



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Estifanos v Harrison, 2024 ONLTB 16353

Date: 2024-03-08

File Number: LTB-L-073900-22-RV

In the matter of: 5, 15 VICTORIA AVE N
HAMILTON ON L8L5E2

Between: Yukunu Estifanos Landlord

And

Lance Harrison Tenant

Review Order

Yukunu Estifanos (the 'Landlord') applied for an order to terminate the tenancy and evict Lance Harrison (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant 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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard on July 17, 2023 and resolved by order LTB-L-073900-22 issued on August 4, 2023.

On September 1, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On September 5, 2023 interim order LTB-L-073900-22-RV-IN was issued, staying the order issued on August 4, 2023.

The request to review was heard by videoconference on October 24, 2023. On November 3, 2023, interim order LTB-L-073900-22-RV-IN2 was issued granting the request to review and directing that the Landlord's application be heard *de novo*.

This application was heard *de novo* by videoconference on December 5, 2023 and January 25, 2024.

The Landlord's legal representative, Francisco Gomez ('FG'), and the Tenant attended the hearing on both days. The Landlord's witness, Paul Elshoff ('PE'), attended the hearing on December 5, 2023.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy, but in all the circumstances it is not unfair to grant relief from eviction, subject to conditions.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On November 14, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served on November 19, 2022. The N5 notice alleges that on 22 specific dates between September 19, 2022 and November 3, 2022 excessive noise was emanating from the rental unit.

Landlord's Evidence – Paul Elshoff

4. PE said he is a tenant in the same building as the Tenant. PE lives on the second level and the Tenant lives on the main level. PE said there is some overlap in the two units' footprints.
5. PE said that he has made complaints to the Landlord about excessive noise emanating from the Tenant's rental unit. He said that initially the nature of the excessive noise was mostly someone playing guitar in the Tenant's rental unit, but later also often included loud television and music from a stereo.
6. PE said he knows the noise is coming from the rental unit because it can be heard very clearly when walking up the stairs in the building, and he knows that the Tenant has an electric guitar and sound system in his rental unit.
7. PE confirmed that he made all of the complaints that are identified in the N5 notices. He said that he requested that the Landlord address the excessive noise issue and that he also filled out a T2 application about this issue.
8. PE entered as evidence a letter that he sent to the Landlord on November 3, 2022 (DOC1633189, pp. 11-13). In this letter, PE complains that there was excessive noise coming from the rental unit on each date identified in the N5 notice, and described the

excessive noise as being caused by "... both paying his guitar and sound system for his music".

9. PE said that on each of these 22 days between September 19, 2022 and November 3, 2022, there was excessive noise coming from the rental unit. In the letter, PE described the noise as "intolerable" and wrote that it "... has disturbed and disrupted my reasonable enjoyment of my rental unit".
10. At the hearing, PE said that noise emanating from the rental unit impacts his anxiety and depression. He said he could be woken up at any time, and that when the noise is ongoing it is difficult to even talk on the phone or have a guest over in person.
11. PE said that the excessive noise did not abate and that it continued until the end of September 2023. This includes during the N5 remedy period from November 20-26, 2023. PE said he had not been in his unit since September 30, 2023 due to a separate issue. PE's tenancy continues despite his absence.
12. On cross-examination, the Tenant said he was at work all day in September 2022, and asked PE how the noise was this bad when the Tenant was not home. PE said that if it was not the Tenant, it must have been someone else in the rental unit creating the noise.

Tenant's Evidence

13. The Tenant said that PE's complaints are fabricated. He also said that there are a total of 7 units in the building, and one can hear cars running by the building from inside his unit. He said there is "no insulation".
14. The Tenant said that in September 2022 he was at work every single day, and was working the night shift from 5:30 p.m. to 5:30 a.m. He said he would leave his rental unit at 4:00 p.m. and would not return home until about 7:00 a.m. or 8:00 a.m. He said he did this 7 days per week for the entire month of September 2022. The Tenant said no one else was in the rental unit.
15. I do note that many, but not all, of the times of PE's complaints are between 8:00 a.m. and 4:00 p.m.
16. The Tenant entered as evidence an Annual Pension Benefit Statement for the period ending December 31, 2022 (DOC-2357509, p. 4). According to this document, in September 2022, the Tenant worked a total of 246.5 hours in September 2022. This is more than 100 hours less than the Tenant would have worked if he worked 12 hour shifts every day in September ($30 \times 12 = 360.00$).
17. The Tenant said that the reason PE has not been at the building since September 2023 is because he was arrested for threatening to kill the Tenant.
18. The Tenant also presented a missed inspection card from OZA Inspections, dated July 17, 2023 (DOC-2357509, p. 9). The Tenant then suggested that this application was in

retaliation for the Tenant speaking with someone from OZA Inspections and telling them what was wrong with the building.

