



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

Citation: Orlando v Weir, 2023 ONLTB 20633

Date: 2023-02-22

File Number: LTB-L-017705-22

In the matter of: 5, 171 RIVERSIDE DR
SUDBURY ON P3E1H1

Between: Raffaele Orlando Landlord

And

Jayne Weir Tenant

Raffaele Orlando (the 'Landlord') applied for an order to terminate the tenancy and evict Jayme Weir (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 February 8, 2023.

Only the Landlord Raffaele Orlando and the Landlord's Legal Representative Monique Laderoute attended the hearing.

As of 11:42 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. Since the Tenant 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. Therefore, the tenancy is terminated effective March 5, 2023.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord served the Tenant a voidable N5 Notice of Termination on March 15, 2022. The voiding period for this N5 Notice was March 15, 2022 until March 22, 2022. The allegations in the N5 Notice relied upon at the hearing were the following:
 - a) On May 30, 2021 at about 11:00 p.m. there was excessive noise coming from the Tenants unit in the form of screaming and yelling.
 - b) On June 23, 2021 the Landlord received a complaint from another tenant that the previous night around 12:00 a.m. there was excessive noise coming from the Tenant's unit in the form of screaming and yelling. It woke up the complainant and prevented them from going back to sleep.
 - c) On July 10, 2021 the Landlord received a complaint from another Tenant that they had to call city bylaw due to excessive noise in the form of loud music coming from the Tenant's unit the night before around midnight.
 - d) On July 29, 2021, the Landlord received a complaint about excessive noise coming from the Tenant's unit in the form of loud music.
 - e) On August 22, 2021, the Landlord received a complaint from another tenant about excessive noise coming from the Tenant's unit in the form of loud music being played at 4:45 a.m.
 - f) On August 31, 2021, the Landlord received a complaint from another tenant about excessive noise coming from the Tenant's unit in the form of extremely loud music being played at approximately 1:00 a.m. The complainant was woken up by the noise.
4. The Landlord called a witness, Germain Brunet, to testify at the hearing. Mr. Brunet lives in the rental unit directly below the Tenant. Mr. Brunet testified he is the tenant that sent the noise complaints the Landlord relied upon in the N5 Notice. The email complaints sent by Mr. Brunet were submitted as evidence at the hearing. He testified the continued noise coming from the Tenant's rental unit had affected his sleep and his enjoyment of the unit in which he resides.
5. Based on the Landlord's uncontested evidence, I am satisfied on a balance of probabilities that the Tenant has substantially interfered with another tenant's reasonable enjoyment of the residential complex.
6. The Tenant did not stop the conduct or activity within seven days of receiving the N5 Notice of Termination. Mr. Brunet's evidence was that on March 16, 2022 at 10:30 p.m. the Tenant was playing loud music and he sent an email to the Landlord complaining about it. This email was submitted at the hearing. Mr. Brunet also testified that on March 18, 2022 the Tenant was playing loud music in the early morning hours. He was woken up at 3:30

a.m. by the music and called bylaw enforcement at 3:40 a.m. and filed a complaint. He sent an email to the Landlord at 5:36 a.m. in which he advises the Landlord the Tenant had stopped her music for awhile but had started again about ten minutes prior to his email being sent. These events occurred during the voiding period, therefore the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs. Section 83 Considerations
8. The Landlord testified that since the N5 Notice was served the Tenant has not made any effort to correct the behaviour. He testified he continues to receive complaints about the Tenant on a regular basis due to noise disturbances in which the police have attended to the residential complex and contacted him in the middle of the night. He cited July 5, 2022 and September 11, 2022 as examples.
9. The Landlord testified the Tenant has damaged the mailbox. He testified the Tenant had attracted bears to the residential complex in the fall of 2022 by not taking her garbage to the curb. As recently as the week before the hearing, the Tenant has prevented snow removal at the residential complex by failing to move a vehicle that is situated in front of the building.
10. The Landlord sought eviction of the Tenant. He is concerned the Tenant's ongoing behaviour will result in other tenants at the residential complex either vacating their units or filing their own applications against him with the Board. The Landlord testified other tenants at the residential complex are looking to him to resolve the issues with the Tenant.
11. I asked the Landlord if they were aware of any circumstance the Tenant may be experiencing that would make an eviction unfair and they were aware of none.
12. 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. The Tenant did not attend the hearing to present any evidence or submissions in support of granting relief from eviction.

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 March 5, 2023.
2. If the unit is not vacated on or before March 5, 2023, then starting March 6, 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 March 6, 2023.

4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 6, 2023 at 5.00% annually on the balance outstanding.

February 22, 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 September 6, 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.