



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

**Citation:** Elm Place Inc. v Sopha, 2022 ONLTB 11558

**Date:** 2022-11-10

**File Number:** LTB-L-017609-22

**In the matter of:** 2106-701 Don Mills Road  
East York, ON M3C 1R9

**Between:** Elm Place Inc. Landlord

**And**

Cheyenne Edwards Sopha Tenants  
Heather Eliza Newby  
Norrian Uzezie Morris

Elm Place Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Cheyenne Edwards Sopha, Heather Eliza Newby and Norrian Uzezie Morris (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on October 11, 2022.

The Landlord's Legal Representative Sabrina Sciulli and the Landlord's agent Andrea Jones ('AT') appeared on behalf of the Landlord. The Tenants Norrian Uzezie Morris and Cheyenne Edwards-Sopha attended the hearing on behalf of the Tenants.

**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. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,250.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$73.97. This amount is calculated as follows: \$2,250.00 x 12, divided by 365 days.
5. The Tenants have paid \$14,625.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$3,320.00. The Tenants testified that they had paid an additional \$1,125.00 towards the arrears by the date of the hearing however, the Landlord was unaware of this payment and the Tenants were unable to provide evidence of the payment at the hearing. Should the payment have been made, it should be applied accordingly to the total arrears owing.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,250.00 from the Tenants 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.
9. Interest on the rent deposit, in the amount of \$21.01 is owing to the Tenants for the period from January 1, 2022 to October 11, 2022.

### *Section 82 Issues – Rent Forgiveness*

10. On October 4, 2022, the Tenants had filed with the Board a list of issues they intended to raise with respect to a requested rent abatement they are seeking pursuant to s. 82 of the *Residential Tenancies Act, 2006* (the 'Act').
11. A copy of the rental application was entered into evidence that outlined that the unit was required for December 17, 2021, and that the term of the tenancy was to begin on January 1, 2022. The Tenants testified that based on the condition of the unit that on January 7, 2022, they requested from the Landlord's Property Manager to delay their occupation of the unit until February 1, 2022.
12. The Tenants testified that when they went to occupy the unit in early January, they had discovered various issues including missing outlet covers, balcony doors that did not lock, mould, the placement of the radiator, and a broken window. An e-mail dated January 10, 2022 was entered into evidence that detailed a list of the Tenants' maintenance issues.
13. As the Tenants did not move in until February 1, 2022, they started doing their own work on the unit between January 17 and 19, 2022, which included painting, filling holes in the walls and cleaning. They also testified that they had spoke with the Landlord's Property Manager and testified that they were promised that their rent for January would not be owed. As such, the Tenants did not pay the rent for the month of February 2022.
14. The Tenants started to receive notices about the missed rent and when they inquired about same to the Property Manager, they were told that the notices were just a formality and that it should be cleared up in a couple of days. After the Tenants received another notice, they inquired again with the Landlord's head office but were advised that the rent was owed and was never forgiven by the Landlord.
15. The Tenants submitted that they should be forgiven this one month's rent as the Landlord's Property Manager had told them the month of January would be forgiven and that they shouldn't be responsible for the miscommunication amongst the Landlord's team.
16. AT testified that she is the Regional Property Manager for the Landlord. AT testified that the Tenants wanted the unit for January 1, 2022 and were provided the unit for that date. The Tenants agreed that they had paid the rent for the month of January 2022 and the last month's rent deposit prior to January 1, 2022.
17. AT testified that the Tenants agreed to accept the unit on an "as is" basis, as the prior tenant was only vacating just 2 to 3 weeks prior to the Tenants taking possession, and that the Tenants wanted the unit for a reduced rental cost for the month of December as a result.

18. Having reviewed the rental application that was entered into evidence and the evidence of both parties, I do not find that the Tenants are owed a month of rent due to their having not moved into the unit until February 1, 2022.
19. The rental application outlines that the tenancy is to commence on January 1, 2022. Further, the "Suite Preparation" portion of the application does not contemplate any rent abatement as a result of the issues that were negotiated in the rental application.
20. While certainly frustrating and likely confusing for the Tenants, the Landlord never formally agreed in writing to forgive any rent as a result of the Tenants not occupying the unit until February 2022. The Tenants had possession of the unit by January 1, 2022 and even completed their own work in the unit during that month. As such, on a balance of probabilities, I am not satisfied that the Tenants are owed a month of rent based on this issue.

