HANDLING A NOISY NEIGHBOR

by Michael Vraa

Hennepin Lawyer, May 2002, Volume 71, No. 2, page 15
[reprinted with permission of the magazine]

It's Friday night. After a long week at the office, Jane returns home to her apartment. She's exhausted and has only one thing on her weekend "to-do" list: sleep. She relaxes over a quiet dinner while watching a Cary Grant movie on cable, and decides to call it a night at 11:00 p.m.

At 11:30 p.m., the upstairs neighbors get home early from the bar and turn on the stereo. By 12:30 a.m., it sounds as if everyone else from the bar is in their apartment too. Jane's weekend of blissful relaxation has now turned into this increasingly recurrent nightmare. The parties are becoming more frequent, and not only on weekends.[1] How can Jane deal with this? She signed a one-year lease in January and it's only May.

Obviously, she could call the police. But, she doesn't want to be especially combative, and she has already tried that a couple of times. By the time the police arrive, either the party has died down or the couple upstairs agree to "tone it down" and the police take no meaningful action.

Jane has also complained to the landlord, but he refuses to do anything, claiming that he can't get in the middle of an argument between tenants.

Jane comes into your law office and asks you how to solve these problems. She either needs to be able to move soon, breaking her lease, or force the upstairs tenants to keep it down or move out.

You tell Jane that she could file a nuisance suit against the neighbors, suing for whatever damages she could prove, as well as potentially getting an injunction to stop the noise permanently. This will cost her at least $132[a] in a filing fee. She could ask for monetary damages and an injunction but it is doubtful that she would have a quick result. If she were to file a nuisance case, it would be highly advisable that she retain counsel, especially if asking for an injunction, which would, of course, cost her attorney fees.

Jane says she would rather proceed pro se, and minimize her costs. She's done some

---

[a][Since this article was written, fees have risen. The filing fee for a Rent Escrow case in Hennepin is $70 and is $322 for other district court cases as of 2013.]

checking on the Internet and asks if she can use rent escrow or in the alternative, simply move out (constructive eviction).

RENT ESCROW

Rent escrow, Minn. Stat. § 504B.385, appears to be a viable option. It only costs Jane $20 to file the case in Hennepin County*, and the vast majority of rent escrow action are filed pro se. The court actually serves the papers on the landlord, meaning that Jane will also save the cost of service.

The rent escrow process is fairly straightforward. Jane would need to send a letter to her landlord demanding that the neighbor problem be remedied. She should put the date on the letter, sign it, and keep a copy for herself and the court. If the problem persists after 14 days, she could file the rent escrow action in Housing Court at the Government Center. The remedies that the court would have available include reducing Jane's rent, ordering the landlord to deal with the problem, and even rescinding the lease.

A tougher question is whether a rent escrow is the appropriate type of action to take when dealing with neighbor problems. Jane would be relying on Minn. Stat. § 504B.161, which outlines the covenants of habitability for every lease in Minnesota. This statute requires that the landlord covenant:

> (1) that the premises and all common areas are fit for the use intended by the parties;
>
> (2) to keep the premises in reasonable repair ...;
>
> (3) to maintain the premises in compliance with the applicable health and safety laws of the state, ... and of the local units of government ...

Jane would need to show that the landlord violated one of these covenants to prevail in a rent escrow action. Numbers 2 and 3 would not apply, as they deal primarily with repair issues. This leaves Jane with the "fit-for-the-use-intended" argument. She would need to show that the landlord knew, or should have known, that her intended use for the apartment would include sleeping in her apartment (not a very high standard). If the noise from nearby apartments under the landlord's control is not reduced, limiting her sleep, Jane could prevail.

