



## Order under Section 69 and Utilizing Section 78 Residential Tenancies Act, 2006

**Citation:** 2686250 ONTARIO STREET v SHERLOK, 2023 ONLTB 30976

**Date:** 2023-04-17

**File Number:** LTB-L-080601-22  
(TSL-21182-21)

**In the matter of:** A-8, 1475 KING STREET WEST  
TORONTO ONTARIO M6K1J4

**Between:** 2686250 ONTARIO STREET Landlord

**And**

ROMA SHERLOK Tenant

2023 ONLTB 30976 (CanLII)

**Your file has been moved to the Landlord and Tenant Board’s new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-080601-22.**

2686250 ONTARIO STREET (the 'Landlord') applied for an order to terminate the tenancy and evict ROMA SHERLOK (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 12, 2022, July 5, 2022 and October 4, 2022. On October 4, 2022 the following parties attended the hearing: The Landlord’s agent, Hana Kruschke, the Landlord’s legal representative, Bitu Di Lisi, the Tenant, the Tenant’s legal representatives, Samuel Mason and Olivia Dooley (student at law).

The Tenant raised issues pursuant to section 82 of the *Residential Tenancies Act, 2006* (the 'Act') and the parties were directed to file closing submissions by no later than October 21, 2022. The Tenant’s filed their closing submissions on October 25, 2022. The Landlord did not file any closing submissions as directed.

**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 \$1,122.95. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$36.92. This amount is calculated as follows: \$1,122.95 x 12, divided by 365 days.

5. The Tenant has paid \$8,420.65 to the Landlord since the application was filed.
6. The parties agreed that the rent arrears owing to October 31, 2022 are \$24,045.78. The Tenant indicated that they had paid October rent by way of cheque, but the Landlord could not confirm whether or not the cheque cleared the Landlord's account. Therefore, if the payment does clear the account, the amount outstanding will be reduced accordingly.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The NSF charges claimed by the Landlord related to electronic fund transfers rather than NSF cheques. Since subsection 87(5) of the Residential Tenancies Act, 2006, does not provide a remedy for electronic fund transfers that fail due to non-sufficient funds, the Landlord's claim for NSF charges is denied.

## Section 82 Issues

### Pest Control

9. I find that the Landlord breached their maintenance obligations with respect to the issue of pest control in the Tenant's unit pertaining to cockroaches. I am satisfied that the Tenant made the Landlord aware of the issue in November of 2020 when they spoke to the Landlord's superintendent in person and later followed up in Email in January of 2021. As of February of 2021, the Landlord took no action to investigate or treat the issue with cockroaches. The Tenant then sought out her own treatment for her unit and had a pest control company attend her unit on or about February 24, 2021. The Tenant submitted into evidence a copy of the invoice that the Tenant paid in the amount of \$310.75 which is dated July 21, 2021. The Tenant indicated that the treatment was successful and no longer an issue. The Tenant requested to be reimbursed for the cost of pest control and the Landlord did not dispute the costs or that they should reimburse the Tenant. The Landlord shall pay to the Tenant the \$310.75 for the pest control treatment.
10. The Tenant requested an abatement of 5% of her monthly rent since notifying the Landlord until the issue was resolved. Based on the submissions of the Tenant, which were not disputed by the Landlord, I find it appropriate to order the abatement for the period of November 10, 2020 to February 24, 2021 for 3.5 months in the amount of \$196.53.

### Heat and Boiler Fire Issue

11. There was no dispute that the boiler caught fire on February 11, 2021 which put the entire building without heat for the weekend. Up to March 12, 2021 the Tenant then had intermittent heat in their unit and they felt cold and sick and had to stay with family and friends out of town with their dog. On February 11th the Landlord offered the Tenant a portable space heater. In order for the Tenant to receive the heater, they were required to sign a release form which indicated that the Tenant would be charged \$100.00 if the heater was damaged or the Tenant misused the appliance.
12. Although it is not uncommon for a boiler to eventually fail due to its useful life expectancy, in the current case, I find that the Landlord was well aware of the maintenance deficiencies with the Boiler since at least 2019 when a property standards order had been issued regarding it. Furthermore, the investigation of the boiler fire resulted in a finding that the fire was caused due to the maintenance deficiency. The Landlord provided no evidence

that regular maintenance was performed on the boiler or that there was any contingency plan in place regarding the boiler, despite that the Landlords knowledge of the property standards report. The Landlords evidence was that they would maintain the boiler once in the fall before they fired it up for the season.

13. On February 28, 2021 there was also no dispute that there was a carbon monoxide leak in the building which required the fire department to attend the property. I am not satisfied that the Landlord kept the Tenants informed of the issue regarding the leak or regarding the boiler fire and heat issue in general. It was the Tenant's advocate, Emina Gamulin, that continued to follow up with the Landlord and they received little to no updates regarding the state of the heat or whether they should be concerned about carbon monoxide leaking into their units. This caused the Tenant to be fearful for their safety, especially during the Covid pandemic.
14. I therefore find that the Landlord breached their maintenance obligations by failing to maintain the boiler in the residential complex which caused the Tenant to be without heat and then to experience intermittent issues with the heat. I also find that the Landlord substantially interfered with the reasonable enjoyment of the rental unit on this basis and also on the basis that the Landlord failed to provide the Tenant with updates and expectations for the issue with the heat, the pipe sounds and the carbon monoxide leak. I also find the Landlords demand to have the Tenants sign an agreement that they would reimburse the Landlord \$100.00 if the heater was damaged or not returned a substantial interference.
15. The Landlord had a positive duty to provide the Tenant with adequate heat without attempting to charge additional fees to the Tenant for their own faulty heat issue. Since the Landlord ought to have been aware of the imminent failure of the boiler and took no action to prevent it, I find that the Tenant is entitled to a 50% abatement for the period of February 11, 2021 to March 12, 2021 when the heat was finally restored in the amount of \$561.48. This abatement also encompasses the issue with the boiler fire and the carbon monoxide leak.
16. The Tenant requested a 100% abatement for this period, however, the Tenant still had the full use of their rental unit during the heat interruption and the Tenant did have intermittent heat.

