



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

Citation: Del Condominium Rentals Inc. v Bohr-lee, 2023 ONLTB 78255

Date: 2023-12-04

File Number: LTB-L-004962-23

In the matter of: 511, 280 HOWLAND AVE
TORONTO ON M5R0C3

Between: Del Condominium Rentals Inc. Landlord

And

Daniel Bohr-lee and Yvonne Bohr Tenant

Del Condominium Rentals Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Bohr-lee and Yvonne Bohr (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on November 22, 2023.

The Landlord's Legal Representative Edwin Sadasivam and the Tenant attended the hearing. Prior to the commencement of the hearing, the Tenant spoke with Tenant Duty Counsel.

Determinations:

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$4,700.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$154.52. This amount is calculated as follows: \$4,700.00 x 12, divided by 365 days.
5. The Tenant has paid \$14,735.00 to the Landlord since the application was filed.
6. The rent arrears owing to November 30, 2023 are \$36,965.00. The Tenant does not dispute the arrears.
7. The Landlord is entitled to \$20.00 to reimburse the Landlord for administration charges and \$15.00 for bank fees the Landlord incurred as a result of 1 cheque given by or on behalf of the Tenant which was returned NSF.

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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 \$4,700.00 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 \$173.84 is owing to the Tenant for the period from June 1, 2022 to November 22, 2023.

Section 82 issues:

11. The Tenant filed a list of issues he wishes to raise pursuant to section 82 of the Act, being the following issues which started on June 1, 2022:
 - Lights in both bedrooms and den do not turn off;
 - Living room plugs cause circuit breakers to trip;
 - Front hall light does not turn off; and
 - Pool is not open.
12. The Tenant submits that the lights in the bedrooms and den did not completely turn off, they would dim but still emit some light. The Tenant stated that within two months of noticing that the lights would not dim, he could go to the breaker and turn them off that way. The Tenant is asking for a reduction of rent of 7.5% for a total of two months of not having lights turned completely off.
13. The Tenant states that the living room plugs caused the circuit breakers to trip. The Tenant alleges that it caused a "major nuisance as he would have to flip the breaker if it tripped and there were times where once this was done, it would only trip again. On times like this, he would give up using the living room. The Tenant states that he had a TV in the living room which resulted in him not being able to use it to the extent he wished. The Tenant seeks a rent reduction of 7.5% since June 1, 2022 for the occasional tripping of the living room plugs.
14. The Tenant states that the front hall light did not turn off and it was not dimmable. The Tenant submits that he wanted to have the light turned off but was unable to do so. The tenant did acknowledge that he had a door for his bedroom which would close but light would still emit through. The tenant seeks a rent abatement in the amount of 2.5% since June 1st 2022 until May 2nd 2023 when it was repaired.
15. The Tenant alleges that he is entitled to a rent abatement as the outdoor pool Was not open when he moved into the rental unit. The Tenant states that the outdoor pool did not open until this past summer. As a result of the pool not being open, the Tenant seeks a 5% rent reduction as having an outdoor pool was a large factor that contributed to his decision to move into the rental unit.
16. The Landlord's Legal Representative submits that the rental unit is situated in a brand new condominium building and that the tenant would have access two amenities through the condominium. The lease states that:

The Tenant acknowledges that the amenities and facilities of the subject building (proposed or actual) are subject to change from time to time. The Landlord Makes no representation or warranty that any such amenity or facility will be available for use during the term of this tenancy agreement. use of such amenities and facilities is subject at all times to the Condominium Documents.

17. After having this clause pointed out to the Tenant, the Tenant submits that he clearly did not read the lease well when he signed it. I find that the Tenant has led insufficient evidence to establish that the Landlord is responsible for the pool not being opened and no remedy will be awarded for this issue.
18. The Landlord's Legal Representative submits that the amount of rent abatement the Tenant is seeking is excessive and while the issues identified by the Tenant were perhaps inconvenient, the Tenant had found a way to turn off the lights, and deal with the breaker tripping. The identified issues were resolved within 8 to 10 months, being April 28, 2023.
19. The Tenant has the obligation of proving that the Landlord is in breach of the *Act*. Based on the evidence before me, I am satisfied that the Landlord is in breach of section 20 of the *Act* being that the landlord is responsible for providing and maintaining the rental unit in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
20. In *Onyskiw v. CJM Property Management*, 2016 ONCA 477 (CanLII), the Court of Appeal for Ontario determined that a contextual approach should be adopted when considering a landlord's potential breach of subsection 20(1) of the *Act*. A breach will not be found if the Landlord's response to a maintenance issue was reasonable in the circumstances. In this case, I find that the Landlord's response to the maintenance issues identified by the Tenant was not reasonable in the circumstances, particularly it should not have taken 8 to 10 months to repair the issues.
21. Section 82(3) of the *Act* states that if a Tenant raises an issue under subsection (1) the Board may make any order in respect of the issue that it could have made had the tenant made an application under this Act.
22. An abatement of rent is a contractual remedy on the principle that if you are paying 100% of the rent then you should be getting 100% of what you are paying for and if you are not getting that, then a tenant should be entitled to abatement equal to the difference in value. In other words, an abatement of rent can be viewed as compensation to the Tenant for inconvenience and loss of use of the rental unit.
23. In considering the evidence and submissions before me, as well as the impact it had on the Tenant and on similar cases before me, I find that a rent abatement in a global amount of \$1,000.00 is reasonable in the circumstances. An order for this amount shall be issued accordingly.

Relief from eviction:

24. The Tenant states that he is vacating the rental unit on November 30, 2023 and is "okay with that date" to terminate the tenancy and move out of the rental unit. The Landlord does not oppose this date. 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 November 30, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The Landlord shall pay a rent abatement to the Tenant in the amount of \$1,000.00. This amount shall be deducted from the total arrears owed.
2. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
3. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$36,186.00 if the payment is made on or before November 30, 2023. See Schedule 1 for the calculation of the amount owing.
4. 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 30, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
5. **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 30, 2023.**
6. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$30,011.60. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. 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.
7. The Tenant shall also pay the Landlord compensation of \$154.52 per day for the use of the unit starting November 23, 2023 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before December 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 16, 2023 at 7.00% annually on the balance outstanding.
9. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 December 1, 2023.

December 4, 2023
Date Issued

 Heather Chapple
 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 June 1, 2024 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2023

Rent Owing To November 30, 2023	\$51,700.00
Application Filing Fee	\$186.00
NSF Charges	\$35.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$14,735.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an abatement	- \$1,000.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$36,186.00

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

Rent Owing To Hearing Date	\$50,399.44
Application Filing Fee	\$186.00
NSF Charges	\$35.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$14,735.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$4,700.00
Less the amount of the interest on the last month's rent deposit	- \$173.84
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$1,000.00
Total amount owing to the Landlord	\$30,011.60
Plus daily compensation owing for each day of occupation starting November 23, 2023	\$154.52 (per day)