



Order under Section 94.7 Residential Tenancies Act, 2006

Citation: Constance Hamilton Housing Co-operative v Duschene, 2023 ONLTB 46220

Date: 2023-06-26

File Number: LTB-C-022712-23

In the matter of: 3, 70 Lambertlodge Avenue
Toronto ON M6G3X3

Between: Constance Hamilton Housing Co-operative Co-op

And

Line Duschene Co-op Member

Constance Hamilton Housing Co-operative (the 'Co-op') applied for an order to end the occupancy of the member unit and evict Line Duschene (the 'Co-op Member') because the conduct of the Co-op Member, another occupant of the member unit or a person permitted in the residential complex by the Member is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the Co-op or another Member of the Co-op or occupant of the residential complex, or substantially interferes with another lawful right, privilege or interest of the Co-op or another such member or occupant.

The hearing was held by video conference on May 17, 2023.

Only the Co-op's agent, M. Hope, and the Co-op's legal representative, M. Hackl, attended the hearing. The Co-op's witnesses, N. Kates and M. Johnson also attended the hearing.

As of 9:15 a.m., the Co-op Member 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 Co-op's evidence.

Determinations:

N5C Notice of Termination:

1. The Co-op served the Co-op Member with an N5C notice of termination, served on January 16, 2023. The notice of termination alleged that the Co-op Member sent a number of harassing or disturbing messages to other Co-op Members by text or email, that she threatened and swore at others, and that she screamed and yelled and played loud music. I found that only the allegations relating to noise were specific and detailed enough for the Co-op Member to understand and respond to.

Voiding Period:

2. The Co-op's witness, N. Kates (NK) is a next door neighbour of the Co-op Member. She submitted into evidence an email, dated January 20, 2023, written by her to the Co-op, informing them about loud playing and singing coming from the Co-op Member's unit, also loud drumming sounds, and also an email dated January 21, 2023, by NK to the Co-op, informing them that the Co-op Member was "loud all day today...yelling or singing from her balcony," and that she also had a loud stereo.
3. The Co-op's witness, M. Johnson (MJ), also shares a common wall with the Co-op Member.
4. MJ submitted into evidence an email dated January 23, 2023, from her to the Co-op, in which she complains about very loud music and singing all the previous weekend, including the previous night at a late hour, and quite loudly.
5. The Co-op submits that the Co-op Member continued to make loud noise throughout the voiding period of the N5C notice of termination, and therefore she did not void the notice.

Co-op's Evidence:

6. NK provided most of the Co-op's evidence. The Co-op Member's unit is above and adjoining NK. She testified about loud screaming, yelling, loud noises from TV, radio and CD player.
7. NK submitted into evidence a number of emails from dates commencing 2021, and continuing to the present, informing the Co-op about the Co-op Member screaming, yelling, swearing, or ramping up her stereo so loudly that NK had to leave her unit. Many instances occurred in the middle of the night, or very early in the morning such as 4:30 a.m. She also submitted into evidence emails she had sent about instances when the Coop Member stood outside her door threatening her. One of her emails was dated November 7, 2021.
8. NK said that she has lived in her unit since 2007, and the Co-op Member has always been problematic. NK said she believes that the Co-op Member has lived in her unit for longer

than 15 years. She said that the interfering behaviour has escalated in the last three years.

9. NK said that she is an art therapist, and she frequently works from home. She said that the Co-op Member's behaviour disturbs her work. She said that there was one week in August 2022, when she lost an entire week of work because the stereo noise was so loud she had to call the police three times that week. NK also said that the noise that week often continued for the entire night, and she said that the police could hear it when she called. NK said that she is often unable to sleep.
10. NK said that her adult son with special needs lives with her. She said that her son gets confused and disturbed or panicked by the Co-op Member's behaviour. She also said that her dog gets very panicky due to the noise level.
11. NK said that she often hears the Co-op Member yelling things through the wall that are "very delusional". She said that during the terrible week in August 2022, the Co-op Member approached her and threatened her by saying, "I'll make your life miserable."
12. NK also mentioned an incident from September 1, 2022, when the Co-op Member blew marijuana smoke in her face and flicked ashes at her hair. She said that the Co-op Member left marijuana butts lying around the residential complex, and these are very dangerous for dogs.
13. NK said that the noise incidents occur at any time of the day, in the middle of the night, and they can go on for hours.
14. MJ is also an immediate neighbour of the Co-op Member. She said that she has lived in the Co-op for 5 years with her partner. She said that the disturbances from the Co-op Member began in 2020. She submitted into evidence a log of noise from October 24 to November 8. She could not remember if the dates were from 2021 or 2022 because she said the noise was ongoing in both years, and it was representative of the noise that occurred all the time.
15. MJ said that the noise mostly consists of very loud music or loud singing. She said that she works from home, and she cannot concentrate unless she wears headphones.
16. MJ said that the noise incidents vary from several hours to all day to successive days. She said that the noise has been particularly bad in the last few months.
17. MJ said that the Co-op Member is rude when asked to stop, but the Co-op Member has not threatened MJ.

