



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

Citation: Cheung v Trepanier, 2023 ONLTB 31786

Date: 2023-05-08

File Number: LTB-L-025801-22

In the matter of: 604, 211 SAINT PATRICK ST TORONTO
ON M5T2Y9

Between: Michael Cheung Landlords
Ren ee Cheung

And

Jordan Trepanier Tenants Nikkie Edwards

Michael Cheung (the 'Landlord') applied for an order to terminate the tenancy and evict Jordan Trepanier and Nikkie Edwards (the 'Tenants') because the Tenants did not pay the rent that the Tenants owes and determining that the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

This application was heard by videoconference on April 6, 2023.

The Landlords, Renee Cheung, he Landlords' Representative, George Brown and the Tenant, Jordan Trepanier attended the hearing.

The application was amended to include Renee Cheung as Landlord as reflected in the style of cause.

Determinations:

L1/L9 Application:

1. The Landlords served the Tenants with an invalid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Landlords chose to convert the application to an L9 application for arrears only.

2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$3,500.00. 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 April 30, 2023 are \$54,175.00.
6. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The amount the Tenant owes the Landlords is greater than the Board's monetary jurisdiction of \$35,000.00 as set out in section 207 of the Act.
8. The Landlords has chosen not to proceed at Superior Court for the full amount and is aware that by proceeding at the Board any claim the Landlords may have for arrears in excess of \$35,000.00 is extinguished.

L2 application:

9. On April 18, 2022, the Landlords gave the Tenant an N5 notice of termination terminating the tenancy on May 9, 2022. The notice of termination contains the following allegations: the Tenants or someone permitted into the rental unit broke the door in the rental unit with a photograph attached which showed the glass of the door shattered.
10. The Tenant does not dispute they wilfully or negligently damaged door in the rental unit by shattering the glass of the door as depicted in the photograph.
11. The Tenant did not repair the damage, pay the Landlords the reasonable costs to repair the damage or make arrangements satisfactory to the Landlords within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with section 62(3) of the *Residential Tenancies Act, 2006* (Act).
12. The replacement cost of damage the Landlords seek is \$1,000.00 which is extinguished because of the Board's monetary jurisdiction.
13. The Landlord collected a rent deposit of \$3,500.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.00 is owing to the Tenant for the period from November 1, 2021.
14. The Tenant was required to pay the Landlord \$38,202.74 in daily compensation for use and occupation of the rental unit for the period from May 10, 2022 to April 6, 2023.
15. Based on the Monthly rent, the daily compensation is \$115.07. This amount is calculated as follows: $\$3,500.00 \times 12$, divided by 365 days.
16. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit (LMR) shall be applied to the rent for the last month of the tenancy which off sets against the per diem compensation the Tenants owe

(\$38,202.74\$3,500.00 LMR=\$34,792.74 + per diem starting April 7). Based on my finding in paragraphs 5,7 and 8, hereof, the Tenant therefore owes \$35,000.00 to April 30, 2023.

17. 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.
18. The Tenants have not shown good faith intention to pay the cost of the door or arrears since this application was filed on May 5, 2022 and it's unlikely that the Tenants will preserve this tenancy with a payment plan for the damage given their payment history and testimony about experiencing financial hardship.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated on or before May 19, 2023.
2. **The Tenants shall pay to the Landlords:**
 - \$35,000.00 if the payment is made on or before May 19, 2023.
3. The Tenants shall also pay to the Landlords \$186.00 for the cost of the application on or before May 19, 2023. See Schedule 1.
4. If the Tenants do not pay the Landlords the full amount owing on or before May 19, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April May 20, 2023 at 6.00% annually on the balance outstanding.
5. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
6. If the unit is not vacated on or before May 19, 2023, then starting May 20, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 May 20, 2023.

May 8, 2023

Date Issued

Sandra Macchione

Member, Landlords and Tenants 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 November 20, 2023 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 if the tenancy is terminated

Rent Owing To April 30, 2023	\$54,361.00
Reasonable damage cost to replace the door	1,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$3,700.00
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlords owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlords based on the Board's monetary jurisdiction	\$35,186.00