### *Maintenance Issues*

21. The Tenants allege that the Landlord failed to maintain the unit in accordance with s. 20(1) of the Act.
22. The Tenants allege issues with the chipping in the bathtub. This issue was mentioned to the Landlord in the Tenant's January 10, 2022 e-mail. As well, maintenance request forms dated March 25 and July 5, 2022 were entered into evidence that outlined this request. The Tenants testified that this issue has not been resolved.
23. The Tenants allege that the kitchen ceiling was also chipped. A photograph of this issue was entered into evidence and this issue was included in the Tenant's July 5, 2022 maintenance request form. The Tenants claim that they cannot use the burner on the stove and that this issue remains unresolved.
24. The Tenants claimed that there is mould under their flooring however the Tenants testified that the Landlord did resolve this issue. The Tenants testified that there was still mould behind the toilets that they had to resolve themselves. A picture of the floor was entered into evidence.
25. The Tenants allege that they do not have a balcony screen on one of their three balcony doors. This issue was raised with the Landlord in the Tenants' maintenance request forms from March 25, April 4, and July 5, 2022. The Tenants were told that they required a new frame before the screen could be installed. The Tenants testified that this issue does remain unresolved.
26. The Tenants alleged that the sinks leaked in both of the unit's bathrooms. The Tenant testified that one sink was resolved after 2 or 3 work orders. This issue was raised with the Landlord in the Tenants' maintenance request form from April 4, 2022. The Landlord entered into evidence work orders from March 15 and April 28, 2022 outlining that the water damage under the sink in both bathrooms had been inspected and repaired. The Tenants allege that the sinks still leak.
27. The Tenants allege that the radiators in the unit were inadequate to properly heat the unit. This issue was raised with the Landlord by way of a maintenance request form dated

February 1, 2022. Entered into evidence was a work order dated February 16, 2022 showing that this issue was resolved. The Tenants testified that the issue persists.

28. The Tenants allege issues with the kitchen cupboards. A photograph was entered into evidence. The Tenants allege that the cupboard board was removed and held with tape with nails sticking outside of it.
29. The Tenants allege issues with the glass in the solarium. The Tenants raised this issue with the Landlord in their March 8 and April 4, 2022 maintenance requests. The Landlord's contractor inspected this issue in March of 2022, but the Tenants allege that this issue is still unresolved.
30. The Tenants also alleged that the bathroom fans in both bathrooms are not working properly. This issue is only mentioned in the contractor's notes portion of the Tenant's March 8, 2022 maintenance request form. The Tenants testified that the Landlord advised them the building is old and that this issue cannot be fixed. The Tenants allege the lack of working fans is causing a build-up of mould, but no evidence was led to support that assertion.
31. While the Tenants testified that they had agreed to move into the unit "as is", they testified that they did not fully understand what that meant and did not believe the unit would contain the alleged safety issues the Tenants state were present in the unit when they took occupation of same on January 1, 2022. The Tenants are seeking a 20% rent abatement for the months of February until October, 2022.
32. The Landlords entered into evidence various maintenance requests and work orders that they had completed as a result of said requests from February 1, 2022 until June 17, 2022.
33. AT testified that the Tenants had agreed to rent the unit on an "as is" basis, which included painting of the unit that would have to be completed after the Tenants took possession of the unit. AT testified that the Landlord was aware of the potential issues and agreed that they were still required to maintain the unit in accordance with the Act however, dealing with COVID-19 restrictions and a lack of staff hindered the Landlord's ability to respond in a timely manner. As well, the Landlords did not have an adequate amount of time between the vacation of the previous tenant and the commencement of the Tenants' new tenancy to adequately prepare the unit to their standards.
34. AT testified that her property management company had just taken over the building and that she had been dealing with a large backlog of maintenance requests. She testified that she prioritized inspections by staff and would hire outside contractors where issues were warranted an immediate resolution.
35. AT testified that the Landlord prioritized issues that were time sensitive and issues that could be considered health hazards. Having reviewed the evidence presented by both parties, I am satisfied that the Landlord inspected and addressed the more pressing issues that were requested by the Tenants and not raised in this hearing.
36. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the Board should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably

