



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

Citation: Minto Apartment Limited Partnership v Delage, 2023 ONLTB 26082

Date: 2023-03-22

File Number: LTB-L-022805-22

In the matter of: 413, 1192 MEADOWLANDS DR E
NEPEAN ON K2E6J9

Between: Minto Apartment Limited Partnership Landlord

And

Brian Delage Tenant

Minto Apartment Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Brian Delage (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 8, 2023.

Only the Landlord's Legal Representative Anne Skelly and the Landlord's Agent Erin Crepeau attended the hearing.

As of 9:31 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. The Landlord's L2 application is based on two N5 notices alleging that the Tenant's behavior substantially interfered with another tenant's or the landlord's reasonable enjoyment of the residential complex and the landlords lawful rights, privileges or interests. For the reasons that follow, the application is granted.
2. On March 9, 2022 the Landlord served the Tenant with an N5 notice of termination with a termination date of April 2, 2022. As this was the first N5 notice served to the Tenant, the Tenant was able to void the N5 notice if he stopped the activities or corrected the behavior described in the N5 notice within seven days of being served the N5 notice. The evidence from the Landlord's Legal Representative and the Landlord's Agent was that the Tenant continued the behavior and did not void the N5 notice.
3. The behaviors of concern that are detailed in the first N5 notice were listed as taking place on November 15, 2021 and March 9, 2022 and include excessive noise, slamming of doors, screaming and swearing between midnight and 6:00 a.m. regularly.
4. On March 31, 2022, the Landlord served the Tenant with a second N5 notice of termination with a termination date of April 18, 2022. Pursuant to section 68(1) of the *Residential Tenancies Act, 2006* (the 'Act'):

68(1) A landlord may give a tenant notice of termination of the tenancy if,

(a) a notice of termination was given to the tenant under section 62, 64 or 67; and

(b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 60 one, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61(1) and that involves an illegal act, trade, business or occupation described in clause 61(2) (a).

5. The behaviors of concern that are detailed in the second N5 notice were listed as taking place on March 17, 2022 and included excessive noise, loud voices, slamming of doors, screaming and swearing between the hours of 12:30 a.m. and 5:30 a.m..
6. The Landlord's Agent, Erin Crepeau is a Property Manager with the Landlord who testified that she received a number of complaints from other residents in the residential complex regarding the Tenant's behaviour and conduct including that as a result of the Tenant's behaviour and conduct, the other residents were unable to sleep, properly function and their mental health was declining.
7. A number of emailed complaints from other residents within the residential complex were tendered into evidence that detail the Tenant's behaviour and conduct and how it affected the other residents in the complex.

8. The Landlord's Agent testified that post service of the N5 notices, the Tenant's behaviour and conduct has continued and tendered emailed complaints the Landlord received from other residents from July, 2022 and March 1, 2023.
9. As a result, the Landlord is seeking termination of the tenancy.

Analysis:

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

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.

11. The uncontested evidence and submissions before me is that the Tenant's behaviour and conduct of creating excessive noise which includes screaming, slamming of doors and swearing is interfering with the reasonable enjoyment of other residents in the residential complex. Based on the uncontested evidence and submissions before me, I find that the Tenant's behaviour and conduct has prevented the Landlord from meeting its obligations to ensure other residents can reasonably enjoy the residential complex.
12. 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. In this case, based on the uncontested evidence and submissions, and on a balance of probabilities, I am satisfied that the Tenant's conduct and behaviour, as also outlined in the N5 notices, substantially interfered with other tenants' or the Landlord's reasonable enjoyment of the residential complex, and/or lawful rights, privileges or interests and that despite the N5 notices, the Tenant's conduct and behaviour continues.
13. The Landlord also incurred the cost of \$186.00 to file this application and is entitled to reimbursement of that cost.

Relief from eviction:

14. The Landlord's Legal Representative submits that the Tenant has continued the behaviour despite the N5 notices and also despite communications and warnings to the Tenant. The Landlord's Legal Representative was not aware of any further factors to consider with respect to relief of eviction.

15. Considering the Tenant's behaviour and conduct post service of the N5 notices of termination, I find that the Tenant would be unable to comply with a conditional order and issuing one would further extend the interference with the reasonable enjoyment of other units. Given the circumstances, 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.
16. This order contains all of the reasons in this matter and no further reasons will be issued.

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 2, 2023.
2. If the unit is not vacated on or before April 2, 2023, then starting April 3, 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 3, 2023.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount the Tenant owes the Landlord is \$186.00.
6. If the Tenant does not pay the Landlord the full amount owing on or before April 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 3, 2023 at 5.00% annually on the balance outstanding.

March 22, 2023

Date Issued

Heather Chapple

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 3, 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.

