



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

**Citation:** Bombardieri v Demers, 2022 ONLTB 14224

**Date:** 2022-12-15

**File Number:** LTB-L-010759-22

**In the matter of:** 2A-564 CONCESSION ST, HAMILTON, ON L8V1B1

**Between:** Bruno Bombardieri Landlord

**And**

Larissa Demers Tenant

2022 ONLTB 14224 (CanLII)

Bruno Bombardieri (the 'Landlord') applied for an order to terminate the tenancy and evict Larissa Demers (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 Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on November 3, 2022.

Only the Landlord and their Representative Nilo Grabar attended the hearing.

As of 9:53a.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. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for damages in the application. Therefore, the tenancy is terminated as of January 3, 2023 and the Tenant shall pay to the Landlord

\$5,311.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord Bruno Bombardieri testified that the rental unit is in a mixed use residential and commercial building that he owns. There are 7 residential units and 3 commercial units. The commercial units have a different municipal address than the residential units, but they are all part of one building that he owns. The Tenant's rental unit is located directly above a commercial unit that the Landlord rents to Deborah Andrievich ('D.A') who runs a beauty supply store. The Landlord testified that the Tenant has been causing problems with both her residential neighbours and the commercial tenant below her. The allegation is that the Tenant is constantly blaring loud music, smoking marijuana, and causing damage to the residential property.

#### Substantial Interference – Incidents from the Notice of Termination

4. On June 29, 2022 the Landlord served the Tenant with an N5 Notice of Termination ('N5') with a termination date of July 20, 2022. This notice listed 16 incidents in which the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.
5. The commercial tenant D.A, whose business is directly below the Tenant's rental unit, kept a log of the incidents involving the upstairs Tenant and reported them to the Landlord.
6. The N5 describes an incident on April 14, 2022 between 1:00p.m. and 3:00p.m. in which there was extremely loud music and a domestic argument in the unit. The N5 notice says there was lots of cursing and banging and slamming noises.
7. The N5 describes an incident on April 21, 2022 between 2:30 and 3:30p.m. where there was loud music and stomping coming from the Tenant's apartment and it disturbed the commercial tenant below.
8. The N5 describes an incident on April 22, 2022 between 9:30a.m. and 10:00a.m. in which there was extremely loud music coming from the Tenant's apartment.
9. The N5 describes an incident on April 23 and 24, 2022 in which other tenants in the building told the Landlord that the Tenant was blaring her Karaoke machine until 3:00a.m. or 4:00a.m.
10. The N5 describes an incident on April 26, 2022 between 11:30a.m. and 1:30p.m. in which very loud music was coming from the Tenant's apartment.
11. The N5 describes an incident on May 14, 2022 between 11:30a.m. and 2:30p.m. in which the commercial tenant downstairs heard music. The commercial Tenant banged on the ceiling to signal that the music was too loud, which resulted in the Tenant entering the commercial store and yelling at the commercial Tenant. After leaving, the Tenant returned to her unit and blasted her karaoke machine and stomped around.
12. The N5 describes an incident on May 18, 2022 between 10:30a.m. and 11:30a.m. in which the commercial tenant downstairs heard extremely loud noises coming from the rental unit

that sounded like the dropping and dragging of furniture. There was also a strong smell of marijuana that traveled through the vents to the commercial property below.

13. The N5 describes an incident on May 19, 2022 between 10:30a.m. and 11:30a.m. in which the commercial tenant below smelt a very strong smell of marijuana coming from the rental unit.
14. The N5 describes an incident on May 20, 2022 between 1:00p.m. and 3:00p.m. in which the commercial tenant smelt a strong smoke smell and loud music was played intermittently.
15. The N5 describes an incident on June 2, 2022 in which the rental property's two property managers went to do a unit inspection. The Tenant was not in the unit and they discovered that a pot had been left on the stove with food inside and the stove element on. The property managers turned off the element because it was a fire hazard.
16. The N5 describes an incident on June 9 2022 at 9:00.a.m. in which the commercial tenant heard loud music and smelt a strong marijuana smell.
17. On that same day the N5 describes an incident in the evening in which there was a loud argument heard by other residents of the rental property. The Tenant also had a visitor who pulled the fire alarm twice and caused a disturbance in the hallway. The N5 states that when another resident went to check if the visitor was ok, the visitor attacked him.
18. The N5 describes an incident on June 13, 2022 from 11:30a.m. to 2p.m. in which the commercial tenant smelt a strong smell of marijuana in her store.
19. The N5 describes an incident on June 16, 2022 from 11:30a.m.-1:30p.m. in which loud stomping and music was heard from the rental unit by the commercial tenant below.
20. The N5 describes an incident on June 21, 2022 from 11:30a.m.-1:30p.m. in which loud music was heard.
21. The N5 describes an incident on June 24, 2022 in which the police were called to the Tenant's unit to discuss threats that the Tenant made to the landlord and his family. Evidence was not lead about that specific date, but Becky Cooper from the Hamilton Police Record's Office testified that prior to this date on May 28, 2022 the Landlord reported that the Tenant has been making calls and sending messages to his cellphone that he shared with his 12 year-old son. In the complaint the Landlord stated that in these calls and messages the Tenant is making threats and sexual comments. The Tenant has also apparently sent videos showing her damaging the rental property.
22. The Landlord testified that some of these messages are directed towards his son. The Landlord testified that in one message the Tenant said "I know your son is listening to these messages and he needs to learn about sex".
23. The Landlord testified that he asked the Tenant not to contact him directly and that he hired a Property Manager as a direct result of the Tenant's behaviour. The Landlord testified that he told the Tenant the Property Manager is who she should contact about issues in the residential property.
24. At the hearing the commercial tenant D.A, whose business is directly below the Tenant's rental unit, was shown the list of complaints and she affirmed that she made the majority of

