



Order under Section 31  
Residential Tenancies Act, 2006

Citation: LI v NJS Capital, 2023 ONLTB 67233

Date: 2023-10-11

File Number: LTB-T-073915-22

In the matter of: 104, 34 NOBLE STREET  
TORONTO ON M6K2C9

Tenant

Between: SHAN SHAN (CINDY) LI  
ERIC DAVIS

And  
NJS CAPITAL

Landlord

SHAN SHAN (CINDY) LI and ERIC DAVIS (the 'Tenant') applied for an order determining that NJS CAPITAL (the 'Landlord'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

This application was heard by videoconference on November 10, 2022, November 25, 2022, and January 20, 2023.

The Landlord's Legal Representative, B. Rubin, the Landlord's Agent, M. Teich and the Tenant attended the hearing.

Determinations:

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. This application alleges substantial interference due to work being performed by the Landlord.
3. When a tenant is claiming that work being performed by a landlord has substantially interfered with the Tenant's reasonable enjoyment of the unit, the Board must apply section 8 of O Reg 516/06:

8. (1) In this section,

“work” means maintenance, repairs or capital improvements carried out in a rental unit or a residential complex. O. Reg. 516/06, s. 8 (1).

(2) For the purposes of section 22, paragraph 3 of subsection 29 (1) and subsection 31 (1) of the Act, this section applies to the Board in making a determination,

(a) as to whether a landlord, superintendent or agent of a landlord, in carrying out work in a rental unit or residential complex, substantially interfered with the reasonable enjoyment of the unit or complex for all usual purposes by a tenant or former tenant, or by a member of the household of a tenant or former tenant; and (b) whether an abatement of rent is justified in the circumstances.

(3) In making a determination described in subsection (2),

(a) the Board shall consider the effect of the carrying out of the work on the use of the rental unit or residential complex by the tenant or former tenant, and by members of the household of the tenant or former tenant; and

(b) the Board shall not determine that an interference was substantial unless the carrying out of the work constituted an interference that was unreasonable in the circumstances with the use and enjoyment of the rental unit or residential complex by the tenant or former tenant, or by a member of the household of the tenant or former tenant

4. The first determination I need to make is whether or not the work constituted an interference that was unreasonable in the circumstances with the use and enjoyment of the unit by the Tenants.

Tenants evidence

5. The Tenants testified that the Landlord performed work at the residential complex comprising of 2 renovation projects over a 6-month time period. The unit below their unit was renovated and a unit below their unit was renovated. Renovations started in June 2020 and ended November 2020.

6. The Tenant testified that the first renovation started at the beginning of June 2020, and this was to the unit above them. She testified that the work was going on from 7:00 a.m. until 7:00 p.m. She testified that the first six weeks of the renovation were the worst. She testified that they would hear drilling, hammering, men yelling and music playing. The Tenant testified that the noise would be intermittent, but frequent throughout the day. It would be back and forth throughout the day between the drilling and hammering. This lasted for the first 6 weeks. For the last two weeks of this project, the Tenant testified that they mostly just heard voices throughout the day. She testified that even when the drilling and hammering stopped, the traffic in and out of the building was constant. The Tenant testified that while the renovations were happening, there was an open dumpster in the alleyway below their kitchen and dining room window. They testified that residents would throw household garbage in it and it would attract vermin.

7. The Tenant testified that the second renovation to the unit above their unit started at the end of August 2020. The Tenant testified that during the August renovation, the Landlord had to tarp their ceiling in preparation and instead of taking a day to tarp, in fact it took a week. The workers had to drill a hole in their wall to access the pipes upstairs and as a result, they could not use the bathroom for 48 hours. The Tenant testified that while the workers were working on the floor, debris fell into their unit. The Tenant testified that she was worried for her health because of all the different workers coming into the unit. In terms of noise, the Tenant submitted sound clips into evidence of drilling into evidence.

She testified that the noise was daily in 10 to 20 minute intervals throughout the day from the end of August until the end of October.

#### Landlord's evidence

8. The Landlord's agent testified that the complex is an industrial loft converted to residential use. He testified that upon a unit becoming vacant, the Landlord undertook renovations to bring the units up to code and aesthetically, up to today's standards. This included updating the flooring, cabinets, and counter tops, painting the walls and updating the plumbing.
9. The Landlord's agent testified that the noise the Tenant's are alleging amounts to substantial interference is regular construction noise relative to the work that was being carried out in the unit.

#### Analysis

10. As mentioned above, the issue I must determine first is whether or not the work carried out by the Landlord constituted an interference that was unreasonable in the circumstances.
11. Based on the evidence before me, I find on a balance of probabilities that the work carried out by the Landlord did not constitute an interference that was unreasonable.
12. While I am not bound by the decision issued by another member of the Board, Vice Chair Ruth Carey, in her decision in TST-54860-14 (Re), 2016 CanLII 38333 (ON LTB) at para. 78 and 79 of that decision, commented on the meaning of s.8(3) of the Regulation as follows:

Subsection 8(3) creates a two part test that is both subjective and objective.

Paragraph 8(3)(a) requires the Board to look at the individual circumstances of the Tenant and the impact on him. So the impacts described above and experienced by the Tenant are important but pursuant to s. 8(3)(b) the Board is barred from making a finding that the Landlord substantially interfered with the Tenant's reasonable enjoyment regardless of the severity of those impacts unless the Tenant leads sufficient evidence to establish unreasonableness with respect to the work being done. That is a very difficult hurdle to cross and except in rather obvious and egregious cases it usually requires a tenant to lead evidence from engineers and contractors. That did not occur here.

13. I agree with this reasoning. Section 8 (3) of the regulation is there to ensure that the impact on an individual tenant is considered, subsection 8 (3) (b) means that if work is done in a reasonable manner, the Board is prevented from finding that the work performed substantially interfered with the Tenant's reasonable enjoyment regardless of any impact it may have had on the Tenant.

14. I do not find that drilling and hammering or general noise experienced by the Tenants was unreasonable in relation to the work that was being carried out. It is expected that there will be noise when installing new flooring, fixing walls, and installing new plumbing. I do not find that there was anything unreasonable or out of the ordinary with the method in which the work was carried out or that it could have been carried out in a different manner.

15. The Tenant's application is therefore dismissed.

It is ordered that:

1. The Tenant's application is dismissed.

October 11, 2023

Date Issued

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Emily Robb

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor  
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.