



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

Citation: Eplco Realty Group Ltd. v Vuletic, 2024 ONLTB 10867

Date: 2024-02-13

File Number: LTB-L-035223-23

In the matter of: 712, 200 BALLIOL ST
TORONTO ON M4S1C6

Between: Eplco Realty Group Ltd. Landlord

and

Marko Vuletic
Anie Laureta Abiera Tenants

2024 ONLTB 10867 (CanLII)

Eplco Realty Group Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Marko Vuletic and Anie Laureta Abiera (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenants or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on January 30, 2024.

The Landlord's Legal Representative, Jason Paine, the Tenants' Legal Representative, Karly Wilson, and the Tenants attended the hearing. Beth Komito-Gottlieb ('BG'), Tina More ('TM') and Carolina Lopez ('CL') testified on behalf of the Landlord.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.

2. The Landlord served the Tenants with an N5 Notice of Termination ('N5 Notice') alleging that the Tenants substantially interfered with the reasonable enjoyment or another lawful right, privilege or interest of the Landlord or another tenant pursuant to section 64(1) of the *Residential Tenancies Act, 2006* (the "Act").
3. The Landlord also served the Tenants with an N6 Notice of Termination ('N6 Notice') alleging that the Tenants committed an illegal act pursuant to section 61(1) of the Act.

N6 Notice

4. The Landlord served the Tenants with an N6 Notice to End your Tenancy For Illegal Acts ('N6 Notice') by placing a copy of the N6 Notice under the door of the rental unit or through a mail slot in the door on April 21, 2023. The termination date in the N6 Notice was May 18, 2023. I am satisfied that the N6 Notice was properly served and complied with section 61 of the Act.
5. The N6 Notice alleges that the Tenant, Marco Vuletic ('MV'), allowed their dog to roam freely about the property in contravention of the City of Toronto Municipal Code By-Law. BG testified that on April 14, 2023, while outside with her own dog, she was the Tenants' dog running off leash towards her and her dog.
6. The Tenants did not dispute that they had their dog off leash. MV testified that he has been told by management for the Landlord on several occasions that as long as the dog is not aggressive, they can be off leash on the property. He was told the same thing again by the current superintendent at the building approximately one month prior to the hearing.
7. Per the N6 Notice, the City of Toronto Municipal Code requires that all dogs must be on a leash and in the care and control of a person, unless consent is given by the person owning the property where the dog is found. The Landlord was not present to provide evidence with respect to the Tenant's testimony that he was given consent to have his dog off leash, so I prefer the evidence of the Tenant.
8. Based on the evidence before me, I find, on a balance of probabilities, that the Tenants had the consent of the Landlord to have their dog off leash and therefore did not contravene the local by-law. I therefore find that the Tenants did not commit an illegal act by having their dog off leash at the residential complex and this portion of the Landlord's application shall be dismissed.

N5 Notice

9. The Landlord served the Tenants with an N5 Notice to End your Tenancy For Interfering with Others, Damage or Overcrowding ('N5 Notice') by placing a copy of the N5 under the door of the rental unit or through a mail slot in the door on April 11, 2023. The termination date in the N5 Notice was May 10, 2023. I am satisfied that the first N5 Notice was properly served and complied with section 64 of the Act.

10. The N5 Notice alleges substantial interference with another tenant's or the landlord's reasonable enjoyment of the premises and/or lawful rights, privileges, or interests by causing excessive noise and smoking marijuana in the rental unit and disturbed neighbouring tenants on several days between August 17, 2022 and April 7, 2023. The N5 Notice gave the Tenants an opportunity to void the notice within 7 days by refraining from the conduct complained of in the notice.

