



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

Citation: Quadera Limited v Hamilton, 2024 ONLTB 62139

Date: 2024-08-27

File Number: LTB-L-026384-24

In the matter of: 101, 210 LELAND AVE S
THUNDER BAY ON P7E2N5

Between: Quadera Limited Landlord

And

Chelsea Hamilton Tenant

Quadera Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Chelsea Hamilton (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 by videoconference on August 12, 2024.

The Landlord's agent, Sheri Taddeo ('ST'), the Tenant, the Tenant's witness, Hayley Hamilton ('HH'), and the Tenant's representative, Matthew Jollineau ('MJ'), attended the hearing.

It is determined that:

- As explained below, the Landlord has proven on a balance of probabilities some of the grounds for termination of the tenancy, but it is not unfair in the circumstances to grant relief from eviction, on conditions.
- The Tenant was in possession of the rental unit on the date the application was filed.
- On March 4, 2024, the Landlord gave the Tenant a first, voidable N5 notice of termination. As explained below, the first N5 notice was valid, so the Landlord was allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006 (Act)*.
- On March 31, 2024, the Landlord gave the Tenant a second N5 notice of termination. The notice of termination contains the following allegations:
 - On March 30, 2024 from 12:00 a.m. and March 31, 2024 from 6:42 p.m. to 8:30 p.m. the Tenant and her guest were yelling, crying, screaming, swearing, fighting,

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and smashing things in the unit, and this could be heard throughout the building, disturbing other tenants; and

b) On March 31, 2024 the Tenant and her guest were smoking inside the rental unit contrary to the terms of the tenancy agreement, and this also substantially interfered with other guests.

5. The first N5 included an allegation that on March 4, 2024 the Tenant and her guest were smoking inside the rental unit, contrary to the tenancy agreement, and this also interfered with other tenants' reasonable enjoyment.
6. ST gave evidence that the tenancy agreement provides that smoking inside the rental unit is prohibited, and that she personally smelled smoke coming from the rental unit at this time. The Tenant acknowledged that she smoked inside the rental unit.
7. I find that by smoking inside the rental unit, the Tenant substantially interfered with the Landlord's lawful right, privilege, or interest in the Tenant not smoking inside the unit and not permitting others to do so. For this reason, I find that the first N5 notice was valid.
8. I am also satisfied on the evidence before me that the Landlord proved that the Tenant and/or her guest were smoking inside the rental unit on March 31, 2024, as alleged in the second N5 notice. The Tenant said she has now stopped smoking inside the rental unit, and is prepared not to smoke inside the rental unit moving forward. ST said she has not smelled smoke coming from the unit recently.
9. I am satisfied based on the evidence before me that there was screaming, crying, swearing, and the sounds of fighting and items being smashed inside the rental unit on the dates and times alleged by the Landlord in both N5 notices. ST presented emails from other tenants complaining about these sounds, and said she personally attended the residential complex and heard these noises on March 4, 2024 and March 31, 2024.
10. The Tenant acknowledged that there were loud fights inside her rental unit, but said these noises emanating from the rental unit on March 4, 30, and 31, 2024 were the result of her being violently assaulted by her former boyfriend.
11. She said that her former boyfriend was living in the unit at the time, and these were not the only incidents of violence against her perpetrated by her former boyfriend. She said her former boyfriend no longer lives in the rental unit and they have broken up. He moved out of the unit around late May 2024. She said she still sees her former boyfriend sometimes, but not in the rental unit.
12. The Tenant's evidence was that she has been diagnosed with borderline personality disorder, post-traumatic stress disorder, generalized anxiety disorder, attention deficit hyperactivity disorder, and depression. She said her mental health issues impeded her ability to get out of this abusive relationship with her boyfriend earlier.
13. In particular, she said that her borderline personality disorder causes many issues, including making her vulnerable to co-dependent relationships and increasing the feeling of not wanting to be alone. She said that while her former boyfriend lived with her, he paid for half of the bills. The Tenant said she cannot work, has a grade 9 education, and it is difficult to pay the bills on her own. She said this economic dependence also contributed to her difficulty in ending the relationship with her former boyfriend sooner.

