Apartment law: Nuisance caused by room rental

Unfortunately, neighbors and nuisance often turn out to be a recurring combination. Not in the least when the adjacent house has been made available for room rental to students. In a case handled at the District Court of Amsterdam, the neighbour of the floor below appealed to the deed of division, which states that the apartment may only be used as a dwelling. The question is whether room rental does or does not fall under the term 'dwelling'.

An apartment owner rents out separate rooms of his house to four students. As a result, the sub-neighbour experiences quite a lot of noise nuisance. The neighbour states that the students play loud music and receive a lot of visitors in the evening hours, causing noise in the apartment and stairwell late at night. These complaints are substantiated with an expert report and statements from the ground floors.

Are you fighting with a deed of division?

The neighbour states that the apartment owner does not comply with the deed of division which states that the apartment must be used as living space. According to the neighbour, the term 'living space' in this case means an 'independent living space' (just like in the administrative housing act) and room rental is therefore not allowed. If room letting is prohibited according to the demerger deed, the neighbour can take this as an opportunity to apply for a ban. In this case, however, such a ban on room rental was not directly included in the demerger deed or the

demerger regulations. The definition in the Housing Act simply does not apply in this case, according to the District Court.

What the District Court can do is to examine whether it can be ruled according to objective standards that the parties have agreed that renting rooms is not permitted. This objectivity is an important condition because third parties must also be able to rely on the contents of the deed of division when inspecting it. In this case, the District Court did not find any leads in the deed of division and the demerger regulations that would show that it was once intended to prohibit room letting. In short, the neighbour could not demonstrate that the apartment owner with room rental was in violation of the demerger deed.

Unlawful nuisance?

Fortunately for the neighbour, he had also held the apartment owner responsible for unlawful nuisance (Article 5:37 of the Civil Code & Article 6:162 of the Civil Code). According to established case law of the Supreme Court, in order to determine whether unlawful annoyance actually occurred, the nature, seriousness and duration of the annoyance and the damage caused by it in connection with the further circumstances of the case are taken into account. According to the District Court, neighbours in an apartment complex will experience nuisance more quickly because they share several walls and floors with different neighbours. This requires, on the one hand, that one should take more account of each other, but, on the other hand, that one should also tolerate some nuisance from each other.

In this case, however, the apartment owner failed to take adequate measures against the nuisance despite knowing about it. The nuisance has also been substantiated by an expert report and is also confirmed by other neighbours. The District Court therefore ruled that there was unlawful nuisance caused by noise. The apartment owner will therefore have to take measures to prevent future nuisance.

If owners of the OA are in agreement, it is safest to include a ban on room rental in the demerger deed in order to prevent a lawsuit such as this.

Are you also struggling with nuisance from neighbours or would you like to rent out your apartment room by room and are you looking for advice? Please feel free to contact M2 Advocaten.

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