**CITATION**: Medallion Corporation v. McIlroy, 2023 ONSC 5196
**DIVISIONAL COURT FILE NO.:** 140/23
**DATE:** 20230921

**SUPERIOR COURT OF JUSTICE – ONTARIO**
**DIVISIONAL COURT**

**RE:** MEDALLION CORPORATION, Appellant/Landlord

**AND:**

SCOTT MCILROY, Respondent/Tenant

**BEFORE:** Matheson J.

**COUNSEL:** *David Strashin*, for the Appellant

*Shibil Siddiqi and Scott Byers*, for the Respondent

**HEARD at Toronto:** September 20, 2023, by Videoconference

**ENDORSEMENT**

[1] The Appellant Landlord appeals the order of Member J. Benham of the Landlord and Tenant Board ("LTB") dated January 12, 2023 (LTB File No. LTB-T-068739-22) (the "Order").

[2] The Order arose from the Tenant's application alleging interference with his reasonable enjoyment of his rental unit due to noise from the adjacent unit. The Member determined that the noise was caused by a child with autism who lived next door. The Landlord had sent notices to the neighbouring tenant in response to the complaints, but the issue persisted.

[3] The Member cited this Court, setting out the Landlord's obligation to take reasonably necessary action against a neighbouring tenant who denies a neighbour quiet enjoyment: *Hassan v. Niagara Housing Authority*, [2000] O.J. No. 5650 (Div. Ct.). This obligation is not disputed.

[4] The Member found that the only action the Landlord had taken regarding the noise complaints was sending notices to the neighbour, and that the Landlord had decided to do nothing else. The Member found that the Landlord did not investigate other noise suppression techniques such as retaining a contractor to adjust the insulation between the two units. The Member said, "I can certainly appreciate the situation the Landlord is faced with" but found that the Landlord had substantially interfered with the Tenant's reasonable enjoyment of his rental unit.

[5] The Member awarded a rent abatement of $7,419.60 and directed the Landlord to hire a contractor to ascertain whether soundproofing could be installed to reduce the noise. The Member declined to order the Landlord to cease the noise, finding that would be unreasonable and unenforceable.

[6] This appeal is limited to questions of law: *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 ("*RTA*"), s. 210. The standard of review is correctness: *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33, at para. 8; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37.

[7] The Landlord submits that the Member erred in law by failing to take into account s. 3(4) of the *RTA*, which confirms that the *RTA* is subject to the *Human Rights Code*. More specifically, the Landlord submits that the Member failed to analyze the significance of the child's disability under the *Human Rights Code* and the resulting limitations on the Landlord's ability to address the noise complaints. The Landlord submits that it could not evict the neighbour and child under the *Human Rights Code* and there was nothing more that could be done.

[8] The first difficulty with this submission is that it is being raised for the first time on this appeal, which is not normally permitted. The second difficulty is that it is based on the assumption that there was nothing more that the Landlord could do given the child's disability short of an impermissible eviction. This overlooks the basis for the Order. The Member found that there were more steps that the Landlord could have taken regarding soundproofing, specifically having a contractor adjust the insulation.

[9] The Landlord submits that the Member erred in law because the reasons for decision do not contain an express analysis of the obligations to the child under the *Human Rights Code*. However, the reasons for decision do reflect an awareness of and need to consider the disability and the Member did not make an order that would potentially discriminate against the child.

[10] The Landlord further submits that the Member failed to take into account the real substance and the good faith of the Tenant's complaints, as required by s. 202 of the *RTA*. However, the Landlord has not shown a legal error in the Member's consideration of the real substance of the noise complaints and it does not appear that good faith was challenged before the Board.

[11] Despite the able argument of counsel, the Landlord has not established an error of law. The Tenant raises other arguments against this appeal, which need not be addressed.

[12] This appeal is therefore dismissed with costs to the Tenant in the agreed amount of $6,000, all inclusive. The Landlord shall have an additional 30 days from today to comply with the Order.

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Matheson J.

**Date:** September 21, 2023