CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 16, 2024
CASE: 2023-00502N
Citation: Farinha v. White, 2024 ONCAT 57

Order under section 1.44 of the *Condominium Act, 1998.*

Member: Patricia McQuaid, Vice-Chair

The Applicant,
Onika Farinha
Self-Represented

The Respondent,
Dr. Barrie White, P.Eng
Self-Represented

The Intervenor,
Simcoe Condominium Corporation No. 181
Represented by Nellie Snowball, Agent

Hearing: Written Online Hearing – January 18, 2024 to April 10, 2024

REASONS FOR DECISION

A. INTRODUCTION

[1] Living in community poses many challenges, and this is yet another instance in which a dispute between neighbours has unfortunately escalated to a case before the Tribunal. And here again, at the core of the dispute are allegations about noise between two units, one above the other. The Applicant, Onika Farinha, alleges that the Respondent and his family are creating unreasonable noise which is affecting the comfort and quiet enjoyment of her unit. She asks that an order be made that the Respondent comply with the condominium's rule relating to noise and that the noise disturbances cease. In response, the Respondent asserts that that some of the noise that the Applicant complains of was coming from a different unit, that there is no objective basis on which to conclude that any noise created by him or his family is unreasonable, and finally, that any noise transmission is exacerbated by the fact that the condominium is an older building with a wood frame structure building construction. Simcoe Condominium Corporation No. 181 ("SCC181") is an

intervenor in this case and is generally supportive of the Applicant's allegations of unreasonable noise.

B. BACKGROUND

[2] The Applicant and her daughter moved into their unit in December 2019. They are both health care workers and do shift work. The Respondent and his family reside in the unit above the Applicant's. The Respondent and his wife, who are both 85 years old, have lived in their unit since March 2017. Initially, it appears that one adult son lived with them; however, in September 2020 a second adult son moved in, followed by his wife and two young children in July 2023, all in a three-bedroom unit. Therefore, in recent months, five adults and two children have lived in the unit.

[3] The Applicant's first noise complaints related to "constant pacing"; the Applicant's daughter stated that this occurred in the first two years of living in the unit; however, the pacing was noise that she "chose to live with". This appeared to change in February 2021. On February 16, 2021, the Applicant sent an email to Nellie Snowball, the condominium manager, complaining of noise from another unit on her floor and from the Respondent's unit. She described the noise from the Respondent's unit as "loud constant walking back and forth, up and down at 7 am, 2 pm, 1 am, 3 am, 4am …"

[4] Ms. Snowball sent the first of approximately eight letters (between February 2021 and February 1, 2024) to the Respondent and his wife on February 18, 2021. In that first letter she advised that they had received a complaint of excessive noise from their unit. She drew their attention to two of the corporation's rules. Rule 8 states that owners and their family shall not create or permit the creation of or continuation of any noise or nuisance which, in the opinion of the board or manager, may or does disturb the comfort or quiet enjoyment of the property by other owners. Rule 23 states that rugs or carpets shall cover 65% of all floor areas, excluding bathrooms and kitchens.

[5] Regarding Rule 23, Ms. Snowball stated in the hearing that SCC181 has confirmed that the Respondent is in compliance with this rule.

[6] The nature of the Applicant's complaints expanded in July 2023 when the Respondent's grandchildren moved in. Complaints were made about sounds of screaming, thumping, running, jumping, and rolling of items on the floor. The Applicant's daughter stated that the noise became more disruptive of their ability to sleep, to hold virtual meetings (the Applicant's daughter is also a student) and to simply sit peacefully in their living room.

[7] For the reasons set out below, I find that the evidence before me does not support a finding of unreasonable noise in violation of s. 117 (2) (a) of the *Condominium Act, 1998* (the "Act") or SCC181's governing documents.

C. EVIDENCE & ANALYSIS

Are the Respondent and his family carrying on activity which results in the creation or continuation of any unreasonable noise that is a nuisance, annoyance or disruption, contrary to s. 117 (2) (a) of the Act?

[8] In addition to this section of the Act, Rule 8 of the Respondent's Rules, referred to above, is also relevant to the issues in this hearing. I do note that while there was suggestion in the Applicant's evidence to a rule that in effect required a quiet time after 8 pm, the Applicant clarified that there is no such rule.

[9] During the hearing, evidence was provided by both the Applicant and the Intervenor about the Respondent's grandchildren's rambunctious behavior while inside the unit. This was noted during a visit by Ms. Snowball and her colleague Patricia Young. Ms. Snowball and Ms. Young also commented on the cluttered state of the Respondent's unit. The latter point is not relevant to this case and regarding the grandchildren's behaviour, that is only relevant to the extent that it relates to the noise issue. In this decision, I will only refer to the evidence and submissions relevant to my analysis and the issues to be decided in this case.

[10] The Applicant submitted a log of noise complaints for six days in July 2023. Noise was heard as early as 8:30 am and as late as 11:15 pm, described as running, banging and jumping. She submits that the log is illustrative of the persistence of the noise she hears. The Applicant also submitted recordings of the noise in various rooms in her unit. The discernible sound is of a thumping kind of noise. I find these recordings of little persuasive value; although I can hear the sound, I cannot determine what is the cause of the sound, its volume, or its duration.

