



Order under Section 31
Residential Tenancies Act, 2006

File Number: TST-24180-21

In the matter of: 305, 218 CLOSE AVENUE
TORONTO ON M6K2V5

Between: Marty Johnston Tenant

and

Frank Ferrante Landlords
Mike Ferrante
Rosanne Ferrante

Marty Johnston (the 'Tenant') applied for an order determining that Mike Ferrante, Rosanne Ferrante and Frank Ferrante (the 'Landlords') harassed, obstructed, coerced, threatened or interfered with the Tenant and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.

This application was heard by way of video conference on October 5, 2021. The Tenant and the Landlord Rosanne Ferrante attended the hearing. The Landlord was represented by David Strashin, Counsel.

Determinations:

1. The Tenant's T2 application was filed on October 6, 2020 and alleges that the Landlords substantially interfered with the Tenants reasonable enjoyment of the rental unit and threatened, harassed, obstructed and coerced or interfered with the Tenant.
2. For the reason set out below, I find that the Tenant has failed to prove on a balance of probabilities that the Landlord has breached the *Residential Tenancies Act, 2006* (Act).

Tenant's evidence:

3. The Tenant has resided in the rental unit since December 2012. The residential complex is a low-rise 3 storey apartment. The main floor consists of a restaurant and the second and third floors contain 10 rental units.

4. The Tenant testified that on or about November 15, 2018 the Landlord replaced the exhaust fan on the roof of the residential complex. The Tenant stated that the new exhaust fan is located directly above his apartment and is excessively loud.
5. The Tenant reported their concerns to the Landlord within a few days, but the Landlord did not address or respond to the noise complaint.
6. In January 2019 the Tenant filed a complaint with the City of Toronto regarding the excessive noise emanating from the exhaust fan. The City of Toronto closed the Tenant's complaint after discussion with the Landlord. The Tenant believes this was because the Landlord had also commenced eviction proceedings against the Tenant. The Tenant did not provide any evidence to support this assumption.
7. On February 9, 2020 the Tenant filed a second complaint with the City of Toronto regarding the noise from the exhaust fan. The second complaint resulted in an inspection from a bylaw officer. The Tenant testified that the officer did two noise readings, which both resulted in over 50 decibels. The Tenant did not provide any evidence or copies regarding the tests or any report issued by the bylaw officer. The Tenant stated that the bylaw officer was intending to return to do an ambient test but didn't attend the subsequent appointment. The Tenant believes this was done due to the Covid-19 lockdown.
8. On June 25, 2020 the Tenant testified that he received an email from the 311 advising that his complaints have been investigated and closed.
9. In September 2020, the Tenant made a second complaint to the Landlord about the fan, but the Landlord once again failed to address the Tenants concerns.
10. On September 25, 2020 the Tenant filed a complaint with the Municipal Licensing and Standards – City of Toronto. The Tenant advised that his complaint was never responded to.
11. Prior to filing the T2, the Tenant received some legal advice from Parkdale Legal Clinic and sent the Landlord a final complaint letter. The Landlord once again did not address the Tenants concerns.
12. The Tenant stated that the excessive noise continued throughout the later period of 2020 and into the holidays, and he has continued to experience noise disturbances from the exhaust fan since filing this application.
13. In early 2021, the Tenant contacted the City of Toronto again. The Tenant was assigned a Bylaw Enforcement Officer to look into his concerns. An onsite inspection of the exhaust fan was conducted on May 22, 2021. The Tenant does not recall or have any information regarding the results but remembers the Bylaw officer stating that the noise is above 50 decibels.
14. The Tenant testified that the Landlord sent him a letter on June 7, 2021 advising that on the recommendation of the bylaw enforcement, that an acoustic engineer was to come and

inspect the rental unit on June 9, 2021. On June 10, 2021, the bylaw enforcement emailed the Tenant advising that the Landlord had notified them confirming that the Landlord had retained the services of an engineer to inspect the rental unit.

