



Order under Subsection 87(1) Residential Tenancies Act, 2006

Citation: Song v Yang, 2026 ONLTB 48049

Date: 2026-06-23

File Number: LTB-L-075423-25

In the matter of: 4612, 386 YONGE ST
TORONTO ON M5B0A4

Between: Cheng Song Landlord

And

XIJING Yang Tenant

Cheng Song (the 'Landlord') applied for an order requiring XIJING Yang and PUFAN Yang (the 'Tenants') to pay the rent that the Tenants owe.

The lease agreement names only Xijing Yang as the Tenant, so the application was accordingly amended to exclude P. Yang as a named Tenant.

This application was heard by videoconference on November 17, 2025, and June 16, 2026.

The Landlord and the Tenant attended both the hearings.

Determinations:

1. As of the hearing date, the Tenant was still in possession of the rental unit.

Background:

2. It is undisputed that the Tenant concluded a valid lease agreement with the owners of the rental unit to commence September 15, 2024. The monthly rent was \$2,300.00, to be paid on the 15th day of each month. The Tenant paid \$29,100.00 up front at the beginning of the tenancy. This amount covered the monthly rent for a full year, to September 14, 2025, plus \$1,500.00.
3. At the hearing on June 16, 2026, the Tenant said that the \$1,500.00 was agreed between the parties to cover \$500.00 key deposit and \$1,000.00 damage deposit.
4. The owners of the rental unit at the time of the lease were Di Li and Zhuo Zhang. They remain the owners to date.

First Hearing:

5. The matter came before me as a result of the following sequence of events. C. Song (CS) a second mortgage holder on the rental unit, had her lawyer send a letter, dated July 17, 2025, to the Tenant, telling him that CS is the second mortgagee on the rental unit, that his Landlords were in "continued default" under the second mortgage, and further informing him to pay the rent to CS' lawyer In Trust going forward. It also informed him that my "...client is entitled to apply to the Landlord and Tenant Board for termination of your lease for non-payment of rent if you fail to pay future rents as directed."
6. The Tenant knew that his rent was completely paid up to September 14, 2025, so he did not pay the rent as directed in the letter. CS filed her application on September 9, 2025, claiming arrears of rent for the period commencing July 15, 2025, and the period commencing August 15, 2025.
7. When the matter was first heard, CS was seeking unpaid rent to the date of the first hearing on November 17, 2025. The Tenant admitted that he had not paid any rent since September 15, 2025, because he was not sure to whom rent was due. He said that he was seeking some kind of legal documentation confirming that he was obliged to pay rent to CS. The Tenant provided documentary evidence that he had set aside the required rent, but he said he simply did not know who he should pay it to. He had also received an email from his original Landlords on September 7, 2025, asking him about where and how he was going to make future rent payments, and this further confused him.
8. CS said that the original Landlords declared bankruptcy on May 8, 2025, and she was the second mortgage holder on the property. She said that after they went bankrupt, she had her lawyer send the letter of July 17, 2025, to the Tenant to inform him that she was the person lawfully entitled to collect the rent.
9. I determined at the first hearing on November 17, 2025, that there was a dearth of documentary evidence to support CS' claim to be the person who is lawfully entitled to collect the rent. Consequently, I adjourned the hearing to provide CS an opportunity to disclose any documentary evidence that she had to support her claim to be the sole lawful Landlord with a right to collect the rent. I ordered the Tenant to pay his rent into the Board going forward until this matter is resolved. He has done so.

Second Hearing:

10. In the interim, CS provided documentary evidence of the parcel register for the rental unit. She also provided documentary evidence of her payment of the outstanding property tax on the rental unit to May 8, 2026, as well as her full payment of the condo fees and lien charges on the rental unit to May 31, 2026.
11. I find, on a balance of probabilities, that CS is currently the Landlord in this tenancy, and she is therefore the person entitled to collect the rent, for the reasons that follow.

Reasons and Analysis:

12. Subsection 47(1) of the *Mortgages Act*, R.S.O. 1990 ('MA') provides, that a person who becomes a mortgagee in possession of a mortgaged residential complex which is the subject of a tenancy agreement between the mortgagor and a tenant or who obtains title to the residential complex by foreclosure or power of sale shall be **deemed to be the landlord** under the tenancy agreement.
13. The term "mortgagee in possession" is not defined in the MA. There are a number of ways to determine whether a person is a valid "mortgagee in possession". Chief among them seems to be the act of depriving a mortgagor of control and management of the mortgaged property. In *Bank of Montreal v. Smith*, 2008 CanLii 28435, ('Smith') the Court canvases the case law to determine at which point a mortgagee can be considered a "mortgagee in possession". They look at the case, *Sun Life Trust Co. v. R.* [1988] G.S.T.C. 63 ('Sun Life'), which they find, had "accurately and succinctly" set out the factors to look at. They quote from *Sun Life*, "A mortgagee takes possession by taking such steps as are necessary to deprive the mortgagor of the control of the property. In this case, the mortgagee instructed its lawyers to take control of and manage the property to the exclusion of the mortgagor...." The Court finds, with respect to their own set of facts in *Smith*, that the mortgagee has specifically **not** taken those steps. They write, at paragraph 41, "In this case, there is no evidence that the mortgagee has taken out of the mortgagor's hands the control and management of the mortgaged premises."
14. Consequently, it appears that the very act of taking control of the management of the property, directing a tenant to pay them rent, can turn a mortgagee into a "mortgagee in possession". One of the ways of taking this control is by serving a "Notice of Attornment of Rent" or "Notice of Change of Landlord". Although those words were not in the title of the letter sent by CS' lawyer to the Tenant on July 17, 2025, it was, in effect, a notice of change of landlord or a notice of attornment of rent. In the body of the letter CS' lawyer cites section 47 of the MA, informing the Tenant that he is being notified about a change in landlord, and he directs the Tenant to pay the rent to his client CS.
15. CS has produced a number of documents that support her entitlement to send the notice of change of landlord to the Tenant on July 17, 2025. The parcel register from May 2026 shows that the original landlords still own the rental unit. However, the parcel register also suggests that CS is now the sole mortgagee as of September 2025. She had documentary evidence of discharge of the first mortgage of the property dated September 16, 2025. CS has paid all the property taxes owed on the rental unit, as well as all the condo fees owed on the rental unit, and she has also thereby released the lien put on the property after property tax had not been paid. CS also disclosed a letter from the Trustee of the Estate of the original Landlord D. Li, dated May 13, 2025, which informs CS that the Trustee will not be taking possession of the rental unit, and directs CS to commence power of sale proceedings on the rental unit. Consequently, all of CS' disclosed documentary evidence supports her entitlement to have sent the letter on July 17, 2025, and the letter provides evidence that CS is a valid "mortgagee in possession", entitled to step into the shoes of "Landlord" as of July 17, 2025. As Landlord, CS is entitled to collect the rent from the Tenant.

