



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

Citation: KINGS CLUB RESIDENCES INC v Kunga, 2023 ONLTB 20417

Date: 2023-02-10

File Number: LTB-L-016920-22

In the matter of: 414, 1100 KING ST W
TORONTO ON M6K0C6

Between: KINGS CLUB RESIDENCES INC Landlord

And

Tenzin Kunga Tenant

KINGS CLUB RESIDENCES INC (the 'Landlord') applied for an order to terminate the tenancy and evict Tenzin Kunga (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 Agent Manny Palomar and the Landlord's Legal Representative Bryan Rubin 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 an N5 notice 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. The rental unit is contained within a complex of approximately 536 units with approximately 500 people residing in the complex.
3. On March 16, 2022, the Landlord served the Tenant with an N5 notice of termination with a termination date of April 6, 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 was that the Tenant continued the behavior and did not void the N5 notice.

4. The behaviors of concern that are detailed in the N5 notice were listed as taking place on a number of dates between October 23, 2021 and February 22, 2022 and include:
 - Noise complaints - excessive noise, particularly loud music and loud bass emanating from the rental unit.
5. The Landlord's Agent, Manny Palomar is a Property Manager with the Landlord who testified that between the dates of October 23, 2021 to February 22, 2022, he and the Landlord's security team received a large number of complaints of loud music with loud bass emanating from the Tenant's rental unit. Several warnings were provided to the Tenant during this time period however the noise has continued.
6. The Landlord's Agent testified that the noise was so loud that the walls would vibrate, there was loud laughing, screaming and talking emanating from the Tenant's rental unit which would last into the early hours of the morning, 7:00 or 8:00 a.m.
7. Security incident reports tendered into evidence indicate a number of incident reports completed as a result of complaints by other residents within the complex stating that excessive noise, particularly loud music, was emanating from the Tenant's unit.
8. The Landlord's Agent submitted a letter into evidence which was addressed to the Tenant on November 18, 2021 regarding the noise disturbance which requested the Tenant cease and desist the behaviour and that either he or security personnel have knocked on the Tenant's door a number of occasions to have the music turned down but the Tenant has not complied.
9. The Landlord's Agent submitted that the residents in the neighbouring units #415 and #413 have since vacated due to the excessive noise and the Landlord has been unable to re-rent those two units due to the Tenant's continued excessive noise.
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 evidence and submissions before me is that the Tenant continuously played loud music and bass in his unit which prompted a number of complaints to the Landlord. Further, the adjacent residents to the Tenant have vacated due to the excessive noise and the Landlord has been unable to re-rent those units. Despite a number of warnings including correspondence to the Tenant and knocking on the Tenant's door to request that the Tenant cease the behaviour, the Tenant's conduct and behaviour continues.

12. 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.
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 the Tenant has resided in the rental unit since 2020 and is in his late 20's to early 30's in age. 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.
16. 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.
17. 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 February 21, 2023.
2. If the unit is not vacated on or before February 21, 2023, then starting February 22, 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 February 22, 2023.
4. The Tenant shall also 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 February 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 22, 2023 at 5.00% annually on the balance outstanding.

February 10, 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 August 22, 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.

2023 ONLTB 20417 (CanLII)