



Civil Resolution Tribunal

Date Issued: June 28, 2021

File: SC-2021-004374

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Perka v. Cheslock*, 2021 BCCRT 711

B E T W E E N :

SHANNON PERKA

APPLICANT

A N D :

ANDREW CHESLOCK and CAROL CHESLOCK

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This is a dispute between neighbours in a strata corporation.

2. The applicant, Shannon Perka, is the former owner of strata lot 1 (unit 101) in a strata corporation, The Owners, Strata Plan NW 3158 (strata). The respondents, Andrew Cheslock and Carol Cheslock, own strata lot 8 (unit 201) in the strata.
3. The strata is not a party to this dispute, but is a party to a related dispute, ST-2020-006246, which I discuss below.
4. The strata plan shows that Ms. Perka's unit 101 is located directly below the Cheslocks' unit 201. In ST-2020-006246, the Cheslocks said smoke from cigarettes and marijuana, and odours from plug-in air fresheners or essential oil devices, entered their strata lot from unit 101. They say these odours were a nuisance and impacted their health. They said the strata failed to enforce its smoking and nuisance bylaws, and failed to accommodate Ms. Cheslock's disability.
5. In this dispute, Ms. Perka says the Cheslocks made frequent and unsubstantiated complaints about her and her partner, C, to the strata, over a 2 year period. She says these allegations caused undue stress, and loss of enjoyment of her strata lot. She says that the Cheslocks' frequent complaints made living in her strata lot unbearable, so she sold it and moved out in December 2020.
6. As remedy, Ms. Perka requests \$5,000 for loss of use and enjoyment of unit 101, stress, and real estate fees. She also requests an order that the Cheslocks cease any attempted contact or "nuisance activity" towards her or C, and refrain from making public comments or accusations against them.
7. The Cheslocks deny these claims, and say their complaints against Ms. Perka were legitimate.
8. The parties are self-represented in this dispute.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil*

Resolution Tribunal Act (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

10. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Both parties in this dispute question the credibility, or truthfulness, of the other. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. Also, in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is in issue.
11. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
12. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to do or stop doing something, pay money, or make an order that includes any terms or conditions the CRT considers appropriate.
13. Ms. Perka originally requested \$10,000 in damages, and filed her claims as counterclaims to the related strata property dispute, ST-2020-006246. However, I find that Ms. Perka's claims do not fit within the CRT's strata property jurisdiction. CRTA section 121(1) says that strata property claims must be claims "in respect of

the *Strata Property Act*'. As explained in the non-binding but persuasive decision in *Alameer v. Zhang*, 2021 BCCRT 435, damages claims between individual strata lot owners are not claims in respect of the *Strata Property Act* (SPA), since the duties in the SPA are owed by the strata corporation. Rather, such claims generally arise under the common law of torts (legal wrongs).

14. With her consent, Ms. Perka's claims were re-classified as this separate small claims dispute. Ms. Perka agreed to reduce her damages claim to \$5,000 in order to fit within the CRT's monetary limit for small claims disputes.
15. Ms. Perka requests anonymity in the published version of this decision, as she says the Cheslocks' allegations injure her reputation. Parties in CRT proceedings are generally named, consistent with an 'open court' principle that allows for transparency. I find there is nothing in this dispute that would warrant departing from the open court principle, and so I will not anonymize Ms. Perka's name.
16. As noted above, Ms. Perka requests orders that the Cheslocks not contact her or C, not make complaints about them, and not make public comments about them. I find it is not appropriate to make these orders.
17. C is not a party to this dispute, and I find Ms. Perka has no standing to claim remedies on his behalf. Also, I find the CRT does not have authority to make injunctive orders (orders to stop doing things) in a small claims dispute, except where permitted by section 118 and those exceptions do not apply here. However, even if I had jurisdiction to do so, I would not make this order because I find the issue is moot. Ms. Perka no longer owns a strata lot in the strata, or lives there. I therefore find the order would serve no practical purpose.
18. I therefore decline to grant this remedy.

