



I hereby certify this is a true copy of an Order dated
APR 12, 2023
Nancy Meis
Landlord and Tenant Board

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

Citation: Williams and McDaniel Property Management v Killins, 2023 ONLTB 30922

Date: 2023-04-12

File Number: LTB-L-021865-22

In the matter of: 201, 18 FERGUSON AVE
SAULT STE. MARIE ON P6B3J4

Between: Williams and McDaniel Property Management Landlord

And

Andrew Killins Tenant

Williams and McDaniel Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Killins (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 March 7, 2023.

Only the Landlord's agent, A. Wreggit, and the Landlord's legal representative, J. Andersen attended the hearing.

As of 10:00 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The residential complex is a 4 storey multi unit building consisting of 38 units.
4. The Tenant moved into the rental unit in 2021. His monthly rent is \$1,275.00.
5. The Landlord filed two N5 notices of termination in February and March 2022.
6. Both N5 notices of termination contained allegations that the Tenant was moving and dragging heavy objects in the middle of the night, in dates in January and March 2022, and these actions were disturbing neighbours in the residential complex.
7. The first N5 notice of termination was deemed to have been served on the Tenant on February 14, 2022. The Landlord did not report any incidents that occurred in the week

commencing February 14, 2022, and therefore the Tenant voided the first N5 notice of termination.

8. The Landlord's agent, A. Wreggit (AW) said that the primary complainant about the Tenant's activities and noise was Tenant A. Miller (AM), who lives directly below the Tenant. AW provided a history of AM's written complaints.
9. In the messages presented by AW, AM primarily complained that the Tenant made constant noise in the middle of the night, he was always right outside her window or in the parking lot dragging a shovel around. She complained that the Tenant was always dragging a snow float at 2, 4, 6 a.m., and she was woken up or she was unable to sleep. She also had complained to AW that the Tenant dropped things on his floor that made loud sounds in the middle of the night. AW submitted a number of written complaints from AM into evidence. These were dated on various dates in January 2022, March 2022, September 2022, October 2022. AM told AW in her written complaints that she was unable to sleep, and that the Tenant's actions created a constant ordeal for her.
10. AW said that she also received complaints from a number of other tenants who lived on the same side of the building about the shovelling in the middle of the night.
11. AM also testified. She is 76 years old. AM said that the Tenant's unit is directly above hers, and his noises started in 2021 when the Tenant moved in. She said that she hears scraping, vacuuming, furniture lifting and dropping and things banging on the floor, and these noises go on until 3 or 4 a.m. She said that the disturbance has taken "years off her life". AM said that she now hates going to bed because she never knows when the noise will start.
12. AM said that she has verbally asked the Tenant to stop the noise, and he will stop for up to a week, but then it starts again. She said that she used to call his number, but she no longer bothers. She said she has gotten up out of her bed in the middle of the night to knock at his door.
13. The Landlord's witness, G. Speck (GS) lives on the same side of the building as the Tenant.
14. GS said that the Tenant makes a constant scraping noise with a shovel outside his bedroom window. He said that one night he heard the Tenant pushing an empty shovel for 5 ½ hours. GS said that he put up with the noise for a year, until the new building manager took action. He said that the Tenant was rude or non-responsive to complaints.
15. GS said that the Tenant also plays for hours with his beeping car alarm.
16. GS said that the shovelling noise always takes place after 10 p.m. in the evening, and he and others have had to get out of bed to speak with the Tenant. He said that the new manager had to remove all access to shovels in the last few weeks, and this has helped the situation.
17. The Landlord submits that the Tenant has caused excessive noise at all hours of the night, on the residential complex, and this noise has disturbed a number of other tenants. The Landlord submits that the noise has been constant for over a year, and it has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or other tenants. The Landlord requests an order for eviction.

Analysis and Reasons:

18. The Landlord's witnesses gave uncontested evidence about constant, disruptive and disturbing noise. The noise takes place all night, and it is frequent. The noise has disrupted the sleep of many residents, and in the case of AM, she alleges that it has so disturbed her sleep that it has taken years off her life. The Tenant persists in making the noise, despite having been repeatedly asked to stop.
19. Consequently, I find that the Landlord has proved, on a balance of probabilities, that the Tenant has substantially interfered with the reasonable enjoyment, as well as the lawful right, privilege or interest of the Landlord or other tenants.
20. It is now before me to determine whether my finding merits eviction, or some other type of appropriate remedy for the Landlord.
21. The witnesses described substantial disturbance. They have attempted to reason with the Tenant, or they have asked him to stop. Sometimes these requests have necessitated the tenants leave their beds in the middle of the night to knock at the Tenant's door. Many of the residents are elderly. These attempts have had very limited success. GW said that the Tenant has sometimes responded very rudely to his requests to tone down the noise. The other tenants say the noise has never stopped for longer than a week. Consequently, I do not find that a conditional order would be effective.
22. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In particular, the Tenant's noise problem has not improved in almost two years, despite repeated requests from other tenants, and despite being served with two N5 notices of termination by the Landlord. The Tenant is disturbing elderly, vulnerable neighbours. It is prejudicial to the Landlord and the other tenants for the tenancy to continue.
23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
24. The Landlord collected a rent deposit of \$1,275.00 from the Tenant and this deposit is still being held by the Landlord.
25. 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 April 23, 2023.
2. If the unit is not vacated on or before April 23, 2023, then starting April 24, 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 April 24, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.

5. If the Tenant does not move out on or before April 24, 2023, the Landlord is authorized to deduct from amount owing to the Tenant \$41.92 per day for compensation for the use of the unit starting April 25, 2023, to the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before April 24, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 25, 2023, at 6.00% annually on the balance outstanding.
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 12, 2023
Date Issued

Nancy Morris
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 October 24, 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.