



# Civil Resolution Tribunal

Date Issued: July 10, 2025

File: SC-2024-003321

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hui v. Clark*, 2025 BCCRT 934

B E T W E E N :

MO FONG HUI and JENNY YIU

**APPLICANTS**

A N D :

ELVA MAY CLARK, LARRY CLARK, and TAYLORE CLARK

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about nuisance or hazards in a strata corporation (strata). The applicants, Mo Fong Hui and Jenny Yiu, live in a ground-floor townhouse in the strata. The respondents, Elva May Clark, Larry Clark, and Taylore Clark, live in a strata lot on the fifth floor of the strata, above the applicants' townhouse.

2. The applicants allege the following. For 6 months the Clarks have been passing urine or a urine solution through their balcony drains. The drains direct the urine onto the applicants' patio area, causing plants to die and creating unpleasant fumes that cause headaches and coughing. The applicants claim \$5,000, for a combination of the cost of replacing 1) dead plants, 2) contaminated stone pavers, soil, rugs and shoes, 3) missed work, and 4) medical bills.
3. The respondents deny dumping any liquids from the balcony. They say that there is no evidence that links the urine to the respondents or their strata lot. They also say that there are 20 floors above their strata lot with similar balcony drain spouts that could be responsible for the applicants' troubles. They say some substances fall onto their balcony as well. The respondents also allege that the applicants have a camera facing directly onto their balcony and have asked the applicants to provide any relevant video evidence.
4. This dispute and dispute number SC-2024-003368 involve the same respondents but different applicants. They involve similar but slightly different issues, so I have written separate decisions for each dispute and considered the evidence in each separately. That said, much of the evidence is duplicated in both proceedings. For this reason, large portions of my decisions are identical.
5. Mo Fong Hui represents the applicants. Taylore Clark represents the respondents.
6. For the reasons that follow, I dismiss the applicants' claims.

## **JURISDICTION AND PROCEDURE**

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

8. Section 39 of the CRTA says the CRT has discretion to decide the hearing's format, including by writing, telephone, videoconferencing, email, or a combination of these. The parties in this dispute each question the other's credibility (truthfulness) about what occurred. In *Downing v. Strata Plan VR2356*, 2023 BCCA 100, the court recognized that oral hearings are not necessarily required where credibility is in issue. It depends on what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions. Here, the parties provided their recollections, photos, video, and relevant correspondence. No party requested an oral hearing, and I find it unlikely that cross-examination would reveal any inconsistencies in any party's evidence. So, I decided to hear this dispute through written submissions.
9. 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.
10. Where permitted by section 118 of the CRTA, 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.

## **ISSUE**

11. The issue in this dispute is whether the respondents are liable for causing urine or a urine solution to enter the applicants' property, and if so, what remedy is appropriate.

## **BACKGROUND, EVIDENCE, AND ANALYSIS**

12. In a civil proceeding like this one, the applicants must prove their 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. The applicants did not provide a final reply, though they had the opportunity to do so.

13. I will first describe the strata. The photos and videos in evidence show the following. The applicants live in a townhouse on the ground floor of the strata. It is undisputed that their townhouse is adjacent to another townhouse, and the occupants of that townhouse are applicants in the other linked dispute. The townhouse has an outdoor patio covered with pavers. There are also planters of various sizes, including one or more large concrete planters with trees growing in them. The parties sometimes refer to this as the front porch area.
14. The respondents live in an adjacent high-rise building that is part of the strata. It is unclear if the building is connected to the townhouses, but nothing turns on this. There are at least 10 floors visible in the photos and given this I accept the respondents' submission that there are roughly 25 floors in the high-rise. All depicted strata lots appear identical from the exterior. They each have an outdoor balcony with 2 short pipes protruding from the bottom. The pipes act as drainage, causing liquid from the balconies to exit the pipes and fall down from a great height. The balconies are stacked vertically in a column-like manner. Glass panels act as railings for the upper half of the balconies.
15. The applicants were vague about the exact position of their townhouse in relation to the respondents' strata lot. The respondents provided photos from their balcony facing down. One shows a dog. The respondents identified that applicants' townhouse by stating the depicted dog is the applicants', and it is in their patio area. As this is undisputed, I accept this is the case. The photos show the respondents' strata lot is not located directly above the townhouses. However, I find it likely that the respondents' 2 balcony drainage pipes would empty directly above the applicants' outdoor patio area. I find any liquid exiting the pipes would likely fall 5 stories and land on the applicants' stone pavers or garden area. Given the other

