



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-104610-25

In the matter of: 3, 301 CORDOVA RD
OSHAWA ON L1J1P1

Between: David Marsh Landlord
Vasana Marsh

And

Dalton Hackett Tenant

David Marsh and Vasana Marsh (the 'Landlord') applied for an order to terminate the tenancy and evict Dalton Hackett (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 March 25, 2026.

The Landlord's Legal Representative Daniel Greanya and the Tenant 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 and the claim for compensation in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. N5 Notice of Termination -Substantial interference

On September 21, 2025, the Landlord gave the Tenant a first, voidable N5 notice of termination, which was deemed served on September 21, 2025, with a termination date of October 11, 2025. The first N5 described an incident on September 19, 2025, the Landlord alleged that Mr. and Ms. Lue were awakened by a loud, banging, and screaming at 12:00 a.m. The Lue's sent a text message to the Tenant at 1:00 a.m., it was alleged that the

Tenant reacted by banging louder. The Tenant came downstairs and a verbal and altercation occurred. Therefore, the Landlord was allowed to give the Tenant a second, non-voidable N5 notice of termination under section 68 of the *Residential Tenancies Act, 2006* (Act).

4. On December 3, 2025, the Landlord gave the Tenant a second N5 notice of termination, which was deemed served on December 12, 2025, with a termination date of December 29, 2025. The notice of termination contains the following allegations: On or about November 24, 2025, between midnight and 3:40 a.m., the Tenant made excessive noise, screaming, including but not limited to banging.

Landlord's Evidence

5. The Landlord's first witness was Alicia Lue. She testified she resides in the rental unit below the Tenant since August 2024. She witnessed repeated late-night noise including shouting, banging and karaoke-style singing.
6. She testified that these occurrences were primarily between midnight and early morning hours. Ms. Lue alleged that these noises caused sleep disruption impacting her family, including their newborn child.
7. The Tenant sought the Landlord's intervention, which offered a temporary improvement, but it was followed by a recurrence.
8. She testified that on September 19, 2025, the Tennat was making noises, so much so that her husband used a broom to strike ceiling due to the noise. The Tenant came downstairs, resulting in a verbal confrontation between the Tenant and her husband.
9. The verbal confrontation escalated into a physical altercation in the hallway, were the other neighbour intervened, breaking up both parties in the process. She described the situation as a chaotic multi-party involving yelling a physical engagement.
10. She confirmed that they vacated the rental unit on February 1, 2026.
11. The Tenant Mr. Hackett cross examined Ms. Lue on the evidence presented.
12. During cross-examination, Ms. Lue acknowledged that she did not have any recordings of the alleged noise levels. She testified that attempts were made to cooperate with the Tenant through text messages; however, some of these exchanges became argumentative while others were apologetic in tone. She further confirmed that the noise was intermittent but recurred over a period of several months.
13. When questioned about the building being poorly insulated, she acknowledged this was true.
14. The Landlord's next witness was John Nunez. He testified he was aware that noise occurs intermittently, 1-2 days per week at time. He was aware that noises included dragging, yelling, and loud disturbances.

15. Mr. Nunez stated that the noises originate from the Tenant's rental unit. Some noise included what he said was last week at 3:30 a.m., yelling and the chair dragging.
16. The Tenant Mr. Hackett cross examined Mr. Nunez on the evidence presented.
17. During cross examination Mr. Nunez stated that he has no personal relationship with the Tenant but acknowledged that he knew David Marsh for approximately 11 years. He confirmed that noise were intermittent rather than a constant disturbance.
18. The Tenant questioned Mr. Nunez about an incident that occurred on March 12, 2026, which he confirmed he was aware of this incident that it occurred around 11:58 p.m. and last until about 12:30 a.m.
19. Lastly, Mr. Nunez stated that he had no direct knowledge about the allegation in the N5 Notice or if the N5 had been filed.
20. The Landlord's final witness was Stephanie Mitchell.
21. She testified that on September 19, 2025, she heard shouting and a disturbance in the hallway. She observed a physical altercation between Ms. Lue's husband and the Tenant Mr. Hackett. It was discovered that Ms. Mitchell was the neighbour who intervened as previously testified by Ms. Lue.
22. Once between the parties, Ms. Mitchell stated that she attempted to prevent further escalation and was able to convince the Tenant to go upstairs and Ms. Lue's husband to return to the rental unit.
23. I will note the Landlord introduce Ring Camera evidence showing the alteration. I was satisfied this footage was not alternated in anyway.
24. She stated that confirmed poor sound insulation in the building, as she resided in the rental unit for a period where Ms. Lue resided. Additionally, she provided evidence of an incident that occurred in November 2025, involving both parties, she intervened and de-escalated the situation. She noted that the Tenant appeared to be intoxicated at the time of this incident.
25. The Tenant Mr. Hackett cross examined Ms. Mitchell on her evidence presented.
26. She confirmed that the incident in November 2025, some of her indicators of alcohol was the smell coming from the Tenant.
27. Ms. Mitchell empathized she had no bias towards the Tenant or Ms. Lue husband and was willing to assist both parties. She wanted to live in peace and she did not like that the parties had verbal and physical alterations.

