



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

Citation: Hastings Local Housing Corp v Sweet, 2023 ONLTB 18601

Date: 2023-02-08

File Number: LTB-L-009735-22

In the matter of: 204, 315 EDMON ST RR 1
DESERONTO ON K0K1X0

Between: Hastings Local Housing Corp. Landlord

And

Michael Sweet Tenant

Hastings Local Housing Corp. (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Sweet (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 1, 2023.

The Landlord's Property Supervisor, Carrie Lough attended the hearing. Witnesses for the Landlord, Heather Lindsay, Colleen Roebuck and Ever Gray also attended the hearing.

As of 9:25 am, 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. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, I will be issuing a conditional order.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The tenancy began in 2012.
4. This is a rent geared to income tenancy.

N5 Notice of Termination Substantial Interference

5. On January 21, 2022, the Landlord gave the Tenant an N5 notice of termination by Xpress Post, deemed served on January 26, 2022. The notice of termination contains the

allegation that the Tenant is making excessive noise in the rental unit by having the volume of the television on at an excessive level.

6. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. The N5 notice gave the Tenant an opportunity to void the notice within 7 days, from January 27, 2022 to February 2, 2022 by refraining from having the volume on his television on at an excessive level. The Landlord received complaints from another tenant on January 27, 28, 29 and 30, 2022 of the televisions volume on at an excessive level. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

Landlord's Uncontested Evidence

7. The Landlord's Property Supervisor, Carrie Lough, testified that the rental unit is in a fifty plus residential complex.
8. She testified after receiving noise complaints from another tenant she would send notices and letters to the Tenant asking him to stop making excessive noise in the rental unit particularly related to volume of the television on at an excessive level. There was no success in resolving this issue with the Tenant. She testified the Tenant has been very abrasive with her and gets very aggravated when she speaks to him regarding the noise issue.
9. She testified the Landlord has called the Police on occasion regarding the high level of noise coming from the Tenant's rental unit, however the Police were not able to assist.
10. She testified that on January 4, 2023, the By Law Officer attended the rental unit and issued a warning to the Tenant regarding the excessive noise coming from the rental unit. She states that after this visit the tenant continued to have his television on extremely loud.
11. The Landlord's witness, Heather Lindsay testified she resides in the rental unit beside the Tenant and that she has submitted several noise complaints to the Landlord regarding the Tenant having the volume of his television on at an excessive volume at all hours of the day and night. These complaints to the Landlord are from May 1, 2021 to January 31, 2023.
12. She testified the noise is loud all the time and gets worse at night, which does not allow her to sleep or if she does fall asleep, she gets woken up by the noise. She states once she files a complaint with the Landlord and the Landlord speaks to the Tenant then the noise becomes even louder.
13. She testified this is very stressful for her as she cannot have family or friends over as it is so loud, and she cannot even carry on a conversation with them inside the rental unit.
14. She testified even if she puts on headphones inside her rental unit, she can still hear the television as it is so loud.

15. The Landlord's witness, Colleen Roebuck testified that she lives in the residential complex and has witnessed the excessive noise coming from the Tenant's rental unit while inside Heather Lindsay's unit. She states that when inside she is not able to carry on a conversation with her due to the noise coming from the Tenant's television.
16. She testified that she has seen the Tenant stand on a chair on his balcony and look over into Heather Lindsay's unit to see if she is home.
17. She testified when the Tenant knows that Heather Lindsay is home, he purposely turns the volume of the television up to an extremely high volume.
18. She testified when she goes to the laundry room which is on the other side of the Tenant's rental unit, she can hear the television in the laundry room.
19. She testified she lives on the same floor as the Tenant, about halfway down the hallway and sometimes when she exits her rental unit, she can hear the television in the hallway.
20. The Landlord's witness, Ever Gray testified she resides in the residential complex and on several occasions has heard excessive noise coming from the television of the Tenant's rental unit.
21. She testified when she visits Heather Lindsay they cannot carry on a conversation as the noise is so loud. She states that she has heard the noise in the hallway on the floor that the Tenant lives on.

Analysis

22. Based on the testimony of the Landlord's Property Supervisor and the Landlord's Witnesses, I am satisfied, on the balance of probabilities, that the Tenant has substantially interfered with the reasonable enjoyment of another tenant of the residential complex by making excessive noise caused by volume of the television on at an excessive level.
23. I find that this conduct does not allow other tenants in the building to enjoy their rental unit and causes other tenants to not be able to sleep at night and have quiet enjoyment of their rental unit.

Relief from Eviction

24. 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 pursuant to subsection 83(1)(a) of the Act. I find that it would not be unfair to provide the Tenant with an opportunity to correct the issue by refraining from having the volume of the television on at an excessive level.
25. I have considered that the tenancy began in 2012 and the tenancy is rent Geared to Income. The Tenant could face challenges finding another rental unit that meets his financial needs.

26. This order contains all the reasons for the decision. No other reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below:
 - a) The Tenant shall ensure that the volume of the television is not on at an excessive noise level at any time during the day or night.
2. The conditions set out in Paragraph 1(a) will be in place for a period of one year from the date of this order.
3. On or before February 22, 2023, the Tenant shall also pay the Landlord \$186.00 for the cost of filing this application.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 23, 2023 at 5.00% annually on the balance outstanding.
5. If the Tenant fails to comply with the conditions set out in paragraph 1(a) 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.

February 8, 2023
Date Issued

Trish Carson _____
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.