[11] SCC181 provided evidence about what Ms. Snowball described as a sound test. Ms. Snowball and Ms. Young attended at both units at 11 am on January 18, 2024. Ms. Young stated that she attended in the Applicant's unit while Ms. Snowball was in the Respondent's unit. She heard what appeared to be running in the hallway, however the noise was, she stated, not very loud. The Applicant's daughter stated that Ms. Snowball indicated to her that day that she too would find the noise disruptive. Unfortunately, as a "noise test", this visit to the units is not compelling evidence. Following this visit, Ms. Snowball sent another letter to the Respondent and his wife, advising that management continued to receive complaints of the noise coming from their unit of children running and jumping up

until 10 pm nightly.

[12] The Respondent also complained about noise from the unit above his and sent emails to management in January 2021 and November 2022. He alleges that the sound transmission in the building is problematic and submits that at times when he was hearing noise from the unit above him, the Applicant would thump on her ceiling in the apparent belief that the noise was coming from his unit. The Respondent asserts (and submitted a log of what he described as a sampling of pounding on the ceiling by the Applicant on approximately 24 dates between November 2023 and February 2024) that the Applicant has since February 2020 persistently struck the ceiling which causes vibration in their unit. In response to this assertion, the Applicant states that the only time that she "rapped on the ceiling was on October 20, 2021 after she listened to noise for a year and a half".

[13] This divergence in the evidence between the Applicant and Respondent highlights the unfortunate lack of neighbourly relations between them. The actual number of times that the Applicant has banged on the ceiling in response to noise she finds disturbing probably falls somewhere between their respective testimonies.

[14] The Respondent states that the sounds they are generating are incidental to regular daily life, with the occasional mishap – they do not deliberately create extra noise. He stated that they added four-inch mats in the living room to reduce sound and that they recently purchased a new rug for the living room that is marginally larger than the previous rug in the hope that it will further dampen the transmission of foot-fall sounds. It seems that despite these measures, the Applicant contends that the noise has continue.

[15] While there is very little objective evidence before me, I can conclude that there is likely noise heard by the Applicant in her unit given that a family of 6-7 people lives above her, two of whom are young children who actively play in the home. I also accept that the noises that they hear disturb the Applicant and her daughter. The question for me to decide is whether the noise is unreasonable and amounts to a nuisance, annoyance or disruption. I must make that determination based on the weighing of the evidence on a balance of probabilities.

[16] Having considered all of the evidence, I find there is insufficient evidence to conclude that the sounds the Applicant complains of amount to an unreasonable noise. Rather, they are more readily characterized as the sounds of everyday living in a household with young children who will create some noises of the kind complained of in this case. It is not the Tribunal's role to direct how the children's activities are managed unless they are found to create unreasonable noise. Similarly, there are complaints of "heavy walking" by someone in the Respondent's

unit, yet there is compliance with the rule relating to sound absorption – the rug or carpet rule. It is not the Tribunal's role to direct whether a person is permitted to pace in their home, or if they do pace, where that pacing occurs.

[17] Though I find that the Respondent is not creating unreasonable noise, I do acknowledge that the noises heard by the Applicant and her daughter impact them. They are subjectively annoyed by the sounds they hear. But the disturbance must be found to be objectively unreasonable. The Applicant's subjective annoyance or experience of being disrupted is not sufficient to make the situation one that the Tribunal can remedy within its jurisdiction. In a communal living environment like a condominium, a certain amount of noise, and perhaps even the potential for a moderate degree of annoyance, may be inevitable and must be tolerated.

[18] In coming to this conclusion, I am not stating that the Applicant is not a reasonable person. She works shifts – her sleeping hours vary and it is important that she get her sleep and as a result her level of tolerance may be lower; however, this is not an objective indication of unreasonable noise. She stated that she has taken steps to block sounds with a fan or headphones. And the evidence from the Respondent is that they have also taken steps to mitigate sound, with rugs and floor mats. This situation highlights that condominium living necessarily involves living in community with shared rights and responsibilities, and in this instance particularly, a show of empathy and consideration for each other's life circumstances.

[19] SCC 181 has attempted to resolve the issues between the Applicant and Respondent in an effort to ensure that all have the right to enjoy their home. However, reliance on the subjective view of Ms. Snowball is not sufficient. Although Rule 8 refers to the opinion of the manager in determining if there is a disturbance affecting the comfort of one's home, this does not mean that this depends on the individual manager's *subjective* opinion. Rather, it requires the manager to make an objective and reasonably informed determination of the extent of the noise at issue. Nevertheless, I do commend Ms. Snowball for the efforts made to help resolve the issue. In her October 23, 2023 letter to the Respondent and his wife, she suggested that wearing slippers or stocking feet in the units and minimizing the children's running and jumping might help curb the noise, especially after 8 pm. These are practical proposals which I encourage the Respondent to consider.

Costs

[20] There has been no request for costs. I note that Rule 48.1 of the Tribunal's Rules of Practice provides that a successful party is entitled to a reimbursement of the

Tribunal fees unless the Tribunal orders otherwise. In this case, the Applicant was not successful. I will not order reimbursement of her Tribunal filing fee.

D. ORDER

[21] The Tribunal Orders that:

1. The application is dismissed without costs.

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Patricia McQuaid
Vice-Chair, Condominium Authority Tribunal

Released on: April 16, 2024