

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: May 30, 2025

CASE: 2024-00442N

Citation: Kwok v. Man, Lo, 2025 ONCAT 88

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

Member: Brian Cook, Member

The Applicant

Holly Kwok,
Self-Represented

The Respondents

Siu Wai Man,
Self-Represented

Junny Lo,
Self-Represented

The Intervenor

York Region Standard Condominium Corporation No.1331
Represented by Jessica Hoffman, Counsel

Hearing: Written Online Hearing – December 30, 2024 to April 30, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] Holly Kwok is an owner and occupier of a unit in York Region Standard Condominium Corporation No.1331 (YRSCC 1331). The unit above her unit is owned by Junny Lo and is tenanted by Siu Wai Man and his family.
- [2] Ms. Kwok says she hears noise from the unit above which disturbs her quiet enjoyment of her unit. The noise is caused by the normal activities of daily living of Mr. Man and his family.
- [3] Mr. Man has taken steps to try to reduce the noise caused by his family, including

purchasing carpets and mats and encouraging his family to reduce noisy activities.

- [4] YRSCC 1331 says that the building security staff have investigated complaints of noise made by Ms. Kwok and have never confirmed unreasonable noise from Mr. Man's unit.
- [5] The issue in this case is whether Mr. Man and his family create unreasonable noise that results in a nuisance, annoyance, or disruption for Ms. Kwok.
- [6] For the reasons that follow, I find that Ms. Kwok has not established that Mr. Man and his family create unreasonable noise.

B. BACKGROUND

- [7] This is the second Application brought by Ms. Kwok alleging unreasonable noise from the unit above her. The first Application was filed in 2023 and proceeded to Stage 2 – Mediation in September 2023. According to a Motion Order dated January 4, 2024, during mediation, the parties agreed to arrange for acoustic testing and retained HGC Engineering to complete the investigation. The testing was completed on October 26, 2023.
- [8] After the test results were received, Ms. Kwok indicated that she was disappointed by the results and hoped for a solution to her continuing experience of noise. However, she stopped participating in the mediation and did not ask to have the case move to Stage 3 – Decision and the file was closed.
- [9] Ms. Kwok filed this present Application in 2024. In the Application, Ms. Kwok noted that she continues to be disturbed by noise from the unit above and hoped for a solution. The case proceeded to Stage 2 – Mediation which concluded in December 2024. Ms. Kwok moved the case to Stage 3 – Tribunal Decision and the case was assigned to me.
- [10] The hearing took place by video conference and written submissions. During the hearing, there was discussion of whether something could be done to reduce the noise transmission. The Condominium Manager provided floor plans of the two units. Mr. Man indicated where carpeting and mats were placed in his unit. Ms. Kwok indicated that she experiences most of the more significant noise in her living room – study area. The corresponding area in Mr. Man's unit is the kitchen and dining room. Most of this area is now covered by carpeting. The Condominium Manager indicated that the carpeting includes some foam backing which he felt would be sufficient to reduce noise transmission. He noted that one area that is not covered is the space in front of the stove and sink, a space that is about two feet

wide. The other areas not covered by carpeting in the kitchen and dining room area have furniture on them.

C. EVIDENCE

The acoustic study

- [11] As noted, during mediation in the first Application, the parties agreed to retain an engineer to do an acoustic study. HSC Engineering conducted the study. According to their report, the purpose of this test was to “determine the effective performance of the demising floor/ceiling assembly, and to compare the result to the recommendations outlined in the Ontario Building Code (OBC) and other relevant documents.”
- [12] The test involved a device that produces tapping in the upper unit. The transmission of the tapping through the floor is then measured. The report indicates that the testing showed good impact isolation for typical laminate flooring in a poured concrete building with findings that met or slightly exceeded the Ontario Building Code requirements.
- [13] Ms. Kwok incorrectly understood that the tests were designed to objectively measure the noise she experiences. The tests did not measure the decibel levels of noise she experiences but rather assessed the flooring structure.
- [14] Ms. Kwok said that she paid for the report, which cost about \$2,500. She said she was told by YRSCC 1331 that she would need to have the study done in order to move the case forward and that if it produced findings that supported her case, YRSCC 1331 would pay for the report but that she would pay if the findings did not support her case. She paid as she thought that the findings did not support her case.
- [15] During the hearing, I questioned whether this was a fair process, especially given the misunderstanding of what the engineer was actually testing. However, it appears that the negotiations about retaining the engineer happened as part of the mediation process in the first Application and it would not be appropriate to revisit that in adjudication during this second Application.

