



Order under Section 78(6) Residential Tenancies Act, 2006

Citation: Donatis Brothers Inc v MOONIAS, 2026 ONLTB 8347

Date: 2026-01-27

File Number: LTB-L-084404-25

In the matter of: 1, 73 WINDEMERE AVE N
THUNDER BAY ON P7A6B3

Between: Donatis Brothers Inc Landlord

And

CORY MOONIAS Tenants
JESSI MOONIAS

Donatis Brothers Inc (the 'Landlord') applied for an order to terminate the tenancy of CORY MOONIAS and JESSI MOONIAS (the 'Tenants') because the Tenants failed to meet a condition specified in the order issued by the Board on November 8, 2024, with respect to application LTB-L-028079-24.

A hearing was held by videoconference on December 4, 2025 at 2:51 p.m. to consider this application.

The Landlords Jake Donatis and Zach Donatis, the Tenant Jessi Moonias and the Tenant's representative Molly MacDonald attended the hearing. Colin Stewart also attended the hearing as a witness for the Tenant.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Determinations:

Background

1. The Board order issued on November 8, 2024, states the Landlord could apply to the Board under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') without notice to the Tenant to terminate the tenancy and evict the Tenant if the Tenant did not meet certain condition(s) specified in the order. The Board issued an Endorsement directing the application to a hearing because additional evidence was required.

2. Section 78 (1) of *the Act* states:

78 (1) A landlord may, without notice to the tenant, apply to the Board for an order terminating a tenancy or evicting the tenant if the following criteria are satisfied:

1. The landlord previously applied to the Board for an order terminating the tenancy or evicting the tenant.
 - i. A settlement mediated under section 194 or order made with respect to the previous application, imposed conditions on the tenant that, if not met by the tenant, would give rise to the same grounds for terminating the tenancy as were claimed in the previous application, and
 - ii. provided that the landlord could apply under this section if the tenant did not meet one or more of the conditions described in subparagraph i. The tenant has not met one or more of the conditions described in subparagraph 2 i. 2006, c. 17, s. 78 (1).
3. In this case, the Landlord must establish a breach of the condition of the order, and it must also establish the Tenant's conduct gives rise to the same grounds for terminating the tenancy as were claimed in the previous application LTB-L-028079-24. Therefore, the Landlord has to establish both that there is a breach of the order issued on November 8, 2024, and that the Tenant's conduct substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.
4. The conditions of the order issued on November 8, 2024, require the Tenant to comply with the following:
 - For a period of 12 months from November 15, 2024 to November 14, 2025, the Tenants agree not to cause or allow any guest to cause excessive noise in the residential complex, especially between the hours of 11:00 p.m. to 7:00 a.m.
5. I find that the Landlord has not met the burden of proof required and terminating the tenancy is not reasonable under section 78(1) of *the Act*. My reasons are below.

Was there a Breach?

Landlord's evidence

6. The Landlord alleged the Tenant has breached the aforementioned order by making excessive noise.
7. The Landlord alleged that on October 6, 2025 the Tenant and their guests were making excessive noise in the residential complex. Entered into evidence was a video dated October 6, 2025 recorded by Ajel Kachroo, a tenant living in unit 3, which captures from his open window the audio of people talking and laughing outside the rental unit. Also entered into evidence was email correspondence received from Mr. Kachroo dated

October 6, 2025, which complains about noise and behavior in the residential complex past 11:00 p.m.

8. The Landlord further alleged that on October 9, 2025 the Tenants and their guests were making excessive noise in the residential complex. Entered into evidence were two videos recorded by Mr. Kachroo on October 9, 2025; the first video shows a police officer speaking with who the Landlords allege is a guest of the Tenant about an incident involving excessive noise and the second video captures from his open window the audio of people talking loudly and uttering expletive language outside the residential complex. The Landlord submitted moments captured at 0:42, 1:09 and 1:40 marks of the video recording rise to the level of breaching the order. Also entered into evidence was an email from Mr. Kachroo dated October 16, 2025 which complains that the Tenant was involved in a loud argument around 9:30 p.m. and 10:00 p.m.
9. The Landlord testified that this behaviour is not limited to the aforementioned incidents, rather it has been consistent and ongoing. The Landlord testified they regularly receive complaints from other tenants about the Tenant's behaviour. Entered into evidence were written statements from other tenants in the residential complex. The first statement is from a tenant named Randy, received by the Landlord on November 5, 2025 which alleges a number of behaviour related complaints, including that the Tenants have been loud after 11:00 p.m. The second statement is from a tenant named Scott Ennis received March 27, 2024, which alleges the Tenants are always fighting at all hours of the night and it makes he and his friends uncomfortable.

