



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

Citation: SK Properties & Development Inc v Jack, 2023 ONLTB 65719

Date: 2023-10-10

File Number: LTB-L-033784-22

In the matter of: 206, 24 Shallmar Boulevard
Toronto ON M6C2J9

Between: SK Properties & Development Inc Landlord

And

Denise Jack Tenants
Michael Jack

SK Properties & Development Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Denise Jack and Michael Jack (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 Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on July 20, 2023.

The Landlord's Agent Yuval Keshen and the Tenants attended the hearing.

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 Tenant was in possession of the rental unit on the date the application was filed.
3. *N5 Notice of Termination*

Substantial interference

On January 5, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination. This was deemed served on January 5, 2022. The Landlord alleged that on or about December 31, 2021, at approximately 1:30 p.m., they received multiple complaints that the Tenant was banging into the ceiling and that interfered with other Tenants reasonable enjoyment of the residential complex. Therefore, 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).

4. On June 15, 2022, the Landlord gave the Tenant a second N5 notice of termination which was deemed served on June 15, 2022. The notice of termination contains the following allegations: that on or about June 3, 2022, at approximately 4:24 a.m., the Landlord received complaints that the Tenant was banging into the ceiling and yelling which interfered with another Tenants reasonable enjoyment of the residential complex. Further, on or about June 9, 2022, at approximately 1:10 p.m., the Landlord alleges the Tenant was banging into the ceiling, which disturbs another Tenants enjoyment of their unit.
5. The Landlord's first witness was Zulena Ortega. She testified that on or about December 31, 2021, at approximately 1:30 p.m., uncertain of which Tenant or occupant, in other words she did not provide a name of the person she believed was banging on the ceiling. Ms. Ortega stated whoever was banging on the ceiling, was going to every room in her apartment, which startled her and was unsettling. I will note Ms. Ortega did not testify to how many rooms are in her apartment nor did she provide can description of the banging noise.
6. She testified Police had been contacted on December 31, 2021, but stated " I did not get anything from the Police". Further, she stated the Landlord was not doing much either.
7. Ms. Ortega provided testimony about the June 3, 2022, incident. She testified that she was woken up by of what she claims was the Tenant, as she heard loud voices. This incident occurred around 4:00 a.m.
8. The Tenant Michael Jack cross examined Ms. Ortega on the evidence presented. Mr. Jack questioned if Ms. Ortega ever seen him, she replied "no". Ms. Ortega was then asked if she had seen him knock, the answer was no. When questioned if she had a dog, Ms. Ortega responded yes, she has had a dog since Mother's Day 2019. The parties disagreed with the definitions of a playing ball and a ball dispensing treats for the dog. I find it was a play on words between the parties. Other questions and answers that were asked had nothing to do with the allegations in the 1st or 2nd N5 notice.
9. The Landlord's next witness was Richard Wiebe. He testified that he is the superintendent at the residential complex since May 2016. Mr. Wiebe was aware of the issues between Ms. Ortega and the Tenants. However, he could not recall any dates of the incidences. Mr.

Wiebe did recall some conversations he had with both Ms. Ortega and the Tenants. However, could not recall a date/time of when these conversations took place. I cannot give Mr. Wiebe's evidence any weight as he failed to provide any time or date specifics.

