



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

Citation: Ricci v Anwar, 2023 ONLTB 32268

Date: 2023-04-25

File Number: LTB-L-023213-22

In the matter of: 8, 817 LANSDOWNE AVE TORONTO
ON M6H3Z1

Between: Maria Ricci Landlord

And

Farzan Anwar Tenant

Maria Ricci (the 'Landlord') applied for an order to terminate the tenancy and evict Farzan Anwar (the 'Tenant') because the Tenant 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 21, 2023.

The Landlord's Agent Flora Ricci, the Landlord's Representative Monique Laderoute and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of June 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

The Allegations in the Notice of Termination

3. On March 31, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served on April 5, 2022. The notice states that the Tenant has substantially interfered with

the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. Specifically, the notice of termination alleges:

1. On December 5, 2021 the Tenant was jumping on the rental unit floor and falling to the floor repeatedly. This occurred until 3:00a.m. in the morning. The notice states that the Tenant's actions caused the floors and walls to shake.
2. On January 30, 2022 the Tenant was jumping and slamming doors. This caused the walls to shake. A neighbour tenant knocked on the Tenant's door to ask him to stop and indicated that the Tenant seems intoxicated since he was staggering and stumbling around.
3. On March 22, 2022 the Tenant was making loud noises. A neighbour tenant had to put earphones on and listen to music so as not to be disturbed by the loud noises. Another neighbour tenant stated that the tenant comes and goes all night, slams doors, and jumps in a manner that shakes the floors and walls.
4. On March 30, 2022 the Tenant was jumping and banging in his rental unit. A neighbour tenant complained to the Landlord that the noise is affecting her daughter's ability to get up and go to school. This neighbour tenant also complained that her child is traumatized by the noise and will not occupy her own bed.

The Evidence Regarding the Incidents listed on the Notice of Termination

4. Nathalie Charland ('N.C') lives below the tenant in the same rental property. N.C testified that in the evening of December 4, 2021 and into the early hours of December 5, 2021 the Tenant was jumping, banging, stomping, and using his full body weight to fall to floor, and rolling a chair across the floor.
5. N.C testified that on January 30, 2022 that the Tenant was banging, stomping, and moving furniture around. N.C testified that the banging is so intense it shakes the walls and her ceiling fan. In a text message N.C sent the landlord about the incident she states that the disturbance lasted from 10:30p.m. to 1:30a.m.
6. N.C testified that on March 22, 2022 around 1:30a.m. the Tenant was again causing loud noises above her. In a text message N.C sent to the Landlord about this incident she states that the Tenant was jumping and that this was causing the walls to shake.
7. N.C testified that the noise from the Tenant's unit is almost always at nighttime between 10p.m. to 6a.m. and happens for long durations.
8. Michael Bath (M.B') lives in a rental unit right beside the Tenant. M.B testified that on January 30, 2022 between 11:00p.m. and 2:00a.m. the Tenant was being extremely loud and was repeatedly banging doors.
9. M.B testified that on March 22, 2022 the Tenant was again being extremely loud during the night and was repeatedly slamming doors in his rental unit. In a text message M.B sent the Landlord about the incident he states that he had to resort to blasting music through his

headphones in order to drown out the sound. He also states that the noise made by the Tenant is getting louder over time.

10. M.B testified that on March 30, 2022 the Tenant was making loud noises around 6:00a.m. In a test message that M.B sent the Landlord about this incident he says that he is not sure what the Tenant is doing in his rental unit, but he hears a bang every few seconds.
11. The Tenant testified he has no memory of any of these events because of medication he was taking at the time.

Incident During the Voiding Period

12. After receiving the notice of termination, the Tenant had between April 6, 2022 to April 12, 2022 to correct the behaviour and void the notice of termination. N.C testified that on April 11, 2022 while she was attending virtual school during the day, the Tenant was jumping in his rental unit. N.C testified that the ceiling was shaking because of the Tenant's actions. I found N.C to be credible in this regard and find on a balance of probabilities that the Tenant did not stop the conduct within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

Incidents Since the Notice of Termination was Served

13. N.C testified that the Tenant's behaviour has not improved since the notice of termination was served. N.C testified that she has made note of 17 disturbances caused by the Tenant since the application was served. N.C testified that these disturbances are all major disturbances and not something she would classify as everyday noises.
14. M.B also testified that there has been no improvement in the Tenant's behaviour since the notice of termination was served.
15. Text messages with numerous complaints that N.C and M.B have made to Landlord since the application was filed were entered into evidence. The complaints all allege that the Tenant is making very loud noises, mostly at night, for prolonged periods of time.
16. The Tenant testified that since the notice of termination was served, he has not been causing loud noises and any noises made are only slight.

