



Civil Resolution Tribunal

Date Issued: September 4, 2024

File: CS-2023-003006

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Rajabali v. Spectrum Housing Co-operative*, 2024 BCCRT 865

BETWEEN:

SHAESTA RAJABALI

APPLICANT

AND:

SPECTRUM HOUSING CO-OPERATIVE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr, Vice Chair

INTRODUCTION

1. Shaesta Rajabali is a member and resident of the Spectrum Housing Co-operative. She has had an ongoing conflict with a neighbour, SK, about noise and other issues. Mrs. Rajabali asks for five orders, most of which relate to her frustration with how the co-op has handled her complaints about SK. She also asks for \$5,000 in

compensation, claiming that the co-op's inaction has caused her undue stress. Mrs. Rajabali is self-represented.

2. The co-op says that SK has made similar noise complaints against Mrs. Rajabali. It says it acted reasonably when addressing their complaints against each other, and that there is essentially nothing more they can do. The co-op asks me to dismiss Mrs. Rajabali's claims. A director represents the co-op.

JURISDICTION AND PROCEDURE

3. These are the CRT's formal written reasons. The CRT has jurisdiction over certain cooperative association claims under section 125 of the *Civil Resolution Tribunal Act* (CRTA). 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.
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. I have considered the potential benefits of an oral hearing. Here, I am properly able to assess and weigh the documentary evidence and submissions before me. There are no credibility issues about any important facts. So, the CRT's mandate to provide proportional and speedy dispute resolution outweighs any potential benefit of an oral hearing. I find that an oral hearing is not necessary in the interests of justice. I therefore decided to hear this dispute through written submissions.
5. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.
6. Under CRTA section 127 and the CRT rules, in resolving this dispute I may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

7. The issues in this dispute are:
 - a. Did the co-op reasonably address Mrs. Rajabali's complaints and otherwise treat her fairly?
 - b. If not, what remedy is appropriate?

EVIDENCE AND ANALYSIS

8. The co-op was established in 1985. It consists of 44 units in 11 buildings. SK lives in unit 22. Before May 2021, Mrs. Rajabali and SK lived next door to each other. In May 2021, Mrs. Rajabali moved into unit 35, directly above unit 22. The problems between Mrs. Rajabali and SK began almost immediately. For clarity and ease of reading, I will simply refer to SK and Mrs. Rajabali even though there are other residents in both units who were, at times, involved in the various complaints.
9. The co-op's rules establish a standard occupancy agreement for all members. Section 7.02 of the agreement is called the "Good Neighbour Provision". It says that members must not use a unit in a way that disturbs other residents' quiet or peaceful enjoyment, or unreasonably annoys or interferes with other members of the co-op "by sound, conduct, or other activity".
10. The co-op also has policies outlined in a member handbook. Section 6.2 of the policy says that there will be no excessive noise between 11:00pm and 7:00am.
11. The co-op also has rules about dispute resolution. Rule 25.1 says that members should first try to resolve disputes without the co-op's involvement. Rule 25.2 says that if that fails, a member can write to the board to initiate the dispute resolution process. Rule 25.3 says that the board must review the dispute and may act as mediators to resolve it. Rule 25.4 says that if mediation fails, the board may refer the matter to an arbitration committee. Rule 25.5 says that the arbitration committee's decision is final.

12. These rules do not apply to member termination. Rule 5 says that the co-op may terminate membership when a member has breached the occupancy agreement or co-op policies. This means that the co-op can terminate a member's membership if they persistently cause unreasonable noise.
13. SK complained about Mrs. Rajabali shortly after Mrs. Rajabali moved into unit 35 in May 2021. SK's complaints were about noise and water running off Mrs. Rajabali's balcony onto SK's balcony. Mrs. Rajabali took issue with the complaints, and the co-op's response to them, but did not make any complaints about SK until November 2021. I note that Mrs. Rajabali also is unhappy with a meeting that took place in October 2021 about SK's complaints, but I find it unnecessary to discuss it because it was unrelated to Mrs. Rajabali's complaints that are the basis for her claims in this dispute.
14. Mrs. Rajabali made several noise complaints about SK in November and December 2021. She reported loud music and a loud vacuum, often late at night. SK's noise complaints were also ongoing during this time. The co-op wrote to both Mrs. Rajabali and SK asking them to report unreasonable noise in real-time so that a board member could attend and observe the noise. Mrs. Rajabali emailed the co-op objecting to the suggestion, believing it showed the co-op did not "take this complaint seriously".
15. Despite this initial concern, Mrs. Rajabali emailed the board on February 15, 2022, asking them to attend her unit to hear the noise. She said SK was banging on the ceiling. The co-op did not respond and no one attended. Instead, on February 22, 2022, the co-op wrote to both Mrs. Rajabali and SK to say it had exhausted its options and would take no further action.
16. SK's noise complaints continued throughout 2022 but Mrs. Rajabali did not complain about noise again until late January 2023. She made more complaints in early February and early March. On March 18, 2023, Mrs. Rajabali asked the co-op to initiate dispute resolution procedures under the rules. In April 2023, the co-op said it was looking into mediation or arbitration. The co-op ultimately invited Mrs. Rajabali and SK to attend a mediation with a professional mediator, which the co-op paid for.

