



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

File Number: LTB-L-002279-26

In the matter of: 5, 346 ELGIN CRT
OSHAWA ON L1J2P4

Between: DE PALMA PROPERTIES LTD. Landlord

And

CHESTER GILKES Tenant

DE PALMA PROPERTIES LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict CHESTER GILKES (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 April 20, 2026. The Landlord's Agent, Joe De Palma ('JD'), The Landlord's Legal Representative, Carrie Aylwin, the Landlord's witnesses, Beverly Troke ('BT') and Helen Fuerest ('HF'), and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, after having regard to all the circumstances, the tenancy shall be permitted to continue if the Tenant complies with the conditions ordered below.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On December 12, 2025, the Landlord gave the Tenant an N5 notice of termination, deemed served on December 13, 2025 (the 'N5 Notice'). In summary, the N5 Notice alleges that on various dates from February 20, 2025 to October 31, 2025, the Tenant, their occupants and/or guests have been creating excessive noise at various hours of the day and night. It was also alleged that the Tenant was throwing cigarette butts off the balcony.

Landlord's Evidence

4. The residential complex is a two-story building that contains 11 units. JD is the Property Manager of the residential complex. It was his evidence that the Landlord started receiving complaints regarding noise emanating from the rental unit on February 21, 2025. In this regard, there were complaints of screaming, arguments, door slamming and banging noises emanating from the rental unit. JD tendered two complaints received from another tenant of the residential complex, BT, regarding noise coming from the rental unit on February 20, 2025 and on December 13, 2025
5. BT is a tenant of the residential complex that has lived there for approximately 20 years. She resides in unit 6. It was her evidence that she started experiencing noise issues since children moved into the rental unit a few years ago. In this regard, she described hearing the children make loud noises such as yelling, arguing, screaming, kicking and banging. She stated that at times it feels as if they are in her living room and that she can still hear them even when she takes her hearing aids out. Multiple complaints made by BT regarding the noise as well complaints of the Tenant throwing cigarette butts off the balcony were tendered as evidence. The dates of the complaints corresponded with the dates and allegations set out in the N5 Notice.
6. HF is a Superintendent, along with her husband, that works and lives in the residential complex. They reside in unit 3. It was HF's evidence that she started receiving complaints about the Tenant a few months after he moved in. In this regard, approximately 6 tenants made complaints about noise emanating from the rental unit such as loud music and kids screaming. HF stated the bass from the music was strong and tenants complained of being able to feel it. HF stated she could hear the music and feel the bass at times from her unit and when she was in other areas of the residential complex.
7. HF testified that when they would receive a noise complaint that her or her husband would go to investigate it and that 95% of the time the noise complaint was warranted. Three letters that were received regarding noise complaints, dated June, 14, 2025, January 28, 2026 and February 27, 2026 were tendered as evidence. HF stated that the noise complaints have continued since February 2026 but that they were mostly verbal complaints. HF also stated that attempts were made to discuss the noise issue with the Tenant but that he was rude or unresponsive.

Tenant's Evidence

8. The Tenant has lived in the rental unit for approximately 6 years. He lives in the unit with his 2 children, ages 10 and 12 years old.
9. It was the Tenant's evidence that the noise complaints were exaggerated and that kids have friends over, play video games, have birthday parties, etc. and that sometimes this creates a bit of noise, but that it is normal everyday noise. The Tenant stated that the residential complex is an older building that echoes, which amplified the music and/or bass. The Tenant denied being advised of the noise complaints prior to the N5 Notice but did acknowledge that the police attended his unit due to a complaint of loud music. The Tenant stated that he no longer plays music in the unit because of the complaints.

10. The Tenant admitted that he did throw cigarette butts off the balcony on a few occasions and stated that this was due to a genuine misunderstanding that he was allowed to. However, he stated that this would be a non-issue going forward as he had quite smoking.
11. The Tenant was of the view that his neighbour and the Superintendents had a personal issue with him and were trying to work together to have him evicted.

Analysis

12. Based on the evidence and submissions provided, I find on a balance of probabilities that the Tenant, his occupants and/or guests, have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant by creating excessive noise in the rental unit as described in the N5 Notice.
13. It is true that in a multi-unit residential complex noises of daily living are to be expected. Similarly, when there are children living in a rental unit some occasional noise is to be expected such as crying, dropping toys, etc. These noises fall under the category of noises of daily living. However, several written complaints were tendered as evidence regarding noise that occurred often and lasted for more than a few minutes at a time. These complaints were corroborated by witness testimony and so I do not find the noise complaints to be exaggerated as alleged by the Tenant.
14. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. In this regard, the voiding period was from December 13 to 19, 2025. During this period, the Landlord received a noise complaint on December 14, 2025, regarding screaming and yelling coming from the rental unit on December 13, 2025. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
15. With respect to the issue of throwing cigarette butts off the balcony, this was not disputed by the Tenant. I find that this conduct also substantially interfered with the Landlord's reasonable enjoyment as the Landlord was tasked with having to clean up cigarette butts. Moreover, throwing cigarette butts from a balcony is a fire hazard.

Relief from Eviction / Section 83 of the Act

16. The Landlord's Legal Representative requested termination of the tenancy. In this regard, it was submitted that a conditional order would not be appropriate as the Tenant was in denial about the noise issue and didn't believe he or his children were making excessive noise.
17. The Tenant was opposed to termination of the tenancy and was of the view that he could comply with a conditional order. The Tenant stated that eviction could negatively impact his children as they go to school in the area and, if evicted, he may not be able to find a place in the same school district. In addition, the Tenant and his children have friends and family in the area and his children also play sports in the community.
18. The Tenant is a long-term tenant with two young children. I accept that the Tenant and his children are rooted in their community.

19. The Tenant testified that he quit smoking and, in any event, would not throw cigarette butts from the balcony. He also testified that he would no longer play loud music. What remains appears to be mostly the noises created by his children. Family status is a protected ground under the *Ontario Human Rights Code*. Under the Code, every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. This is not to say that other tenants and the Landlord have to accept excessive noise. Rather, it is to say there is a positive obligation on the part of the Landlord to work the Tenant and see if there is a way to minimize the disruption caused by his children. In this case there was little evidence to suggest that the Landlord had done this prior to commencing eviction proceedings.
20. Furthermore, termination of a tenancy is a remedy of last resort and relief should be granted where the tenancy can be saved without overly prejudicing a landlord's interests. I find that a conditional order will adequately address the noise concerns and cigarette butt issue while allowing the Tenant and his children to remain housed. If the Tenant does not comply then the Landlord will have swift recourse pursuant to section 78 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 the period of one year, commencing the date of this order, the Tenant, his occupants and/or guests shall not do any of the following:
 - i. throw cigarette butts from the balcony; and
 - ii. make excessive noise in the rental unit such as playing loud music, screaming, yelling, arguing, or make persistent banging or kicking noises.
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 LTB without notice to the Tenant.
4. The Tenant shall pay to the Landlord \$186.00, which represents the cost the Landlord incurred to file the application.

5. If the Tenant does not pay the Landlord the full amount owing on or before June 30, 2026, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2026 at 4.00% annually on the balance outstanding.

June 16, 2026
Date Issued

Rachel Gibbons
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.