



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

**Citation:** Lin v Fan, 2023 ONLTB 70061

**Date:** 2023-10-23

**File Number:** LTB-L-004251-23

**In the matter of:** UNIT LPH4, 75 ST NICHOLAS ST  
TORONTO ON M4Y0A5

**Between:** Qing Lin Landlord

**And**

Yi Mo Fan Tenants  
Kai Song

Qing Lin (the 'Landlord') applied for an order to terminate the tenancy and evict Yi Mo Fan and Kai Song (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on June 7, 2023.

The Landlord, the Landlord's Legal Representative, Yun Tao Li, the Tenants and the Tenants' Legal Representative, Allen Chang, attended the hearing.

**Determinations:**

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment 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.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Tenants vacated the rental unit on May 14, 2023. Rent arrears are calculated up to the date the Tenants vacated the unit. While the Tenants say they moved out on May 9, 2023, they did not return the keys to the Landlord until May 14, 2023. I therefore find that the Tenants were still in possession up until they returned the keys to the Landlord. The Tenants had sufficient access to, use of, care and control of the rental unit up until they returned the keys on May 14, 2023: See *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995 (ON CA), at para. 20.
4. The lawful rent is \$3,200.00. It was due on the 10th day of each month.
5. The Tenants paid \$9,600.00 to the Landlord since the application was filed.
6. The rent arrears owing to May 14, 2023 are \$13,326.05.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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8. The Landlord collected a rent deposit of \$3,200.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
9. Interest on the rent deposit, in the amount of \$81.10 is owing to the Tenants for the period from May 10, 2022 to May 14, 2023.

### Tenants' Issues

10. Pursuant to subsection 82(1) of the *Residential Tenancies Act, 2006* (the 'Act'), the Tenants raised the following issues in relation to the air conditioning, blinds, heat and hot water and elevators at the residential complex.
11. For the following reasons, I find that the Landlord has not breached their obligations under the Act with respect to the air conditioning, blinds, heat and hot water. However, I do find that the Landlord breached their obligations with respect to the elevators. Therefore, I find the Tenants are entitled to a rent abatement of \$1,330.41 as compensation for the Landlord's breach. This amount is deducted from the total rent arrears owed.
12. I accept the Tenants' submission that air conditioning was included as part of the lease agreement between the parties. The Tenants' Legal Representative submitted that throughout the summer of 2022, the air conditioning was not working. While I accept that the air conditioner was broken, it was undisputed that the Tenants informed the Landlords on or about July 12, 2022 and the Landlord provided the Tenants with portable air conditioner units on or about July 14, 2022.
13. Although the Tenants' Legal Representative submitted the portable air conditioners were inadequate, I accept the Landlord testimony that the Tenants did not complain about the inadequacy of the portable units after July 14, 2022. The Tenants did not testify at the hearing to refute this. I therefore find that the Landlord responded reasonably to the Tenants' complaints about the air conditioner. Accordingly, I am not satisfied that the Landlord breached their obligations under the Act with respect to the air conditioning.
14. With respect to the blinds, I find that the Landlord's response was reasonable. Therefore, I do not find the Landlord breached their obligations under the Act and no remedy is awarded for this issue.
15. According to text messages submitted by the Tenants, it appears that they informed the Landlord that the blinds in the rental unit were missing pieces, causing the rooms to be too bright and too hot. I accept the Tenants' submission that the Landlord fixed the blinds on August 25, 2022. I also accept the Landlord's testimony that time was required to measure the blinds, order parts, and make necessary arrangements (while accommodating the Tenants' schedule) to do the repairs. Based on the circumstances of this case, I find the actions the Landlord took to fix the blinds were reasonable.
16. The Tenants' Legal Representative submitted that the Tenants were without heat or hot water for half of October 2022 and then a couple of days each in November 2022, December 2022, and March 2023. While I accept that this would have interfered with the Tenants, the evidence establishes that the heat and hot water were intermittently shut off to the rental unit to perform maintenance and repairs to the plumbing and HVAC systems in the residential complex. The Tenants failed to establish that the carrying out of the work

constituted an interference that was unreasonable in the circumstances: See subsection 8(3)(b) of O. Reg. 516/06. Therefore, I am not satisfied that the shut off to heat and hot water substantially interfered with the reasonable enjoyment of the rental unit by the Tenants in the circumstances of this case.

17. With respect to the Elevators, I find the Landlord's response was not reasonable in the circumstances.
18. There are 3 elevators in the residential complex – a condo building with at least 34 floors. The Tenants resided on the 34<sup>th</sup> floor. I accept the Tenants submission all 3 elevators were not working on September 21, 2022. I also accept the Landlord's testimony that one elevator was repaired on or about September 23, 2022. I also find that the second elevator was fixed sometime in October 2022, and the third was fixed sometime in mid-February 2023.
19. While the Landlord submits the elevator repairs were out of their control, the Landlord took no action to respond to the issue. In my view, a reasonable Landlord would at the very least contact Condominium Board/Management to expedite the repairs.
20. With respect to the quantum of abatement, I find that \$1,330.41 is reasonable in the circumstances and calculated as follows: 100% rent abatement for the 2 days there were no working elevators, 25% for the additional month it took to get the 2<sup>nd</sup> elevator repaired, and 10% for the subsequent months it took (October 2022 to February 2023) to repair the 3<sup>rd</sup> elevator.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated as of May 14, 2023, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord \$8,900.54. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit and the rent abatement/rebate awarded to the Tenants is deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlord the full amount owing on or before November 3, 2023, the Tenants will start to owe interest. This will be simple interest calculated from November 4, 2023 at 7.00% annually on the balance outstanding.

**October 23, 2023**

**Date Issued**

**Khalid Akram**

Member, Landlord and Tenant 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 Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$22,926.05
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	- \$9,600.00
<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	- \$3,200.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$81.10
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$1,330.41
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$8,900.54</b>

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