

NCAT says Landlords are not responsible for Tenants' Noise

In a recent case, NCAT has decided that a landlord falls under no obligation to ensure that their tenants comply with the by-laws in a strata scheme.

The Case

The case of *Filetti -v- Eales; Eales -v- Filetti* [2018] NSWCATCD 66 involved a dispute about noise between owners and residents in an apartment building in Vaucluse, Sydney. Ms Filetti owns and lives in an apartment in that building. She claimed that the tenants who lived in the apartment above hers created excessive noise. Ms Filetti applied to NCAT for orders against the tenants and the owner of the apartment above, Mr Eales, to require them to treat the floor space of their apartment to prevent the transmission of excessive noise. Ms Filetti also sought an order to compel Mr Eales to require his tenants to comply with the by-laws concerning the noise, and an order to require Mr Eales to compensate her for breaches of the by-laws committed by his tenants.

The Decision

NCAT dismissed Ms Filetti's claim. NCAT was not satisfied that Ms Filetti had proven that Mr Eales' tenants created excessive noise. NCAT accepted that it had power to make an order to require a lot owner to comply with the by-laws. However, NCAT did not consider that it could make an order requiring an owner to ensure his or her tenants comply with the by-laws. NCAT observed that the strata legislation does not impose an obligation on landlords to ensure their tenants comply with the by-laws (although NCAT did find that a landlord had capacity to require his or her tenants to comply with the by-laws). For that reason, NCAT dismissed Ms

Filetti's claim for an order for Mr Eales to ensure that his tenants complied with the by-laws.

The Claim for Compensation

Ms Filetti also made a claim for compensation against Mr Eales for a breach of the by-laws by him. NCAT expressed doubt that it had power to make an order for compensation in the circumstances. NCAT considered that the decision of the Court of Appeal in *The Owners Strata Plan 50276 -v- Thoo* [2013] NSWCA 27 suggested that compensation is not available in respect of a breach of a by-law either in NCAT or a court of general jurisdiction.

Conclusion

Ultimately, Ms Filetti's claim was unsuccessful because she did not prove that Mr Eales' tenants were making excessive noise in breach of the by-laws. However, the more interesting aspects of the case are the findings by NCAT that it cannot make orders requiring a lot owner to ensure his or her tenants comply with the by-laws or order one lot owner to pay another owner compensation for a breach of the by-laws.

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