If it is found that the landlord's inaction is allowing the noisy neighbors to intrude upon Jane's "quiet enjoyment" of the premises, this may be another avenue to success in a rent escrow action. Quiet enjoyment is an implied covenant in every lease in Minnesota.[2] It is often discussed in tenancies with noise problems, sometimes mistakenly. Quiet enjoyment does not simply mean that the apartment will be kept "quiet," but rather, "the

covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."[3] The most traditional version of a quiet enjoyment violation would be the landlord renting the same property to two separate parties, while guaranteeing that each has the exclusive right to possess. Quiet enjoyment could apply in Jane's case, though, if she could show that her quiet enjoyment is hindered by her neighbors' "interference with her tenancy" and the landlord failed or refused to remedy the problem.

Although there is not a wealth of case law on the issue, at least one Hennepin County Housing Court decision favored a tenant dealing with noisy neighbors in a rent escrow action. In *Person v. Torchwood Management*,[4] a pro se tenant filed a rent escrow action for problems relating to neighbors. The court found that "loud and abusive language by neighboring tenants, noisy parties, unjustified harassment by other tenants and failure of landlord to effectively abate this nuisance" were sufficient factors to find in favor of the tenant. The court did try to limit the issue somewhat, pointing out that "a baby who may be screaming at odd hours of the night" would not be a good case for the plaintiff/tenant. The court went on to state that the "law expects only that the landlord make reasonable and good faith efforts to remedy the situation." The tenant was awarded an abatement (a refund for living in substandard conditions) of 20 percent of her rent for a four-month period.

If the landlord fails to take any substantial steps to remedy the problem, Jane has an argument that rent escrow is an appropriate remedy.

Dendy v. Solar Partnership [5] offers a contrary view, finding in favor of the landlord. In *Dendy* , the plaintiff complained about his upstairs neighbor's excessive "foot-stomping," especially late at night or early in the morning. No other tenants in the building complained about the upstairs neighbor.

The Housing Court ruled against the tenant, noting that the plaintiff had refused the landlord access to his apartment in order to assess the sound level. The court also found that the landlord had made a good faith attempt to contact the upstairs tenant about the noise level. The court summed up the standard that a tenant must meet; "that the noise of a co-tenant made the premises materially unsuitable for ordinary residential living and that it was within the landlord's power to abate the nuisance."

CONSTRUCTIVE EVICTION

Jane's other approach, declaring a constructive eviction and moving out, may also succeed. The initial procedural aspect of a constructive eviction is much simpler for Jane as well. Minn. Stat. § 504B.131 requires that she simply "vacate and surrender" the premises if her apartment becomes uninhabitable. In most cases, it would be wise to inform the landlord of the condition, give him a reasonable time to fix the condition, and

move out only if the landlord fails or refuses to address the condition. The landlord would be likely to sue Jane for the remainder of the rent due under her lease or until the apartment was re-rented. Jane would defend this case, asserting constructive eviction as her defense.

In *Colonial Court Apartments v. Kern*,[6] Irene Kern rented a unit in a suburban apartment building on Jan. 1, 1966. While inspecting the unit before deciding whether to rent, she inquired about the noise level in the apartment and was assured that the building was "well insulated and not noisy " by the landlord's agent.

Almost immediately after moving in, Kern started complaining about her upstairs neighbors, a young couple. Kern complained that they had frequent, noisy parties, "ran water early in the morning, operated a dishwasher at late hours, and subjected her to insulting and abusive language ...." *Id*. at 771. Kern's complaints to the landlord were sufficient to convince the landlord that the couple should move, and he gave the couple a notice to vacate telling them to move out by the end of February. This notice was retracted, however, when the landlord learned that the wife was pregnant. It was eventually agreed that the couple would move out by June 1. Kern was notified and seemed satisfied knowing the couple would move out then. However, they were not out by June 1, and on June 16, Kern vacated the apartment building claiming she had been constructively evicted.

The trial court seemed to take interest in not only the details of the noise disturbances, but also the effect on Kern. She had great difficulty sleeping, and resorted to driving to Eau Claire, Wisc.., to get adequate sleep at her parents' home on weekends. An additional factor that seemed important to the trial court was the fact that the landlord had assured Kern twice that the noisy couple would leave by a certain date, and in both instances, the couple failed to do so.