18. The Co-op's witness, M. Hope (MH) is the President of the Co-op Board. She said that she began her tenure on the Board in February 2021, and the Board has been receiving complaints about the Co-op Member since then.
19. MH said that the Board attempted mediation with the Co-op Member in July 2021, but she refused. She said that the Co-op Member is unresponsive to letters from the Board. She said that the Co-op Member signed a performance agreement on May 17, 2022, with regard to her behaviour, but the Co-op Member has broken the agreement many times. She estimates that at least half the Members have complained about the Co-op Member, and there have been at least 200 complaints.
20. MH said that the Co-op Member had provided a note from her doctor to the Co-op stating that the Co-op Member needs to sing in order to maintain her mental health. However, when the Co-op asked the Co-op Member for specifics of what this meant in order to accommodate the Co-op Member, the Co-op Member refused to contact her doctor.
21. The Co-op submits that the Co-op Member is making life intolerable for other members of the Co-op. The Co-op has taken steps to work with the Co-op Member, but she has even escalated her behaviour, in particular, to disturb NK. They submit that the Co-op Member has no concern for others, and she has also substantially interfered with MJ and MH. Her behaviour is frequent and continues even after the N5C notice of termination was served. The Co-op requests eviction.

Reasons and Analysis:

22. The Co-op Member was served an N5C notice of termination for substantially interfering with the reasonable enjoyment of the Co-op and other members of the Co-op. The most specific allegations were about excessive noise coming from the Co-op Member and her unit.
23. I find that the testimony of MJ and NK proves, on a balance of probabilities, that the Co-op Member continued her behaviour throughout the voiding period, and therefore she did not void the N5C notice of termination.
24. The Co-op's witnesses' uncontested evidence is that the Co-op Member makes excessive noise at all hours of the day, including the middle of the night, that it can last for hours at a time, some times it lasts for days. NK described a situation where the Co-op Member made so much concentrated, loud noise for a period of week, that NK had to call the police on three occasions. The Co-op Member does not stop her noise when asked, and she is belligerent in her response. She has made life intolerable for NK and her son, and she has been the subject of at least 200 complaints from at least half of the Co-op members. Her behaviour has continued and even escalated after the N5C notice of termination was served in January 2023.

25. Consequently, I find that the Co-op has proved, on a balance of probabilities, that the Co-op Member's behaviour has created a substantial interference with the reasonable enjoyment of the residential complex for all usual purposes by the Co-op or another Member of the Co-op or occupant of the residential complex

Section 83 Considerations:

26. As mentioned above, the Co-op Member has been belligerent in her response to requests for her noise to stop. She refused to provide the Co-op with further details about how they could accommodate her need to sing loudly. The Co-op Member has broken the performance agreement with the Co-op multiple times. She refuses to undergo mediation with the Co-op. Her behaviour continues to the date of the hearing. I find that a conditional order would not be successful, and it is therefore not the appropriate remedy.

27. The Co-op Member has made the life of others intolerable in the residential complex, and therefore her occupancy is no longer viable.

28. I have considered all of the disclosed circumstances above in accordance with subsection 94.12(2) of the Residential Tenancies Act, 2006 (the 'Act'), and I find that it would be unfair to grant relief from eviction pursuant to subsection 94.12(1) of the Act. However, the Co-op Member has been a long term member of the Co-op, and she will need a bit more time to find an alternative place to live. Consequently, I find that it would not be unfair to postpone the eviction until August 31, 2023, pursuant to subsection 94.12(1)(b) of the Act.

It is ordered that:

1. The Co-op Member's occupancy is terminated on August 31, 2023.
2. The Co-op Member must vacate the member unit on or before August 31, 2023.
3. If the Co-op Member does not vacate the member unit on or before August 31, 2023, the Co-op Member shall pay the Co-op compensation of \$11.67 per day for the use of the unit starting September 1, 2023 until the date the Co-op Member moves out of the unit.
4. The Co-op Member shall pay the Co-op's \$201.00 cost of filing the application on or before August 31, 2023.
5. If the Co-op Member does not pay the Co-op the full amount owing on or before August 31, 2023, the Co-op Member will start to owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.
6. If the unit is not vacated on or before August 31, 2023, then starting September 1, 2023, the Co-op may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Co-op on or after September 1, 2023.

June 26, 2023

Date Issued

Nancy Morris

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 expires on March 1, 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.