



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

Citation: MULTFAITH HOUSING INITIATIVE v Nungnik, 2022 ONLTB 12898

Date: 2022-11-25

File Number: LTB-L-008940-22

In the matter of: 6, 380 BLAKE BLVD
VANIER ON K1L6L2

Between: MULTFAITH HOUSING INITIATIVE Landlord

And

Rachael Nungnik Tenant

MULTFAITH HOUSING INITIATIVE (the 'Landlord') applied (L2 application) for an order to terminate the tenancy and evict Rachael Nungnik (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 (N5 notices).

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

This L2 application was heard by videoconference on November 2, 2022.

Only the Landlord's Agents, Kayla Mitchell ('LLA1') and Mary-Ann Schwering ('LLA2'), attended the hearing.

As of 12:35 pm, 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 compensation in the application. However, as requested by the Landlord's Agents at the hearing, the Landlord is not seeking termination of the tenancy, neither is the Landlord seeking filing costs.
2. The Tenant was in possession of the rental unit on the date the application was filed (on February 14, 2022).
3. The Landlord served the Tenant with two N5 notices of termination, providing adequate details and dates when the claimed undue noise (slamming doors, yelling, shouting, loud music, etc.) emanated from the rental unit. The first N5 notice dealt with noise complaints

on October 29 & 30, 2021 and November 5, 2021, whereas the second N5 dealt with additional noise complaints on December 25, 2021 and during the week of January 3-10, 2022.

4. The Landlord's Agents testified the first N5 notice was successfully voided by the Tenant (which was served on November 10, 2021) as there was a complete stop for a limited period of time (with 7-days of the N5 being served) in respect of the overnight and early morning undue noise incidents.
5. The Landlord's Agents testified the second N5 notice (which was served on January 25, 2022) sets out the details of the recurrence of the same type of undue noises and disturbances that had precipitated the need for the first N5 notice. LLA2 testified about the incidents set out in the second N5 notice.
6. The Landlord's Agents confirmed that the Landlord is a non-profit housing provider who tries to keep all residents housed if it is possible to do so. In her testimony, LLA2 stated that since the issuance of the second N5, there has only been one more incident of undue noise emanating from the rental unit, which happened in June 2022. Other than that, the Tenant seems to have corrected her behaviour. As a result, the Landlord's Agents stated the Landlord is not seeking to evict the Tenant but to keep the tenancy intact on the condition the Tenant refrains from making similar undue noise that has been set out in the second N5 notice. As well, the Landlord is not seeking reimbursement of their L2 application filing fee.
7. Based on the Landlord's submissions, and on a balance of probabilities, I find the Tenant's or Tenant's guest's conduct has substantially interfered with another tenant and/or the Landlord and with the Landlord's lawful right, privilege or interest of the Landlord, in respect of the repeated instances of claimed undue noise and disruptions. As I accept that the first N5 notice was successfully voided by the Tenant – nothing was provided to contest the Landlord's submissions on this point -- I find the Landlord's basis of claim contained in the second N5 notice to be successful under this L2 application.
8. 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 subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The Landlord's L2 application that seeks termination of the tenancy is denied if the Tenant complies with the following terms:
2. For the 12-month period **starting on November 3, 2022 and ending on November 2, 2023** inclusively, the Tenant or any guests or visitors of the Tenant shall not commit any act that substantially interferes with the reasonable enjoyment of the Landlord or other tenants in the residential building which is identical to or similar to those actions of undue excessive noise set out in the second N5 notice of termination that forms a basis of this L2 application.
3. If the Tenant does not comply with the terms/conditions set out in paragraph 2 of this order, the Landlord may apply, without notice to the Tenant, and without a hearing, to

terminate the tenancy and evict the Tenant, pursuant to section 78 of the *Residential Tenancies Act, 2006*. Such an application must be filed within 30 days of a breach of paragraph 2 of this order, and must be accompanied by a detailed affidavit setting out the circumstances and date(s) of the breach.

November 25, 2022
Date Issued

Alex Brkic
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.