The Minnesota Supreme Court, in analyzing Kern's case, noted that her situation was "materially less serious" than other successfully asserted constructive eviction defenses. *Id.* at 771. The Court summed up the applicable rule by stating, "the acts of one tenant do not constitute a constructive eviction of another tenant of the same landlord unless they materially disturb the latter tenant in the use, occupancy, and enjoyment of the demised premises . . . to injure the other tenant." *Id.*

The Court ultimately gave the trial court's findings great deference, noting "the question whether there is a constructive eviction is one of fact with each case largely dependent upon its particular circumstances." *Id*. at 772. It should be noted that Minnesota's approach to constructive evictions does seem consistent with other states.[7]

CONCLUSIONS AND TRENDS

In both cases in which the tenant prevailed, there was convincing and credible evidence of the noise itself. It is unclear whether this was ever proven in *Dendy* . The best evidence is likely to be third-party witnesses who also heard and/or complained about the problems themselves.

The tenant's case is much stronger if the landlord either failed to take any action or failed to take the action he or she promised to take. In either situation, the landlord needs to be given a reasonable chance to remedy the problem prior to filing a rent escrow or a constructive eviction assertion.

One reason to file the rent escrow over asserting a constructive eviction is the relative risk that Jane will have to take. In the rent escrow, she writes the letter and files the case, paying her $20 filing fee. The case is heard within a few weeks and she is told whether she wins or loses. In the case of the constructive eviction, Jane simply leaves the apartment after giving the landlord the chance to fix the problem. If the landlord sues for performance and Jane loses her constructive eviction defense, she could be liable for the rent for the remainder of the lease – a much bigger financial risk.

Succeeding in a rent escrow should be easier for Jane than in a constructive eviction case as well. The court has a variety of remedies available to apply, with a rent reduction being the most likely remedy the court would grant. The rent reduction gives the landlord an incentive to deal with the problem neighbors either by pressuring them to keep the noise level down, or ultimately forcing them to move out with a notice to vacate or an eviction action. It is difficult to ascertain a trend in what will or will not succeed in either type of case due to the lack of relevant case law. One area to watch in future litigation concerning neighboring co-tenants is smoking. This type of case would be the strongest for a tenant if the building has been designated as nonsmoking and a nearby neighbor is smoking in the building, with smoke permeating the aggrieved tenant's unit.

ENDNOTES

1 - The author notes that although this article is not autobiographical, he does have some experience on point. In his last apartment, his downstairs neighbors frequently home late on weekends after drinking and tried to accompany early Santana records on bongo drums.

2 - See *Wilkinson v. Clauson*, 12 N.W. 147 (1882).

3 - BLACK'S LAW DICTIONARY 1248 (6th ed. 1990).

4 - *Person v. Torchwood Management*, No. UD 192064543 (Minn. Dist. Ct. 4th Dist.,

July 6, 1992). The Housing Court files for about the last 12 months are stored by the Housing Court in Rm. A-1700 of the Hennepin County Government Center. Older files can be ordered at Rm. A-1700 at no cost but take a few days to be transferred from archives. Cases cited in this article are also available from the author.[b]

5 - *Dendy v. Solar Partnership*, No. UD 1940707547 (Minn. Dist. Ct. 4th Dist., Aug. 26, 1994).

6 - *Colonial Court Apartments, Inc. v. Kern*, 163 N.W.2d 770 (1968).

7 - See, generally, Schoshinski, AMERICAN LAW OF LANDLORD AND TENANT § 3:7 (1980 and Supp. 2000) (provides a comprehensive overview of different fact patterns), and *Blackett v. Olanoff*, 358 N.E.2d 817 (Mass.1977)

---

[b][The cited cases are also available at http://www.homelinemn.org/publications/other-publications/ along with a copy of the article as it appeared originally in *Hennepin Lawyer*. The court's case-storage protocols have changed since the article was written.]