



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

**Citation:** POPLAR PLAINS INVESTMENTS C/O BRIARLANE PROPERTY MANAGEMENT INC  
v Eurke, 2023 ONLTB 20435  
**Date:** 2023-02-15  
**File Number:** LTB-L-016916-22

**In the matter of:** 403, 1525 BIRCHMOUNT RD  
TORONTO ON M1P2H3

**Between:** POPLAR PLAINS INVESTMENTS C/O BRIARLANE PROPERTY      Landlord  
MANAGEMENT INC

**And**

David Watt      Tenant  
Fredrick Eurke

POPLAR PLAINS INVESTMENTS C/O BRIARLANE PROPERTY MANAGEMENT INC (the 'Landlord') applied for an order to terminate the tenancy and evict David Watt and Fredrick Eurke (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 February 7, 2023.

Only the Landlord's Legal Representative Bryan Rubin and the Landlord's Agent Antonio Pinheiro attended the hearing.

As of 12:16 p.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 a N5 notice of termination served on the Tenant on February 24, 2022 with a termination date of March 20, 2022 based on the allegation that the Tenant's behaviour or the behaviour of someone visiting or living with the Tenant has substantially interfered with another tenant's or the Landlord's reasonable enjoyment of the residential complex and/or lawful rights, privileges, or interests.

2. For the reasons that follow, I find that the tenancy between the Landlord and the Tenant is terminated.
3. As this was the first N5 notice of termination, the Tenant had seven days to remedy the situation by stopping the conduct or activity or correcting the behaviour complained about. The Landlord's Legal Representative submits that the Tenant did not void the N5 notice as the behaviour continued.
4. The behaviours of concern that are detailed in the n5 notice were listed as taking place from May 26, 2021 to February 20, 2022 and include:
  - Noise complaints particularly screaming, slamming doors, braking dishes and using vulgar language.
5. The Landlord's witness, Derek Middleton ('DM') testified that he resides in unit #405 and that approximately one week after the Tenant's partner moved into the rental unit, the excessive started.
6. On February 20, 2022, DM testified that police attended the Tenant's rental unit in response to his complaint of screaming, windows being slammed and loud banging noises emanating from the Tenant's rental unit. DM submits that the Tenant's partner also called DM's guest racist names.
7. DM submits that the loud noises continued after this incident and after the delivery of the N5 notice of termination.
8. Email communications from DM to the Landlord were tendered into evidence at the hearing and these email communications detail the noise and behaviours complained of for a period of at least 7 months.
9. DM stated that due to the excessive noise, he was unable to sleep in his bedroom as that wall was shared with the Tenant's unit however, in August, 2022, the noise calmed down which permitted DM to move back into his bedroom. DM believes the noise calmed down because the Tenant's partner moved out of the unit.
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 had excessive noise emanating from his rental unit for a period of time which prompted a number of complaints to the Landlord. Further, the adjacent resident to the Tenant was unable to sleep in his bedroom due to said noise. Despite a warning letter dated May 26, 2021 sent to the Tenant and the delivery of the N5 notice of termination, the Tenant and/or his guest did not cease the behaviour, the Tenant's conduct and behaviour continued.

12. Based on the uncontested evidence and submissions before me, and on a balance of probabilities, I find that the Tenant's and/or his guest's behaviour and conduct has prevented the Landlord from meeting its obligations to ensure other residents can reasonably enjoy the residential complex and that the Tenant's behaviour has substantially interfered with other tenants reasonable enjoyment of the residential complex.
13. 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 notice, substantially interfered with other tenants' or the Landlord's reasonable enjoyment of the residential complex, and/or lawful rights, privileges or interests.
14. The Landlord also incurred the cost of \$186.00 to file this application and is entitled to reimbursement of that cost.

*Relief from eviction:*

15. The evidence before me was that it was believed the Tenant's guest was the root cause of the excessive noise and that she has since vacated the unit. As the noise has subsided, the Landlord's Legal Representative sought a conditional order. Given the circumstances, I am satisfied that the Tenant should be afforded an opportunity to preserve their tenancy and that a conditional order would be appropriate. 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. This order contains all of the reasons for this matter and no further reasons will be issued.

**It is ordered that:**

1. The Landlord's application for eviction of the Tenant is denied as long as the Tenant meets the conditions set out below.
  - (a) The Tenant shall not engage in the same behaviours as set out in the N5 notice of termination dated February 24, 2022 for a period of 12 months commencing February 16, 2023.
2. If the Tenant fails to comply with any of the conditions in accordance with paragraph 1, the Landlord may apply under section 78 of 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 set out in paragraph 1 of this order.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2023 at 5.00% annually on the balance outstanding.

**February 15, 2023**

**Date Issued**

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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.

2023 ONLTB 20435 (CanLII)