Tenant's evidence

10. The Tenant's representative submits that the Tenant has not engaged in conduct that rises to the level of breaching the order issued November 8, 2024. The Tenant denies making excessive noise, and denies anyone who may have made noise are the Tenant's guests.
11. With respect to the allegations regarding the incident of October 6, 2025, the Tenant, Jessi Moonias ("JM") testified she was in the hospital from September 26, 2025 through October 7, 2025 and therefore could not have been her captured in the recording. Entered into evidence were hospital records dated October 29, 2025 supporting the Tenant's testimony, showing the Tenant was discharged from St. Joseph's Hospital on October 7, 2025. The Tenant's representative submitted the Landlord's description of the audio recording exaggerates the volume, and further submitted that there was no direct evidence submitted to show the Tenant or a guest of the Tenant were responsible for the noise.
12. With respect to the allegations regarding the incident of October 9, 2025, JM testified she was arguing with her daughter and the individual who was responsible for causing the noise was Cornelous Wapoose, who was not a guest. Entered into evidence were police records dated October 9, 2025 which documents an incident including noise and an alleged assault with ongoing screaming for 30 minutes from 8:21 p.m. The report

characterizes the aforementioned individual as an unwanted person and the report concludes by stating unwanted parties left upon request with no concerns.

Analysis

13. The Landlord bears the burden of proof that there was a breach.
14. Here the Landlord's case relies substantially on hearsay evidence. The Board may admit hearsay evidence; however, the weight to be given to such evidence depends on its reliability, necessity, and corroboration, particularly where the allegations are serious and carry significant consequences. In this case, neither Landlord personally witnessed the alleged excessive noise or observed the Tenant on either October 6, 2025 or October 9, 2025. While hearsay evidence is admissible, the Board must exercise caution where the allegations are extremely serious and the evidence is uncorroborated.
15. With respect to the incident on October 6, 2025, the Landlord's conclusion regarding the volume of noise is not based on direct observation rather, it is based on information provided to him, and by his own inferences drawn from reports or video recordings. As such, I assign little weight to this evidence. Having reviewed the documentary evidence, in particular the video recording, I do not judge the volume captured by the audio rises to the level of being excessive noise. Even if I did judge the volume as excessive, the video captures a view looking out of a window as well as audio; and the Landlord led no direct evidence to support the allegation that the Tenant or a guest of the Tenant was responsible for the audible noise captured in the video. As such, I place very little weight on this evidence including the written complaint from Mr. Kachroo.
16. With respect to the incident on October 9, 2025 all documentary evidence presented by both the Landlord and the Tenant suggests the incident occurred before 11:00 p.m. which includes the police report as well as the complaint received by the Landlord. As such, I find this incident, whether it rises to the level of excessive noise or not, did not violate the terms of the order issued on November 8, 2024 which clearly states the Tenants agree not to cause or allow any guest to cause excessive noise in the residential complex, especially between the hours of 11:00 p.m. to 7:00 a.m. As the incident did not occur during the restricted time period, I do not have to consider whether the noise was excessive.
17. I place no weight to the remaining evidence led by the Landlords. The written witness statement from Scott Ennis dated March 27, 2024 alleges incidents outside of the relevant window, November 15, 2024 to November 14, 2025, and is therefore not relevant to this matter. The written witness statement from Randy, while contemporaneous, only asserts generic complaints; it lists no specific dates or times.
18. Had any of the individuals whose complaints the Landlord is relying on in this matter been called as witnesses, their testimony would have been subject to cross-examination, and this may have added credibility to the Landlord's submissions that the Tenant was either responsible for the alleged conduct or that the incidents rise to the level of excessive noise and therefore substantial interference.

19. I have assessed the reliability and probative value of all of the evidence presented, including the hearsay evidence, in light of the seriousness of the allegations. I have also considered the Landlord's submissions considering s. 15(1) of the SPPA specifically permits the introduction of hearsay evidence, whether or not it was given under oath or affirmation. I have also considered that admitting hearsay evidence under s. 15(1) of the SPPA can and has been found to constitute a denial of natural justice (see *B.(J). v. Catholic Children's Aid Society of Metro Toronto* [1987] O.J. No. 2614 (Div. Ct.) and *Re Girvin et al. and Consumer's Gas Co.*, [1973] O.J. No. 814 (Div. Ct.)). In my analysis, where evidence was based on second-hand information or inference rather than direct observation, I have explained the weight assigned to that specific evidence. For the reasons set out above, I am not satisfied, on a balance of probabilities, that the Tenant breached the order dated November 8, 2024.

20. Accordingly, the Landlord's application for termination of the tenancy is denied.

It is ordered that:

1. The L4 application is dismissed.
2. Order LTB-L-028079-24 issued on November 8, 2024 remains in effect.

January 27, 2026
Date Issued

Greg Witt
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.