Rent Owed to the Landlord CS:

16. It is now before me to determine to how much rent CS is entitled.
17. As noted above, the Tenant paid the rent in full to the original Landlords to August 14, 2025, if we assume that those Landlords had a right to retain a last month's rent deposit of \$2,300.00. Since the November 2025 hearing, the Tenant has paid 12 further months of rent at a rate of \$2,300.00 per month. That means that the rent is paid in full to August 14, 2026, at a rate of \$2,300.00 per month, if we deem that the new Landlord CS still has a right to retain a last month's rent deposit on behalf of the Tenant.
18. However, the Landlord CS sent the Tenant a valid N1 notice of rent increase in November 2025, for an increase to \$2,350.00 per month commencing March 15, 2026. Since the Landlord CS was the mortgagee in possession as of November 2025, she was entitled to send the Tenant a valid N1 notice of rent increase. She provided the notice of rent increase in writing, and it was over 90 days before the rent increase was to take effect. Therefore, I find that CS is entitled to rent of \$2,350.00 from March 15, 2026. This equals \$250.00, or five months of the \$50.00 increase from March 15, 2026 through August 14, 2026.
19. I informed the parties that the original Landlords were not entitled to collect \$1,000.00 damage deposit. Pursuant to sections 105 and 106 of the Residential Tenancies Act, 2006 (the 'Act'), this is an illegal charge, and the amount of \$1,000.00 will be offset from the amount owing to the Landlord CS in paying out to her, the rent paid into the Board. Offsetting the \$250.00 extra rent owed to the Landlord CS (five months at \$50.00 per months) against the \$1,000.00 illegally collected by the original Landlords for a damage deposit, I find that the Landlord CS will be entitled to all the rent paid into the Board by the Tenant, save for \$750.00 that will be ordered to be paid back to the Tenant.
20. Taking into account all the offsets mentioned above, the Board will be ordered to pay out to the Landlord CS all the rent paid into the Board by the Tenant, except for \$750.00 that will be ordered to be paid back to the Tenant. This will resolve the application to the date August 14, 2026.
21. The monthly rent is \$2,350.00 going forward, to be paid on the 15th day of each month by the Tenant to the Landlord CS commencing August 15, 2026.
22. The Landlord CS is deemed to be holding a last month's rent deposit on behalf of the Tenant collected September 15, 2024, in the amount of \$2,300.00. It is deemed that the Landlord has not paid any interest on the last month's rent deposit.
23. The Board will pay out to the Tenant \$750.00 of the rent paid in by him to reimburse him for the \$1,000.00 damage deposit unlawfully collected by the original Landlords at the commencement of the tenancy.
24. Although the Landlord CS incurred a cost of \$186.00 for filing the application, I find that she is not entitled to reimbursement of those costs. The Tenant has always been willing to pay the rent, and he has always paid the rent. I find that it was not unreasonable of the Tenant to be confused about who was entitled to collect the rent. The letter sent to the Tenant by CS on July 17, 2025, was confusing, and it was not backed up with any other

documentary evidence. The Tenant had never heard of CS on that date, and he had not received any information from his original Landlords about any issue with the tenancy. There was no reason for him to pay substantial sums of money to a person who he had never heard of, who showed up out of the blue with a lawyer's letter. In fact, the Tenant received a message from the original Landlords in September 2025, two months after that letter, inquiring about the rent going forward. CS has prevailed in this application, but not because the Tenant defaulted in paying the rent. She has only prevailed because, after the first hearing of the application in November 2025, she finally provided sufficient documentary support to prove, on a balance of probabilities, that she is a "mortgagee in possession", thereby qualifying her to be entitled to be deemed the Landlord pursuant to subsection 47(1) of the MA.

It is ordered that:

1. The Board shall pay out to the Landlord, Cheng Song, \$26,850.00, paid into the Board by the Tenant.
2. The Board shall reimburse the Tenant, Xijing Yang, \$750.00 of the amount paid into the Board by him.
3. **Board staff are directed to pay out the amounts stated in paragraphs #1 and #2, to the named individuals above, plus accrued interest*.**

June 23, 2026
Date Issued

Nancy Morris
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.

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