



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

Citation: Indo-Canadian Non Profit Corp of Peel c/o Victoria Park Management v White, 2023
ONLTB 57753
Date: 2023-08-25
File Number: LTB-L-034429-22

2023 ONLTB 57753 (CanLII)

In the matter of: 61 STOKES RD
BRAMPTON ON L6Y4V4

Between: Indo-Canadian Non Profit Corp of Peel c/o Victoria Park Management Landlord

And

Antoinette White Tenant

Indo-Canadian Non Profit Corp of Peel c/o Victoria Park Management (the 'Landlord') applied for an order to terminate the tenancy and evict Antoinette White (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 June 27, 2023.

The Landlord's legal representative, Karolina Aguiar ('KA'), the Landlord's witness, Dragan Babin ('DB'), and the Tenant attended the hearing.

Preliminary Issues:

1. This application was filed based on a non-voidable N5 notice served under section 68 of the Act. For an N5 notice to be served under section 68 of the Act, there must first be a valid previous notice served. In this case, the Landlord previously served an N5 notice under section 64 of the Act on June 9, 2022. Under section 68, the second N5 notice can therefore include allegations of conduct that occurs more than seven days but less than 6 months after June 9, 2022 that would justify service of another N5 notice under section 64.

2. In this case, all of the allegations in the second N5 notice occurred on or before June 16, 2022. The second N5 notice is therefore invalid.
3. The application was filed within 30 days of the termination date in the first N5 notice, and KA requested to amend the application to proceed on the basis of the valid first N5 notice instead of the invalid second N5 notice. I granted this request. There is no prejudice to the Tenant in granting this request because the allegations in the first N5 notice had to be proven even if the hearing were to proceed on the basis of the second N5 notice, because it would still have to be proven that the first N5 notice was valid.

Determinations:

4. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy, but it is not unfair in all the circumstances to grant relief from eviction, subject to conditions.
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. On June 9, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination. This N5 notice contains the following allegations:
 - a. On March 20, 2022 the Landlord received a penalty notice from the City of Brampton for \$300.00 because of excessively loud music emanating from the rental unit;
 - b. On March 23, 2022 the Landlord informed the Tenant of the penalty notice, that their loud music was disturbing others and violated the tenancy agreement;
 - c. On May 21, 2022 and May 29, 2022 there were parties with large numbers of people and loud music until past 4:00 a.m.;
 - d. Despite a letter to given to the Tenant on May 26, 2022, warning the Tenant with respect to these parties and loud music, there was another large party with loud music that lasted past 2:00 a.m. on June 4, 2022.

Landlord's Evidence

7. DB gave evidence for the Landlord. He said he is a property manager responsible for the rental unit, and has been in his position since 2018.
8. The rental unit is a 3-bedroom townhouse.
9. DB entered as evidence the penalty notice from the City of Brampton, dated March 20, 2022 and issued to the Landlord for the offence of "cause, create, or permit Public Nuisance" contrary to municipal by-laws. The offence address listed is the rental unit. The notice imposes a \$300.00 fine on the Landlord, and under "notes", the notice says "permitting unreasonable noise (music) to be played on property causing disturbance".

10. On March 24, 2022, DB gave a letter to the Tenant, advising her that the \$300.00 would be “back charged” to the Tenant, that the excessive noise from March 20, 2022 violates the Tenant’s lease and urging the Tenant to “stop the noise”.
11. DB said that despite this, excessive noise continued emanating from the rental unit. In particular, the Landlord received complaints of excessive noise at the rental unit on May 20, 2022 and May 21, 2022. The letter again urges the Tenant to “stop the noise” failing which the Landlord may commence legal action.
12. DB said that after this, this excessive noise continued, and other tenants continued complaining. DB said he is in the residential complex on Tuesdays and Thursdays, and usually on Tuesdays he would receive complaints from other tenants about excessive noise at the rental unit over the weekend.
13. DB said that other tenants complain regularly, but typically want to remain anonymous and do not want to provide complaints in writing. He said that he received verbal complaints of excessive noise between the May 29, 2022 and June 4, 2022, and during the remedy period of June 10-16, 2022.
14. DB entered as evidence a screenshot of an Instagram post. DB said this is an advertisement for a recurring party at the rental unit. The ad is for a party called “Girls just wanna have fund\$”, presented by “Da sexy bartender & Princess”. It says that the party starts June 9 at 12am, and “every Thursday after”. The location identified for the party is “Stokes Rd. (Brampton)”. At the bottom, it says to “DM @dasexybartenderfor info”. DB said another tenant forwarded this to him.
15. DB also entered another advertisement posted by “dasexybartender” for “Princess Fish Fry Fridays”, every Friday starting at 7:00 p.m. The address for the “Fish Fry” is the rental unit address. It says to contact “Princess” using WhatsApp to pre-order food, and DB said the phone number provided is the Tenant’s. The date of this post is August 5, 2022.
16. DB said he believes “Princess” is the Tenant’s nickname. He said these parties have a significant impact on the residential complex. They attract a lot of vehicles on the street and create excessive noise.
17. DB also entered as evidence a letter addressed to the Landlord from another tenant, who did not sign their name to the letter. It says that on August 21, 2022 at 6:30a.m., a young woman pounded on their door saying to call police because she had been assaulted at an after house club at 61 Stoke Road.
18. Another handwritten but unsigned letter from another tenant was entered as evidence by DB. It is stamped as received by the Landlord on September 22, 2022, and says there are parties at the rental unit every weekend on Thursday, Friday, Saturday, and Sunday.
19. DB also entered a photo of the inside of the rental unit that was taken by the Landlord’s staff in June or early July 2022. The photo shows a silver pole and a bar in the background.