ISSUES

19. Is Ms. Perka entitled to \$5,000 in damages?

EVIDENCE AND ANALYSIS

20. In a civil claim like this one, Ms. Perka, as the applicant, bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision. For a discussion of the facts in this case, see my related decision in ST-2020-006246.
21. For the following reasons, I find Ms. Perka is not entitled to any damages.
22. Ms. Perka says the Cheslocks' "constant" complaints about her to the strata were harassment, and constituted a legal nuisance.
23. To the extent Ms. Perka's claims are about harassment, I note that there is no legally recognized tort of harassment in BC: *Total Credit Recovery v. Roach*, 2007 BCSC 530. She also argues that the Cheslocks' defamed her and C, in the course of their complaints about them. The CRT does not have jurisdiction to resolve defamation claims, so I make no findings about that in this decision.
24. In *Campbell et al v. Blainey et al*, 2005 BCSC 250, the court held at para 55 that a nuisance occurs when the defendant's "use of his property" unreasonably inflicts inconvenience and discomfort. To establish nuisance, Ms. Perka must prove a "substantial, non-trivial interference" with her use and enjoyment of common property or unit 101, and that the interference is unreasonable: see *The Owners, Strata Plan LMS 1162 v Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33.
25. I agree that the evidence before me establishes that the Cheslocks made a number of complaints about Ms. Perka and C, from about August 2018 onwards. However, I find the documents in evidence do not establish that these complaints occurred almost daily, as Ms. Perka asserts. Rather, the evidence Ms. Perka includes less than 10 emails and letters from the strata setting out complaints from the Cheslocks. While there appear to have been verbal complaints also, there is no log or other record setting out the frequency of these complaints, or their substance.

26. Ms. Perka asserts that the Cheslocks “spied, stomped, slammed doors & windows, irritated, intimidated, confronted us in our normal activities while on our patio causing us the loss of enjoyment & peaceful use of our home & patio”. I find the evidence before me does not confirm some of the allegations, such as stomping, slamming, and confrontations. For example, there are no witness statements explaining when these alleged actions occurred, who was involved, or what happened. There is also no witness statement from C, although Ms. Perka appears to be, in part, making claims on his behalf. I also note that she does not have legal standing to make claims on C’s behalf.
27. In my decision in ST-2020-006246, I found that the evidence established that there likely was smoke and other odours entering the Cheslocks’ strata lot from unit 101. I find this conclusion does not support Ms. Perka’s claim that the Cheslocks’ complaints about smoke and odours were unreasonable. This is particularly true since under *Strata Property Act* section 135, the Cheslocks were entitled to complain to the strata about perceived bylaw violations. Also, the evidence shows that the Cheslocks were not the only owners who complained to the strata about smoke and odours from unit 101. Rather, Ms. Perka’s next-door neighbour, GW, also complained to the strata several times about similar smoke and odours. These findings do not support Ms. Perka’s claim for damages against the Cheslocks.
28. In addition, I find the evidence before me does not establish that the Cheslocks’ complaints were so frequent that they would constitute an unreasonable interference with Ms. Perka’s use and enjoyment of unit 101. As explained above, while Ms. Perka says the Cheslocks complained almost daily, she did not provide confirmation to prove that. It is clear from the evidence that Ms. Perka disliked the Cheslocks’ complaints, and found them stressful and upsetting, but I find she has not provided sufficient evidence to establish that they were an unreasonable interference with her use and enjoyment of her property.
29. Finally, I find there is no objective evidence that Ms. Perka sold her strata lot because of the Cheslocks’ complaints, rather than for some other reason. For

example, there is no corroborating statement from Ms. Perka's realtor, or another witness, to confirm the reason for the sale.

30. For all of these reasons, I find Ms. Perka is not entitled to damages for loss of use and enjoyment of unit 101. I dismiss this claim.

31. Ms. Perka was unsuccessful in this dispute. Based on the CRTA and the CRT rules I find she is not entitled to reimbursement of CRT fees or dispute-related expenses.

ORDER

32. I dismiss Ms. Perka's claims, and this dispute.

Kate Campbell, Vice Chair