them. She spoke specifically about the incidents on April 12, 21, May 14, 18, June 9,13,16, and 21, 2022 however I accept on a balance of probabilities that all of the daytime complaints about music and marijuana smell were made by D.A. I also accept on a balance of probabilities, based on the uncontested oral testimony of D.A and the written descriptions of the daytime complaints, that they occurred.

25. No neighbouring residential tenants were called as witnesses at the hearing and no evidence was lead about the noise complaints during the weekend of April 23/24, 2022 and the June 9, 2022 evening incident with a disturbance by a guest of the Tenants. As such, I will not consider those specific incidents in my order.

#### Substantial Interference - Incidents in the Voiding Period

26. The Tenant was served with the N5 notice of termination on June 29, 2022. She had 7 days between June 30-July 6, 2022 to correct her behaviour and void the notice of termination.
27. D.A testified that on July 6, 2022 the Tenant was playing her music extremely loudly and that it started in the early afternoon and continued until D.A left work for the day at 5p.m. D.A also testified that since the beginning of July she has complained to the Landlord at least twice a week about the strong smell of marijuana but could not recall the specific dates.
28. I am satisfied on a balance of probabilities that the Tenant did not void the marijuana smell or loud music issues from the N5 Notice of the Termination.
29. I heard no evidence about ongoing harassing phone calls, videos, and messages being sent to the Landlord or his son during the voiding period. As such, I am not satisfied on a balance of probabilities that specific claim was not voided. I will also add that the harassment claim was not plead with specificity on the N5 and at the hearing specific details about the dates that these messages were sent, and copies of the messages were not provided. As such, even if I had found that this claim was not voided, I likely would have dismissed the harassment claim for not meeting it's evidentiary burden.
30. I also heard no evidence about any fire hazards caused by the Tenant during the voiding period that were similar to the June 2, 2022 incident plead on the N5 notice. As such, I find that claim to be voided as well.

#### Substantial Interference - Ongoing Issues

31. D.A testified that on July 9, 2022 at approximately 11:18a.m. the Tenant was blasting her music and making loud sounds as if heavy things were being dropped on the floor and that this lasted for a couple of hours.
32. D.A testified that on July 14, 2022 around 3:00p.m. there was extremely loud music being played from the Tenant's unit. D.A testified that while the loud music was still on, the Tenant came into the store and started yelling at D.A that the music actually wasn't that loud.
33. Ali Bird is a new property manager of the building as of October 2022. He testified that the building is non-smoking and that he has had to remind the Tenant of that.

34. The Landlord also submitted into evidence an email from October 19, 2022 from D.A indicating that she could smell a strong weed smell on that day.
35. I note that the Landlord also called evidence about other ongoing issues with the Tenant. If the issues were not specifically plead in the N5 notice I did not consider them. For example, the Landlord lead evidence about the Tenant's dog barking at all hours. I did not consider that as it was not plead on the N5 notice.

Substantial Interference – Analysis

36. Section 64 of the *Residential Tenancies Act* ('the Act') states the following:

“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.”

37. The Landlord's claims from the N5 that were not voided and that evidence was called about at the hearing, are the substantial interference of the downstairs commercial tenant by the Tenant's smoking marijuana and playing loud music and making other loud noises and the substantial interference with the Landlord's lawful right, privilege or interest that results from that.
38. The Act makes clear that the only substantial interference that is to be considered under this section is that of the Landlord or another tenant. A residential complex under the Act can include commercial businesses that are within the complex and in *TSL-58643-14 (Re)*, 2015 CanLII 11751 (ON LTB) this Board at para 16 determined that a downstairs commercial tenant was a Tenant of the residential complex. As such, I make the same analysis in this case and find that the commercial tenant is a tenant of the residential complex and therefore their enjoyment of their unit can be considered.
39. At the hearing the commercial tenant D.A testified that the constant noise and marijuana smell affects her business because it is embarrassing when these issues occur when she has costumers and that the issues reduce her enjoyment of the rental property.
40. The incidents in which the Tenant has played loud music for hours and smoked marijuana are numerous and significant. As such, I find on a balance of probabilities that the loud music and marijuana smoke emanating routinely from the Tenant's apartment substantially interferes with the reasonable enjoyment of the downstairs commercial tenant.
41. Additionally, I find on a balance of probabilities that the Tenant's behaviour also substantially interferes with a lawful right, privilege or interest of the Landlord's. This is because the downstairs commercial tenant testified that because of the ongoing issues with the Tenant she is considering terminating her tenancy and finding someone else to run her business. That the Landlord is liable to lose his commercial tenant because of the actions of the Tenant substantially interferes with the Landlord's rights, interests, and privileges. I also find that the constant complaints that the Landlord is receiving from the

commercial tenant about the Tenant also substantially interferes with the Landlord's lawful rights, interests, and privileges as he is constantly having to field these complaints.

