



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

Citation: Chaudrhy v Ray, 2023 ONLTB 74161

Date: 2023-11-14

File Number:
LTB-L-023444-23

In the matter of: Lower Level, 2873 14TH LINE GILFORD
ON L0L1R0

Between: Fatime Chaudrhy and Qasim Ali Landlords

And

Candace Ray and Thomas Alexander Tenants Hunsdale

Fatime Chaudrhy and Qasim Ali (the 'Landlords') applied for an order to terminate the tenancy and evict Candace Ray and Thomas Alexander Hunsdale (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was originally heard by videoconference on August 3, 2023. The Landlord's legal representative Luigi Innamorato attended the hearing. Both Tenants and their legal representative Michaela Rosolak attended the hearing. The matter was adjourned because there was not enough time to the section 82 issues the Tenants intended to raise.

An interim order was issued on August 22, 2023 which directed the Tenants to pay the ongoing monthly rent until the matter is brought back before the Board and I am seized of the matter.

A continuance of the hearing was held by videoconference on October 4, 2023. The Landlord Fatime Chaudrhy and the Landlord's legal representative Luigi Innamorato attended the hearing. The Tenant Candace Ray and the Tenants' legal representative Michaela Rosolak attended the hearing.

Determinations:

1. The residential complex is a rural house which is divided into an upper unit and a lower unit.

2. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Nonpayment of Rent (N4 Notice). The Tenants 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. The Tenants were in possession of the rental unit on the date the application was filed.

Date the rental unit was vacated

4. The Tenants vacated the rental unit on September 30, 2023. Rent arrears are calculated up to the date the Tenants vacated the unit.
5. The Tenant Candace Ray ('Ms. Ray') states that the Tenants physically vacated the rental unit on August 1, 2023. Ms. Ray confirms sending a text message to the Landlord Fatime Chaudrhy ('Ms. Chaudrhy') on August 28, 2023 which was read into the record by the Landlord at the hearing. The text message notes that the Tenants request that the last month's rent deposit be applied to the rent for September 2023. The text message further notes that the Tenants requested that the Landlord ask the upper-level tenants to turn on the switch for the basement lights for the "umpteenth time" so the Tenants could start packing. Ms. Ray further states that the Tenants provided the Landlord with an N9 Tenant's Notice to end the Tenancy (N9 Notice) on August 31, 2023 which notes a termination date of September 30, 2023. The N9 Notice was produced for the hearing and is signed by Ms. Ray and dated August 31, 2023.
6. The Landlord submits that the Tenants provided the Landlords access to the rental unit on September 30, 2023 and returned the keys to the rental unit on that date which was undisputed by Ms. Ray.
7. I find the Tenants vacated the rental unit on September 30, 2023. I find this is supported by the N9 Notice and the undisputed testimony that the Tenants provided vacant possession of the rental unit to the Landlord on September 30, 2023.
8. The lawful rent is \$2,400.00. It was due on the 1st day of each month.
9. The Tenants have not made any payments since the application was filed.
10. The rent arrears owing to September 30, 2023 are \$21,600.00.
11. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlords collected a rent deposit of \$2,400.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit is applied to the arrears of rent because the tenancy terminated.

13. Interest on the rent deposit, in the amount of \$69.04 is owing to the Tenants for the period from August 7, 2022 to September 30, 2023.

Section 82 issues

14. The Tenants raised maintenance issues pursuant to s. 82 of the *Residential Tenancies Act, 2006* (the 'Act') and request a rent abatement of 50% - 75% for the duration of their tenancy. Ms. Ray states that the tenancy commenced August 8, 2022 which was undisputed by the Landlord.
15. As explained below, the Tenants have proven on a balance of probabilities that the Landlords failed to meet the Landlords obligations under subsection 20(1) of the Act for not repairing the electrical issue relating to operation of the lights in two rooms inside the rental unit and for the Landlords not rectifying the issue relating to the storage of garbage on the deck above the Tenants rental unit. I find these issues commenced August 20, 2022 and were not repaired for the duration of the time the Tenants remained in the rental unit. Therefore, the Tenants are entitled to a rent abatement for these items.
16. I accept Ms. Ray's testimony that the Tenants physically left the rental unit until August 1, 2023. I accept that their belongings remained until September 30, 2023 which is the undisputed date that the keys were returned to the Landlord. The Tenants are therefore entitled to a 20% rent abatement or \$480.00 per month for the period of August 20, 2022 – July 31, 2023.
17. The rent abatement calculation is as follows:
- From August 20, 2022 – August 31, 2022 at \$15.48 daily per diem (20% of monthly rent is \$480.00/31 days) x 11 days for August 2022 = \$170.28
 - From September 1, 2022 - July 31, 2023, 11 months x \$480.00 = \$5,280.00
 - Total rent abatement is \$5,450.28 (\$170.28 + \$5,280.00)

18. The Tenants are not entitled to a rent abatement for the issues relating to the exterior driveway light or the fireplace. I do not find the Tenants have established the Landlords have failed to meet their obligations under s. 20(1) of the Act. Further reasons are provided below.