photos in evidence, I also find that the balconies directly above and below respondents' balcony would drain into the same area.

16. I turn to the chronology. The correspondence shows that the applicants first emailed the strata manager about urine odours on October 12, 2023. The applicants said that someone above them was washing urine from their balcony, causing the liquid to drain down all over the applicants' front porch and planter area by their gates. Alternatively, someone was simply urinating on the balcony and causing the liquid to enter the applicants' front porch area. The applicants asked the strata to investigate and determine who was responsible.
17. I conclude for several reasons that the applicants did smell objectively unpleasant odours and the source was a noxious liquid that entered their property from time to time. Their reports are corroborated by the applicants in dispute number SC-2024-003368. The strata manager's emails show they also accepted the applicants' account. In any event, it is undisputed that the applicants' front porch area smelled of urine.
18. The applicants followed up with the strata manager in February and March 2024. The March 2024 emails show the following. By this time the applicants believed the respondents were the source of the problem. The strata manager had sent a letter to the respondents. The applicants believed that after receiving it, the respondents had begun dumping the liquid in a different area near side doors located by the front lobby.
19. In addition to that, the applicants said their situation had worsened as follows. The soil was contaminated, plants were dead, tiles were stained, and a "putrid smell" was all over the affected areas. It was not possible to wash away the odour with water. The applicants' health had deteriorated since November 2023.
20. A March 23, 2024 photo shows the applicants in SC-2024-003368 filled a clear container with the liquid. It resembles urine.

21. An RCMP incident report shows the applicants contacted the police about their complaints on March 25, 2024. There is no indication the RCMP investigated or made any specific findings.
22. On May 8, 2024, the applicants emailed the strata manager. They reported that there were no new liquid-related incidents in the past month. I find they had stopped by then, as there is no indication otherwise.
23. In late June 2024, the strata fined the respondents \$200 in connection with the applicants' complaints. The respondents denied liability and requested a hearing. In an August 23, 2024 email, the strata manager confirmed a hearing date. The strata manager added that the strata council had determined the source of the liquid was another strata lot, and the council no longer wished to fine the respondents. The results of the hearing are not in evidence.

***Are the respondents liable for causing urine or a urine solution to enter the applicants' property?***

24. The applicants complain about a noxious liquid entering their property, so I find the law of nuisance and trespass apply. A nuisance in the strata context is a substantial, non-trivial, and unreasonable interference with use and enjoyment of property. See *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33.
25. Trespass to land includes placing or throwing some material object on the land of another without the legal right to do so. To constitute trespass a respondent must in some direct way interfere with the applicant's land. The requirement of directness differentiates trespass from nuisance, which is committed when the respondent makes a use of their land that indirectly affects the land of the applicant. See *Lahti v Chateauvert*, 2019 BCSC 1081 at paragraph 6.
26. Here, I find little turns on whether, strictly speaking, nuisance or trespass applies. In either case the applicants must show that the respondents were responsible for the

liquid entering the applicants' property. For the reasons that follow, I find the applicants have not proven this was the case.

