



Civil Resolution Tribunal

Date Issued: March 25, 2025

File: SC-2023-010246

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McKraig v. Bourne*, 2025 BCCRT 378

BETWEEN:

THERESA MCKRAIG

APPLICANT

AND:

LEONARD BOURNE and ELMA BANKS

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Mark Henderson

INTRODUCTION

1. This dispute is about noise from a neighbouring strata lot.
2. The applicant, Theresa McKraig, owns and lives in unit 207 in a strata. The respondents, Leonard Bourne and Elma Banks, live in unit 307 directly above unit 207. Ms. McKraig says the respondents have been making unreasonable noise and

causing a nuisance since approximately June 2022. Ms. McKraig says she suffered depression, anxiety and insomnia from the disturbances. Ms. McKraig also says she has suffered mental distress and loss of income because of the respondents' ongoing conduct. Ms. McKraig seeks \$5,000 in compensation for lost income.

3. The respondent, Leonard Bourne, denies making noise that caused a nuisance or otherwise harming Ms. McKraig. Leonard Bourne did not provide their title or preferred pronouns, so I refer to them by their full name throughout this decision, intending no disrespect. The respondent, Elma Banks, did not file a Dispute Response and is technically in default, which I address in more detail below.
4. Ms. McKraig represents herself. Leonard Bourne represents themselves. Elma Banks did not participate in this dispute.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under *Civil Resolution Tribunal Act* (CRTA) section 118. CRTA section 2 says 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.
6. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. I find that an oral hearing is not necessary.
7. 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 court.

8. 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.

ISSUES

9. The issues in this dispute are:
 - a. Did the respondents commit a nuisance against Ms. McKraig, and if so, what is the appropriate remedy?
 - b. Is Ms. McKraig entitled to damages for mental distress, if so, what amount?
 - c. Is Ms. McKraig entitled to damages for loss of income, if so, what amount?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, Ms. McKraig must prove her claims on a balance of probabilities. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. Leonard Bourne provided no evidence other than their Dispute Response and written submissions, despite having the opportunity to do so.
12. As noted above, Elma Banks did not file a Dispute Response as required under CRT Rule 3.1. For this reason, Elma Banks is technically in default and their liability is assumed, subject to the evidence.
13. Ms. McKraig says that in late June 2022, Elma Banks began regularly visiting unit 307 and essentially living in unit 307 with Leonard Bourne and Leonard Bourne's son. At some point Elma Banks' three children also lived in unit 307. Ms. McKraig says the unit 307 residents engaged in loud, aggressive behaviour including screaming, swearing, physical and domestic violence, and threats of self-harm, that she could hear in unit 207. Ms. McKraig also says the occupants partied late into

the night, played loud music, stomped around the unit, slammed doors and moved furniture at irregular hours. Ms. McKraig further says the residents in unit 307 sometimes threw garbage from their balcony onto her balcony below.

14. Ms. McKraig complained to the strata about the noise and other behaviour. Ms. McKraig emailed the strata on a regular and sometimes daily basis between July 2022 and August 2023 to report the ongoing noise disturbance.
15. Ms. McKraig's strata complaints resulted in the strata giving Leonard Bourne warnings or bylaw fines on six separate occasions. The evidence shows that the noise from unit 307 reduced for a brief time in September 2022, but that it resumed in frequency in November 2022. Ms. McKraig says Leonard Bourne yelled at her and intimidated her in response to the fines that the strata issued. In a January 15, 2023 email to the strata, Ms. McKraig said on January 14, 2023, that Leonard Bourne was yelling at her from a window saying, "we can make as much noise as we want till 11pm you [expletive]!" I find the strata's repeated warnings and bylaw fines for noise issued against unit 307 support Ms. McKraig's allegation that the noise was both problematic and ongoing.
16. Ms. McKraig's email records provided in evidence show that she logged complaints of pounding from the ceiling, arguing, and loud music that would sometimes occur during the day, in the evening, and late at night. The email evidence shows Ms. McKraig logged and reported detailed instances of stomping, yelling, swearing, fighting, and loud partying, including past 11pm, on many days in November and December 2022 and January 2023, often several times a day and lasting for hours. It also shows one of unit 307's occupants referred to "the [expletive] downstairs", which Ms. McKraig says meant her, as the occupants were upset with her complaints, and that Ms. McKraig felt afraid given the nature of the noise.
17. Ms. McKraig continued recording episodes of yelling, stomping, and banging during the day into the late evening in February, March, April, May, June and July 2023. In her submissions, Ms. McKraig gave further details of continued arguing and noise episodes in August 2023, which I find I do not need to detail here.

18. Ms. McKraig also included a timeline of events which indicate that the noise and banging continued until at least June 2024. Ms. McKraig says the stomping and banging had improved significantly in July 2024.
19. Ms. McKraig included in evidence two videos of banging noise from unit 307. I find the videos show intermittent but abrupt and loud banging. I find the volume of the banging provided in the videos would be intolerable, especially if, as Ms. McKraig says, it occurred on a regular basis during the day and night.
20. In response to Ms. McKraig's allegations, Leonard Bourne says they are a well-liked member of the strata. Leonard Bourne acknowledges that their son as well as Elma Banks and their three children were living in unit 307. Leonard Bourne says the noise arises from normal activities of living with children. Leonard Bourne did not specifically dispute that they had yelled at Ms. McKraig about the bylaw fines.