Issue#1 – power disconnection to the lights in lower-level rental unit

19. Ms. Ray states that there is an electrical switch located in the upper tenants' unit and when this switch is turned off, the lights are inoperable for the third bedroom and the living room inside the Tenants rental unit. Ms. Rays states this issue was first reported to the Landlord on August 20, 2022 and it occurred about once per week for the duration of the tenancy. Ms. Rays states Ms. Chaudrhy advised the Tenants that it was not an electrical issue and that her husband would place a cap on the electrical switch to prevent the upper-level

tenants from turning off the switch affecting the lights in the Tenants rental unit. Ms. Ray relies on text messages she sent to the Landlord which were undated, advising that this issue was ongoing throughout the tenancy. Text message correspondence between Ms. Ray and Ms. Chaudry from September 2022 notes that the light switch in the upstairs unit needs to be on at all times for the lights in the lower unit to work. The last text message sent to the Landlord advising of this issue was on August 28, 2023.

20. Ms. Chaudry states that the Landlords live 15 minutes away from the residential complex. She states that black duct tape was placed over the electrical switch in the upper tenants' unit in late August 2022. Ms. Chaudry states that the Tenants advised the Landlords that this issue was still occurring in September 2022/October 2022. Ms. Chaudry states that she asked the upper-level tenants to look at the switch and that they advised her that their laundry basket may have inadvertently turned off the switch. Ms. Chaudry states that since she did not hear from the Tenants again regarding this issue until August 2023, the Landlords assumed there was no longer an issue.
21. The Landlords rely on the Board's decision *CEL-020221-21 Joaquim Alexandre and Marva D. Jones, 2022 CanLII 82028 (ONLTB)* which notes there is no formula to determine the amount for a rent abatement and the circumstances of each case need to be determined when considering the amount to be awarded. The decision further notes factors to be considered when determining the amount of a rent abatement which include the following. 1) The length and severity of the issue and its effect on the tenant, 2) whether the landlord rectified the issue(s) in a reasonable timeframe and if the response was appropriate, 3) whether the tenant bears any responsibility, and 4) if the tenant interfered with the landlord's efforts to rectify the issue(s). These factors have been considered in my calculation for determining the amount for the rent abatement.
22. I find that the Landlords failed to meet their obligations under s. 20(1) of the Act relating to the electrical issue causing the lights in two rooms in the rental unit to be inoperable when a switch was turned off in the unit located above the Tenants rental unit. I accept Ms. Ray's evidence and I find this issue was occurring since August 20, 2022 and this issue had not been repaired by the time the Tenants physically left the rental unit on August 1, 2023. Ms. Chaudry does not dispute the Tenants first advised the Landlords of this issue on August 20, 2022. Ms. Chaudry testified that she received further text messages from the Tenants in September/October 2022 advising this issue had not been repaired following an attempt by the Landlords to repair the issue. There was no further evidence produced by the Landlords regarding any attempts to repair the issue following the Tenants advising them the issue was still occurring in September 2022, despite the Landlords living 15 minutes away from the residential complex. I do not find it is reasonable that the Tenants had to notify the Landlords when the lights in their rental unit were inoperable and for one of the Landlords to then contact the upper-level tenants to request that they turn on the switch inside their unit. This seems onerous for the Tenants and unreasonable that the Landlords did not take any further steps to properly repair this issue.

23. I find the August 28, 2023 text message sent to the Landlord in which the Tenants request the Landlord to ask the upper-level tenants to turn on the electrical switch so the Tenants could pack their belongings in the rental unit supports this issue was not repaired as of August 28, 2023. I have awarded the rent abatement up until the date of July 31, 2023 as Ms. Ray testified that the Tenants physically moved out of the rental unit on August 1, 2023. Ms. Ray states that the issue with the lights not working in two of the rooms in the rental unit occurred once per week. I find this issue would have substantially interfered with their reasonable enjoyment of the rental unit during the time that the Tenants resided at the rental unit.

Issue#2 – Garbage on the deck above the Tenants rental unit

24. Ms. Ray states that the upper-level tenants would throw garbage into an unlatched garbage container which was placed on the deck for the upper-level unit. Ms. Ray states that animals would tear open the garbage and the garbage would be all over the deck and it was not cleaned up by the upper-level tenants. Ms. Ray states that the upper-level tenants had a baby and there were also dirty diapers all over the deck. Ms. Ray states that she reported this issued to the Landlords shortly after the Tenants moved into the rental unit. The upper deck was located above the Tenants bedroom window and the rental unit did not have air conditioning. Ms. Ray states they could not open their windows due to the smell from the upper deck. Ms. Ray states that the Landlords did not do anything to address this issue.

