



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

Citation: Pinedale Properties Ltd. v Sharp, 2023 ONLTB 17940

Date: 2023-02-03

File Number: LTB-L-041308-22

In the matter of: 106, 1716 Main Street West
Hamilton Ontario L8S1G9

Between: Pinedale Properties Ltd. Landlord

And

Lisa Sharp Tenant

Pinedale Properties Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Lisa Sharp (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 January 25, 2023. Only the Landlord, Tatiana Storozhuk, the Landlord's legal representative, Samuel M. Korman, and the Landlord's witness, Shawntal Cubitt (SC), attended the hearing.

As of 1:04pm, the Tenant was not present or represented although properly served with notice of this hearing by the Board. After the matter concluded, the Tenant did end up signing in at 2:04pm. When asked why they were so late signing into the hearing, the Tenant indicated that they had tried to get in but couldn't get into the hearing.

On the basis that the Tenant was not present at the time the matter was called, the hearing proceeded with only the Landlord's uncontested evidence.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed.

2. On February 24, 2022, the Landlord gave the Tenant a first, voidable N5 notice of termination. The termination date in the notice is March 17, 2022. The notice alleges that the Tenant has been disturbing other Tenants in the residential complex with loud music, television and bass on a regular basis. The Landlord also alleged that they have received complaints regarding doors slamming and smashing sounds in the Tenants unit.

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3. In accordance with subsection 64(3) of the *Residential Tenancies Act, 2006* (the 'Act'), the Tenant can void a first N5 notice by correcting the conduct outlined in the notice within 7 days of being served the notice. In this case, the voiding period is February 25, 2022 to March 4, 2022.
4. On March 8, 2022 the Landlord gave the Tenant a second N5 notice of termination. The termination date on the notice is March 23, 2022. The pleadings on the second N5 notice outline issues during the voiding period for the first N5 notice and therefore the second N5 notice is defective. In accordance with subsection 68(1) of the Act, a landlord may serve a second notice of termination within 6 months of the service of the first N5, but not before the 7-day voiding period after service of the first N5 notice.
5. On this basis, the Landlord sought to amend their application in order to rely on their first N5 notice. Since the termination date in the first N5 notice still falls within the 30-day period for the Landlord being able to file their application, I see no reason to deny the request to amend the application to rely on the first N5 notice.
6. Based on the undisputed evidence of the Landlord, I find that the Tenant substantially interfered with the reasonable enjoyment of another Tenant in the residential complex on February 9, 2022 by playing loud music and slamming doors around 1:30am. Also, by slamming doors and playing music loudly on February 19, 2022 at 1:00am and by playing loud music with deep bass on February 22, 2022 at 1:25am as alleged on the Landlords first N5 notice.
7. I also find that the Tenant did not void the notice by correcting the behaviour within the 7day voiding period. The Tenant again was playing their music loud with heavy bass at 1:15am on February 25, 2022 and again from about 7:00pm on February 26, 2022 to 1:00am on February 27, 2022. And again from 7:00pm on February 27th into the early hours on February 28th. And still playing music with deep bass on March 1, 2022 from 7:00pm to 1:00am on March 2nd. In fact, the Tenant continued on a daily and nightly basis all throughout the voiding period according to the undisputed evidence of the Landlords witness, (SC) who lives directly above the Tenant.
8. SC indicated that this ongoing noise has been happening since shortly after the Tenant moved in and that she is disturbed late at night and throughout the day on a daily basis from the loud bass that comes from the Tenants audio player. There were short periods of time over a few months where SC was not disturbed by the Tenant in 106 and she

believed it was a result of bylaw or after receiving a termination notice. Then the noise would begin again and would go on for about 18 hours a day and every day.

9. SC testified that her sleep is disturbed on a regular basis and that she felt particularly disturbed by the noise during the Covid lockdown because she had nowhere to go to escape the sound. SC also testified that they have left the unit for groceries while the sound of music and heavy bass was going on, only to find that the Tenant was also out and about and had left the music playing with deep loud bass while they were away. SC feels as though the Tenant has deliberately played their music at levels that disturb her and that she sets the bass high in order to deliberately interfere with her enjoyment of her unit because she has complained to the Landlord about it. In support of this, SC submitted a copy of a note that was slipped under her door from the Tenant that read, "stay away from my fucking door. My TV is not loud, live with it. No one else complains".

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10. SC testified that the bass and noise was loud even as of the morning of the hearing and that the noise has continued despite the Tenant being put on notice that it is disturbing other Tenants. SC has lived in the rental unit for about 16 years and has been disturbed by the noise since approximately December 31, 2020.
11. Based on the undisputed evidence of the Landlord I find that the Tenant and or their guests or occupants have substantially interfered with the reasonable enjoyment of another Tenant in the residential complex and therefore I find it appropriate to grant the Landlords application and their relief sought.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

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 14, 2023.
2. If the unit is not vacated on or before February 14, 2023, then starting February 15, 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 15, 2023.
4. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before February 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 15, 2023 at 5.00% annually on the balance outstanding.

February 3, 2023

Date Issued

Terri van Huisstede
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 15, 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.

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