



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

Citation: Johnston v Kendall, 2023 ONLTB 28186

Date: 2023-04-03

File Number: LTB-L-034372-22

In the matter of: Basement A, 6 Bonacres Ave Toronto
ON M1C1P7

Between: Kevin Johnston Landlord

And

John Kendall Tenants Tracy Cannata

Kevin Johnston (the 'Landlord') applied for an order to terminate the tenancy and evict John Kendall and Tracy Cannata (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

Kevin Johnston (the 'Landlord') also applied for an order requiring John Kendall and Tracy Cannata (the 'Tenants') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on March 20, 2023.

Only the Landlord Kevin Johnston and the Landlord's Legal Representative Elaine Page attended the hearing.

As of 10:05 a.m., the Tenants were 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. Since the Tenants did not attend and the Landlord was prepared to proceed, the matter

proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for reasonable out-of-pocket costs the Landlord has incurred or will incur to repair undue damage caused by the Tenants.

N5 Notices

2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The residential complex contains three rental units. Two are located in the basement and one is located on the main floor of the building. The Tenants reside in unit A in the basement.
4. On February 9, 2022, the Landlord gave the Tenants a first, voidable N5 notice of termination, deemed served on February 9, 2022. The allegations contained in this first N5 notice of termination are:
 - a) On May 25, 2021 at 2:45 p.m., the Tenants were playing music so loudly it prevented the upstairs tenant from effectively working from home as a phone call was not able to be made.
 - b) On May 30, 2021 at 11:54 a.m., the Tenants were again playing loud music that interfered with the other tenants' reasonable enjoyment of their units. The Landlord texted the Tenants advising them to turn their music down.
 - c) On May 30, 2021 at 11:45 p.m., the Tenants were yelling at each other, slamming doors and throwing things. The incident woke the upstairs tenants and it continued for approximately 30 minutes.
 - d) On May 31, 2021 at 4:30 a.m., the upstairs tenants were again woken up from yelling and screaming coming from the Tenants' rental unit in the basement.
 - e) On June 2, 2021, the Landlord delivered a letter to the Tenants outlining the noise complaints and requesting the actions be stopped immediately.
 - f) On February 4, 2022 at 6:30 a.m., the Tenants were fighting, yelling at one another and screaming. The incident woke up the other tenant in the basement.
 - g) On February 7, 2022 at approximately 8:00 p.m., the Tenants were yelling at each other and while the noise died down after a period, it began again later in the evening and lasted until midnight. Both of the other tenants in the residential

complex complained to the Landlord about the incident the next day on February 8, 2022.

5. The Landlord called Maura Connolly, the upstairs tenant, to testify at the hearing. Ms. Connolly testified to the dates and times of the allegations contained on the first N5 notice and I was satisfied on a balance of probabilities this first N5 notice was valid.
6. The Landlord's evidence was that after serving the N5 notice there were no other incidents or complaints within seven days. As such, I find the Tenants voided the first N5 notice. Therefore, the Landlord was allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (the Act).
7. On May 28, 2022, the Landlord served the Tenants a second N5 notice of termination with a termination date of June 15, 2022. The notice of termination alleges the Tenants substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. It contains the following allegations:
 - a) On May 23, 2022, between the hours of 5:00 p.m. and 1:00 a.m., the Tenants were arguing, yelling and slamming doors to the point the other tenants were unable to sleep.
 - b) On May 24, 2022 at 6:00 a.m., the Tenants were arguing and yelling and woke up another tenant.
8. The upstairs tenant Ms. Connolly testified in support of the allegations contained on the second N5 notice and confirmed the dates and times of the incidents. Her evidence was the occurrence on May 23, 2022 lead the other basement tenant in Unit B to ask Ms. Connolly if they could stay upstairs with her as they were frightened by the volatile situation. She also testified the police were called and approximately six officers arrived on scene.
9. Based on the uncontested evidence presented by the Landlord, I am satisfied on a balance of probabilities the Tenants' conduct has substantially interfered with a lawful right, privilege or interest of the Landlord and the other tenants residing at the residential complex. I am convinced the noise and volatile situation caused by the Tenants has affected the quiet enjoyment of the other tenants' rental units and left them in a state of worry and unease.

Damage

10. The Landlord testified he had installed a pillar on the side of the driveway at the residential complex. His evidence was the Tenants' assigned parking space is next to the pillar and they have hit the small structure damaging it. The Landlord submitted photographs of the pillar which appears to be a brick construction capped with a concrete paver. The paver cap is cracked and the bricks below are in disarray. The Landlord's evidence was the bricks were joined together and the adhesion was broken after the Tenants vehicle struck the pillar. The Landlord's evidence was the Tenants acknowledged causing the damage and

that they would pay to repair it. The Landlord's evidence was the damage has not been repaired and the Tenants have not made any payments to him for the cost of the repair.

11. The Landlord submitted evidence of the approximate cost for the repair. The total requested by the Landlord is \$514.14. The document submitted shows the cost of the materials and an amount for the labour to reconstruct the pillar. Based on the uncontested evidence of the Landlord, I am satisfied on a balance of probabilities the Landlord will incur out-of-pocket expenses to repair undue damage to property at the residential complex caused wilfully or negligently by the Tenants. I found the amount sought by the Landlord to be substantiated by his own research and reasonable in the circumstances. As a result, it will be ordered.

Section 83 Considerations

12. The Landlord's evidence was that since the second N5 notice was served the issues with noise have continued. Ms. Connolly testified as recently as March 3, 2023, she had sent a video to the Landlord of another disturbance. Her evidence was she had not seen the Tenant John Kendall in recent times however, the Tenant Tracy Cannata continues to play music loudly "at all hours" and it has caused Ms. Connolly to leave her unit and stay elsewhere at times. Ms. Connolly also testified that the Tenant Ms. Cannata is not approachable to discuss the issue as she become aggressive and intimidating.
13. The Landlord requested an eviction within eleven days of this order, citing the ongoing affect the Tenants' behaviour is having on the other residents at the residential complex. I asked the Landlord if they were aware of any circumstances the Tenants may be experiencing that would make an eviction unfair and they were aware of none. The Tenants did not attend the hearing to present any evidence or submissions in support of granting relief from eviction.
14. 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.
15. The Landlord has incurred the cost of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenants must move out of the rental unit on or before April 14, 2023.
2. If the unit is not vacated on or before April 14, 2023, then starting April 15, 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 15, 2023.
4. The Tenants shall pay to the Landlord \$700.14, which represents the reasonable cost of repairing the damaged property and costs.
5. If the Tenants do not pay the full amount owing by April 14, 2023, they will start to owe interest. This will be simple interest calculated from April 15, 2023 at 5.00% annually on the balance outstanding.

April 3, 2023

Date Issued

John Cashmore

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 15, 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.