



Civil Resolution Tribunal

Date Issued: June 25, 2024

File: SC-2022-001432

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Reym v. Fell*, 2024 BCCRT 593

BETWEEN:

JASON ROELOF REYM

APPLICANT

AND:

MIRANDA FELL and RICHARD RILEY FELL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Megan Stewart

INTRODUCTION

1. This dispute is between duplex neighbours. Jason Roelof Reym says Miranda Fell and Richard Riley Fell interfered with the use and enjoyment of his property by making noise, including playing loud music, and smoking marijuana on their property. Mr. Reym seeks \$5,000 in damages. He is self-represented.

2. The Fells deny causing a nuisance. They say they played their music at a reasonable volume, and that Mr. Fell smoked marijuana on the Fells' property to help him manage a medical condition. Mrs. Fell represents the Fells.

JURISDICTION AND PROCEDURE

3. These are the Civil Resolution Tribunal's (CRT) formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states 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.
4. 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. The parties in this dispute question each other's credibility, or truthfulness. However, disputes involving an assessment of the parties' credibility do not necessarily require an oral hearing (see *C.2K Holdings Ltd. v. The Owners, Strata Plan K 577*, 2019 BCSC 1981, at paragraph 33). Here, I find I am properly able to assess and weigh the documentary evidence and submissions before me, including the substantial audio and video evidence, to come to a decision. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice and fairness.
5. CRTA section 42 says the CRT may accept as evidence information it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

Preliminary issues

6. The Fells ask that I not admit into evidence unspecified non-consensual recordings Mr. Reym made of private conversations the Fells had with each other. The Fells say

the recordings were made in contravention of the Criminal Code, and that Mr. Reym likely edited the conversations for his own purposes. I find this is speculative, as there is no evidence the conversations were manipulated. Also, I find most of the recordings were of music, indistinct conversations, or other non-conversational noise. Regarding the recordings of clear conversations, it appears these mainly took place outdoors during parties or gatherings with various people, and were not personal conversations between the Fells that would give rise to a reasonable expectation of privacy. So, I decline the Fells' request, and I admit the recordings into evidence.

7. Mrs. Fell also says Mr. Reym recently sold his half of the duplex, and suggests this means the dispute is moot (of no legal consequence). Mr. Reym's claim is for damages arising from the Fells' past behaviour, so even if he has sold his property, I find there is a live issue to consider. For that reason, I did not consider it necessary to confirm the sale of Mr. Reym's half of the duplex.
8. Finally, the Fells say Mr. Reym harassed them by making unfounded complaints to the municipality and the RCMP. There is no recognized tort of harassment in BC, and the Fells did not file a counterclaim, so I have not addressed this assertion further.

ISSUE

9. The issue in this dispute is whether the Fells caused a nuisance, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mr. Reym must prove his claims on a balance of probabilities, meaning more likely than not. I have read all the parties' submissions and evidence, but refer only to information I find necessary to explain my decision.

The applicable law and Mr. Reym's claims

11. I find Mr. Reym bases his claims on the law of nuisance. A private nuisance is when a person substantially and unreasonably interferes with another person's quiet use

and enjoyment of their land or property (see *British Columbia (Minister of Public Safety) v. Latham*, 2023 BCCA 104). A substantial interference is one that is “more than mere inconvenience or minor discomfort”. Also, it 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, as is alleged here.

12. The Fells bought and moved into one side of the duplex around October 2020. Mr. Reym and his partner live or lived in the other side. The parties knew each other before the Fells moved in, and were initially friendly. By early 2021 though, the relationship had begun to sour.
13. Mr. Reym says starting in late 2020, the Fells prevented him and his family from enjoying their property by being noisy and smoking marijuana, the smell of which entered their home.
14. From May 2021 to January 2023, Mr. Reym, his partner, and another family member living in the duplex at the time, kept a detailed log of noises they say they heard from the Fells’ property at different times of the day and night. The log showed entries every few days, including music and bass, yelling, loud talking, wall-banging and door-slamming, and dog-barking. The log continued into 2023, but with far fewer entries. In addition to noise, the log also recorded when the occupants of Mr. Reym’s side of the duplex observed things like Mr. Fell smoking marijuana, Mr. Fell “staring” in their windows when passing by, and the Fells coming and going, among others.
15. Mr. Reym made numerous complaints about the Fells to the municipality’s bylaw department and to the RCMP, mainly in relation to alleged noise. Mrs. Fell also made complaints about Mr. Reym. The bylaw department’s redacted service records in evidence show bylaw officers responded to Mr. Reym’s complaints throughout 2021, but observed no bylaw violations. In February 2022, a bylaw officer wrote to Mr. Reym to advise him staff would no longer conduct site visits without evidence of bylaw infractions. The RCMP’s redacted complaints records also show while officers attended the duplex various times, no charges were laid. I acknowledge that just

because the authorities involved did not issue bylaw violation tickets or lay criminal charges, it does not mean the Fells did not cause a nuisance. However, I find some of the comments in the RCMP complaints records helpful in assessing whether the noise was more than a mere inconvenience, and would not be tolerated by an ordinary person. For example:

- a. On May 29, 2021, an officer attended the duplex and noted the music was “of a loud but not of an obnoxious volume”.
- b. On July 11, 2021, an officer wrote “low music could barely be heard coming from a blue tooth speaker (...) member could not even register what genre of music was playing”.
- c. On July 31, 2021, an officer recorded a “loud party” at the Fells property and that they cautioned that if they had to re-attend, a bylaw violation ticket might be issued against Mrs. Fell.
- d. On December 11, 2021, an officer noted even with the front door open “music was played at a reasonable level”.
- e. On March 20, 2022, an officer wrote “no music was heard from outside the residence” as they approached.
- f. On April 22, 2022, an officer wrote “the base was audible though wasn’t overly intrusive” (reproduced as written).