Ms. Kwok’s experience

- [16] Ms. Kwok says that the noise she experiences results from activities in the unit above. These include footsteps, objects falling, running, and thumping, chairs dragging on the floor, and children yelling. She does not think the noise necessarily results from unreasonable behaviour and agrees that it is consistent

with noise caused by a family with three young children. However, the noise is disruptive for her. She was not disturbed by the tenants who were in the unit before Mr. Man moved in.

[17] Ms. Kwok purchased a device to measure the decibel levels of the noise she experiences. She said that the readings of louder noises were in the 40 – 60 decibel range, but she was not able to capture or record any of the readings.

[18] During the second video conference I suggested that Ms. Kwok keep a journal to document the noise she experiences and note the decibel levels. However, she reported that she found it difficult to do this.

D. CONCLUSIONS

[19] Section 117(2) of the *Condominium Act, 1998* states:

No person shall carry on an activity or permit an activity to be carried on in a unit, the common elements or the assets, if any, of the corporation if the activity results in the creation of or continuation of,

(a) any unreasonable noise that is a nuisance, annoyance or disruption to an individual in a unit, the common elements or the assets, if any, of the corporation...

[20] A finding that noise is unreasonable requires evidence that confirms the nature of the noise and establishes that the noise is objectively unreasonable.

[21] In this case, the evidence about the noise consists only of Ms. Kwok's testimony. Her evidence is that she is disturbed by noise from the unit above that is caused by ordinary activities of daily living from the family above. The noise is intrusive because she values quiet and works from home.

[22] Ms. Kwok's evidence is that she has measured the decibel levels of the noise with a device she purchased for that purpose. She says that the device has measured the louder noises at 40 to 60 decibels, but she has been unable to capture readings from the device. She has also been unable to correlate the decibel readings with the type of noise she experiences and when they occur.

[23] Even if the activities in the unit above do result in decibel levels of 40 to 60, this does not establish that the noise is unreasonable.

[24] The decibel scale is logarithmic which means that 60 decibels is many times more intense than 40 decibels. As background noise, decibel levels of even 60 are not loud and are consistent with background sound levels experienced in a household

of people. A normal conversation between two people could be measured at 60 decibels. However, if there is no significant background noise, the sudden onset of noise at 60 decibels would be noticeable and could be disruptive (see for example: *Park v. Toronto Standard Condominium Corporation No. 2775*, 2023 ONCAT 171).

- [25] I accept that noises from the unit occupied by Mr. Man and his family can be heard by Ms. Kwok. I accept that some of the noise is disruptive to her, especially noises that are sudden in an otherwise quiet environment. However, based on the evidence before me, it appears the noise she experiences is caused by ordinary activities of daily living by Mr. Man and his family. Mr. Man has taken measures to reduce the noise, including installing floor coverings and encouraging his children to be respectful of neighbours.
- [26] As noted in the cases referred to by counsel for YRSCC 1331 and Mr. Man, unless there is some factor such as poor construction or defects (ruled out in this case by the acoustical study), noise resulting from normal activities of daily living is not generally considered unreasonable, particularly when there is an absence of supporting evidence confirming the nature, frequency and intensity of the noise.
- [27] A family of 5 including young children will inevitably create noise in the process of living their lives. In multi-residential community living some noise from daily activities must be expected. To be considered 'unreasonable' there must be supporting evidence confirming the nature and intensity of the noise. There is none here.
- [28] For these reasons, I find that Ms. Kwok has not established that she experiences unreasonable noise in her unit.

E. ORDER

- [29] The Application is dismissed.

Brian Cook
Member, Condominium Authority Tribunal