

Dealing with A Noisy Condo Tenant – Court Declines to Make an Eviction Order

In a recent case, [NNCC No. 6 v. Temedio](#), a condominium corporation applied to the Court for an order requiring a tenant to permanently vacate the leased unit due to loud noises and voices emanating from the unit, which constituted a breach of the corporation's rules. The unit owner brought a separate application seeking an order that the lien for legal costs which was registered against the unit, be vacated.

The unit owner had bought the unit to provide a home for her disabled adult grandson who was unable to live alone. The owner leased the unit to her grandson's mother.

Over the course of several years, other residents complained about excessive noise coming from the unit, including repeatedly dropping heavy objects, pounding on the walls and the tenant yelling profanities. After numerous compliance letters had been sent to the owner and the noise continued, the corporation registered a lien against the unit for the legal fees it incurred in seeking compliance with the condominium documents. Concerns about the noise abated after the occupant of the unit directly below moved out and there were no further noise complaints after the court application was commenced.

Although the Court concluded that the tenant had violated the condominium rules by creating excessive noise, it refused to evict the tenant, calling eviction a draconian and extreme order that should be used only where there is an ongoing refusal to comply. Instead, it ordered that the tenant comply with the condominium documents and that the owner take reasonable steps to ensure that the tenant complied. The Court criticized the condominium corporation for taking a heavy-handed approach to this matter and suggested that with a more conciliatory approach, the corporation could have obtained compliance without the need for a court application.

However, the Court refused to vacate the lien registered against the unit for several reasons:

- it was not appropriate for the unit owner and the tenant to ignore the corporation's concerns about the noise;
- the owner had been warned in the compliance letters that the corporation intended to charge her unit with the legal fees it incurred; and
- the corporation's rules and by-laws both specifically provided that the unit owner is responsible for legal expenses incurred to seek compliance with the condominium documents.

The corporation was also awarded costs relating to the application in the amount of \$2500, inclusive of disbursements and HST.

While the corporation was not able to evict the tenant, it did achieve some success in this court application as it obtained a compliance order, the lien was not set aside and it was awarded costs.