



**Order under Section 69 / 88.1
Residential Tenancies Act, 2006**

Citation: Dong v Tara, 2024 ONLTB 20737

Date: 2024-03-25

File Number: LTB-L-072821-23

In the matter of: BEDROOM 3, 35 DEEVALE RD
NORTH YORK ON M3M1Z2

Between: Thai Hoa Dong Landlords
Linh Nguyen

And

Vikas Tara Tenant

Thai Hoa Dong and Linh Nguyen (the 'Landlords') applied for an order to terminate the tenancy and evict Vikas Tara (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 Landlords or another tenant.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlords' reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on March 13, 2024.

The Landlords, the Landlords' legal representative Yunqiao Zhang, the Tenant and the Tenant's legal representative Ian Gardiner attended the hearing.

Determinations:

- As explained below, the Landlords have proven on a balance of probabilities some of the grounds for termination of the tenancy. However, the tenancy shall be preserved on the condition that the Tenant comply with the terms of this order as detailed below.
- The Tenant was in possession of the rental unit on the date the application was filed.
- The rental unit is a single bedroom in a house with eight other rooms.
- The lawful monthly rent is 800.00.

N5 Notice – Substantial Interference

5. On September 7, 2023, the Landlords gave the Tenant an N5 notice of termination. The notice of termination alleges that the Tenant: changed the lock at the residential complex without the Landlords permission, disabled the security system, illegally accessed a vacant room, installed blinds without permission, plays loud music and excessive noise and threatens other tenants.
6. Although the Tenant alleges that he did not receive copy of the N5 notice, based on the Landlords' submissions at the hearing, I am satisfied the Tenant was properly served the N5 notice as detailed in the Landlords' evidence and Certificate of Service.
7. The Landlords' disclosure included various communications, photographs, videos, lease agreement, reports and witness statements.
8. The Tenant did not provide the Landlord or the Board with disclosure as required as relied on his oral testimony.
9. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

Voiding Period:

10. Section 64(3) of the Residential Tenancies Act, 2006 (the 'Act') states the that a tenant can void an N5 Notice by stopping the activities or correcting the described behaviour within seven days of being served with notice. In this case, the seven-day voiding period is from September 8, 2023 to September 14, 2023.
11. In other words, to void the notice, the Tenant must “stop the conduct or activity” or “correct the omission” that substantially interfered with the Landlord's rights. What steps the Tenant takes to stop the conduct is up to the Tenant. The Board's N5 form states that “you have 7 days to stop the activities or correct the behaviour described.”
12. The Landlord said that although some of the issues that gave rise to the N5 notice has been voided, the Tenant continues to cause loud noise at the rental unit and harass other tenants. The Landlord reported the Tenant to police on September 9, 2023.
13. Based on the evidence before the Board, I find the Tenant, although voided some of the issues in the N5, continued to disrupt other tenants at the residential complex that led to the Landlord contacting the Police on September 9, 2023.

The Landlords' Evidence

14. It was the testimony of the Landlords that the Tenant had interfered with other tenants' and the Landlords' reasonable enjoyment of the residential complex by continued loud noise. The Landlord also submitted that the Tenant tampered with the security cameras and installed a blind on the main door without permission. The Tenant continuously harasses other tenants, he illegally changed the locks and locked the door between the lower and

upper units and gained access to a vacant room without permission and refused entry to the Landlord.

15. It was the Landlords' evidence that around September 2, 2023, the Tenant changed the lock of the main door to the residential complex and did not provide the PIN to the Landlords. Police attend the residential complex around September 3, 2023 where the Tenant confirmed he changed the lock. The Landlords said that the issue was remedied around September 7, 2023 when he installed the new lock.
16. The Landlord said that around September 5, 2023, the Tenant removed and destroyed the camera system at the residential complex and the Tenant did not restore or replace the camera. The Landlord installed new cameras around September 15, 2023.
17. With respect to the allegations pertaining to the lock between the lower and upper units, the installation of blinds on the main door and accessing the vacant room, I do not find the allegations rise to the level or substantial interference that warrant eviction.
18. With respect to the issue of prohibiting the Landlord from entering the rental unit, base on the evidence before the Board and on a balance of probabilities, I am not satisfied the Landlord, at all times, served proper notice of entry nor do I find the allegations rise to the level of substantial interference.
19. The central issues in dispute relate to noise complaints and allegations of harassment against the Tenant. The Landlords reviewed photographs, video and other documents at the hearing.
20. The Landlord relied on around four witness statement from various tenants. In the statements, the tenants complain of the Tenant's harassing and threatening behaviour, loud music and various issues related to the allegation in the N5 notice.
21. As explained at the hearing, it is well-established law that the Board, as a tribunal governed by the Statutory Powers Procedure Act ("SPPA"), may accept and consider hearsay evidence.
22. The courts have said that hearsay evidence is not to be treated as presumptively less reliable than direct evidence. In *Rex Diamond Mining v. Ontario Securities Commission*, 2010 ONSC 3926 (CanLII), the Court stated, at paragraph 4: "hearsay evidence is not, in law, necessarily less reliable than direct evidence"
23. However, I acknowledge that none of the authors of the witness statements were present at the hearing to be cross examined by the Landlords. The fact that the evidence is hearsay and not subject to cross-examination does effect the weight that it merits.
24. The Landlords said that the Tenant continues to be the source of noise complaints and harassment at the residential complex and he has lost tenants as a result and had to reimburse a tenant for rent. As a result, the Landlords seeks an immediate termination of the tenancy.
25. Based on the evidence before the Board, I am not satisfied that the Landlords have met the burden of proof with respect to the allegation of harassment. The witness statements contain little detail on specific allegations and the authors were not present at the hearing to provide testimony or be cross examined.