Dog Barking

11. TM lives next door to the Tenants. She testified that she constantly hears the Tenants' dog barking, and it has been ongoing since she moved into the rental unit. She testified that when the dog barks it is not for a long period of time, it usually lasts for a minute or so and sometimes it is just a single bark. She testified that the dog has an aggressive bark, so it is startling.
12. CL lives in the unit above the Tenants' unit. She testified that she also hears the Tenants' dog barking frequently. She testified that she has been awoken by the Tenants' dog barking, and the barking usually lasts for three to four minutes before it subsides. She testified that the dog barking often impedes her ability to enjoy her balcony in the summer and disrupts her quiet tie. She did not provide any dates or times of when the Tenants' dog barking awoke her or disturbed her.
13. The Tenants denied that their dog barks excessively or for any extended periods of time. MV testified that while their dog does bark, their dog is trained to stop on command, and they do their best to ensure they stop the barking as soon as it starts. The Tenants submitted a video showing MV instructing the dog to stop barking at his command in support of this statement.
14. The Tenant, Anie Abiera ('AA') testified that she is a light sleeper and typically goes to sleep around 11:30pm as she has to work the following morning. She testified that she has not been woken up during the night by their dog barking. She testified that she hears other tenants' dogs barking, and she hears it more often when they have the windows open. She is unsure of the source of the barking, but she believes the tenant above them and in front of them both have dogs.
15. Considering all of the evidence, I cannot find, on a balance of probabilities, that the Tenants' dog barking caused excessive noise in their unit, let alone noise that constitutes substantial interference. It was undisputed that there are many dogs in the residential complex, and several dogs in the surrounding units to this rental unit. Both witnesses attribute the barking to the Tenants' dog based on the size of the dog and the fact that the other units have smaller dogs but there was no investigation to determine that the barking is caused by the Tenants' dog.
16. Additionally, neither witness provided testimony as to how the barking impacted their ability to enjoy their units on the specific dates alleged in the N5 Notice for me to determine that

the disturbance on those dates is substantial in nature. Both witnesses testified that the barking does not last for extended periods of time and CL confirmed that she has heard MV instructing the dog to cease barking when it does. Therefore, I am not satisfied that the Tenants' dog barking substantially interfered with another tenants' reasonable enjoyment of their unit and this portion of the Landlord's application shall be dismissed.

Smoking Marijuana

17. TM testified that the MV smokes marijuana in the rental unit and on the balcony of the rental unit and the smoke emanates from the unit into hers. She testified that she has allergies, and the smoke causes a foul odour in her unit which disturbs her.
18. CL testified that she also smells marijuana smoke in her unit several times throughout the day and the smell lingers in her unit for quite some time. She testified that the smell is strongest in her kitchen and generally in the back part of her apartment. She testified that although she has not seen MV smoking, when she has been on her balcony, she has seen the smoke coming from below her balcony.
19. The Tenants denied that they smoke in the rental unit or on the balcony. AA testified that she does not smoke but she is aware that both of her neighbours smoke. She testified that she has a collapsed lung so second-hand smoke would be harmful to her condition. She testified that she also smells marijuana smoke in her kitchen and in the rental unit when the windows are open, but she is unsure of where the smell comes from.
20. MV testified that he does use marijuana however, he consumes it using a machine that does not burn the marijuana or emit smoke. He testified that the tenant in the unit below him smokes and has since the Tenants moved in.
21. Considering all of the evidence, I cannot find, on a balance of probabilities, that the Tenants have been smoking marijuana in their rental unit. Neither witness has actually seen either of the Tenants smoking marijuana. While CL testified that the smoke was coming from below her balcony, it is reasonable to conclude that it is possible that the smoke is travelling up from a lower unit than this Tenants' unit. In these circumstances, the Landlord had an obligation to investigate the complaints as they happened to verify that the smoke was coming from the Tenants' unit. The Landlord failed to take any steps to investigate the source of the smoke, and I am not satisfied based on TM and CL's evidence in this case, especially considering the Tenants' deny smoking in the unit or on the balcony, and the Landlord was not present to give evidence themselves of the Tenants smoking.
22. Even if I did find that the Tenants were the cause of the marijuana smoke, I am not satisfied on a balance of probabilities that the Landlord has proven that this substantially interfered with another tenants' reasonable enjoyment of their unit or a lawful right, privilege or interest of the Landlord.
23. The Landlord did not submit any evidence that it is a term of the lease that the Tenants are not permitted to smoke in the rental unit. CL testified that she smells the smoke but did not

provide any evidence as to how the marijuana smoke impacts her or substantially interferes with her reasonable enjoyment. While TM testified that she has allergies, she did not provide any details of those allergies or evidence to support that those allergies are caused by or exasperated by marijuana smoke.

