summer a few days before the Tenant did, but he saw the Rona bags in the living room before he left. He returned to the rental unit on August 31, 2019 and discovered all of the Rona bags were gone from the living room. He took a picture of the living room that day that was entered into evidence. It shows the Tenant's suitcase, cardboard boxes, plastic bins, and small furnishings still there, but the Rona bags are gone.
9. As far as I am aware from the evidence of the parties, the rental unit remained empty for the summer. The only people identified in evidence as entrants to the rental unit between when the tenants left in May and the end of the summer were the Landlord, the

Landlords' real estate agent, and prospective purchasers being shown the rental unit by the real estate agent.

10. The Landlord says that she went to the rental unit three times that summer: once in June, once in July, and a final time in August. There is no dispute between the parties that the Tenants did not receive written notice of entry for any of these visits. The Landlord says the first visit in June was because in April one of the tenants complained of vermin. She went to clean. In July she says she also went to clean and in August, it was for the closing of the sale. According to her, on none of these visits did she see the Rona bags in the living room. She says she did not know anything about them until August 31, 2019 when Oliver informed her they were missing.
11. The Landlords' real estate agent was not called to testify. The Landlord says that the agent would not have let prospective purchasers into the rental unit unaccompanied.
12. The other evidence with respect to who might have taken the Rona bags is about what happened on August 31, 2019, when Oliver and his girlfriend Brittany attended to remove their possessions from the rental unit.
13. Oliver says that he and Brittany went to the unit to collect their own things on August 31, 2019. Oliver noticed the Rona bags were gone and texted the Tenant to tell her. He says that the Landlord was present at that time and told him she threw the bags away because she thought they were garbage. The Landlord denies ever saying that to Oliver.
14. The texts entered into evidence are in Mandarin. There is some dispute between the parties with respect to the translation into English of two of those texts. But there is no dispute with respect to the following exchange between the Tenant and Oliver that occurred on August 31, 2019:

**Tenant:** The landlord threw my stuff away?

**Oliver:** The luggage was thrown away. Were the Rona bags full of clothes?

**Tenant:** No. There were clothes, shoes, furniture, bags, etc. inside. Please asked him to find them for me.

**Oliver:** OMG. She probably threw them away a long time ago.

**Tenant:** Who tell you my luggage was all thrown away?

**Oliver:** The landlord.

15. According to the Landlord's translation, another passage reads as follows:

**Oliver:** Shit

**Tenant:** Do you have her phone number?

**Oliver:** What can we do?

**Tenant:** She ain't in her right mind.

**Tenant:** Almost all of my things are in the Rona bags

**Tenant:** Only my stuff has been thrown out or what?

**Oliver:** It was said they were thrown out.

**Oliver:** Believed they were tree leaves.

**Oliver:** Garbage or something.

16. The underlined sections above are the Landlord's version of the disputed messages. In the Tenant's version of the translation, the underlined words are translated to mean that "She [the Landlord] said she regard those bags as garbage (leaves inside) and then threw away."
17. The dispute about the exact translation of the texts is not particularly material. What is important is that the texts were written as events were unfolding, corroborate the evidence of Oliver, and contradict the evidence of the Landlord. They support the conclusion that the Landlord knew about the existence of the Rona bags and was involved in, or at least aware of, their disposal. This means the Landlord's statement to the effect that she never saw the Rona bags is not credible. Neither is her testimony that she had nothing to do with them going missing. In other words, the Landlord is not credible, and I accept Oliver's testimony as true. The Landlord disposed of the Rona bags and their contents.

## ANALYSIS

18. Pursuant to s. 22 of the Act, a landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.
19. I am satisfied that a landlord who enters a rental unit during a tenancy without notice to a tenant and then disposes of some of the tenant's personal possessions without consent has substantially interfered with that tenant's reasonable enjoyment of the rental unit for all usual purposes and breached section 22 of the Act.

## REMEDY

20. The only remedy the Tenant seeks is compensation for the disposed of items. Her application claims \$8,589.99, but at the hearing the amount claimed was reduced to \$7,613.74.