The Tenant's Evidence

26. It was the position of the Tenant that he gets along with the other tenants at the residential complex. He said that other tenants play loud music as well and the complaints from the neighbours cannot conclude that he is the source of the noise.
27. He said he is a student and also works evenings in a restaurant, often returning home after midnight.
28. The Tenant said that he did change the locking system after advising the Landlord of a defect and the Landlord did not fix the issue. After the Police intervention, he said he provided the Landlord with the PIN and the locking system was functional.
29. With respect to the security cameras, the Tenant acknowledged that he disabled the camera in the common kitchen as he felt it was an invasion of his privacy. In terms of the exterior cameras, he said they were enabled around September 3, 2023 when the Police advised him not to tamper with the cameras.. He said he has no knowledge of further camera issues.
30. It was the Tenant's evidence that around September 3, 2023, the Landlord, with around 5 people attended the rental unit, entered without notice and threatened to evict him. The Tenant said that he contacted the Police who advised him to contact the LTB.
31. The Tenant said that he installed removable blinds on the main door for shade and privacy.
32. The Tenant also questioned the authenticity of the witness statements.
33. It is the position of the Tenant that the Landlords did not provide sufficient evidence to support the claims in the application. He said that most of the allegations in the N5 were remedied promptly and therefore the application should be dismissed.

L2 Claim for Costs:

34. The final claim in the application is made by way of s.88.1 of the Act for out of pocket expenses the Landlords incurred for substantial interference. Specifically, the Landlord seeks costs for the replacement of the lock and security cameras and labour. The Landlords also seek cost to compensate for a returned rent payment to another tenant.
35. Section 88.1(4) limits recovery under section 88.1 to "reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of an interference" by the tenant. On the face of section 88.1, a successful claim is limited to a cash outlay by a landlord for conduct by a tenant that falls within the limits of the section.
36. The onus on this application rests with the Landlord.
37. The Landlords said he incurred costs to change the PIN lock to a standard locking system in the amount of \$88.60. Receipts provided.
38. The Landlords also claimed costs related to the purchase of new security cameras in the amount of \$180.09. Receipts provided. The Landlord seeks labour costs in the amount of

\$50.00.

39. The Landlords claimed an amount for rent that he returned to a vacating tenant in the amount of \$800.00. I find the Landlords led insufficient evidence to support the proposition that the tenant vacated as a result of the Tenant's behaviour.
40. Based on the evidence before the Board and on a balance of probabilities, I find the Landlords led insufficient evidence to support the claim that the actions of the Tenant led to the need for a new locking system or replacement of cameras. The Tenant testified that he provided the PIN to the Landlord and the lock was working so there was no need to change the lock. The Tenant also testified that the video cameras were functional after the Police advised the Tenant not to tamper with the cameras.
41. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true. Where, the evidence of the opposing party is as believable as that of the party bearing the burden of proof, that burden cannot be said to have been discharged.
42. Accordingly, I find the Landlord has not met the burden of proof with respect to the claims for compensation. In this case I prefer the evidence of the Tenant, that the locking system was functional and the Landlords did not provide sufficient proof that the cameras were damaged by the Tenant.

Relief from Eviction

43. The evidence before me establishes that the Tenant and/or his guests are routinely noisy and disruptive and this behaviour has a negative impact on the tenants' peaceful enjoyment of the residential complex.
44. Based on my findings above, I am satisfied that the Tenant has substantially interfered with the Landlord's reasonable enjoyment of the residential complex and substantially interfered with a lawful right, privilege or interest of the Landlord by playing loud music at the residential complex. While the Tenant may have voided some of the issues in the N5 notice, I am further satisfied that the Tenant did not void the N5 notice when he Landlord contacted the Police during the voiding period with regard to the Tenant's disruptive behaviour.
45. Additionally, I do not find the Landlords met the burden of proof to establish that the Tenant harassed others at the residential complex. In my view, the testimony of the Landlord and details in the witness statements were vague and inconclusive.
46. As explained at the hearing, termination of tenancy is a remedy of last resort and from an adjudicative standpoint, I do not find that the Landlords met the burden of proof to support the termination of this tenancy.
47. I considered that some of the issues were remedies and others, in my view, did not rise to a level that would constitute substantial such as the interior lock, blinds and kitchen

camera. I am satisfied, however, that when the Tenant plays loud music, it disrupts the reasonable enjoyment of other tenants.

48. 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.
49. As the Landlord was partially successful with the application, the Tenant shall compensate the Landlords for the cost to file the application in the amount of \$186.00.
50. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlords and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall not play loud music or cause excessive noise at the residential complex at a volume to disrupt the peaceful enjoyment of others at the residential complex.
3. If the Tenant fails to comply with paragraph 2 of this order, the Landlord may apply under section 78 of the Act, without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant. The Landlords must make this application no later than 30 days after the Tenant's breach of this order.
4. The Tenant shall pay to the Landlords \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlords the full amount owing on or before April 5, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 6, 2024 at 7.00% annually on the balance outstanding.

March 25, 2024

Date Issued

Dana Wren

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.