20. DB said that the loud parties continued at the rental unit, and he became aware of numerous other social media posts for these parties. The following such posts were entered as evidence:
 - a. “Scorpio Bash”, at 61 Stokes Road, Brampton, on November 5 from 6pm-12pm. This posts says there is a cover charge to enter.
 - b. 4 posts for “Pole Baddies”, every Friday night starting at 12am. One of these posts was from March 3, 2023, and another was from March 17, 2023. These ads do not include an address, but say to DM “@dasexybartender” or message the Tenant’s phone number on WhatsApp for the address.
 - c. 2 posts for a “Pretty in Pink” Birthday Celebration, to take place on March 18, 2023. These ads say to text the Tenant’s phone number “for info and bottle service”.
21. DB said there are parties at the rental unit every weekend, and he receives complaints about them almost every week. He said other tenants have call police several times.
22. DB also entered as evidence several reports from the City of Brampton Enforcement and By-Law Services. One report from March 27, 2022 says that there is a repeat issue of loud music at the rental unit “going till 5am most nights”. Another report from April 24, 2022 says that on that date a Municipal By-law Enforcement Officer contacted a complainant about an ongoing issue of parties at the rental unit ever Friday and Saturday from midnight to 8am. It says the officer was reaching out to the owner to find a solution. A further entry from May 30, 2022 says that the officer could not follow up due to officer safety concerns.
23. Other Municipal By-law Enforcement reports from May 7, 2022, May 28, 2022, July 25, 2022, and August 6, 2022 all document parties and excessive noise at the rental unit.
24. DB also said there was a shooting within the past year that was somehow related to the Tenant’s parties. DB’s evidence was vague on this point, and the Tenant denied that she had anything to do with a shooting. DB also said there have been complaints about fights among people attending the Tenant’s parties, but DB’s evidence was again vague, and the Tenant denied this.
25. DB also entered two additional complaint letters from other tenants. One was undated and the other dated May 29, 2023. Both complain about the loud noise and disturbance coming from the Rental Unit every weekend.

Tenant’s Evidence

26. The Tenant said she did have a party on March 20, 2022. She said it was a birthday party, and she paid the \$300.00 penalty, as requested by DB.
27. She said the shooting in the area had nothing to do with her.
28. The Tenant said she gardens in her yard and used to use a boombox, but stopped doing so and now only uses the boombox in her basement. She said that “during Covid” she did have parties with friends and family, but does not do so anymore. She said that she did not

know she was offending people. She said she made one of the social media postings for her birthday party, but does not know where the others came from.

29. In any event, she said she does not host parties anymore.
30. The Tenant said she has lived at the rental unit for more than 20 years, and lives there with her daughter and son, aged 28 and 16. She says that she now only has about 15-20 people to her house, and only on the weekends. She said they come to her house around 3am from another friend's house, and she makes them soup.
31. The Tenant said she does not have the money to move, and her son attends school nearby.

Analysis

32. To prove a fact on a balance of probabilities, there must be sufficient clear, convincing, and cogent evidence of the fact: *FH v McDougall*, 2008 SCC 53 (CanLII), para 46. The Landlord has discharged this burden. The Landlord presented several written complaints from other Tenants, several reports from Municipal By-law enforcement, and numerous social media posts for parties at the rental unit. All of this evidence consistently supports the allegations that there were parties at the rental unit, typically on weekends, very late at night/early in the mornings, that were excessively loud and substantially disturbed other tenants.
33. The Tenant denied knowing anything about the social media posts, aside from one for her birthday, but this is belied by her address being included in some of them, and her phone number in others. This, combined with the complaints about parties consistently taking place and creating excessive noise leads to the conclusion that the Tenant either created these posts or permitted them, and then hosted the parties advertised in the posts.
34. Based on the evidence before me, I am satisfied that the Landlord has proven the allegations in the N5 notice, and that the N5 notice was not voided.
35. The Tenant or a person or people permitted in the rental unit or residential complex by the Tenant have substantially interfered with the Landlord's reasonable enjoyment of the residential complex for all usual purposes, have substantially interfered with other tenants' reasonable enjoyment of their rental units or the residential complex for all usual purposes, and have substantially interfered with the Landlord's lawful interest in discharging its obligations to other tenants under the Act.
36. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Relief from Eviction

37. The Landlord sought an order ending the tenancy, arguing that there has been a consistent pattern of loud parties causing disturbance to other tenants, and that there are safety

concerns related to these parties. DB said that neighbouring tenants cannot rest and feel unsafe.

38. The Tenant said these parties have stopped, and there have not been any police or by-law officers present this year. It is accurate that all of the municipal By-law reports presented by the Landlord are from 2022, but there were also some complaints from other Tenants in 2023.
39. The Tenant's conduct has breached the Act and it is not acceptable. This is, however a long term tenancy, and the Tenant said she could not afford to move to another rental unit. In all the circumstances, I find that a conditional order is most appropriate, allowing the tenancy to continue provided that the conduct described above does not continue.
40. 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.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall not play music or permit music to be played in the rental unit at a volume that substantially interferes with other tenants' reasonable enjoyment of their rental units or the residential complex.
3. The Tenant shall not create, or permit her guests or other occupants of the rental unit to create, noise in the rental unit that substantially interferes with other tenants' reasonable enjoyment of their rental units or the residential complex.
4. If the Tenant fails to comply with the conditions set out in paragraphs 2 or 3 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.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing on or before September 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 6, 2023 at 6.00% annually on the balance outstanding.

August 25, 2023

Date Issued

Mark Melchers

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.