25. Ms. Chaudrhy states the upper-level tenants used garbage tags and the option of garbage tags was offered to the Tenants. Ms. Chaudrhy states she contacted the City of Innisfil and they advised her that they would only provide her with one garbage bin with a latch. When Ms. Chaudrhy was asked at the hearing if she could have purchased a second garbage bin with a latch from the City of Innisfil, she stated that the City of Innisfil did not provide her with that option. Ms. Chaudry testified that the Landlords did not attend the residential complex to address the garbage issue.

26. Ms. Ray states that garbage tags would not be useful in preventing the animals from getting into the garbage. Ms. Ray produced copies of undated text message correspondence with the Landlords which notes that the Landlords suggested the Tenants use garbage tags. A text message from Ms. Ray notes that there is nowhere to put the excess garbage when the garbage bin is full.

27. I find that the Landlords failed to meet their obligations under s. 20(1) of the Act when the Landlords did not rectify the issue with the open garbage on the upper deck. I find that the Landlords did not take reasonable steps to address this straightforward issue. I do not accept Ms. Chaudhry's explanation is reasonable that the City of Innisfil did not provide her with the option of purchasing a second latched garbage bin. I find the Landlords did not make a reasonable effort to obtain additional latched garbage bins which would have contained the garbage and prevented it from being accessed by animals. I do not find that

garbage tags which are typically attached to garbage bags would provide any assistance in preventing animals from tearing open the garbage bags. It was undisputed that the residential complex is in a rural area. Therefore, I find it would be reasonable that the garbage would need to be secured to prevent animals from accessing it.

28. Further, the Landlords lives 15 minutes away from the residential complex but Ms. Chaudrhy stated the Landlords never attended the rental unit to inspect the issue with the garbage. Ms. Chaudrhy responded to the issue raised by the Tenants by text message. I find this was unreasonable and supports that the Landlords did not take the necessary steps to mitigate this issue. I find this issue significantly impacted the Tenants reasonable enjoyment of the rental unit as their bedroom was located right below the deck. I accept Ms. Ray's testimony that this issue was first reported to the Landlords shortly after the Tenants moved in which was not disputed by Ms. Chaudrhy. As I have determined that the Landlords did not take steps to mitigate this issue, I accept that the issue with the garbage occurred for the duration of the time the Tenants resided in the rental unit and therefore the Tenants are entitled to a rent abate for this period from August 20, 2022 – July 31, 2023.

Issue#3 – Exterior light on driveway inoperable

29. Ms. Ray states that there is a long driveway at the residential complex and the exterior light which shines onto the driveway stopped working in October 2022 and this was a safety issue. Ms. Ray states the lightbulb was replaced but this did not repair the issue. Ms. Ray states that she believes this issue was not repaired for the duration of the tenancy.
30. Ms. Chaudrhy states that the upper-level tenants replaced the lightbulbs for the exterior driveway lights and that the lights were working in July 2023.
31. I do not find the Tenants are entitled to a rent abatement for the exterior driveway light issue because I do not find the Tenants have provided any further details regarding the driveway light being inoperable beyond October 2022. Therefore, I am not persuaded that this issue was occurring for the duration of tenancy as stated by Ms. Ray.

Issue#4 – Unable to use fireplace at rental unit

32. Ms. Ray states that the Tenants were unable to use the fireplace which was the primary heat source for the rental unit. Ms. Ray states the Tenants could not obtain tenant insurance because there was no Wood Energy Technology Transfer ('WETT') inspection report obtained by the Landlord for the fireplace. Ms. Ray testified that the Tenants heated the rental unit by propane heat.
33. Ms. Chaudrhy states that the Tenants brought this issue to the Landlords attention about one month after moving into the rental unit but the Tenants never provided the Landlords with any documentation to support that they could not obtain tenant insurance due to a lack of a WETT inspection.

34. I do not find that the Tenants are entitled to a rent abatement relating to the issues raised for the fireplace. There was no documentation produced to support that the Tenants were denied tenant insurance, or that they had advised the Landlords of this. Based on Ms. Ray's testimony, the Tenants were not without a heat source for the rental unit as Ms. Ray testified the Tenants heated the rental unit using propane heat.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated as of September 30, 2023, the date the Tenants moved out of the rental unit with their belongings.
2. The Tenants are entitled to a rent abatement in the amount of \$5,450.28 for the period of August 20, 2022 - July 31, 2023.
3. The Tenants shall pay to the Landlords \$13,866.68. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit with their belongings and the cost of filing the application, less the amount for the rent abatement. The rent deposit and interest the Landlords owes on the rent deposit is deducted from the amount owing by the Tenants. See Schedule 1 below for the calculation of the amount owing.
4. If the Tenants do not pay the Landlords the full amount owing on or before November 25, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 26, 2023 at 7.00% annually on the balance outstanding.

November 14, 2023

Date Issued

Kimberly Parish

Member, Landlords and Tenants Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenants must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$21,600.00
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlords since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,400.00
Less the amount of the interest on the last month's rent deposit	- \$69.04
Less the amount the Landlords owes the Tenants for an {abatement/rebate}	-\$5,450.28
Total amount owing to the Landlords	\$13,866.68