Tenant's Evidence

28. The Tenant Mr. Hackett testified and denied intentional excessive noise. He stated that he uses a headset while gaming and attempted to reduce sound. He stated that because of the building insulation issues minor sounds are amplified. This was confirmed by Ms. Mitchell's testimony.

29. Mr. Hackett admitted and confirmed that he occasional drinks. This is not part of the Landlord's pleadings.
30. Regarding, the September 19, 2025, he admitted it was an emotional escalation, but it was due to the frustration of repeated complaints. He also denied begin the sole aggressor in disputes he had with the other tenant (Ms. Lue's husband).
31. Mr. Greanya cross-examined the Tenant on his evidence presented.
32. The Tenant admitted anger during the confrontation with Ms. Lue's husband. There was an admits to occasional consuming alcohol during the incidents.

Analysis

33. On a balance of probabilities, I find that the Tenant engaged in intermittent late-night noise, including loud talking, movement, and occasional disturbances. The building has poor sound insulation, as described by the Landlord's witness, Ms. Mitchell, and the Tenant.
34. On or about September 19, 2005, there was an incident involving the Tenant, a neighbouring tenant (Ms. Lue's husband), and physical intervention by Ms. Mitchell. I find that this incident involved mutual escalation, not a unilateral pattern of assault by the Tenant alone.
35. Ms. Lue's testimony confirmed that the noise levels were intermittent but recurred over a period of several months. There was no evidence such as recordings or sounds, to support the allegations in November 2025. Contemporaneous documentary evidence is generally more reliable than recollection-based testimony, particularly in circumstances where the passage of time may affect memory.
36. The standard of proof in this matter is the balance of probabilities, meaning the Applicant must establish that it is more likely than not that the alleged events occurred and that they constitute a breach of the *Residential Tenancies Act*, 2006. After considering all of the evidence, I find that the Landlord has not met this burden.
37. I find that the evidence does establish that there were recurring disturbances, some late-night disruptions, and at least one serious escalation incident. However, I find that the conduct does not consistently rise to the level of ongoing substantial interference warranting eviction. In reaching this conclusion, I have considered the intermittent nature of the events, the role of environmental factors such as poor insulation contributing to noise transmission, and the presence of mutual escalation among tenants.
38. With respect to the hallway altercation on September 19, while the incident is serious, the evidence establishes that the incident was not solely attributable to the Tenant, involved mutual confrontation, and was successfully de-escalated by Ms. Mitchell. There is no persuasive evidence of a sustained or ongoing pattern of violent behaviour.
39. I find that the Landlord's case relies largely on assertions and subjective interpretations of events. While the Landlord may genuinely believe their account, belief alone is insufficient.

The evidence presented lacks independent verification and reliable documentation to support the core allegations, including those relating to November 24, 2025. As a result, the evidence does not rise above the level of mere allegation.

40. For all of the foregoing reasons, I find that the Landlord has failed to establish, on a balance of probabilities, that the Tenant substantially interfered with the reasonable enjoyment of others or otherwise breached the 'Act'. Accordingly, the Landlord's application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

May 15, 2026
Date Issued

Anthony Bruno
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.