15. On July 5, 2021 the Tenant received an email from the bylaw enforcement stating that a final inspection was done on July 4, 2021 and that no noise violation was found.
16. On cross examination, the Tenant agreed that all complaints filed with the City have been closed and that no outstanding city orders are current. The Tenant further agreed that the Landlord brought an rent arrears (L1) application against the Tenant in 2019 and that the Tenant did not raise the exhaust fan issues under section 82 of the Act at the L1 hearing.
17. The Tenant maintains that the excessive noise is still ongoing. The Tenant is seeking a 75% rent abatement from October 2019 to present and for the Landlord to be ordered to install a sound barrier between the ceiling and the exhaust fan on the roof.

Landlord's evidence:

18. The Landlord has owned the residential complex for approximately 35 years. Since installing the new exhaust fan, none of the other nine tenants living in the building have complained regarding the noise of the fan.
19. The Landlord testified that the Tenant has never provided the Landlord with an audio recording of the excessive noise to date. The Landlord attempted to enter the rental unit on a few occasions, but the Tenant did not permit entry for the Landlord to enter to hear the noise.
20. The Landlord argues that all complaints submitted to the City of Toronto and Bylaw enforcement have resulted in the file being closed and that no violations were ordered by the City against the Landlord. The Landlord further reiterates that on the recommendation of Bylaw, the Landlord hired an acoustic engineer to inspect the rental unit and exhaust fan which resulted in no violation.
21. The Landlord further argued on submissions that the Tenant did not provide any reports from any third party engineers or summons any Bylaw officials or engineers to support the level of noise emanating from the exhaust fan.

Analysis:

22. Sections 22-23 of the *Residential Tenancies Act, 2006 (the Act)* state:

22. A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.

23 A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.

23. As this is a Tenant application, the onus of proof rests with the Tenant. The Tenant failed to provide any recordings, professional reports or notices issued by a bylaw officer indicating that the exhaust system installed by the Landlord makes excessive and disturbing noise. The Tenant did not provide any doctor notes supporting the impact the noise has had on the Tenant, or evidence that other tenants in the building had concerns about the fan. Finally, the Tenant agreed that all municipal and bylaw complaints concerning the fan have been closed, without the Landlord being ordered to take any action.

24. Therefore, I find that the Tenant's evidence is insufficient to prove on a balance of probabilities that the Landlord has substantially interfered with the Tenants reasonable enjoyment of the rental unit and threatened, harassed, obstructed and coerced or interfered with the Tenant.

Costs against the Landlord:

25. At the end of the hearing, I advised the parties that I would be considering ordering costs against the Landlord.

26. The Tenant submitted a request for accommodation with the Board and the Board scheduled the Tenant to participate in the hearing via the Board's Public Access Terminal (PAT). A Vice Chair of the Board issued a direction on October 1, 2021 advising the parties that the matter would be heard at 10:00am.

27. The Landlord's legal representative was engaged in multiple hearing rooms with the Board on October 5, 2021 and did not become available to participate in this proceeding until 11:30am. The Landlord's legal representative did not advise the Board prior to the hearing that he was in multiple hearing rooms that day, but rather relied on his client to advise the Member.

28. The matter was concluded before 12:30pm and as such, the Board was able to conduct the entire hearing block on the scheduled date. The Landlord's legal representative apologized and advised that this issue would not occur again.

29. The Landlord's legal representative ought to have advised the Board that he would be unable to participate in this hearing at the scheduled start time of 10:00am due to the fact he was scheduled for multiple hearings at the same time. However, I don't think costs are appropriate in these circumstances. I accept the apology and note that the hearing was

concluded within the scheduled hearing time. However, the Landlord's legal representative is cautioned that going forward, he shall advise the presiding Member at the start of the hearing block that he is in multiple hearing rooms at the same time.

It is ordered that:

1. The Tenant's application is dismissed.

December 1, 2021
Date Issued



Fabio Quattrociochi
Member, Landlord and Tenant Board

Toronto South-RO
15 Grosvenor Street, 1st 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.