Did the respondents commit a nuisance against Ms. McKraig, and if so, what is the remedy?

21. Although Ms. McKraig initially described her claim as "domestic abuse", I find that the behaviour complained about reflects a nuisance claim, as she acknowledged in her later submissions. So, I have considered Ms. McKraig's allegations on that basis.
22. 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". 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.
23. Based on the video evidence of the banging and Ms. McKraig's email records of the frequency of the noise, I find the regular screaming, fighting, swearing, banging and

stomping that Ms. McKraig logged in her emails to the strata would have been intolerable to an ordinary person when viewed objectively.

24. I disagree with Leonard Bourne's argument that the noise was part of normal living with children. I accept that stomping and banging may be normal noises associated with life with children in a strata unit. Yet, Ms. McKraig's emails to the strata show complaints of arguing, swearing and loud music late at night which are inconsistent with the normal noise associated with living with children.
25. For these reasons I find that the respondents' conduct created a nuisance.

What is the appropriate remedy?

26. Damages for nuisance are generally intended to provide solace and compensation for the interference with the use and enjoyment of the person's property. I find that the appropriate degree of compensation depends on the nature of the nuisance and the impact on the innocent party.
27. 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. In *Chu v. Sefat*, 2021 BCCRT 723, a tribunal member awarded \$2,500 for loud music that disrupted the applicant's sleep on 16 occasions over a 6-month period. In *Mete v. Masouleh* 2023 BCCRT 515, a tribunal member awarded \$3,150 for nuisance damages for ongoing yelling and screaming from a neighbouring strata unit over 28 months. In *Mete*, the applicant said that the noise affected his sleep and caused him emotional distress including symptoms of anxiety and depression.
28. Here, Ms. McKraig experienced the ongoing noise for approximately 23 months. Ms. McKraig also said she experienced poor sleep due to the noise. For these reasons, I find Ms. McKraig is entitled to \$3,000 in damages for nuisance.

Is Ms. McKraig entitled to damages for mental distress?

29. In *Lau v. Royal Bank of Canada*, the court found there must be some evidentiary basis for awarding damages for mental distress. Ms. McKraig did not provide specific evidence to support a separate claim for mental distress other than a prescription for trazodone, an anti-depressant, which started in August 2023 and continued until at least May 2024. The prescription record says the trazodone was to treat insomnia. Ms. McKraig says she saw a doctor at a walk-in clinic to get the prescription, but the doctor was not permitted to provide a note to justify the trazodone prescription. I find the prescription record alone is not sufficient evidence for awarding separate mental distress damages beyond the nuisance damages awarded. So, I dismiss Ms. McKraig's claim for mental distress damages.

Is Ms. McKraig entitled to damages for loss of income, if so, what amount?

30. Ms. McKraig says in her submissions she lost approximately \$7,316.09 in income. In her Dispute Notice Ms. McKraig claims \$5,000 in damages. I infer that Ms. McKraig has waived her claim to any amount over the CRT's \$5,000 small claims limit.

31. Ms. McKraig held a permanent part-time position as a licensed practical nurse at a local hospital. In support of her claim for lost income, Ms. McKraig provided a summary of her total earnings for 2020 through 2024 as follows:

- June 20, 2020, year to date (YTD) income \$32,228.91,
- June 18, 2021, YTD income \$31,975.52,
- June 17, 2022, YTD income \$35,721.95,
- June 16, 2023, YTD income \$28,405.86, and
- June 14, 2024, YTD income \$52,958.41.

32. Ms. McKraig said she normally relies on picking up extra shifts to earn full-time wages. Ms. McKraig said that from January 1, 2023, to June 16, 2023, her income was lower due to ongoing stress, depression, anxiety, and insomnia. Ms. McKraig

said she was afraid to leave her unit. While Ms. McKraig provided a timeline of recurring events over the course of two years and sent e-mails to the strata of ongoing complaints, I find that Ms. McKraig's evidence lacks specific information about nursing shifts that she turned down or days that she missed work due to her concerns. So, I find that Ms. McKraig has not proved a specific loss of income arising from the nuisance. For these reasons, I dismiss Ms. McKraig's claim for loss of income.

33. In summary, I find Ms. McKraig is entitled to \$3,000 in damages for nuisance. I also find Leonard Bourne and Elma Banks are jointly and severally liable for these damages.
34. The *Court Order Interest Act* applies to the CRT. Ms. McKraig said in her Dispute Notice that she did not want to claim pre-judgment interest. So, I make no award for pre-judgment interest.
35. Under CRTA section 49 and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find Ms. McKraig is entitled to reimbursement of \$175 in CRT fees. No party claimed dispute-related expenses.

ORDERS

36. Within 30 days of the date of this decision, I order the respondents, Leonard Bourne and Elma Banks, to pay the applicant, Theresa McKraig, a total of \$3,175, broken down as follows:
 - a. \$3,000 as damages, and
 - b. \$175 in CRT fees.
37. The applicant is entitled to post-judgment interest, as applicable.

38. The applicant's other claims are dismissed.

39. 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.

Mark Henderson, Tribunal Member