Substantial Interference - Analysis

17. Section 64(1) of the Act says the following:

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. N.C testified that the loud noises made by the Tenant disturb her and her young daughter's ability to sleep. N.C testified that there have been times she has considered keeping her child home from school because she is so exhausted from being kept up at night. N.C testified that the banging above her unit is so extreme that it shakes the walls in her daughter's bedroom. N.C testified that her young daughter is scared of the noises coming through the ceiling and has not slept in her own bedroom for two years. N.C also added that she feels unsafe with the Tenant in the rental property.
19. M.B testified that that he finds the noises coming from the Tenant's unit disturbing. M.B testified that it affects his ability to sleep and also his mental health.
20. The Landlord's daughter Flora Ricci ('F.R') is the property manager for the rental property. F.R testified that she gets frequent complaints about the Tenant. F.R testified that she believes that the Landlord has lost at least one tenant who vacated the rental property partly because of the actions of the Tenant.
21. The Tenant testified that from November 2021 to March 2022 he was taking medication that affected his memory and actions. The Tenant says he has no memory of any of the incidents alleged in the notice of termination. However, the Tenant also testified that when his neighbour M.B complains he responds by quieting down. The Tenant testified that since the notice of termination was served, he has not been causing loud noises and any noises made are only slight.
22. Text messages and emails from the Tenant to the Landlord show that the Tenant has responded to the Landlord's concerns with confusion and has mentioned having no memory of the alleged incidents.
23. I find on a balance of probabilities that on December 5, 2021, January 30, 2022, March 22, 2022, and March 30, 2022 the Tenant caused loud noises by banging and slamming doors in his rental unit. I also find that there was an additional incident on April 11, 2022 during the voiding period and that the incidents have been ongoing. I make those findings because I found the testimony of both M.B and N.C to be credible as it was offered in a forthright manner. I do not accept the Tenant's testimony that the issues have resolved since the notice of termination was served because of the conflicting testimony of the neighbouring tenants which I have already found to be credible and the significant text message evidence regarding every incident that has occurred since the notice was filed. I also found the Tenant's testimony to be contradictory, he at times mentioned having no memory of the incidents, but then also said that he has always responded to the complaints from his neighbours by reducing the noise.

24. On a balance of probabilities, I find that the Tenant's actions between Dec 2021 to March 2022 substantially interfered with the reasonable enjoyment of neighbouring tenants. This is because the noise being made by the Tenant is happening late at night, is long in duration, is affecting the neighbouring tenants ability to sleep, and is scaring N.C's daughter such that she cannot sleep in her own bedroom. On a balance of probabilities, I also find that the Tenant's actions substantially interfered with the Landlord's lawful, right, privilege, and interest because the Landlord must constantly field complaints about the Tenant.
25. I am not satisfied that the medication that the Tenant was taking affected his behaviour and memory such that he is not responsible for the incidents listed on the notice of termination. This is because the Tenant stopped taking the medication in March 2022, but the incidents have persisted past that date and are ongoing. If the medication the Tenant was taking was responsible for his actions, his actions should have stopped when he stopped taking the medication. There is no evidence before me in the form of testimony or medical documentation, that the medication would have any long-lasting effects after the Tenant stopped taking it.
26. After the hearing the Tenant filed additional evidence on the Tribunal's Ontario Portal. This evidence is a doctor's note that lists all the medications the Tenant was taking and says that it could affect his cognitive abilities and behaviour. The note says that the Tenant was given prescriptions for the medication from November 22, 2021 to March 9, 2022. I did not authorize post hearing submissions, have no information about whether this evidence was sent to the Landlord, and the Landlord did not have an opportunity to challenge the evidence at the hearing. However, having looked at the evidence I do not find it helpful because it only tells me about medication the Tenant was taking up to March 2022. As stated previously, if the Tenant's behaviour was caused by the medication, it does not explain why the Tenant continues to make loud disturbances after he has stopped taking the medication.

Relief from Eviction

27. The Tenant requested relief from eviction in the form of a conditional order to stop making noise disturbances. The Landlord is opposed to conditional relief from eviction.
28. I am not satisfied that conditional relief from eviction would be fair in the circumstances because I am not satisfied that the Tenant would abide by it. N.C testified that there have been 17 disturbances since the application was served and I found her to be credible in this regard. As such the Tenant has not demonstrated that he can modify his behaviour. Additionally, the Tenant downplayed his behaviour at the hearing and referred to the noise he makes as only slight and stated that he always reduces the volume when asked. By doing so the Tenant has not demonstrated awareness into his behaviour that illustrate that he can stop making the noise disturbances.
29. The Tenant also requested relief from eviction in the form of a delayed eviction. The Tenant testified that he has lived in the rental unit for 10 years, his religious place of

worship is nearby, he has had recent trauma with the death of a family member, and it will take him 6-7 months to find a new place to live.

30. 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 postpone the eviction until June 30, 2023 pursuant to subsection 83(1)(b) of the Act. In making that determination I have considered that the Tenant has been a long-term resident of the rental property, has community supports nearby, is dealing with a recent trauma, and will need time to find somewhere new to live. However, I have also considered that the Tenant's behaviour has resulted in his neighbours being unable to sleep, experiencing mental health issues as a result, and that there is a child who is afraid to sleep in her own bed because of the sounds coming through the ceiling.

Daily Compensation

31. Based on the Monthly rent, the daily compensation is \$16.43. This amount is calculated as follows: \$500.00 x 12, divided by 365 days.
32. The Tenant has paid all rent up to the hearing date. The Tenant shall pay \$16.43 per day for the use of the unit starting March 22, 2023 until the date the Tenant moves out of the unit (minus any rent already paid).
33. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
34. The Landlord collected a rent deposit of \$500.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$92.57 is owing to the Tenant for the period from January 1, 2012 to March 21, 2023.
35. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

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 June 30, 2023.
2. If the unit is not vacated on or before June 30, 2023, then starting July 1, 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 July 1, 2023.

4. The Tenant shall also pay the Landlord compensation of \$16.43 per day for the use of the unit starting March 22, 2023 until the date the Tenant moves out of the unit (minus any rent already paid).
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The Landlord shall apply the last month's rent deposit to the last month of the tenancy and pay the Tenant \$92.57 in interest on that deposit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

April 25, 2023

Date Issued

Amanda Kovats

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 January 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.