24. Considering all of the evidence, I am not satisfied that even if the marijuana smoke is caused by the Tenants, that it has substantially interfered with another tenants' reasonable enjoyment of their unit or a lawful right, privilege or interest of the Landlord.

Excessive Noise – banging, stomping, scraping

25. TM testified that she has been disturbed by noises from the Tenants' since she moved in, approximately 20 months ago. She testified that she has continued to make complaints since the N5 notice was served. TM testified that the kinds of noises she hears include the sounds of stomping, scraping, banging on the walls, banging of a pipe, and slamming noises. She has kept a noise log and the noises occur at all times throughout the day and night, sometimes waking her up while she is sleeping. She testified that the noises often happen in response to what she is doing in her unit at the time, which she believes is intended to disturb her so she stops whatever it is she is doing at that time.
26. CL testified that she hears noises similar to the noise TM testified to hearing. She testified that she has had issues with noise since she moved into the rental unit in June 2021. She testified that she sometimes has to put on headphones while she is watching television because the noise is too disturbing.
27. The Tenants have lived in the rental unit for 7 years. At the hearing, both Tenants denied making any noise or doing anything to deliberately create loud noise. They have foam padding all throughout the house to minimize noise, especially from their dog. The photographs submitted by the Tenants confirm this. The Tenants testified that they have also heard similar noise but are unsure of the source of the noise. The Tenants submitted a sound recording of similar noise they heard which sounded like a banging noise.
28. Considering all of the evidence, I cannot find, on a balance of probabilities, that the Tenants have made excessive noise in their unit, let alone noise that constitutes substantial interference. Every allegation in the N5 Notice and every complaint the Landlord has ever received has come from TM and CL. The Tenants have lived in the unit for 7 years, but the complaints only started when TM and CL moved into the building. That does not mean, necessarily, that TM and CL's testimony is not reliable. However, in these circumstances the Landlord had an obligation to investigate the complaints as they happened to verify that the noises are coming from the Tenants' unit and that they are as loud and disturbing as reported by TM and CL. Whether noise is excessive or disturbing can be a subjective evaluation, and I am not satisfied based on TM and CL's evidence in this case, especially considering the Tenants deny making excessive noise, the Tenants have heard similar noises coming from other units, and the Landlord did not attend to provide evidence themselves of the Tenants being noisy.

29. Even if I did find that the noise TM and CL testified to hearing was excessive, I am not satisfied on a balance of probabilities that the Landlord has proven that the noise is coming from the Tenants' unit.
30. AA testified that she works during the day and is not home and MV testified that he sleeps or plays video games all day. He testified that he has PTSD and his PTSD is triggered by loud noise. This statement was supported by a medical note submitted by the Tenants.
31. Considering all of the evidence, I find on a balance of probabilities, that even if the noise heard by TM and CL was excessive, the Tenants are not the source of that noise.
32. For the reasons above, this portion of the Landlord's application shall be dismissed.

Excessive Noise – yelling and screaming

33. It was undisputed that MV was yelling and screaming in the rental unit on the dates set out in the N5 Notice. CL testified that one of the incidents in 2023 was serious enough that she was concerned for the other Tenant's safety, so she called the police.

Section 83

34. Having considered all of the circumstances, I find that it would not be unfair to refuse to grant the application pursuant to section 83(1) of the Act. I say this for the following reasons.
35. There is no dispute that MV was yelling and screaming in the rental unit, and I acknowledge that one of the incidents was intense in nature, triggering a neighbouring tenant to contact police. However, MV testified that the yelling and screaming is directly related to his disability and specifically a stressor in his life at that time that triggered the state of distress. AA testified that during that time, MV also underwent a change in medication, which required an adjustment period.
36. The last incident I heard any evidence of was in April 2023, 9 months ago. I heard no evidence that there were any incidents prior to March 2023, even though the Tenants have lived there for 7 years. MV is doing his best to address the issue, he acknowledged it, and underwent a treatment change. In my view, there is no undue hardship to the other tenants to have to tolerate some yelling.
37. In my view, it would not be appropriate to impose a condition that could lead to eviction without notice because these incidents are not serious enough to warrant that, especially in the context of MV's disability.
38. As a result of all of the above, the Landlord's application shall be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

February 13, 2024

Date Issued

Candace Aboussafy

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.