#### Water shut offs

17. The Tenant testified that there were a total of 33 water shut offs between March of 2020 to July of 2022 when the matter was first heard. Some of the water shut offs were planned with notice and others were turned off on the basis of emergencies. The Tenant submitted copies of the water shut off notices provided by the Landlord where the water was shut off with at least some notice. There were 17 notices in total.
18. The Tenant testified that the water would be shut off all day long and that they had to ensure they had water during this time. They also had to cancel appointments and keep buckets of water handy and water bottles. There was a time when the water was shut off for 2 full days and overnight and the Landlord did nothing to provide the Tenant an explanation for the water shut off or any sort of accommodation regarding not having water for the two days. However, aside from the notice copies provided by the Tenant, the Tenant could not recall any other specific date that the water was off.

19. I do not find it unreasonable that the Landlord needs to shut the water off to the entire building on occasion as a result of the building being old and not having individual shut offs in each unit. The Landlords evidence was that when a unit would become vacant, they would ensure there was a shut off valve put in the unit for future use. They have a plan in place to reduce the amount of water shut offs required for the entire building.
20. According to the Tenants evidence, the water was shut off a total of 6 times between April 29, 2021 to May 19, 2021. Two of the notices indicate the water would be off for 2 consecutive days between the hours of 9:00am to 5:00pm. The Landlord failed to provide a reasonable explanation for the water being shut off for this period in time.
21. The Tenant requested \$100.00 in compensation for each of the 33 days that the water was shut off to their unit. However, I find that an abatement 50% per day for the 6 water shut offs between April 29th to May 18th appropriate under the circumstances for a total of \$168.45. Since the Tenant did not provide specific dates regarding the other shut offs outside of the notices, I am unable to determine that the water shut offs constitute substantial interference with the Tenants reasonable enjoyment of the rental unit beyond the period between April 29, 2021 to May 18, 2021.
22. The Tenant is entitled to a total abatement of rent of \$1,237.21. This amount will be deducted from the amount owing to the Landlord.
23. The Landlord collected a rent deposit of \$1,000.00 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.
24. The Landlord has not paid the Tenant annual interest on the last month's rent deposit which they are required to do. Therefore, the Tenant is entitled to interest on their deposit in the amount of \$130.14 for the period of September 1, 2013 to October 4, 2022.

### **Section 83 Considerations**

25. I am not satisfied that the Landlord put any effort into negotiating a payment plan with the Tenant as they were required to do under subsection 83(6) of the Act.
26. The Tenant is currently self employed as a tattoo artist and the Covid pandemic impacted the Tenant over a period of 11 months that they were unable to provide services. The Tenant proposed a payment plan of \$400-\$500 per month in addition to the monthly rent until they can get more financially secure.
27. The Tenant had reached out to the Landlord collectively with other tenants in order to negotiate a payment plan for the arrears, however, the Landlord refused to respond to the Tenants request and demanded that they make individual communications to the Landlord.
28. The Tenant has lived in the rental unit since 2013.
29. The Tenant requested that the Board not consider a payment plan under section 78 on the basis that it would be unfair to the Tenant based on the amount of maintenance issues and lack of responsiveness of the Landlord.
30. The Landlord failed to submit any evidence in closing regarding the Tenant's request and otherwise did not make submissions at the hearing how it would be unfair for the Landlord.

However, all of the issues complained of by the Tenant had not been an ongoing issue as of the hearing date and despite the abatement, the arrears of rent are quite substantial.

31. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

**It is ordered that:**

1. The Tenant is entitled to a total rent abatement of \$1,237.21. This will be applied against the outstanding arrears of rent.
2. The Tenant shall pay to the Landlord \$22,864.43. This amount includes rent arrears for the period ending October 31, 2022 (\$24,045.78), less the interest on the rent deposit (\$130.14), less the abatement (\$1,237.21) and plus the filing fee cost (\$186.00).
3. The Tenant shall pay to the Landlord the amount set out in paragraph 2 in accordance with the following schedule:
  - a) \$400.00 on or by the first day of each month starting on May 1, 2023 and continuing until the rent arrears and costs are paid in full by the Tenant.
4. The Tenant shall also pay to the Landlord new rent in full and on the first day of each corresponding month starting May 1, 2023 and until the arrears are paid in full.
5. If the Tenant fails to make any one of the payments in accordance with paragraphs 3 and 4 of this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenant to the Landlord pursuant to paragraph 2 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after October 31, 2022.

**April 17, 2023**  
**Date Issued**

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 Terri van Huisstede  
 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.