



Civil Resolution Tribunal

Date of Original Decision: May 30, 2024

Date of Amended Decision: July 15, 2024

File: SC-2023-005368

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dhillon v. Hale*, 2024 BCCRT 494

B E T W E E N :

PARVEEN DHILLON

APPLICANT

A N D :

TROY ALLAN HALE and JORDANA CANDACE ISENBERG

RESPONDENTS

AMENDED REASONS FOR DECISION¹

Tribunal Member:

Micah Carmody

¹ Paragraph 30 in the Order section has been amended under CRTA section 64(c) to correct a math error.

INTRODUCTION

1. Parveen Dhillon owns unit 401 in a condo building. Troy Allan Hale owns adjacent unit 402. Jordana Candace Isenberg lived in unit 402 until Mr. Hale evicted her in August 2023.
2. Ms. Dhillon says since she bought her unit in August 2022, Ms. Isenberg has bothered her with noise, harassment, smoking odour, and other disturbances. Ms. Dhillon claims \$5,000 in damages for the disturbances, against both Ms. Isenberg and Mr. Hale.
3. Ms. Isenberg and Mr. Hale both say Ms. Dhillon's claims are false or exaggerated. Mr. Hale also says he tried unsuccessfully to have Ms. Isenberg evicted sooner and blames third parties for his failure to do so.
4. As I explain below, I find Ms. Isenberg liable in nuisance for \$2,500. I dismiss the claim against Mr. Hale.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has authority over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
6. Given that mandate, the CRT conducts most hearings in writing, but it has discretion to decide the format of the hearing, including by electronic communication tools. In this dispute, there are no significant credibility issues. The respondents have largely chosen not to provide evidence or submissions to challenge Ms. Dhillon's account of events. Instead, they simply assert that Ms. Dhillon has not provided evidence to prove her claims. In the circumstances, I decided to hear this dispute through written submissions.

7. Section 42 of the CRTA says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to pay money, return personal property, or do things required by an agreement about personal property or services. The order may include any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did Ms. Isenberg's noise and other conduct amount to a nuisance?
 - b. Is Mr. Hale also responsible for that nuisance?
 - c. What remedy, if any, is appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Ms. Dhillon must prove her claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. Although both respondents had the opportunity, Ms. Isenberg did not provide submissions or documentary evidence, and Mr. Hale provided only brief submissions.
11. I begin with the applicable law. While Ms. Dhillon's Dispute Notice identified several possible legal bases for claim, it is clear from her submissions that she relies on the law of nuisance. A nuisance occurs when a person substantially and unreasonably interferes with another person's quiet use and enjoyment of their land or property. A substantial interference is one that is "more than mere inconvenience or minor discomfort." The test is objective, meaning the interference must be something that

“would not be tolerated” by an ordinary person (see *Wasserman v. Hall*, 2009 BCSC 1318 at paragraph 85). A nuisance can involve a physical interference, such as a water leak, or an intangible interference, such as noise or odours.

12. In August 2022, Ms. Dhillon began to move her belongings in and renovate unit 401. Ms. Dhillon says every time she visited her unit that month, Ms. Isenberg was waiting in the hallway to “scream obscenities” at her about topics that included Ms. Dhillon’s balcony light shining into unit 402, stalkers in the building, highway traffic noise and other issues. Ms. Dhillon says this type of behaviour continued until Ms. Isenberg was evicted one year later.
13. Ms. Dhillon’s evidence includes extensive documentation of the formal complaints she made to the strata that Ms. Isenberg was shouting at her from unit 402’s balcony or through the walls, or banging on walls, or repeatedly slamming her doors. In March 2023, she complained that Ms. Isenberg had slid aside the glass partition between their balconies and was video recording her through her windows. Ms. Dhillon complained in writing about Ms. Isenberg relatively consistently from September 2022 through August 2023.
14. As noted, Ms. Isenberg did not provide evidence or submissions, so Ms. Dhillon’s evidence about Ms. Isenberg’s conduct is largely unchallenged. It is also supported by witness statements.
15. Written statements from the strata president and the building manager confirm that Ms. Isenberg banged on the shared walls of Ms. Dhillon’s unit, slammed doors, and shouted profanity from her balcony on a weekly, if not daily, basis. The statements also confirm that the strata called the police to address Ms. Isenberg’s behaviour almost weekly. The situation became so intolerable that at the 2023 annual general meeting, the ownership voted unanimously in favour of spending up to \$50,000 to bring a legal action against Ms. Isenberg and Mr. Hale for the purposes of evicting Ms. Isenberg.

16. Another strata resident living near Ms. Isenberg provided a written statement. They said they experienced the same treatment from Ms. Isenberg as Ms. Dhillon did, including verbal abuse, yelling and swearing in common areas. They also heard daily stomping, wall-banging, and profanity-shouting off the balcony “at all hours of the day and night”. They felt unsafe around Ms. Isenberg and she interrupted their sleep on a nightly basis.
17. In a strata context, the law expects owners to tolerate background noise and the occasional disturbing noise. However, I find the noise that Ms. Isenberg subjected Ms. Dhillon to was excessive and amounted to more than mere inconvenience or discomfort. I find that an ordinary person would not tolerate that level of noise, wall-banging and shouting on a near-daily basis. Nor would an ordinary person tolerate being filmed through their windows by a neighbour. I find Ms. Isenberg liable in nuisance for the noise she made and her overall aggressive conduct toward Ms. Dhillon between August 2022 and August 2023.
18. As for the marijuana smoke odour, there are only a handful of odour complaints in the evidence and most of them are about odour in the corridor. There is limited evidence that the smoke entered Ms. Dhillon’s unit. I find the evidence insufficient to establish that the marijuana smoke odour rose to the level of intolerable interference. I have not considered it in my assessment of damages below.