16. I note each of these comments was made by a different RCMP officer.

17. Mr. Reym submitted numerous recordings in support of his noise allegations. I find the majority of the recordings do not include noise approaching the level of being intolerable to an ordinary person. Some of the recordings registered no noise at all, or just interference, and many of the others registered only low, muffled music and indistinct lyrics, again with some interference. I was unable to hear any “loud heavy bass” as described by Mr. Reym, though I could hear some low-level bass on a few of the recordings. Some of the recordings included conversations, but I find these

were generally of people speaking at a regular volume, and certainly not being overly loud or shouting. In some instances, a person in the room with Mr. Reym while he was recording began speaking quietly or at a regular volume, and Mr. Reym shushed them or told them to be quiet in a whispered voice. This suggests the noise being complained of was not so loud that it interfered with conversations at an ordinary, or even low, level in Mr. Reym's half of the duplex.

18. I find the loudest recording was of a gathering at the Fells property in late July or early August 2021. On this occasion, the music was turned up outside to a moderate level, and there were various loud conversations taking place. However, I note the RCMP attended and warned Mrs. Fell about the noise, and the recording of the party after police attendance was of people speaking at a regular volume. Also, there was only one occasion that this level of noise was recorded in Mr. Reym's submitted recordings.
19. The only evidence Mr. Reym submitted of decibel readings of the alleged noise was recorded in the logs as follows: March 19, 2022 – 37-40 decibels, March 20, 2022 – 32 decibels, and March 21, 2022 – 27 decibels. Mr. Reym did not explain or provide evidence of the technical reliability of the sound volume measuring device. Neither party explicitly relied on nor submitted independent evidence to establish the level at which noise may cause a disturbance, such as the World Health Organization guidelines. So, I am unable to determine whether the readings in the logs suggested the noise on those occasions was unreasonably loud. However, as indicated above, the RCMP also attended the duplex on March 20, 2022 and determined they could not hear music outside as they approached.
20. Overall, I find the evidence is insufficient to establish the Fells caused a nuisance by being noisy, and in particular, by playing their music loudly. While it is clear they played their music regularly and, on occasion, it was audible at a low volume in Mr. Reym's half of the duplex, I find it did not give rise to anything more than minor discomfort at most, when assessed from an objective perspective. In addition, I find the similar conclusions of different RCMP officers attending the duplex in response

to Mr. Reym's noise complaints confirms the music was not beyond what could be judged reasonable. As the court in *Sauve v. McKeage et al.*, 2006 BCSC 781 determined, in an urban society "a certain amount of give and take is necessary among neighbours". I dismiss this part of Mr. Reym's claim.

21. Next, the alleged odour nuisance. Mr. Reym says Mr. Fell regularly smoked marijuana both inside and outside the Fells' half of the duplex, which entered Mr. Reym's property, causing an intolerable smell, and exacerbating the occupants' medical conditions. The Fells admit Mr. Fell smoked marijuana both inside and outside on their property, but they say he did so to assist with his medical condition. None of the parties provided evidence of any medical conditions, so I have not considered those arguments further.
22. Mr. Reym submitted footage from his security camera showing smoke rising above the fence between the two halves of the duplex on the Fells' side. I find this is likely Mr. Fell smoking marijuana, because the Fells do not dispute it is. Mr. Reym also submitted videos he recorded of the air quality in his home using a "Forensics VAPE Detector". Several of the recordings were of audio only, so I was unable to see the device's air quality readings in those cases.
23. Mr. Reym says the vape detector records particulates in the air within a range of zero to 75 parts per million. The videos of the rooms Mr. Reym says were affected by Mr. Fell smoking next door recorded readings of between 17 and 22 parts per million. Measurements of other rooms Mr. Reym says were not affected by marijuana smoke recorded around 3 parts per million.
24. However, Mr. Reym did not explain what any of the numbers mean in terms of marijuana smoke or smell, and importantly, he did not provide objective evidence of what a high or dangerous reading is. For instance, Mr. Reym did not provide directions or inserts that came with the device explaining the air quality measurements. The readings on their own did not tell me anything, except that the air quality in some parts of the house was different than in others. This does not mean that the smell of marijuana smoke was particularly strong, dangerous, or intolerable

to an ordinary person. The problem is that Mr. Reym's observations about the impact of the marijuana smoke are inherently subjective and difficult to assess on a reasonableness standard. While there were other voices in some of the recordings confirming the smell, they were not identified, so I am unable to determine whether they were independent witnesses.

25. All this being said, I accept Mr. Reym and other occupants of his half of the duplex could smell marijuana smoke coming from the Fells' side. However, in these circumstances, I find it unproven on the evidence before me that the smoke rose to the level of a nuisance, and I dismiss this part of Mr. Reym's claim.
26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mr. Reym was unsuccessful, so I dismiss his claim for CRT fees. The Fells did not pay any fees, and none of the parties claim dispute-related expenses.

ORDERS

27. I dismiss Mr. Reym's claims and this dispute.

Megan Stewart, Tribunal Member