



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

Citation: Saunders v Morrison, 2022 ONLTB 13989

Date: 2022-12-12

File Number: LTB-L-000221-21

In the matter of: UPPER, 737 4TH AVE
OWEN SOUND ON N4K2N5

Between: Sabrina Saunders Landlord

And

Melissa Morrison Tenant

Sabrina Saunders (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Morrison (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 November 2, 2022.

The Landlord, the Landlord's Legal Representative, Carrie Bertrand, and the Tenant attended the hearing. Donna Broga (DB) appeared as a witness for the Landlord.

Determinations:

1. The application is based on an N5 notice of termination ('N5 Notice'), which the Landlord served on November 29, 2021. For the reasons below, I find the Tenant made excessive noise as alleged in the N5 Notice and did not stop the conduct within seven days of receiving

the N5 Notice. Therefore, the Tenant did not void the N5 Notice pursuant to subsection 64(3) of the *Residential Tenancies Act, 2006* (the 'Act').

2. The residential complex is a semi-detached duplex. The Tenant occupies the upper unit and her tenancy began on November 1, 2021. There are tenants in the lower unit and DB owns the residence next door to the residential complex.
3. DB testified that she has lived in the building for 15 years. She testified that since the Tenant moved into the unit next door, she has been disturbed by the excessive noise caused by the Tenant, her occupants, and guests.
4. DB testified the excessive noise emanating from the Tenant's unit is unrelenting. She testified she is subjected to the screaming of profanities, the noise of items being broken, and arguments between the Tenant and her children and guests on a daily basis during all hours of the day and night. She testified that she could not recall specific dates as the noise has never stopped and she did not keep a log of all the incidents.
5. DB testified she did approach the Tenant after an incident on December 13, 2021 where she was awoken between 3:00 a.m. and 4:00 a.m. She testified she spoke to the Tenant later that same day to request the noise cease. She testified the Tenant was aggressive towards her when she knocked on her door so she was unable to have a conversation with the Tenant. She testified she no longer feels safe in her home and the excessive noise is negatively impacted her life. DB testified that she had contacted the police on numerous occasions seeking their assistance to stop the ongoing disturbances caused by the Tenant and her guests.
6. The Landlord testified she had received numerous complaints from DB and the tenants in the lower unit with respect to the disturbances at the Tenant's unit however she was unable to confirm specific dates other than listed in the N5 Notice . She testified the other tenants would not attend at the hearing to offer any evidence fearing retribution by the Tenant. She testified the police were called at least thirty times to attend at the Tenant's unit but she was unable to retrieve any incident reports from the police to corroborate her testimony due to restrictions with the *Freedom of Information Act*.
7. The Landlord testified that the tenants in the lower unit advised her they would need to vacate their unit as the disturbances were ongoing and interfered with their reasonable enjoyment. She testified she waived their rent for the month of December 2021 in the amount of \$1,500.00 in an effort to compensate them for the Tenant's behaviour. She stated she was seeking reimbursement of the waived rent from the Tenant. The Landlord did not provide any evidence to support her claim of \$1,500.00 therefore the claim is denied.
8. The Tenant testified her ex-boyfriend was the cause of the excessive noise in the unit. She testified that he would show up at her unit without her permission and she would need to

scream at him to get him to leave. She testified that she has called the police on several occasions for their assistance to remove him from the unit however she admitted she has not filed for a peace bond application against him. She stated he is currently incarcerated and has not been to the unit for quite some time.

9. The Tenant testified she has raised her voice to her oldest daughter several times but was not aware her actions were disturbing the other tenants and DB. She also testified that some excessive noise could be caused by the washing machine as it is loud while it is operating. She suggested that the units are not soundproofed and some noise should be expected.
10. The Tenant testified that she is not a violent person but does have the capacity to yell as that is her defence to confrontational situations. She testified she has spoken to the tenants in the lower unit and has given them no reason to be fearful of her. She testified she is confused by the allegations against her as the Landlord has not communicated to her there is an ongoing problem.
11. The Landlord is seeking termination of the tenancy by way of an 11-day order.
12. The Tenant does not want to move and seeks to preserve the tenancy. She testified that she is single mother with two children aged 3 and 16 and prior to occupying the rental unit she was homeless living in shelters and a motel. She testified that she suffers with fibromyalgia, chronic pain, anxiety, and nerve damage. She restated that her ex-boyfriend is incarcerated and does not anticipate any further issues with excessive noise.
13. Based on the evidence before me, I am satisfied that the Landlord has established on a balance of probabilities that there is excessive noise coming from the Tenant's unit beyond normal day to day activities. The noise created by the Tenant, her occupants, and her guests has substantially interfered with another tenant's reasonable enjoyment of the residential complex.
14. At the same time, there was no evidence before me that the tenants in the lower unit have complained about noise coming from the Tenant's unit by way of direct testimony or a sworn document. In addition, DB did not testify about any specific and more recent incidents of noise coming from the Tenant's unit after December 13, 2021. Accordingly, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to grant relief from eviction subject to the condition set out in this order pursuant to subsections 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.

2. For a period of twelve months from the date of this order, the Tenant, occupants, and/or any person the Tenant permits in the residential complex, shall keep the noise level down to a level that shall not substantially interfere with the Landlord's or another tenant's reasonable enjoyment. This noise includes but is not limited to yelling, screaming profanities, breaking items, and slamming doors.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, 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. This application is made to the Board without notice to the Tenant.
4. The Tenant shall pay to the Landlord \$186.00.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before December 23, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 24, 2022 at 4.00% annually on the balance outstanding.

December 12, 2022

Date Issued

Susan Priest

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.