



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

Citation: 121 PARKWAY FOREST DRIVE INC. v Strbac, 2023 ONLTB 55291

Date: 2023-08-11

File Number: LTB-L-060879-22

In the matter of: 507, 121 PARKWAY FOREST DR
TORONTO ON M2J5H4

Between: 121 PARKWAY FOREST DRIVE INC. Landlord

And

Marija Strbac Tenant

121 PARKWAY FOREST DRIVE INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Marija Strbac (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 July 31, 2023.

Only the Landlord's agent, Derek Brovola attended the hearing. The Landlord was represented by Geoff Paine.

Also in attendance was the Landlord's witness, Denise Wilson.

As of 9:43am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

I note the Tenant did join the videoconference at 10:16am, after the matter had been disposed.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, an order shall issue terminating the tenancy on August 22, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed and continues to be in possession of the rental unit as of the hearing date.

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3. By way of background this is a monthly tenancy in which rent is due on the first of the month in the amount of \$1,428.24.
4. This tenancy began 2.5 years ago; the residential complex is an apartment building with 232 apartments; the Tenant lives in a 2-bedroom unit with his son.

N5 Notice of Termination - Substantial interference

5. On June 2, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination pursuant to subsection 64(1) of the Act, with a termination date of July 1, 2022. The allegations contained on this notice were about noise and the smell of cigarette and marijuana emanating from the rental unit during the month of May 2022.
6. On October 13, 2022, the Landlord gave the Tenant a second N5 notice of termination pursuant to subsection 68(1) of the Act with a termination date of November 12, 2022. The notice of termination continued a further allegation of noise, on October 11, 2022.
7. At the hearing, the Landlord's witness, DW, who resided in the unit below the Tenant, testified that she submitted a log to the Landlord documenting the interference, the length of the interference and the time of day it occurred from the Tenant's unit. She testified that on May 16, 2022, the smell of marijuana emanated from the Tenant's unit; on May 18, 2022, noise in the form of dragging furniture permeated from the unit above, into her unit. On May 19, 2022, the Tenant above was yelling profanity and derogatory terms towards her and there was loud banging from the Tenant's unit, result in the walls of her unit shaking.
8. DW testified that the impact of the noise has resulted in her being unable to sleep throughout the night, which impacts her ability to function during the day; further, she feels the noise is intentional towards her, particularly since the N5s have been served. DW further testified that the noise has only continued to escalate.

9. DW testified to an incident on October 11, 2022 whereby the noise consisted of constant banging from the rental unit between 9-11pm making it impossible for her and her family to get some sleep.
10. DW testified further to noise disturbances from the rental unit on December 5, 2022, February 17-18, 2022, March 11, 2023, June 10, 2023 and July 27, 2023.
11. The Landlord's witness, DB, testified that he is the property manager for the residential complex for the past 7 years. He further testified that he has had conversations with the Tenant but the Tenant denies all the allegations. He testified that he has asked the Tenant to install area rugs in the unit, which she has, but the noise continues to be a problem in the unit below.
12. The Landlord seeks a termination of the tenancy.
13. Based on the uncontested evidence before the Board I am satisfied that the Tenant has substantially interfered with the reasonable enjoyment of the residential complex by making excessive noise, specifically by playing music loudly, which is having a negative impact on the neighbour below.

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14. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Landlord is unaware of any circumstances that would justify relief from eviction.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
16. There is no last month's rent deposit.
17. At the hearing, the Landlord was directed to file a ledger listing the payments received since the application was filed, to proceed with their claim for compensation pursuant to section 86 of the Act. As the information has not been filed, I find that the claim for compensation has been abandoned.
18. 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 Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before August 22, 2023.

2. If the unit is not vacated on or before August 22, 2023, then starting August 23, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after August 23, 2023.
4. The Tenant shall pay to 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 August 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 23, 2023 at 6.00% annually on the balance outstanding.

August 11, 2023

Date Issued

Sonia Anwar-Ali

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on February 23, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.