



**Order under Section 78(11)
Residential Tenancies Act, 2006**

Citation: Llabjani v Radovanic, 2026 ONLTB 29784

Date: 2026-06-23

File Number: LTB-L-014974-26-SA

In the matter of: 5, 5 POTTRUFF RD S
HAMILTON ON L8K3Z7

Between: Hamide Llabjani Landlord

And

Davor Radovanic Tenants
Vesna Marinkoic

Hamide Llabjani (the 'Landlord') applied for an order to terminate the tenancy and evict Davor Radovanic and Vesna Marinkoic (the 'Tenants') because the Tenants did not meet a condition specified in the mediated settlement signed by the parties on October 30, 2025, with respect to application LTB-L-054968-25.

The Landlord's application was resolved by order LTB-L-014974-26, issued on February 24, 2026. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-014974-26.

The motion was heard by videoconference on March 26, 2026.

The Landlord and the Tenants attended the hearing of the motion. The Landlord was represented by Anthony Corso, testified on her own behalf assisted by an interpreter, Nicholas Ferreira, and called as witnesses: Cynthia Perez (the 'Tenant of Lower 1'); Sinavere Ivishi (the 'Tenant of Upper 1') who was assisted by interpreter, Zyrafete Hodjaj; and Becky Cooper (the 'Police Records Clerk'). The Tenants testified on their own behalf and represented themselves throughout and called as a witness: Sonja Radovanic (the 'First Tenant's Mother').

Determinations:

1. This set aside motion arises from an application that alleges the Tenants were substantially interfering with the reasonable enjoyment of the tenants who lived above them by aggressively responding to what they felt was unreasonable noise coming from that unit.

BACKGROUND TO THE MOTION

2. When the original application came before the Board on October 29, 2025, the parties entered into Board facilitated mediation and consented to an order that says in part for the period October 30, 2025 to April 30, 2026, the Tenants:
 - shall not contact, communicate with or approach the Tenants residing in unit lower 1 regarding any matters, including but not limited to noise complaints or any other matters; and
 - shall address any noise complaints or concerns or other related issues with the Landlord only.
3. On February 18, 2026, the Landlord filed an application pursuant to s. 78 of the *Residential Tenancies Act, 2006* (the 'Act') alleging the Tenants had breached the consent order on February 16, 2026. According to the application, the first named Tenant above was banging on the ceiling and screaming at the tenants in unit lower 1 to get them to stop making noise.

The Preliminary Issue

4. On February 24, 2026, the Board issued the eviction order that is the subject of this set aside motion. It contains an error. It fails to accurately describe the behaviour the Landlord was relying on as a breach of the consent order. It says the "Tenant banged on the door of unit 1-lower resulting in the police being called". The Landlord's application does not allege either of the Tenants banged on the door of unit lower 1.
5. When this discrepancy came up during the hearing, I asked the Tenants if they were prepared to proceed based on the allegations of banging on the ceiling and yelling at the tenants of unit lower 1 that is contained in the Landlord's application rather than on the stated breach on the order, and they indicated they were so prepared. The hearing continued on that basis.

THE ISSUES

6. On a motion like this one, the first issue for the Board is whether the Tenants breached the consent order as alleged by the Landlord. Here, the Tenants deny breaching the original order, so I asked the Landlord to proceed with its evidence first. For the reasons stated below, I am satisfied that the first named Tenant breached the order on February 16, 2026, by screaming at the tenants of unit lower 1 through the ceiling of the Tenants' rent unit in response to what he considered to be unreasonable noise. That is a form of communication with the tenants above forbidden by the consent order.
7. Where the Board is satisfied the Landlord has proven the breach of the order, the next issue before the Board is whether it would not be unfair in all of the circumstances to set aside the eviction order. For the reasons stated below, I am satisfied that it would not be unfair to set aside the eviction order subject to conditions constraining the Tenants' behaviour into the future.

FINDINGS OF FACT

8. The Tenant of unit Lower 1 says that before noon on February 16, 2026, she was in her living room playing with her baby and husband when the first named Tenant started yelling at them to be quiet, saying bad words, and banging on the ceiling. When it continued they moved the baby into the other room for a regular noon time nap and called the Landlord. There is no dispute the Landlord called the police. The Tenant of unit Lower 1 says that the Tenants below started playing music loudly and she was frightened so she took the baby out to her truck and waited for the police to arrive.
9. Although the Tenants and their witness all deny the first named Tenant banged on the ceiling, they all agree that they heard noise from above and the first named Tenant responded by yelling about the noise.
10. The Tenants say that noise between the units is a long standing issue. They have complained about it to the Landlord in the past and the Landlord indicated sound proofing would be installed but it was not.
11. The second named Tenant says on February 16, 2026, they responded to noise from above by raising their own voices asking the person above to please stop making noise, but she later acknowledged it was just the first named Tenant who did that. The first named Tenant says he did not turn to the ceiling and yell but merely raised his voice and said into the open space of his own apartment "please stop". He also says he swears but did not do so during this incident. The First Tenant's Mother was there visiting for Family Day and she says her son was upset and raised his voice and used swear words, and agrees that was probably done to get the tenants upstairs to stop making noise.

