



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

**Citation:** CAPREIT LIMITED PARTNERSHIP v Tracey, 2023 ONLTB 35472

**Date:** 2023-05-08

**File Number:** LTB-L-023521-22

**In the matter of:** 1604, 411 DUPLEX AVE  
TORONTO ON M4R1V2

**Between:** CAPREIT LIMITED PARTNERSHIP Landlord

**And**

Patrick Tracey Tenant

CAPREIT LIMITED PARTNERSHIP (the 'Landlord') applied for an order to terminate the tenancy and evict Patrick Tracey (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.

Only the Landlord's legal representative G. Paine and the Landlord's witness Batia Leibovitch (BL) attended the hearing.

As of 9:53am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. The Landlord served a Form N5 on April 12, 2022 on the basis the Tenant's behaviour has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex and/or their lawful rights privileges or interests. This is the second N5 served by the Landlord within the past 6 months. The first N5 was served on March 2, 2022.
2. The Landlord second Form N5 relies upon one event, namely on April 6, 2022 at 2:00pm, the Tenant knocked on the door of neighbouring unit while intoxicated and proceeded to aggressively scream/yell at the neighbouring residents at unit #1602. Shortly thereafter, the Tenant returned and continued to knock again.

3. The Landlord submits the Tenant's behaviour constitutes harassment and forms part of pattern of ongoing behaviour. The Landlord's witness, Batia Leibovitch (BL), is the neighbouring tenant impacted by the Tenant's conduct. BL testified she was frightened by the Tenant's (unprovoked) behaviour from April 6, 2022 and noted this was not the first time the Tenant has engaged in this type of behaviour. She testified the Tenant appeared to be inebriated and began yelling at her when she opened the door, stating "*he knows its them* **File Number:** LTB-L-023521-22

*trying to kick them out*". She described his behaviour as being "targeted" and indicated she is "afraid" to pass by his unit to use the building elevator.

4. Based upon the Landlord's uncontested evidence, including the impact that the Tenant's behaviour has had on BL, find on a balance of probabilities that the Tenant has substantially interfered with another tenant's reasonable enjoyment of the residential complex.
5. Section 83 requires that I consider all the circumstances in the case, including the Tenant's and the Landlord's situations, to determine whether it would be appropriate to delay or deny eviction in the form of section 83 relief. The Landlord indicated the Tenant knocked and yelled at the neighbouring tenant subsequent to the April 6 event and produced email correspondence and video evidence where the Tenant can be seen knocking on the neighbouring unit's door on July 28, 2022 and September 27, 2022.
6. The Tenant did not attend the hearing, but it was noted that the Tenant has been a living at the rental unit for approximately 3 years, alongside his son. Given the length of the tenancy, the nature of the conduct and the Tenant's family situation, I find it would not be unfair to deny the eviction so long as the Tenant corrects his behaviour. I understand and sympathise with the Landlord's concerns, however if the Tenant complies with my conditional order below, those concerns should be satisfied. As a result, conditional relief will be granted on the terms set out below.

**It is ordered that:**

1. The Tenant shall not engage in aggressive/harassing behaviour towards other residents in the building.
2. If within one year from the date of this order, the Tenant fails to comply with the condition set out in paragraph #1 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.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.

4. If the Tenant does not pay the Landlord the full amount owing on or before May 12, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 13, 2023 at 6.00% annually on the balance outstanding.

**May 8, 2023**

**Date Issued**

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Peter Nicholson

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,  
Toronto ON M7A 2G6

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.\