



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

Citation: Sunder & Company Inc. v Edge, 2023 ONLTB 33691

Date: 2023-05-03

File Number: LTB-L-041325-22

In the matter of: 1904, 180 BOLD ST
HAMILTON ON L8P4S3

Between: Sunder & Company Inc. Landlord

And

Michelle Edge Tenant

Sunder & Company Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Michelle Edge (the 'Tenant') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex;
- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex.

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 December 21, 2022. The Landlord's legal representative G. Paine, Landlord's agent D. Richardson and the Tenant attended the hearing.

Determinations:

1. The Landlord filed this L2 application on July 22, 2022. The Landlord alleges that the Tenant has committed an illegal act by setting off fireworks from their balcony and that this conduct has seriously impaired the safety of others in the complex.
2. As explained below, I am not satisfied that the Landlord has proven the grounds for termination of the tenancy based on an illegal act (N6). The Landlord has proven on a balance of probabilities the grounds for termination of the tenancy based on impaired safety (N7). However, I find that it would not be unfair to issue a conditional order prohibiting that the Tenant or anyone in their unit from setting off fireworks from the balcony of the rental unit or anywhere in or on the residential complex for a period of 24 months. The Tenant shall also pay the Landlord's filing fee of \$186.00.
3. The Tenant was in possession of the rental unit on the date the application was filed.

N6 and N7 Notice of Termination

4. On July 12, 2022, the Landlord gave the Tenant an N6 and N7 notice of termination, deemed served that date. The notices contain the same allegation:
 - Setting off fireworks from the balcony of the rental unit

Illegal Act and Serious Impairment of Safety

5. The Landlord's witness JW is a neighbouring tenant to the subject unit who testified that on June 30, 2022, she was sitting on her balcony late in the evening, when she heard laughter from the balcony of the unit next door and then a lighter sparking. Immediately thereafter, she heard a sound and then a firework flew one and a half feet from her face, narrowly missing her. She testified that this terrified her based on how close the fireworks came to her face. She testified that she could have been set on fire if it had hit her. She called the police, who advised her to call back if it occurred again. She filed a report with the Landlord the next day on July 1, 2022. She testified that she did not see who set the fireworks off as there is a partition between the balconies, however she was certain that it came from unit 1904. She testified that the fireworks were the type that would typically be set off in a large open space. She described it as first shooting straight out from the balcony and then branched out to the sides. She testified that at a fireworks display, it is the type that shoots upward and then "explodes" into branches.
6. The Landlord's agent DR testified that this was not the first incident with an occupant from the Tenant's unit setting off fireworks in the rental complex. On the May 22, 2002, DR testified that she observed the Tenant's teenaged son throw two loud crackers onto the front lawn of the residential complex. It let off a big bang, which she referred to as a "cherry bomb firecracker". A third cracker was let off that night but DR did not personally witness who set it off.
7. The Tenant denied being home on the evening of June 30, 2022. She testified that one of her sons was at work at that hour and that her other son was away for the long weekend. She testified that her invalid husband was the only one home at the time. She denied that anyone would set off fireworks from the unit.

Analysis

8. I find on a balance of probabilities that the Tenant or another occupant of the rental unit or a person permitted in the residential complex by the Tenant has seriously impaired the safety of other tenants in the residential complex by setting off fireworks from the balcony of the Tenant's unit, which narrowly missed hitting the neighbour in the head. This conduct occurred in the residential complex. The proximity of the fireworks to the neighbour constitutes serious impairment of safety.
9. While the witness did not see who set the fireworks off, I find on a balance that the fireworks did come from the Tenant's unit. The witness gave persuasive, descriptive testimony about hearing the sound and then seeing the fireworks shoot out from the balcony directly next

door to her and how it exploded into the air, shooting out in branches, one of which nearly struck her. I am further persuaded by the fact that the witness heard the lighting of the fireworks before they were set off, indicating that her proximity was very close as she testified. The Tenant denied that fireworks were set off from her balcony. However, an occupant of the Tenant's unit was witnessed by the Landlord's agent setting off fireworks in the grounds of the complex one month prior. I find that the Tenant cannot attest as to who was home at the time of the balcony incident because the Tenant was not home herself. The Tenant did not call any other witnesses, particularly her spouse, who was home at the time of the incident.

10. I do not find that the Landlord has proven that the Tenant or an occupant of the Tenant's rental unit has committed an illegal act in the rental unit by setting off fireworks on the balcony. There was insufficient evidence adduced at the hearing to establish this allegation. The N6 portion of the Landlord's application is denied.

Relief from Eviction

11. 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.
12. The Tenant has resided in the complex for more than 25 years. She is the sole income earner in her family and would face substantial financial detriment if the tenancy were to be terminated.

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 or another occupant of the rental unit or a person permitted in the residential complex by the Tenant shall not set off fireworks from the balcony of the rental unit or anywhere in the residential complex for a period of 24 months from the date of this order.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 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.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application on or before June 30, 2023.
5. If the Tenant does not pay the Landlord the full amount owing on or before June 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2023 6.00% annually on the balance outstanding.

May 3, 2023
Date Issued

Donna Adams
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.

2023 ONLTB 33691 (CanLI)