DID THE TENANTS BREACH THE ORDER?

12. Given the evidence of the Tenants and their witness I am satisfied that when the Tenants heard noise from the unit upstairs, the first named Tenant responded by yelling and swearing about the noise in his unit in an effort to get the tenants above to stop making noise.
13. As a result, I am satisfied the Tenants breached the consent order. The obvious conclusion from the evidence of the Tenants is that the first named Tenant deliberately yelled to communicate his displeasure about the noise to the tenants above in an effort to get them to stop. That is a form of communication about noise with the tenants above and constitutes behaviour forbidden by the consent order. Therefore, I find the Tenants breached the consent order.

WOULD IT NOT BE UNFAIR TO SET ASIDE THE EVICTION ORDER?

14. Based on all of the circumstances here and for the reasons stated below, I am satisfied that it would not be unfair to set aside the eviction order subject to constraints on the Tenants with respect to their future behaviour.
15. The Tenants circumstances are that they have lived in the rental unit since 2019 and cannot afford to move. The rent is just over \$1,000.00 a month. The first named Tenant is

in receipt of Ontario Disability Support Program and Canada Pension Plan disability benefits due to an injury that occurred in 2022. He says he is in constant pain. The Tenants total take home income is about \$2,000.00 a month.

16. The Tenant of Upper 1 says she moved into the unit above the Tenants in July of 2025 and the Tenants started complaining immediately about noise to the Landlord. After the incident of February 16, 2026, she and her family moved out. She says she moved out because she was afraid and unhappy at the residential complex.
17. The Landlord says that in addition to the Tenant of Upper 1's recent move, the two families before that who lived in that rental unit both moved out because of the first named Tenant yelling and banging on the ceiling about noise. The Tenants say they do not really know why the previous families moved out. The second named Tenant speculated about pest control issues. The first named Tenant says all he knows is that he complained to the Landlord about the other tenants filming him illegally. As a result, I accept the Landlord's evidence in this regard and find that it is more likely than not that the behaviour of the first named Tenant had something to do with three successive tenants moving out of the unit above.
18. However, after the Tenant of Upper 1 moved out with her family, the unit above the Tenants was re-rented and there have been no complaints about the Tenants from the new occupants.
19. After the Landlord called the police about the February 16, 2026, incident, she went downstairs to speak to the Tenants about the fact that the Tenant of Upper 1 was crying because of the earlier behaviour of the first-named Tenant.
20. The Tenants provided a video audio recording of their conversation. In that recording the first named Tenant speaks very loudly, talks over the Landlord repeatedly to the extent that it is not possible to hear what she is saying most of the time, and calls her a liar and deceiver multiple times. I believe it is fair to say that most people would find the Tenant's behaviour as evidenced on the recording to be overly aggressive and deliberately provocative and intimidating.
21. So the question before the Board is am I satisfied that it would not be unfair to set aside the eviction order? On the one-hand, the first named Tenant has amply demonstrated a certain degree of lack of self-control and a tendency towards behaviour that is loud and aggressive and disturbing to the Landlord and other tenants. On the other hand, the Tenants would face considerable hardship if evicted, and there seems to be no current issue with the Tenants' behaviour since the new tenant has moved in above.
22. So it seems to me that it would not be unfair to set aside the eviction order if the first named Tenant ceased to behave in a loud, aggressive and belligerent manner towards the Landlord and other tenants of the building when dealing with noise complaint issues. If that goal can be achieved, then it would not be unfair for the tenancy to continue.
23. As a result, the motion is granted but pursuant to s. 78(12) the original consent order shall be amended to ensure the first named Tenant's behaviour is sufficiently constrained to ensure there will be no further loud, aggressive or belligerent behaviour by the Tenant towards any other tenants or the Landlord over noise disputes.

24. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The motion to set aside order LTB-L-014974-26, issued on February 24, 2026, is granted. Order LTB-L-014974-26, issued on February 24, 2026, is set aside and cannot be enforced.
2. Order LTB-L-054968-25 issued on October 30, 2025, is amended to read as follows:
 - 1) The Tenants shall direct all noise complaints solely to the Landlord or to a relevant municipal government authority;
 - 2) Any noise complaints the Tenants wish to make to the Landlord shall be in writing;
 - 3) The Tenants and in particular, the first named Tenant above, shall not raise his voice and yell inside the rental unit or anywhere in the residential complex, bang on the ceiling, or act in a belligerent or aggressive manner to other tenants or to the Landlord with respect to noise issues in the residential complex.
 - 4) If the Tenants fail to comply with subparagraphs 1), 2), or 3) above, the Landlord may, without notice to the Tenants, apply to the Board within 30 days of the Tenants' breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants.

June 23, 2026
Date Issued

Ruth Carey
Vice Chair, 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.

