



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

Citation: Finlayson v Torabi Forsani, 2023 ONLTB 20824

Date: 2023-02-21

File Number: LTB-L-032033-22

In the matter of: Main Floor, 21 Caracas Rd
Toronto Toronto M2K1A8

Between: Al Finlayson Landlords
Carol Finlayson

And

Alireza Torabi Forsani Tenants
Chakameh Hassanaziz

Al Finlayson and Carol Finlayson (the 'Landlords') applied for an order to terminate the tenancy and evict Alireza Torabi Forsani and Chakameh Hassanaziz (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.

This application was heard by videoconference on February 6, 2023. The Landlords and the Tenants attended the hearing. Regine Roberts appeared as witness for the Landlord.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, based on the reasons below, I find it would not be unfair to grant conditional relief from eviction.
2. The Landlord's application is based on two N5 notices of termination. The first N5 notice was served to the Tenants on November 8, 2021 with a termination date of January 14, 2022. The second N5 notice was served to the Tenants on February 16, 2022 with a termination date of March 4, 2022. Both notices allege substantial interference with reasonable enjoyment alleging excessive noise emanating from within the rental unit and that the Tenants have tampered with the heat and thermostat in the residential complex.
3. As of the hearing date the Tenants were in possession of the rental unit.
4. The residential complex is a semi-detached dwelling consisting of two rental units. The Tenants subject to this application reside on the main floor unit.

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Landlord's evidence:

5. The Landlord Carol Finlayson testified that she has received numerous telephone calls from the basement tenant regarding excessive noise emanating from within the rental unit. In particular, Ms. Finlayson recalls receiving telephone calls on November 2, 2021, February 1, 2022 and on February 5, 2022. On the February 1, 2022 telephone discussion, Ms. Finlayson testified that she could hear the Tenants yelling in the background.
6. Ms. Finlayson stated that since the application was filed, she has still received complaints regarding excessive noise, but agreed that the conduct has improved since December 2021.
7. Al Finlayson also provided oral testimony at the hearing and testified that the Landlord has received complaints from the basement tenants regarding excessive heat in the basement unit. In particular Mr. Finlayson stated that on January 26, 2022 the basement tenants reported that the heat in the rental unit was approximately 35 °C. The Landlord believes that this is due to the Tenants tampering with the thermostat and as such, on February 4, 2022 the Landlord installed a new thermostat that can be controlled remotely from the Landlord's residence.
8. Regine Roberts provided oral testimony at the hearing and appeared as witness for the Landlord. Ms. Roberts resides in the basement unit of the residential complex. Ms. Roberts testified that there has been excessive noise consisting of screaming and yelling emanating from the upper rental unit since 2020. The Tenant was unable to provide the Board with exact dates of the alleged conduct, but confirmed that the noise has subsided since December 2022. Ms. Roberts also testified that the basement unit is hot and that this issue continues as of the hearing date.

Tenant's evidence:

9. The Tenant Alireza Torabi Forsani provided oral testimony at the hearing and spoke on behalf of both Tenants. Mr. Forsani disputes the allegation that he and his wife had tampered with the thermostat in the rental unit or that the heat was set to an uncomfortable temperature.
10. The Tenant agreed that he and his wife have their occasional arguments but disputed that they frequently allow excessive noise to emanate from within the rental unit. In fact, the Tenant stated at the hearing "we are not like Romeo and Juliet".

Analysis:

11. Section 64(1) and (3) of the *Residential Tenancies Act, 2006* (the Act) states:

64 (1) 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.

- (3) The notice of termination under this section is void if the tenant, within seven days after receiving the notice, sufficiently reduces the number of persons occupying the rental unit.

12. Section 68 of the Act states:

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, 61, 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).

13. Based on the evidence before the Board, I am satisfied that the Tenants have substantially interfered with the reasonable enjoyment of the basement residents by allowing excessive noise to emanate from within the rental unit. The Tenant's own testimony indicates that they do have their occasional arguments in the rental unit, which ultimately results in shouting or yelling. The Landlord's evidence was further supported by the basement resident's testimony and by Ms. Finlayson who confirmed she could hear shouting on the telephone during the February 1, 2022 incident.

14. I am not satisfied however that the Tenants have substantially interfered with the reasonable enjoyment of the basement residents or the Landlord by tampering with the heat and/or thermostat within the residential complex. The Landlord provided insufficient evidence to support that the Tenants have tampered with the thermostat, nor have the Landlords or basement tenant provided any evidence such as temperature readings or reports to support that the heat in the basement unit is excessively hot. I further note that the basement tenants own testimony confirms that she still finds the heat in her unit to be excessive, despite the Landlord changing the thermostat to the residential complex on or about February 2022 and preventing the Tenants from turning up the heat. Therefore, I am unable to conclude that the Tenants are the cause of the heat problem or tampering with the thermostat.

Relief from eviction:

15. 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

grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

16. At the hearing both the Landlord and their witness confirmed that the conduct of the Tenant has corrected in the last few months. The Tenants have also stated that they understand the concerns of the basement tenant and agreed that they would be mindful in limiting any excessive noise.
17. The Divisional Court has previously determined that evicting a tenant is a remedy of last resort: *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Div. Ct.). In this case, I accept the Tenant's submissions that the conduct will not repeat going forward and as such, do not see the prejudice to the Landlord in imposing a conditional order.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
 - For a period of 12 months commencing the date of this order, the Tenants, their occupants, and/or permitted guests shall refrain from allowing excessive noise to emanate from within the residential complex.
2. If the Tenant fails to comply with the conditions set out in paragraph 1 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
3. The Tenant shall pay to the Landlord \$201.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before March 4, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 5, 2023 at 5.00% annually on the balance outstanding.

February 21, 2023

Date Issued

Fabio Quattrociochi

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.