

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Li Ping Cao, Plaintiff

**AND:**

Aidl Iskander, Chehrnaz Bahramian, Hamid-Reza Zeighami, Defendants

**BEFORE:** The Honourable Madam Justice M.E. Vallee

**COUNSEL:** Calvin Zhang, Counsel, for the Plaintiff

Babak Vosooghi Zadeh, Counsel, for the Defendants

**HEARD:** May 2, 2025

**RULING ON MOTION FOR SUMMARY JUDGMENT**

- [1] The plaintiff is the owner and landlord (landlord) of residential premises known as 10A Hughson Drive, Markham (the property). She brings this motion for summary judgment for rent owing of \$120,531 as of April 2025 by the defendants/tenants Iskander and Bahramian.<sup>1</sup> The landlord alleges that the parties entered into a lease dated August 7, 2019 for the property with a monthly rent of \$4,300. The landlord states that the tenants have failed to make regular rent payments since September 2020.
- [2] The landlord requests an order for the amount of the rent arrears; an order terminating the tenancy; an order for issuance of a writ of possession; a direction to the Sheriff to evict the defendants; and, an order requiring the defendants to pay occupation rent of \$5,689 per month or \$189.63 per diem until they vacate.
- [3] The tenants state that the lease was negotiated through a real estate agent. They never met the landlord. They paid the first year's rent in a lump sum. Between September 2020 until June 2021 there was no communication from the landlord or agents. The tenants had no way to contact the landlord. Subsequently, they learned that the landlord had retained counsel, Steve Chan. Pleadings were served and filed in early 2023. The tenants state that they paid \$57,567 to Mr. Chan to be held in trust. The tenants state that they carried out necessary repairs costing \$38,128.83. They admit that an amount is owing for rent from which the cost of the repairs ought to be deducted.

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<sup>1</sup> The defendant Zeighami was the guarantor.

- [4] The landlord denies that repairs were required and if they were carried out, they were not pre-authorized. She states that the defendants have provided minimal evidence to show that they paid for repairs.
- [5] Examinations for discovery of the tenant Bahramian were held in August, 2024.

#### Legal Issues

- [6] Is the summary judgment process appropriate for this matter?
- [7] How much do the tenants owe the landlord for rent?
- [8] Does the lease allow the tenants to do repairs and deduct the cost of them from the rent?
- [9] Should the tenancy be terminated and the tenants be evicted?
- [10] Is there a genuine issue requiring a trial?

#### Applicable Law

- [11] Section 207(1) of the *Residential Tenancies Act*, 2006, S.O. 2006, states that the Board may order payment of up to \$10,000 or the jurisdiction of the Small Claims Court, whichever is greater. A person whose claim exceeds that amount may commence a proceeding in a court of competent jurisdiction.
- [12] The court shall grant summary judgment if the judge is able to reach a fair and just determination on the merits of the motion and determines that there is no genuine issue requiring a trial. (Rule 20.04(2)(a) of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194; *Hyrniak v. Mauldin* [2014] SCC 7 (CanLII) para 66.)

#### The tenants' position

- [13] The tenants agree that the lease amount is \$4,300 per month. They state that from September 2020 to June 2021, they had no means of contacting the landlord. They did not pay rent because there was nobody to collect it. No attorney was present. While the landlord states that she appointed an attorney on April 29, 2021, the tenants never saw the Power of Attorney document. In November 2022, a lawyer for the landlord, Mr. Chan, approached them and demanded rental payments. In April 2023 after pleadings were exchanged, Mr. Chan confirmed that he would hold rental payments in trust pending the outcome of the litigation. The tenants state that they paid \$57,567 to Mr. Chan to be held in trust. No steps were taken in the litigation. In May 2024, the landlord changed counsel to Calvin Zhang.
- [14] The tenants state that repairs were required, particularly to the appliances, before Mr. Chan was involved. They attempted to contact the real estate agent, Mr. Johnson, and another person, Alvin, who said he was the landlord's agent regarding repair and maintenance issues. They did not respond. The tenants state that they were contacted by the police who said that they were looking for the landlord. Then, the bank that held the mortgage also

contacted them because it was trying to locate the landlord. They became concerned about whether the landlord existed and whether they should pay rent to agents.

- [15] The tenants state that the repairs were absolutely necessary to keep the premises in a living condition. They spent \$38,128.83. This amount should be deducted from any rent owing. They challenge the landlord's request for an order to evict them.

The landlord's position

- [16] The landlord states that she requested her real estate agent Alvin Liu to take over management of the property.<sup>2</sup> Mr. Liu sent an email to the tenant Chehrnaz Bahramian in April 2021 requesting that she contact him immediately. The tenant sent a response stating that she did not know who he was, nor whether he had authority from the landlord. She stated that she had reported him to the police and that he was not to contact her again. Only a lawyer with proof of instructions from the landlord should contact her. Mr. Liu sent the tenant a Continuing Power of Attorney document dated April 29, 2021 which states that the landlord appointed Mr. Liu to be his attorney regarding the lease and management of the premises.
- [17] The tenants retained a paralegal, Sam Rad, to represent them. He sent an email dated June 21, 2021 to a paralegal Michael Ostroff, retained by the landlord, prior to Mr. Chan, inviting him to make an application under the *Residential Tenancies Act*.
- [18] The landlord points to a paragraph in the lease under section "J. Maintenance and Repairs". It states:
- The tenant must pay their rent even if they have problems with the maintenance and repair of their unit or property. If the tenant is having a maintenance or repair problem, the tenant should let the landlord know. If needed, the tenant can apply to the Landlord and Tenant Board.
- [19] The landlord states that the tenants have no right to conduct their own repairs and deduct the cost of them from the rent.
- [20] The landlord states that her agents communicated numerous times with the tenants to fix all issues. The landlord obtained a home inspection report dated September 12, 2022. On May 1, 2024 the tenants sent an email to Mr. Chan alleging that they had finished the repairs themselves. He responded that they were not authorized by the landlord.
- [21] The landlord provided a chart showing the rent owing, the payments made and the balance owing being \$120,531 as of April 2025. The tenants allege that the repairs total \$38,128.75. Ms. Bahramian gave an undertaking at examinations to provide proof of payments; however, she has provided proof of payment for only \$1,536.

