



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

**Citation:** Boardwalk General Partnership v Lara, 2023 ONLTB 33054

**Date:** 2023-05-01

**File Number:** LTB-L-017211-22

**In the matter of:** 301, 70 CONWAY DR  
London ON N6E2X2

**Between:** Boardwalk General Partnership Landlord

**And**

Arturo Lara Tenant

Boardwalk General Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Arturo Lara (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.

This application was heard by videoconference on February 7, 2023.

The Landlord attended the hearing and was represented by Carla Livingstone ('C.L. '), who called Karen Buttigieg ('K.B. ') as a witness. The Tenant attended the hearing and was self-represented.

**Determinations:**

1. The rental unit is located in an apartment building. The Landlord alleges that the Tenant disturbs the residential community by making noise consisting of yelling, screaming, banging, and dogs barking in the rental unit. The Landlord also alleges that the Tenant allows his pet dogs to urinate on the balcony which collects on a lower unit balcony, which disturbs other tenants.
2. The Tenant continues to reside in the rental unit. The only remedy being sought is an order for eviction.
3. For reasons that follow, the application is granted.

**THE L2 APPLICATION**

4. The L2 application is based on two N5 notices of termination. For reasons that follow, the N5 Notice portion of the application is granted.

### The N5 Notices – substantial interference

5. The Landlord served two N5 Notices of termination under section 64 of the *Residential Tenancies Act, 2006* (the 'Act') for substantial interference. The Landlord served a first N5 Notice on February 10, 2022 with a termination date of March 31, 2022. This N5 Notice indicated that the Tenant had 7 days to stop the activities or correct the behavior described in the notice. I am satisfied that the actions alleged in the N5 Notice could, if proven, constitute substantial interference.
6. The Landlord then served a second N5 Notice on the Tenant on March 25, 2022 with a termination date of April 30, 2022. This notice indicated that it was the 'second' notice in the past 6-months for a reason with a 7-day correction period, that the Tenant could not void the notice, and that the Landlord could apply to the Board to evict the Tenant.
7. Section 64 of the Act provides that a notice of termination under these provisions must: (i) provide a notice of termination not earlier than the 20<sup>th</sup> day after the notice is given; (ii) set out the grounds for termination; and, (iii) require the tenant within seven days, to stop the conduct or activity or correct the omission set out in the notice. In the event a tenant voids the first N5 Notice, subsections 68(1) and (2) permits a landlord to deliver to a tenant a second N5 Notice with a termination date that shall not be earlier than the 14<sup>th</sup> day after the notice was given.
8. I am satisfied that both the first and second N5 Notices issued to the Tenant were procedurally valid and complied with section 64 of the Act.

### Substantial interference

9. For the reasons that follow I am satisfied on a balance of probabilities that the Tenant substantially interfered with the reasonable enjoyment of other tenants in the residential complex.
10. The first N5 Notice alleges that from February 3, 2022 through to February 9, 2022, the Tenant permitted his dogs to urinate on the balcony which drained onto the balcony located below his unit, and onto the personal possession of that tenant, leaving the balcony unusable. The second N5 Notice essentially alleges that on March 18, 2022 from 3:00 a.m. to 8:00 a.m., prolonged, loud noise disturbances consisting of screaming, yelling, and pounding on the walls and the floor could be heard coming from the rental unit, necessitating the attendance of the local police.

### Landlord's evidence

#### Testimony of C.L.

11. C.L. testified that she is an employee of the Landlord with direct knowledge of the issues related to the application.
12. She explained that between February 3, 2022 through to February 9, 2022, the Landlord received complaints from a tenant, K.B., who lives in the unit located below that of the Tenant's who complained of dog urine spilling from the Tenant's balcony onto her balcony

and personal items. The urine would pool on the tenant's balcony and, on cold days, was observed to create frozen urine 'icicles' that hung from the Tenant's balcony above that of the tenant.

13. C.L. testified to complaints received from multiple tenants about noise consisting of screaming, yelling, pounding on the walls and the floor, that began at 3:00 a.m. and persisted until approximately 8:00 a.m. which required the local police to attend to the unit.
14. Submitted into evidence was a log generated by the Landlord that consisted of a catalogue of concerns related to the rental unit collected from January 19, 2022 through to January 26, 2023 (including warning letters given to the Tenant by the Landlord), detailing complaints made by tenants and other members of the residential community during this time, including those incidents detailed in the N5 Notice.
15. C.L. explained that the log is generated using a computerized software program internal to the Landlord which itemizes the details of each incident, dates and times of occurrences, and the staff member who created it. The entries are created contemporaneously with the time the incident occurred.
16. As the Landlord did not call the authors of the entries made in the log as witnesses, they are considered hearsay to which, under usual circumstances, I would not attach any weight to their content as I am unable to affirm their content. However, I will accept this catalogue of complaints which, although hearsay evidence, are business records made in the usual and ordinary course of the Landlord's business which supports the occurrence of the Tenant's alleged behaviour at the times and dates they occurred.