in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

37. With respect to the issue of the bathtub chipping, I find on a balance of probabilities that the Landlord has failed to provide evidence of any inspection or remediation of this issue and find that the issue is still outstanding.
38. With respect to the issue of the kitchen ceiling, I find on a balance of probabilities that the Landlord has failed to provide evidence of any inspection or remediation of this issue and find that the issue is still outstanding.
39. With respect to the flooring issue and the alleged mould, I am not satisfied on a balance of probabilities that the evidence procured by the Tenants shows that this is a mould issue, or a maintenance issue and this aspect of the Tenant's claim is dismissed.
40. With respect to the issue of the balcony screen, I find on a balance of probabilities that the Landlord has inspected this issue and determined that a new frame is required prior to a new screen being installed. This process has yet to start, likely due to the prioritization of the other issues. That said, on a balance of probabilities I find that the Landlord has yet to properly address this issue in a timely manner.
41. With respect to the issue of the bathroom sinks, the Tenants raised the issues with the Landlord and the Landlord had their contractor resolve the issue on April 28, 2022. While the Tenants testified that the issue persists, no further maintenance requests subsequent to that date were entered into evidence. As such, I find on a balance of probabilities that the Landlord adequately addressed this issue.
42. With respect to the issue with the radiators, the Tenants allege the issue persists even after the Landlord's contractor inspected and addressed the issue on February 16, 2022. While the Tenants testified that the issue persists, no further maintenance requests subsequent to that date were entered into evidence. As such, I find on a balance of probabilities that the Landlord adequately addressed this issue.
43. With respect to the kitchen cupboards, no request for maintenance was entered into evidence from the Tenants with respect to this issue and I am not satisfied that the Tenants properly raised this issue with the Landlord ahead of the hearing.
44. With respect to the issue of the solarium window, I find on a balance of probabilities that the Landlord has failed to provide evidence of any remediation of this issue and find that the issue is still outstanding.
45. While the bathroom fan issue persists, the Landlord had told the Tenants that the building was old and that the fans could not be repaired as a result. I have not heard any evidence why that might have been the case, nor do I find that adequate evidence has been led by the Tenants showing that the lack of bathroom fans is the cause of mould in their bathrooms. That said, the Tenants never submitted any maintenance requests for this issue at all and the only place this issue was noted was by the Landlord's contractor from their March 8, 2022 inspection. As such, I am not satisfied that the Tenants properly raised this issue with the Landlord.
46. As such, on a balance of probabilities I am satisfied that the Landlord has failed to inspect and/or properly address the issues alleged by the Tenant with respect to the bathtub, the

kitchen ceiling, the balcony screen and the solarium window as required under s. 20(1) of the Act.

47. While the Tenants are seeking a 20% rent abatement from February until October with respect to their issues, considering that I have found just the four issues to remain outstanding, the rent abatement will be adjusted to 2% per month from February until October for the bathtub, 5% per month from August until October for the kitchen ceiling, 2% for the balcony screen from April until October and 2% for the solarium window from April until October for a total of \$1,372.50.
48. The Tenants have been paying their rent and had not paid for the month of February 2022 as they felt they did not owe the rent for that month. As such, 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 December 31, 2022 pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

49. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
50. **The Tenants may void this order and continue the tenancy by paying to the Landlord:**
1. \$4,383.50 if the payment is made on or before November 30, 2022. See Schedule 1 for the calculation of the amount owing.
- OR**
2. \$6,653.50 if the payment is made on or before December 31, 2022. See Schedule 1 for the calculation of the amount owing.
51. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants have paid the full amount owing as ordered plus any additional rent that became due after December 31, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.
52. **If the Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before December 31, 2022.**
53. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$(1,573.84). This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.
54. The Tenants shall also pay the Landlord compensation of \$73.97 per day for the use of the unit starting October 12, 2022 until the date the Tenants moves out of the unit.

55. If the Tenants do not pay the Landlord the full amount owing on or before November 21, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 22, 2022 at 4.00% annually on the balance outstanding.
56. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$1,573.84. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenants \$73.97 per day for compensation for the use of the unit starting October 12, 2022 until the date the Tenants move out of the unit.
57. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
58. If the unit is not vacated on or before December 31, 2022, then starting January 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
59. 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 January 1, 2023.

**November 10, 2022**  
**Date Issued**

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Jagger Benham  
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 July 1, 2023 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before November 30, 2022**

Rent Owing To November 30, 2022	\$20,195.00
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$14,625.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$1,372.50
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$4,383.50</b>

**B. Amount the Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before December 31, 2022**

Rent Owing To December 31, 2022	\$22,445.00
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$14,625.00
<b>Less</b> the amount the Landlord owes the Tenants for an{abatement/rebate}	- \$1,372.50
<b>Total the Tenants must pay to continue the tenancy</b>	<b>\$6,633.50</b>

**C. Amount the Tenants must pay if the tenancy is terminated**

Rent Owing To Hearing Date	\$16,508.67
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenants paid to the Landlord since the application was filed	- \$14,625.00
<b>Less</b> the amount of the last month's rent deposit	- \$2,250.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$21.01
<b>Less</b> the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$1,372.50
<b>Total amount owing to the Landlord</b>	<b>\$(1,573.84)</b>
Plus daily compensation owing for each day of occupation starting October 12, 2022	\$73.97 (per day)



