



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

**Citation:** IMH POOL VI-A LP v Knowles, 2023 ONLTB 32992

**Date:** 2023-05-01

**File Number:** LTB-L-006262-22

**In the matter of:** 303, 28 HELENE ST N  
MISSISSAUGA ON L5G3B7

**Between:** IMH POOL VI-A LP Landlord

**And**

Tim Knowles Tenant

IMH POOL VI-A LP (the 'Landlord') applied for an order to terminate the tenancy and evict Tim Knowles (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 March 24, 2023.

The Landlord's Representative, Matt Anderson, the Landlord's witnesses, Ciara Cote, Sharon Cote, and Paul Peltier, and the Tenant's Representative, Atta Choudhry, attended the hearing. The Tenant did not attend the hearing.

**Determinations:**

1. The Landlord has applied for an order to terminate the tenancy and evict the Tenant because the Tenant is substantially interfering with neighbouring rental units due to excessive noise.
2. The Landlord served the first N5 notice to the Tenant on September 23, 2021. It was served because of noise issues that occurred on April 24, July 19, August 9, and August 31, 2021. The Tenant complied with the notice for seven days and thus voided the notice.
3. The Landlord served a second N5 to the Tenant on January 14, 2022, by mail, therefore it is deemed served on January 19, 2022. The second N5 outlined noise issues that occurred on October 27, October 28 and December 11, 2021.

Testimony

4. The Landlord's witness, Ciara Cote (CC), is a resident of the rental complex whose rental unit is beneath the Tenant's rental unit.

5. CC testified that on October 27, 2021, at or around 10:50pm, she was woken up by the sounds of furniture being dragged throughout the Tenant's unit. Later that night, at or around 1am on October 28, 2021, the Tenant was "stomping" throughout his rental unit as well as loud banging. The Tenant was also talking loudly on the balcony. CC stated that she had walked onto her own balcony and witnessed the Tenant talking loudly on his balcony.
6. CC testified that on December 11, 2021, from 2:15am until 3am, the Tenant was stomping, slamming and banging things in his kitchen. CC stated that she believed it was the kitchen because the noise was emanating above where her kitchen is located.
7. CC testified that she has regularly notified the Landlord of the noise issues and has confronted the Tenant herself on numerous occasions, however the noises persist up to the hearing date.
8. CC testified that the excessive noises have greatly interfered with her sleep, her employment and her mental health.
9. The Landlord's witness, Sharon Cote (SC), testified that she had heard the noises when visiting her daughter. SC stated that the noises sounded like heavy "foot-falls" or stomping. SC also heard yelling and loud talking on numerous occasions.
10. SC testified that on March 17, 2022, after she heard excessive stomping, went upstairs to confront the Tenant. SC stated that the Tenant appeared to be wearing heavy boots and may have been going to work. The Tenant did not say anything to SC in response to the noise complaint accusations.
11. The Landlord's witness, Paul Peltier (PP), was the superintendent of the rental complex at the time of the noise issues. He is still employed by the Landlord as a manager.
12. PP stated that he had received numerous, well-documented, complaints from CC regarding the noise issues.
13. PP testified that on two occasions he heard the excessive noise created by the Tenant when he stood outside of the Tenant's rental unit. The talking was loud enough that PP could hear what they were saying in the Tenant's rental unit. PP was also able to hear excessive thumping.
14. PP stated that the Tenant was given multiple warning letters before notices were served to the Tenant. PP presented copies of the warning letters as supporting evidence of this testimony.
15. Under cross-examination, PP stated that the Landlord had only received noise complaints about the Tenant from CC.
16. The Tenant's Representative, in his closing submissions, stated that the Tenant is 64 years old and suffers from medical conditions that would hinder his ability to find a new place to reside or to move. Furthermore, the Tenant's Representative stated that if the Tenant was evicted, there was a strong possibility that due to the Tenant's fixed income of \$1,100.00/month and his medical conditions, would become homeless.

### Analysis

17. Section 64(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

A landlord may give a tenant notice of termination of the tenancy if the conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant is such that it substantially interferes with the reasonable enjoyment of the residential complex for all usual purposes by the landlord or another tenant or substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.

18. The Landlord's witnesses gave testimony that the Tenant was excessively loud on numerous occasions. Although CC's complaints were the only ones received by the Landlord regarding the excessive noise produced by the Tenant, it is understandable due to the fact that they would affect CC directly because the Tenant's floor is directly above CC's unit and would be exposed to the majority of the noises produced by the Tenant.
19. It is reasonable to expect general, everyday noises, to be present in a communal living area such as a residential complex, including sounds such as footsteps. However, I find that the noises being created by the Tenant are excessive and are beyond the scope of "everyday noises". Particularly, I find that the noises produced by dragging furniture or loud talking late at night illustrates the Tenant's failure to consider how the noises produced by his actions would affect his neighbours.
20. Based on the evidence before me, I am satisfied that the Tenant substantially interfered with another tenant's reasonable enjoyment of their rental unit.

### Section 83 Considerations

21. Section 83(2) of the Act states:

(2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).

22. Section 83(1) of the Act states:

83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

(a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or

(b) order that the enforcement of the eviction order be postponed for a period of time.

23. The Act is remedial legislation and the courts have determined that evicting a tenant is a remedy of last resort. In the cases of *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.) and *Paderewski Society v. Ficyk*, [1998], the Divisional Court stated, "to put somebody out of their home must, in my view, call for clear and compelling circumstances that it's no longer possible for the arrangement to continue."

24. The termination of a tenancy is a remedy of last resort and relief should be granted where the tenancy can be saved without overly prejudicing a landlord's interests.
25. The Tenant's Representative stated that the Tenant suffers from several medical conditions and is on a fixed income. The Tenant would have significant difficulty finding a new place to live if evicted.
26. Although I find that the noise issues produced by the Tenant do substantially interfere with his neighbours' reasonable enjoyment of their rental units, I also find that it would be unfair to terminate the tenancy without giving the Tenant one more opportunity to live in his unit without causing any further hardship to his neighbours.
27. I have considered all of the disclosed circumstances in accordance with section 83(2) of 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 sections 83(1)(a) and 204(1) of the Act. The relief is justified by the circumstances of the Tenant's medical condition and the need for affordable housing and is balanced by the Landlord's ability to request an eviction order without a hearing in the event of a breach.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
  - a) The Tenant shall refrain from making any stomping noises in the rental unit or complex between the hours of 8pm and 8am;
  - b) The Tenant shall refrain from moving any heavy furniture in the rental unit or complex between the hours of 8pm and 8am;
  - c) The Tenant shall refrain from any loud talking or yelling in the rental unit or complex between the hours of 8pm and 8am; and
  - d) The Tenant shall refrain from making any other loud noises in the rental unit or complex between the hours of 8pm and 8am.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* 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.

**May 1, 2023**  
**Date Issued**

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Robert Brown  
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.