Is Mr. Hale’s liable for Ms. Isenberg’s nuisance?

19. Ms. Dhillon says that Mr. Hale ignored all the complaints about Ms. Isenberg’s troubling behaviour. She says Mr. Hale maintained that he was trying to evict Ms. Isenberg but failed to follow through.
20. Mr. Hale’s brief submissions focus on his attempts to have Ms. Isenberg evicted. It is not necessary to discuss this evidence because I find Mr. Hale is not liable for Ms. Isenberg’s nuisance.
21. The BC Supreme Court suggested in *Anmore Development Corp. v. The City of Burnaby et al.*, 2005 BCSC 1477, at paragraph 133, that a landlord may be liable for

their tenant's nuisance if they are made aware of it and do nothing to stop it. However, in *Shahgaidi v. Zhang*, 2018 BCSC 2082 at paragraphs 18-31, the court indicated that this remark in *Anmore* was incidental to the issues decided and not supported by the balance of legal authorities. The court said that there must be a causal connection between the intended use of the property and the resulting nuisance, and that such a connection will not be implied simply because a landlord with knowledge of the nuisance fails to terminate the tenancy. I find that *Shahgaidi* is applicable here, noting that it was decided in the context of a nuisance between residents in a strata building. Applying *Shahgaidi*, I find that Mr. Hale is not liable for Ms. Isenberg's nuisance because there is no evidence he was aware that Ms. Isenberg's conduct would be so disruptive when he agreed to rent the apartment to her. I dismiss the claim against Mr. Hale.

What is the appropriate remedy?

22. Damages for nuisance are generally intended to provide solace and compensation for the interference with the use and enjoyment of the innocent party's property. The appropriate amount of compensation depends on the nature of nuisance and the impact on the innocent party. As noted, Ms. Dhillon claims \$5,000.
23. The CRT has previously awarded damages for noise-related nuisance, ranging from \$500 for limited instances of balcony noise to \$5,000 for nearly 3 years of droning and living noise (see, for example, *Lucas v. The Owners, Strata Plan 200*, 2020 BCCRT 238 and *Yang v. The Owners, Strata Plan VR732*, 2020 BCCRT 361).
24. The nuisance here persisted for approximately one year. I accept Ms. Dhillon's evidence that for that period she did not have guests over, kept her blinds on the window nearest unit 402 closed, kept her windows closed, avoided her patio, avoided the elevator, and at times used building security as an escort. She also had to speak with police on a near-weekly basis as they responded to her or the strata's calls about Ms. Isenberg. Ms. Dhillon works from home, and I accept her evidence that Ms. Isenberg's conduct sometimes disrupted her work. I also accept that it sometimes

disrupted her daily prayers. In short, I find that Ms. Isenberg's noise and intrusive behaviour had significant impacts on Ms. Dhillon's daily life for one year.

25. Subjectively, Ms. Dhillon says these disruptions took a toll on her mental and physical health. I accept that, but given there are no reports or statements from doctors or counsellors, I find the extent of the impact on her health is unproven. I also note that unlike many noise disputes, there is limited evidence here of significant sleep disturbance, such as a noise log. These factors reduce the damages I award.
26. The other factor I have considered is the role Ms. Dhillon played in this. On the evidence, I cannot escape the conclusion that Ms. Dhillon brought some of the disturbance on herself. The video evidence Ms. Dhillon submitted shows that she, at least some of the time, chose to engage with Ms. Isenberg and ask inflammatory questions rather than simply ignoring her. I find this likely contributed to a bitter relationship between the two of them. This reduces the damages I award.
27. Considering the nature, frequency, and duration of the respondents' noise and disturbing conduct, the impacts on Ms. Dhillon, and the mitigating factors I explained above, I find Ms. Dhillon is entitled to \$2,500 in damages for nuisance from Ms. Isenberg.
28. The *Court Order Interest Act* applies to the CRT. Ms. Dhillon is entitled to pre-judgment interest on the \$2,500 damages award from September 1, 2022, to the date of this decision. This equals \$185.54.
29. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Ms. Dhillon was substantially successful, so I find she is entitled to reimbursement of \$175 in paid CRT fees. Ms. Dhillon claims \$5 for requesting police records but acknowledges she did not receive the requested records in time to submit them as evidence in this proceeding. For that reason and because she did not provide a receipt, I find she has not proved the expense.

ORDERS

30. Within 21 days of the date of this order, I order Ms. Isenberg to pay Ms. Dhillon a total of \$2,860.54, broken down as follows:
- a. \$2,500 in damages,
 - b. \$185.54 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
31. Ms. Dhillon is entitled to post-judgment interest, as applicable.
32. I dismiss the claims against Mr. Hale.
33. This is a validated decision and order. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member