Damage – Incidents from the Notice of Termination

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42. The second reason for termination listed on the N5 notice is that the Tenant or someone living with the Tenant wilfully or negligently damaged the rental unit or the residential complex.
43. The N5 notice states that on or about the June 27, 2022 a contractor attend the rental property to report on the damage caused by the Tenant. The contractor reviewed the rental property security cameras and the property itself and determined that there was damage to the Tenant's stove, window hinges, rental property fire escape, and that the hallway needed to be cleaned of dirt. The contractor's total bill was \$5,311.00.
44. The N5 also describes an incident on May 21, 2022 in which the Tenant threw furniture down the fire escape which caused damaged to the fire escape. This incident was listed under the substantial interference claim but clearly relates to the damage. The damage to the fire escape was also clearly listed under the damage claim.
45. The N5 describes an incident on May 30, 2022 in which the Tenant threw dirt all over the hallway of the rental property common area. This incident was listed under the substantial interference claim but clearly relates to the damage as the cleaning fee for this is listed under the damage claim.
46. The Landlord submitted into evidence photographs from the building's security camera. There are a number of photographs in which the Tenant can clearly be seen throwing dirt all over the residential hallway. It is not a small amount of dirt, there are literally piles of dirt all over the hallway. There is also a photograph in which the Tenant appears to be throwing something down a fire escape.
47. A report from a contractor was entered into evidence and it says the following:
  1. The windows she has stripped all the handles off new windows and is using a tool to open and close windows.
  2. Regarding the fire escape the tenant rolled down furniture from the top of the fire escape to the bottom. Causing damage to the railing and steps. Steps and handrails had to be replaced and the entire fire escape had to be reinforced.
  3. The stove was replaced for the burners were removed and the glass was broken, and switches removed.
  4. Hallway was cleaned for dirt from outside was spread out the hallways. Dirt had to be removed and the floors cleaned and washed".
48. The contractor's bill was also entered into evidence. It lists \$600.00 to replace the stove, \$600.00 to repair the window hinges, \$3,000.00 to repair the fire escape, and \$500.00 to

clean up the hallway. There was also 13% tax added and the total of the final bill is \$5,311.00.

#### Damage – Voiding Period

49. The Tenant was served with the N5 notice of termination on June 29, 2022. The Tenant did not void this notice by paying the Landlord's \$5,311.00 costs.

#### Damage – Analysis

50. Section 62 of the Act says the following:

A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex. 2006, c. 17, s. 62 (1).

51. I accept on a balance of a probabilities based on the uncontested evidence in the contractor's report and the video stills from building's security camera that the Tenant caused the damaged alleged in the notice of termination. The Tenant is clearly shown in the video stills throwing dirt all over the building's hallway and throwing an object off the fire escape. The other damage was located inside the Tenant's unit and I accept on a balance of probabilities that it was the tenant, another occupant of the rental unit or a person whom the tenant permitted in the unit who caused the damage. The damage alleged inside the Tenant's unit is not the type of normal damage you would expect from wear and tear. The handles were striped off the windows, the stove burners and switches had been removed and there was broken glass from the stove.
52. The Landlord incurred reasonable costs of \$5,311.00. to repair the damage and replace property that was damaged and cannot be repaired. While this number is quite high, the majority of it comes from the damage to the fire escape. The contractor's report states that the entire fire escape had to be reinforced and the steps and handrails had to be replaced. That sounds like quite significant work, and I accept the cost as reasonable.

#### Daily Compensation

53. Based on the Monthly rent, the daily compensation is \$34.52. This amount is calculated as follows: \$1,050.00 x 12, divided by 365 days.
54. The Landlord's Representative submitted at the hearing that the Tenant is not in any arrears, as such daily compensation will be awarded for each day that the Tenant remains in the rental unit from the day following the hearing until she vacates.
55. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
56. The Landlord did not testify at the hearing regarding whether a rent deposit was collected from the Tenant. If the Landlord did collect one, it should be applied to the last month of the tenancy.

Relief from eviction

57. 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. I have considered the significant impact that the Tenant's actions have had on both the Landlord and his commercial tenant. Additionally, the Tenant did not attend the hearing to provide any evidence that would be relevant to my analysis under section 83.

**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 January 3, 2023.
2. If the unit is not vacated on or before January 3, 2023, then starting January 4, 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 January 4, 2023.
4. The Tenant shall pay to the Landlord \$5,311.00, which represents the reasonable costs of repairing the damage and replacing the damaged property.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$5,497.00.
7. If the Tenant does not pay the Landlord the full amount owing on or before January 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2023 at 4.00% annually on the balance outstanding.

**December 15, 2022****Date Issued**\_\_\_\_\_  
Amanda Kovats

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 July 4, 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.