21. The parties consented to the Tenant's disclosure being accepted into the record as evidence. It includes a detailed 21 page list of the items the Tenant says were in the Rona bags that were disposed of. The Tenant compiled the list from memory and downloaded pictures of the items from the internet and used those pictures to create a chart with values assigned to the items.
22. The chart is divided into sections based on where the Tenant pulled prices from. The first section is sub-titled "Unused items priced from Amazon or company website, Total: \$4078.07". The second is headed "Used Items priced by EBAY, Total: \$1056.67". The third is called "Items bought on international retail app Tao Bao priced on July 5, 2022, total: \$2479".
23. By my count there are about 172 items listed. 80 of the items are body products, hygiene and wellness items – things like cosmetics, perfumes, creams, night masks, and cold remedies. There about 27 items of clothing listed but that includes 13 pairs of footwear, sneakers, sandals, and slippers. The rest of the items include a few items of jewelry, 2 watches, electronic accessories like ear buds, linens, small kitchen items, canned food, a standing lamp and a table lamp, bags, and household cleaners.
24. The Landlords argue that the Tenant led insufficient evidence to establish that the Rona bags ever existed, and if they did exist, that the items claimed were actually in the Rona bags in the first place.
25. I am satisfied that the nine Rona bags did in fact exist and were left in the rental unit's living room when the Tenant left for the summer. Both the Tenant and her witness attested to that fact and pictures were entered into evidence of the packed Rona bags in place.
26. With respect to what was in the Rona bags themselves, the Tenant led oral testimony and entered the list into evidence so it cannot be said there was no evidence supporting the Tenant's claims as to what was in the bags. The Landlord's objections appear to be the lack of corroboration of that evidence and problems with the Tenant's credibility.
27. With respect to corroboration, there is in fact some in the evidence. For example, I am satisfied that one Rona bag was covering the Tenant's floor lamp. The lower half can be seen in the photographs, and although the upper half is covered by the Rona bag, what can be seen is consistent with the floor lamp the Tenant describes.
28. With respect to the other items, another example would be the appearance of the closed bags from the photographs. It is consistent with the assertion they contain clothing, linens, and other small items. The bags are full but not fully rounded, meaning that their exterior appearance suggests the bags enclose non-soft items as well as soft ones. The size and number of closed bags also seems to correspond reasonably to the volume one would expect the claimed items to occupy.
29. Another example of corroboration of the Tenant's evidence about what is missing is about an item that compensation is not claimed for. The Tenant says the missing items include the soft drawers that belong in a small rolling cabinet. That cabinet can be seen in the

pictures of the living room taken by Tenant before she left, and in the photograph taken by Oliver on August 31, 2019. In both sets of photographs the cabinet appears without the drawers. The Tenant says the soft drawers are missing from the cabinet because they are in one of the bags.

30. So it simply cannot be said that there is no corroboration of the Tenant's testimony about what was in the missing Rona bags.
31. The Landlords also argue that a negative inference should be drawn because the Tenant failed to produce a copy of the receipt for the Canada Goose parka, failed to produce selfies or other photographs of the Tenant with any of the missing items, and failed to adduce evidence from Oliver or anyone else that saw the items claimed when they were in her possession.
32. I agree with the Landlords that these forms of corroboration would have strengthened the Tenant's case, but that does not mean it is appropriate to draw a negative inference about her failure to produce them.
33. For example, to produce the Canada Goose parka receipt would have required the Tenant's mother to locate or ask for a credit card bill dated at least 4 years prior to the hearing. That is not an impossible task but is sufficiently challenging that most Board litigants cannot or will not tackle it in my experience. Further, although the Tenant takes selfies and says she gave some to her representatives to possibly use at the hearing, it is entirely possible none of them clearly showed the items in question. And yes, Oliver could have been asked to identify items on the Tenant's list but there is no ownership in a witness. The Landlords could have asked as well, but presumably did not because of a reasonable concern that the answers would not have assisted the Landlords.
34. Given all of the above and the circumstances here, I am not prepared to draw the negative inference the Landlords ask me to.
35. That leaves the credibility issue. I agree with the Landlords that the Tenant's testimony included a significant number of inconsistencies and revisions. That is particularly true about the sequence of events. In particular, the Tenant's testimony suffered from a failure to understand the difference between hearsay and personal experience and the importance of distinguishing between them when testifying. She would attribute to herself things other people said or did and later told her about. For example, she said she spoke to the Landlord to get permission to leave her belongings in the living room but later stated it was actually Brittany who did that. This tendency continued even after I explained through her interpreter the important difference between personal testimony and hearsay.
36. But that tendency and problem did not mar her evidence with respect to her personal belongings.
37. The Landlords argue she failed to answer a question about whether the EBAY prices were final sale price or negotiable. During cross-examination she was asked if it was true the value of those items might be the sale price or "best offer". The Tenant answered she

was not sure. No evidence was led at all by the Landlord to suggest the prices from the EBAY research the Tenant did were not reliable, and I have no personal knowledge of whatever pricing structure the Landlord meant by “best offer”. So I am not prepared to make a finding that the Tenant was somehow evasive or untruthful about the EBAY pricing she discovered.

38. Finally, the Landlords argue that except for the Canada Goose parka the Tenant did not give testimony about how old the items claimed are. I took this to mean the Landlords were arguing it was not appropriate to award the Tenant the replacement cost for items as if they new instead of used and the Tenant’s evidence was insufficient to assess any depreciated value.
39. It is true that the Tenant did not testify as to the age of the rest of her items. She was not asked to. But she did testify that she looked for and found pricing for second-hand items. That is why the second part of her chart of claimed items is labelled “Used Items priced by EBAY”. I would also observe that the largest category of items claimed are personal hygiene and makeup items and they are not something anyone can sell or buy used.
40. Given all of the above I am satisfied that the reasonable cost of replacing the items disposed of by the Landlord totals \$7,613.74. The Landlords shall be ordered to pay this amount to the Tenant.
41. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The Landlords shall pay to the Tenant \$7,613.74 for the reasonable costs that the Tenant will incur in replacing property that was disposed of by the Landlord.
2. The Landlords shall pay the Tenant the full amount owing by June 3, 2023.
3. If the Landlords do not pay the Tenant the full amount owing by June 3, 2023, they will owe interest. This will be simple interest calculated from June 4, 2023 at 6.00% annually on the balance outstanding.

**May 23, 2023**

**Date Issued**

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Ruth Carey

Vice Chair, Landlord and Tenant Board

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