#### Testimony of K.B.

17. K.B. testified that she is the tenant who occupies the rental unit located directly below that of the Tenant. She explained that for the past three years, the Tenant would leave his dogs alone in the unit from 11:00 p.m. to 6:00 a.m. the next morning during which time the animals would urinate on the balcony, which spills onto her balcony, leaving it dirty, smelling of urine, and unable to be used. Although this behavior occurred on the dates of February 3, 2022 to February 9, 2022, it had persisted up to January 26, 2023, just before the date of this hearing.
18. K.B. also testified to repeated noise coming from the Tenant's rental unit consisting of yelling, a women screaming, banging, and dogs barking. She confirmed that this noise was heard by her on March 18, 2022 (which led her to call the police to the unit), however, noise continues to be heard in the unit which consists exclusively of dogs barking.

#### Tenant's evidence

19. The Tenant does not dispute the allegations made in the N5 Notices, however, believes that he had corrected the issues related to these complaints such that they are no longer an issue.
20. Elaborating further, he explained that noise consisting of yelling, screaming and banging came from conflict he had with his live-in partner at the time, who has since vacated the rental unit and, as such, there is no more noise of this nature to be heard from the unit.

21. He acknowledges that one of his two dogs does bark, however, blames this on the tenant, K.B., whom he alleges makes banging noises on the walls and ceiling in her unit to intentionally disturb the dogs, causing the dogs to bark. K.B. disputes the Tenant's testimony, denying that she makes noise in her unit to cause the dogs to bark.
22. Finally, the Tenant denies that the dogs urinate on the balcony, explaining that he does not permit them to go on the balcony for them to urinate. In the event the dogs did urinate on the balcony in the past, he attributes this to the manner his ex-partner handled the dogs which is no longer an issue as that person no longer lives in the rental unit.

### Analysis

23. Based on the evidence presented at the hearing, I am satisfied that the Landlord had proven the grounds for eviction pursuant to section 64 of the Act.
24. The Tenant substantially interfered with the reasonable enjoyment of the residential complex by other tenants by creating noise consisting of screaming, yelling, and other noise generating behavior within the unit on March 18, 2022 from 3:00 a.m. until 8:00 a.m., which required the police to attend the unit.
25. I am also satisfied that the Tenant substantially interfered with the reasonable enjoyment of a tenant named, K.B., by allowing his dogs to urinate on the balcony and allowing the urine to collect on K.B.'s balcony that is part of her rental unit which substantially interfered with her use of that portion of her unit.

### Relief from eviction

26. It was the Landlord's evidence that since the two N5 Notices were given to the Tenant, the issues had persisted up to the date of this hearing. C.L. testified to receiving additional complaints from multiple tenants about the dogs barking and how it disturbs the residents in the community.
27. K.B. also testified to the impact the noise has on her by explaining that it leaves her feeling uncomfortable and unsafe in her unit and in the residential complex. The collection of urine on her balcony has forced her not to use her balcony anymore, a place she once enjoyed performing gardening, a hobby she is no longer able to do.
28. The Tenant acknowledges that one of his two dogs does bark, and explained that he is willing to have that dog removed from the unit in order to preserve the tenancy as he has lived in the unit for approximately 9 years. However, and in response to questions posed by the Board, in the event the Board grants the Landlord's application, he would need additional time to find a new place to live, estimating he would need 2-3 months.
29. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Given the length of time the tenancy has been in place, I can infer that the Tenant has a significant connection to the community such that he would need time to make housing arrangements. I am also satisfied that denying the eviction would be unfair to the Landlord as it is clear that the tenancy relationship has deteriorated resulting in a significant, adverse impact on the other tenants who reside in the residential

complex. Noting that the hearing was over two months earlier I am satisfied that any further delay terminating the tenancy would be overly prejudicial to the Landlord.

**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 May 12, 2023.
2. If the unit is not vacated on or before May 12, 2023, then starting May 13, 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 May 13, 2023.
4. The Tenant shall also 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 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 1, 2023**  
**Date Issued**

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Emile Ramlochan  
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 November 13, 2023 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.