19. The Tenant said he was in Bobcaygeon from October 14-18, 2022, and was not home at all on those days. He said that “a girl with two dogs” would come to the rental unit on those days, but that no one plays his guitar because he is left-handed.
20. The Tenant also said that “the City” investigated twice, and the investigator from the City determined he was not making excessive noise. The Tenant did not present any documentation or communication from the City about this.
21. The Tenant said he plays his guitar in his unit, but it is not too loud and no one other than PE complains. He said the same about music he plays on his sound system.
22. The Tenant said he is over 60 years old, is a labourer, and should be retiring soon. He said if he is required to move, he would need at least 6 months to find new living accommodation. He said he could comply with a conditional order, but reiterated that no one except PE complains.
23. On cross-examination, the Tenant said he has 7 electric guitars and a sound system connected to an amplifier.
24. With respect to the work hour discrepancy in September 2022 noted above, the Tenant said he was also working somewhere else that month. There was no documentation presented to confirm this.
25. The Tenant denied having been asked in the past to lower the volume of his music by the Landlord. FG directed the Tenant to a text message included in the Tenant’s document book (DOC-2357509, p. 19). In this message, the Landlord is apparently telling the Tenant to lower the volume of his music on September 29, 2023. The Tenant said he did not know what this message meant. It said:

“Good evening Mr. Harrison please Play your music slow down please you don’t leave by your self I have another telant The leave in there today is Friday 29 September 2023, please come down have nice evening thanks from yukunu good night” (*sic*)

26. I accept that this message may have been confusing.

Law & Analysis

27. The N5 notice alleges that the Tenant has substantially interfered with another tenant’s reasonable enjoyment of their rental unit for all usual purposes. It was given under section 64 of the Act.
28. In section 64, the word “substantial” is used to qualify the type of interference covered. This means that that mere annoyances or trivial incidents are normally not covered and would not form a legitimate basis for a landlord to give an N5 notice to a tenant. The

section also uses the word “reasonable” to qualify the impact on the complaining landlord or tenant. This means that the standard the LTB must apply is not the particular landlord or tenant before the LTB, but rather the reasonable landlord or tenant in similar circumstances: *TST-55210-14*, 2014 CanLII 58631 (ON LTB), para 32.

29. This is the Landlord’s application, so the Landlord bears the burden of proof on a balance of probabilities. To prove a fact on a balance of probabilities there must always be sufficient clear, convincing, and cogent evidence of the fact: *F.H. v. McDougall*, 2008 SCC 53, para 46.
30. On all of the evidence before me, I am satisfied that the Tenant, or someone living with or visiting the Tenant, substantially interfered with PE’s reasonable enjoyment of his rental unit for all usual purposes as described in the N5 notice.
31. PE’s evidence was clear, convincing, and cogent. His complaints about excessive noise created by an electric guitar and a sound system are consistent with the Tenant’s evidence that he has 7 electric guitars and a sound system connected to an amplifier, and that he both plays his guitars and uses the sound system. The Tenant said he does not believe he plays them too loud, but he also made it clear that he does not think that the building has very good soundproofing.
32. The Tenant said he worked 12 hours per day 7 days per week in the month of September 2022, but the Tenant’s own documentary evidence did not support this. The Tenant said he worked elsewhere, in addition to the workplaces identified in his pension document, but there was no paystub or other document to confirm this, and no explanation as to why no such document was presented.
33. When the Tenant said he was in Bobcaygeon for four days in October 2022 he said someone else visited his unit at the time. Even if that person did not play the Tenant’s guitars, she could have used the sound system. PE’s evidence was based on a log created contemporaneously at the time he experienced excessive noise, and I accept his evidence that excessive noise was emanating from the rental unit at the times described in the N5 notice.
34. I accept that the noise created was more than a mere annoyance or trivial incident. Loud music or instrument use on isolated occasions may be considered trivial or a mere annoyance, but in my view, the persistence in this case makes it substantial on the standard of the reasonable tenant in similar circumstances.
35. I do not accept the Tenant’s argument that the application is retaliatory based on the Tenant speaking with an inspector. This is because the application was filed on December 3, 2022, but the Tenant’s evidence was that he met with the inspector around July 2023. The application could not have been in retaliation to an event that occurred after it was filed.
36. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. I accept PE’s evidence that the excessive noise continued during the

remedy period, and thereafter. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

37. I accept that the Tenant does not believe that his music or playing his guitar was too loud. I also accept that when living in multi-residential buildings, tenants and occupants must expect to hear some noise, including noises associated with normal everyday living. There is obviously some animosity between the Tenant and PE. Tenants of different units in multi-residential buildings do not have to like each other, but the relationships between tenants in these living situations ought to be marked by mutual civility and respect.
38. In this case, I accept that the Tenant's music and guitar playing have been at such a volume that they generate excessive noise that is beyond what can be considered noise associated with everyday living.
39. 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.
40. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. For a period of 12 months beginning on March 15, 2024, the Tenant shall not engage in, or permit anyone living with or visiting him to engage in, activities that generate excessive noise in the rental unit that substantially interfere with other tenants' reasonable enjoyment of their rental units for all usual purposes. This includes playing music on an electric guitar or sound system at an excessive volume.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall pay the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 19, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 20, 2024 at 7.00% annually on the balance outstanding.

March 8, 2024

Date Issued

Mark Melchers

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.