27. The applicants say that an ex-strata council member, DN, advised the following. The respondents told DN that the respondents have a dog, that it has a pad on the balcony to urinate on, and the respondents hosed down the balcony every once in a while. The applicants also provided a photo showing the respondents own a dog. The respondents admit to having a dog but say DN's statements are "without merit".
28. I acknowledge DN's statements provide an explanation for the source of the noxious liquid. However, I am unable to place great weight on them as they are hearsay, or secondhand, and about a central issue in this dispute. DN's statement is also inconsistent with the strata council's determination in August 2024 that the respondents were not the source of the liquid. I find this to be a significant point, so some explanation by DN for the council's conclusion would have been helpful. In these circumstances, I do not find the hearsay statements persuasive.
29. Further, there is no submission or evidence about whether any other strata lot occupants located above the applicants have any dogs. So, I put less significance on the respondents' dog ownership in these circumstances.
30. The applicants provided an October 7, 2024 witness statement from KW and KK. KW and KK are residents of the fourth-floor strata lot directly below the respondents' strata lot. They said that on March 24, 2024, one of the respondents knocked on their door and asked if they had complained to the strata about dog urine. They denied doing so. Approximately 15 minutes later, KW discovered a puddle on their balcony of dark yellow brown liquid that smelled of urine. KW went upstairs and asked the respondent to come look at their balcony. The respondent said it smelled like old urine and thought it "might have seeped through the building". After the respondent left, KW and KK noticed liquid dripping coming from the balcony drain on the respondent's strata lot. A picture of the dripping pipe is in evidence.

31. I find KW and KK's statement falls short of proving that the puddle originated from liquid exiting the respondents' balcony drain. Crucially, there is no indication that anyone collected the liquid dripping from the respondents' drainpipes. The liquid shown in the applicant's photos were collected the previous day, on March 23, 2024, and the circumstances about the collection are vague. So, I find it unclear if the dripping liquid was the source of the puddle on KW and KK's balcony or the liquid that affected the applicants.
32. In addition to that, KW and KK said the liquid gathered on their balcony instead of flowing down onto the applicants' property. KW and KK only describe one isolated incident. In contrast to this, the applicants described liquid entering their property for several months. So, I find it difficult to draw any link between this incident and the applicants' complaints.
33. The applicants say that the only occupants who complained about the urine smells were them, their townhouse neighbours, and KW and KK. They say this means the respondents' balcony must be the source of the urine. This would be a compelling fact if proven. However, the applicants did not say what they based this belief on. The strata manager or strata council have access to such information. However, the latest evidence from them is the August 2024 email that says the respondents are not responsible for the urine.
34. The applicants point out accurately that at least one of the respondents' drainpipes appears corroded or stained. They say the noxious liquid caused this.
35. The applicants also provided an October 15, 2024 witness statement from DH. DH works next door to the strata. DH says that in spring 2024, they only saw one balcony heavily stained while the rest of the west-facing balconies were clean. This was the fourth-floor strata lot located directly under the respondents' strata lot. DH also said that a drainpipe on the respondents' balcony was visibly stained.



36. The applicants provided photos that show yellow staining on the side of KW and KK's balcony. They suggest this means the liquid flowed from the respondents' balcony and stained the side of KW and KK's balcony.
37. I do not find the depicted drainpipe corrosion, DH's account, or the balcony stains persuasive. The respondents provided photos of drainpipes from balconies directly above them on the sixth and seventh floor, taken in July and August 2024. They show that the respondents' balcony drainpipes share the same corrosion or stains as those on the sixth and seventh floors. The respondents' other photos show that their balcony and the sixth-floor balcony also share very similar stains on their sides to those observed on KW and KK's balcony. I acknowledge DH's evidence, but I place greater weight on the photos, which I find compelling. I find they show the respondents were not necessarily the source of the drainpipe corrosion or the stains shown on the balcony's sides. The respondents also suffered from the same issues.
38. I also note that it is not possible in any case to determine what type of liquid, if any, caused the drainpipe or balcony side stains from the photos alone.
39. For all those reasons, I find it unproven that the respondents were the cause of the noxious liquid entering the applicants' property. I dismiss the applicants' claims.
40. 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. I see no reason in this case not to follow that general rule. I dismiss the applicants' claims for reimbursement of CRT fees.

## **ORDER**

41. I dismiss the applicants' claims.

---

David Jiang, Tribunal Member