10. The Tenant Michael Jack testified. He testified that on or about December 31, 2021, the Police showed up at his door. Mr. Jack stated that it appeared that Ms. Ortega had been working on some renovations in her rental unit, but neither her nor the Landlord had advised him of any work being done. Ms. Ortega's dog started running at around 7:30 a.m., and he admitted to banging on the ceiling. Mr. Jack stated the walls are thin and he was aggravated as the Landlord failed to listen to any of their concerns about Ms. Ortega's dog and her renovations. Mr. Jack also admitted he stopped retaliating after receiving the 1st N5 notice on January 6, 2022.
11. On or about June 3, 2022, Mr. Jacks testified he was also woken up around 4:00 a.m. by loud voice and banging, he woke up and stepped into the hallway, he saw or heard nothing else and went back to bed.
12. Mr. Jack entered evidence an audio recording of a meeting that he had with the Property Manager.
13. On or about June 10, 2022, the Tenants had a meeting Aneta Ratuszniak, who is the Property Manager at the residential complex. I will note during the recording it is very apparent that the Landlord was aware about Ms. Ortega and the Tenants having issue between each other. The Landlord was aware about the noises, such as banging on the ceiling or dogs running. She also admitted it was only the Tenants who were receiving an N5 despite the Landlord being made aware of Ms. Ortegas behaviour. Ms. Ratuszniak stated that Ms. Ortega bangs and the Tenants bang harder. Ms. Ratuszniak stated that the Police where making the Landlord take action. She further comments that the Landlord received several letters complaining about the Tenants knocking and to stop doing whatever the Tenants are doing. I will note none of the complaint letters were submitted as evidence nor disclosed.

Analysis

14. I find on a balance of probabilities that the Landlord has failed to meet their burden of proof in establishing that 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.
15. When I examine the evidence presented, the Landlord failed to present any evidence about the June 9, 2022, incident. Further. The superintendent Richard Wiebe could not provide any time or date specific about any incidents but did recall speaking to the parties.
16. As I examine the evidence presented for the December 31, 2021, incident, there was no doubt the Tenant Mr. Jack retaliated against Ms. Ortega. However, I am mindful the Landlord knew about the issues these parties had. Through Ms. Ortegas own evidence

she had admitted the Landlord did nothing to solve the issues, this was also echoed in Mr. Jacks testimony.

17. The incident from June 3, 2022, it appears Ms. Ortega blames the Tenant Mr. Jack. Mr. Jack states he heard the same loud voice, went into the hallway, saw nothing, or heard nothing else and wet back to bed. I find there was no evidence led by Ms. Ortega to establish it was Mr. Jack's voice she heard. There was no evidence led or given, such as the tone or voice was the same. In Ms. Ortega's testimony, she provided no evidence to suggest (when Mr. Jack was speaking) that was the same voice she had heard. I find it more likely than not that Ms. Ortega and Mr. Jack heard the same loud voice.
18. When I examine the Landlord's actions in this application. A Landlord's duty is to address substantial interference with the reasonable enjoyment of a tenant by another Tenant. I will refer to the Divisional Court Decision in Hassan v. Niagara Housing Authority, [2000] O.J. No. 5650. The Court stated.

"It is not that the other tenant's actions are imputed to the Landlord, but rather the Landlord's legal responsibility to provide the Tenant with a quiet enjoyment that gives rise to the responsibility of the Landlord to take reasonable steps to correct the intrusion of the neighbouring tenant's right to quiet enjoyment.

19. The Landlord has the obligation to provide the Tenant with quiet enjoyment and take the reasonably necessary action against any tenant that denies a neighbouring tenant quiet enjoyment of their premises.
20. In the present case, the Landlord's Property Manager Ms. Ratusziak acknowledged there was issues between the two parties banging on the ceilings. The Landlord misled the Tenants by advising them that the Police are forcing them to take action. Finally, the Landlord did nothing to resolve the issues between the parties. This was acknowledge when Ms. Ortega testified "the landlord was not doing much about the ceiling noise". Mr. Jack's testimony echoed this when he testified, the Landlord was not listening to his concerns about Ms. Ortega. Ms. Ratusziak further stated the only action the Landlord would be taking is against the Tenants and not against Ms. Ortega. The Landlord cannot just take one side over the other, when the Landlord had knowledge of how each party had been behaving. I would encourage the Landlord to take more precautions before filing an application if they encounter a similar situation, in the future.
21. For all the reasons given above, the Landlord's application shall be dismissed.

It is ordered that:

1. The Landlord' application is dismissed.

October 10, 2023

Date Issued

Anthony Bruno

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.