14. The Tenant said that anyone hearing the sounds coming from her unit would have heard her screaming, but none of her neighbours or any employee of the Landlord ever asked if she needed help, or offered any help or resources.
15. The Tenant said she has now reached out for support in the community relative to the domestic violence that she endured.
16. She said the only times there were loud noises like this coming from her unit were when she was being physically abused.
17. HH is the Tenant's sister, and she said she has a close relationship with the Tenant. She said that the Tenant has dealt with domestic abuse by her former boyfriend for about the last 2 years. She said that she did not witness physical abuse firsthand, but that the Tenant would phone her immediately after incidents of domestic violence, and HH would go to be with the Tenant.
18. HH was certain that the Tenant would not fabricate stories about experiencing domestic abuse.

Positions of the Parties & Analysis

19. ST sought an order terminating the tenancy because the smoking and noise coming from the rental unit has disturbed other tenants for a long time, and she believes these things will happen again.
20. MJ submitted that the yelling and screaming was only caused by the Tenant experiencing domestic abuse at the hands of her former boyfriend, and the impact of this experience should not be compounded by being evicted because of it.
21. MJ also submitted that the Landlord has failed to discharge its duty to accommodate the Tenant to the point of undue hardship.
22. Landlords are obligated to accommodate Tenants' disability-related needs to the point of undue hardship: ss. 2, 17, *Human Rights Code*, RSO, c. H. 19.
23. The duty to accommodate includes procedural and a substantive aspects, and is a collaborative process. The process often begins with a tenant requesting some form of accommodation, and the procedural aspect of the duty then requires a landlord to investigate, with the Tenant's cooperation, how a tenant's disability-related needs can be accommodated. If those disability-related needs can be accommodated without causing the Landlord undue hardship, then the substantive aspect of the duty to accommodate requires the accommodation to be implemented.
24. The procedural duty to accommodate can arise without a tenant making a specific request for accommodation. A landlord may, in some cases, have a duty to inquire as to whether a tenant needs accommodation, for example, if the landlord is aware of circumstances based on which it ought reasonably to have known that some problematic conduct may be disability-related and require accommodation: see, for example, *Sears v. Honda of Canada Mfg.*, 2014 HRTO 45, para 128; *MacDonald v. London Health Sciences Centre*, 2019 HRTO 1134 (CanLII), paras 61-64.

25. In this case, the loud fights may have been connected to a disability-related issue in that the Tenant suffers from several mental health issues which impacted her ability to end the abusive relationship with her former boyfriend. The Tenant did not request any accommodation, and there was not adequate evidence before me to establish that the Landlord knew or ought to have known in the circumstances that the ongoing noise was being caused or contributed to by a disability requiring accommodation.
26. The evidence before me in this case did not establish that the Landlord's duty to inquire or the procedural duty to accommodate was engaged.
27. MJ also highlighted the Tenant's statement that she will not smoke in the unit again.
28. MJ asked that the application be dismissed.
29. I accept that the noise emanating from the rental unit substantially interfered with other tenants' reasonable enjoyment of their rental units. However, I also accept the Tenant's evidence that the noise only occurred when and because she was being violently assaulted by her former partner. The Tenant has ended that abusive relationship and sought out community support for her situation.
30. I agree that the impact of the Tenant's experience of domestic violence should not be compounded by being evicted, or by a conditional order relative to noise that only existed because of that violence. The Tenant has taken positive steps to eliminate the situation that caused the issues with noise, and it is therefore not unfair in the circumstances to grant relief from eviction relative to the allegations about noise.
31. I accept the Tenant's evidence that she will not smoke in the unit moving forward, and it is not unfair in the circumstances to conditionally grant relief from eviction regarding the Landlord's smoking allegations.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the condition set out below.
2. For a period of 12 months beginning on August 28, 2024, the Tenant shall not smoke any substance, including tobacco, in the rental unit, and shall not permit any of her guests or occupants to do so.
3. If the Tenant fails to comply with the condition 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.

August 27, 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.