



Order under Section 69 Residential Tenancies Act, 2006

Citation: Art Rossel Construction Ltd. v Murphy, 2026 ONLTB 28771

Date: 2026-04-09

File Number: LTB-L-102537-25

In the matter of: Main Unit 1, 170 WHEELER AVE
TORONTO ON M4L3V4

Between: Art Rossel Construction Ltd.

Landlord

And

Tyler Beau-James Murphy
Melinda Marie Myron

Tenants

Art Rossel Construction Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Tyler Beau-James Murphy and Melinda Marie Myron (the 'Tenants') because the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another Tenants. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on March 5, 2026.

The Landlord's agent, Robert Rossell, the Landlord's witness, Vanessa Bowers, the Landlord's representative, Oleksandr Pichugin, and the Tenants attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. The Tenants were in possession of the rental unit on the date the application was filed.

Substantial interference

3. On November 5, 2025, the Landlord gave the Tenants a first, voidable N5 notice of termination, deemed served on November 11, 2025, alleging that noise from the Tenant's unit was interfering with another tenant's enjoyment of the residential complex. As such, the Landlord was allowed to give the Tenants a second, non-voidable N5 notice of termination

under section 68 of the *Residential Tenancies Act, 2006* (Act) if another incident occurred more than seven days but less than six months after the first N5 notice was given.

4. On November 24, 2025, the Landlord gave the Tenants a second N5 notice of termination alleging that noise from the Tenant's unit continued to interfere with another tenant's enjoyment of the residential complex.
5. The Landlord's agent testified that the residential complex is a triplex. The Tenants' unit is on the main floor. The building is old (circa 1950), has hardwood floors, plaster ceilings and very little insulation.
6. In August 2025, the Landlord started receiving complaints from the basement tenant about repeated noise (i.e. jumping, stomping, running, squealing) from the Tenants' unit. He relayed those complaints to the Tenants. On cross-examination, he admitted that other than ask the Tenants to place mats over the hardwood floors, the Landlord had taken no steps to have anyone investigate possible soundproofing or insulation. There were no noise complaints about the Tenants from the previous basement tenants who lived in the unit for over fifteen years.
7. The Landlord's witness is the tenant in the basement unit. She moved into the unit in December 2024 and almost immediately started to complain to the Landlord about the noise from the Tenants' unit. She stated that the noise is daily, wakes her up and is irritating.
8. The Tenants testified that they are not deliberately trying to make noise (i.e. no malicious intent) but given that their children are two and five years old, it is very difficult to keep them quiet. After the noise complaints started, they placed thick foam play mats in the living room and did their best to keep their children quiet (i.e. make them take their shoes off inside and wear socks). They cannot, however, promise that their children will not make noise in the future. They have lived in the building for ten years and it is common to hear conversations through the floors because the building is old. It is just '*the nature of the beast*'.

Analysis

9. There is no dispute that the building is old and sound appears to travel very easily through the walls and floors. This suggests to me that noise is an issue in the building and that the noise described by the basement tenant are attributable to the regular activities of the Tenants and their children in their home.
10. *Re File No. TSL-40332* [2002] O.R.H.T.D. No.159 says that,

For the application to succeed, the Landlord must prove that the conduct of the Tenant or her guests has substantially interfered with the tenant's reasonable enjoyment of her unit. While it is clear that the tenant has been disturbed, it must also be proven that the offending noise arises from unreasonable conduct and not from the normal activities of daily living.
11. Based on the evidence before me, I am satisfied that any noise the basement tenant may have heard was not the result of any unreasonable conduct or any unusual behaviour.

12. The conduct of Tenants before me suggests that they fully understand their obligations in relation to the other tenants in the building, particularly since the complex is poorly sound-proofed. I found the Tenants' testimony to be straightforward and consistent, and I have no reason to doubt truthfulness of the Tenants' testimony.
13. As such, I am not satisfied that the Tenants are engaging in any unreasonable conduct and, as a result, any noises the other tenant is hearing can be attributed to the noises of normal activities of daily living.
14. For these reasons, I am not satisfied that the Tenants are substantially interfering with the other tenants' reasonable enjoyment of their units and, as a result, the Landlord's application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

April 9, 2026
Date Issued

Karen Gonçalves
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.