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<sup>2</sup> There was some indication during the motion that the landlord lives in China.

The tenants' position

- [22] The tenants agree that the landlord's proceeding by way of summary judgment is appropriate in the circumstances. The main issue is whether the cost of repairs should be deducted from the rent owing. The tenants state that they had no way to contact the landlord. The lease does not contain any contact information for the landlord. The tenants state that they raised repair issues with the real estate agent and the landlord's agent Alvin. They either did not respond or they dismissed the concerns. The tenants concede that they can prove payment of only \$1,536 toward the cost of repairs.
- [23] The tenants acknowledge that did not set aside the rent payments owing from October 15, 2020 to March 15, 2023. They resumed making rent payments in April 2023 to May 2024. They should not be evicted.
- [24] The tenants state that if this court should find that the outstanding rent is \$102,100.17, the balance after deducting repairs, they would pay that amount immediately.

Analysis

*Is the summary judgment process appropriate for this matter?*

- [25] This matter concerns non-payment of rent, whether the cost of repairs can be deducted from rent owing and whether the tenants can prove that they paid the various invoices for repairs. No credibility findings are required. Both parties agree that the issues can be determined in a summary judgment motion

*How much do the tenants owe the landlord for rent?*

- [26] The tenant states that she did not know to whom the rent payments should be made after September 2020. I note that in section 3 of the lease<sup>3</sup> the box for the landlord's contact information is empty. This is a significant omission. The tenants may have been legitimately concerned about paying the rent to an agent; however, they should have set aside the rent owing so that it would be available to be paid once the issue was resolved. When the landlord's lawyer, Mr. Chan, contacted the tenants in March 2023, the tenants should have been able to pay all of the outstanding rent. They did not set aside the rent so they were unable to bring the outstanding rent into good standing. They began to pay \$4,300 per month which Mr. Chan held in trust. This did not address the \$103,200 owing for 2021 and 2022. I accept the landlord's evidence in her chart<sup>4</sup> that the amount owing for rent is \$120,531.
- [27] The motion was argued on May 2, 2025. Accordingly, there is no information regarding the rent paid for May and the balance owing. The landlord requests \$189.63 per diem until the tenants vacate the property.

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<sup>3</sup> Case Center page A279

<sup>4</sup> Case Center page A493

*Does the lease allow the tenants to do repairs and deduct the cost of them from the rent?*

- [28] The lease term is clear: the tenants must pay rent even if there are problems with the maintenance and repair of the unit or property. There is a process for addressing maintenance or repair problems. The lease does not permit the tenants to conduct repairs and deduct the cost of them from the rent.
- [29] Because the lease did not provide any contact information for the landlord, I will allow the \$1,536 amount for repairs, for which payment is proved, to be deducted from the outstanding rent. I will not allow the amounts of the other invoices because there is no proof of payment. The tenants ought to have known that the deductions from rent would be challenged and ought to have retained proof of payment. Therefore, the outstanding rent as of May 15, 2025 is \$118,995 (\$120,531 - \$1,536).

*Should the tenancy be terminated and the tenants be evicted?*

- [30] The tenants lived rent free for two years. They did not set aside the \$103,200 for those years. Rather, it seems that they spent it. The tenants breached the lease contract. From September 2024 to November 2024 the tenants paid an extra \$1,000 per month in rent toward arrears. From December 2024 to March 2025 the tenants paid an extra \$2,500 per month toward arrears. The payments toward arrears total \$13,000 over 7 months. At this rate, the tenants will require several years to pay off the arrears. In these circumstances, terminating the tenancy is appropriate.

*Is there a genuine issue requiring a trial?*

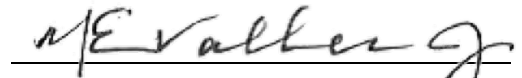
- [31] Given the above, I find that there is no genuine issue requiring a trial.

### Conclusion

- [32] The tenants shall pay to the landlord \$118,995 by May 22, 2025.
- [33] The tenancy between the landlord and the tenants is terminated as of May 23, 2025.
- [34] The tenant shall vacate the property by May 23, 2025.
- [35] If the tenant has not paid the rent due on May 15, 2025, the tenant shall pay the per diem rate of \$189.63 to the landlord until May 22, 2025.
- [36] If the tenant fails to vacate the property by May 23, 2025, the Sheriff is hereby directed to give vacant possession of the property to the landlord or her authorized agent on May 23, 2025.

Costs

[37] On the motion date, counsel made submissions on costs. The tenants shall pay costs to the landlord of \$13,315 all inclusive forthwith.

  
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VALLEE J.

**Date:** May 15, 2025