



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** Yu v Clayton Spencer, 2022 ONLTB 9706

**Date:** 2022-11-15

**File Number:** LTB-L-001714-21

**In the matter of:** 7672 HACKBERRY TRAIL  
NIAGARA FALLS ON L2H 3R5

**Between:** Chong Liu, Xu Wang Landlord

**And**

Angela Downey Tenant

Chong Liu, Xu Wang (the 'Landlord') applied for an order to terminate the tenancy and evict Angela Downey, Cory Clayton Spencer (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on June 22, 2022.

The Landlords, Landlord's representative Rong Wei Yu, and the Tenant attended the hearing.

### **Preliminary Issue:**

1. The application as filed also named Cory Clayton Spencer. The Tenant Angela Downey requested to remove Cory Clayton Spencer as a named respondent because he vacated the rental unit in January 2022. Since Cory Clayton Spencer vacated the rental unit before the date the application was filed, the application was amended to remove Cory Clayton Spencer as a respondent.

### **Determinations:**

2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$2,050.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$67.40. This amount is calculated as follows: \$2,050.00 x 12, divided by 365 days.
6. The Tenant has not made any payments since the application was filed.

7. The rent arrears owing to June 30, 2022 are \$22,110.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$2,050.00 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.
10. Interest on the rent deposit, in the amount of \$77.11 is owing to the Tenant for the period from April 13, 2019 to June 22, 2022.
11. The parties have had several conversations since February 2021 to resolve the rent arrears, including a plan where the Landlord will waive all the arrears had the Tenant vacated the residential unit on March 01, 2021. However, the parties could not reach an agreement.
12. The Tenant disputed the arrears stated by the Landlord. The Tenant was unsure of the exact amount of outstanding arrears but testified that she believed the arrears started from February 01, 2022, to June 30, 2022, for a total of \$12,950.
13. The Tenant testified that she had stopped making any rent payments to the Landlord since November 2020 due to alleged maintenance issues caused by a break-in at the rental unit. She also testified that there were some other months during which he did not pay the rent because her partner, Cory Clayton Spencer, left her and their two children in January 2021.
14. The Tenant submitted that she could vacate the rental unit by July 20, 2022 and asked if the Landlord could draft a payment plan for the rent arrears. The Landlord accepted the Tenant's proposal and agreed to extend her tenancy to July 31, 2021 and draft a payment plan with the Tenant accordingly.
15. Based on the evidence before me, I find the rent arrears, as stated by the Landlord, to be accurate. The Landlord provided detailed oral evidence regarding the discussions he had with the Tenant regarding the arrears. He also filed an L1/L9 update sheet with the Board, which reflected the amount of outstanding arrears. The Tenant could not provide copies of rent receipts or payment ledger to establish her alleged rent arrears. The Landlord testified that he had received no payment from the Tenant since November 2021. Regarding the maintenance issues, I could not consider these allegations as the Tenant had not provided advance notice as required by section 82(2) of the Residential Tenancies Act, 2006 (the 'Act') and did not provide any reason why he had failed to do so.
16. Therefore, the Tenant will be ordered to pay rent arrears of \$18,130.00 for November 01, 2021, to June 30, 2022. The parties have agreed to terminate the tenancy on July 31, 2021 and draft a payment plan representing the amount of rent owing and compensation up to July 31, 2022.
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 not be unfair to postpone the eviction until July 31, 2022 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
  - \$30,496.00 if the payment is made on or before November 5, 2022. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after November 5, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before November 5, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$17,551.69. 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.
6. The Tenant shall also pay the Landlord compensation of \$67.40 per day for the use of the unit starting June 23, 2022 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before November 26, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 27, 2022 at 2.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 5, 2022, then starting November 6, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 November 6, 2022.

**November 10, 2022****Date Issued**


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 Percy Laryea

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 May 6, 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.

\*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

**Schedule 1**  
**SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 5, 2022**

Rent Owing To November 30, 2022	\$30,310.00
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	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<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	- \$
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$30,496.00</b>

**B. Amount the Tenant must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$19,492.80
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	- \$0.00
<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	- \$2,050.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$77.11
<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	- \$
<b>Total amount owing to the Landlord</b>	<b>\$17,551.69</b>
Plus daily compensation owing for each day of occupation starting June 23, 2022	\$67.40 (per day)