The mediation occurred in late December 2023. Neither party explained the reason for the delay. Mrs. Rajabali and SK were not able to resolve any significant aspects of their ongoing dispute. There is no evidence anything has happened since.

Has Mrs. Rajabali proven that SK caused unreasonable noise?

17. The occupancy agreement does not prohibit all noise, just noise that unreasonably interferes with other members' quiet and peaceful enjoyment of their unit. In other co-op disputes, the CRT has applied the common law of nuisance to determine whether noise is unreasonable, and I adopt the same approach here.¹ The test is objective, meaning that it does not depend on whether Mrs. Rajabali found the noise intolerable. Instead, noise is unreasonable if an ordinary person would not tolerate it. In dense living conditions like co-op living, there must be a certain amount of "give and take" between neighbours, because some amount of noise is inevitable.²
18. In strata context, the CRT has consistently found that a person must provide objective evidence to prove that noise is unreasonable, such as decibel readings, audio or video recordings, witness statements, or professional measurements. This guards against the risk that a particular person may be unusually sensitive to noise.³ That said, I have reviewed all of Mrs. Rajabali's complaints to the co-op, and I accept that she finds the noise from unit 22 intolerable.
19. However, there is little objective evidence about the noise. Mrs. Rajabali provided a witness statement from HT, the co-op's maintenance coordinator, dated March 1, 2024. HT says they attended Mrs. Rajabali's unit on March 14, 2023, and heard loud noises they believed were from banging and vacuuming in unit 22. They said it was after 11:00pm and was disturbing.
20. Mrs. Rajabali provided several other witness statements: from another co-op resident, from friends, from her counsellor, and from her mother. None of these statements assist Mrs. Rajabali. There is no indication in any of them that the witness

¹ See *Kalyuk-Klyucharev v. City Edge Housing Co-operative*, 2022 BCCRT 496.

² See *The Owners, Strata Plan 1162 v. Triple P Enterprises*, 2018 BCSC 1502, and *Sauve v. McKeage et al.*, 2006 BCSC 781

³ See, for example, *Woo v. The Owners, Strata Plan BCS3011*, 2024 BCCRT 835.

directly observed anything relevant, such as noises from unit 22. Instead, they repeat the allegations Mrs. Rajabali makes about the noise and the co-op's response to her complaints. The only thing I take from these witness statements is confirmation that Mrs. Rajabali has been very upset by the noise and the ongoing conflict with SK and the co-op.

21. So, the only objective evidence is from HT, who observed the noise once. I find this is insufficient to prove that the ongoing noise was unreasonable.

Was the co-op's responses to Mrs. Rajabali's complaints reasonable?

22. I turn then to the focus of Mrs. Rajabali's claim, which is the co-op's response to her complaints.

23. Under CRTA section 127(2), the CRT can make orders to remedy an unfairly prejudicial action by a cooperative association. Mrs. Rajabali does not frame it this way, but I find this is the main legal basis for her claim. To succeed, she must prove that the co-op failed to meet her reasonable expectations, which had an unfairly prejudicial effect. Mrs. Rajabali does not have to prove that the co-op acted in bad faith or had an improper motive, but the co-op's conduct must be inequitable or unjust.⁴

24. In the strata context, the CRT has consistently found that residents have a reasonable expectation that their strata corporation will investigate bylaw complaints and enforce contraventions. A CRT vice chair considered whether residents in co-ops have the same reasonable expectation, and decided they did not. The vice chair relied on the fact that section 26 of the *Strata Property Act* explicitly requires strata corporations to enforce their bylaws, and the *Cooperative Association Act* does not have a similar provision.⁵ Other CRT decisions are not binding on me, and I do not agree with this reasoning. I find that housing cooperatives have an implied legal obligation to address

⁴ See *Harding v. Meadow Walk Housing Co-operative*, 2021 BCCRT 1103, and *Watson v. Lore Krill Housing Cooperative*, 2022 BCCRT 1167.

⁵ *Kalyuk-Klyucharev*, at paragraph 34.

member complaints about rule and occupancy agreement violations. Otherwise, members would be left without any effective way to address issues.

25. As noted above, the rules indicate the co-op community's expectation that members will first try to work together to resolve conflict. The rules then provide the co-op with options: mediation, arbitration, or termination of membership. I find that the co-op must act reasonably when deciding how to enforce compliance with its rules, policies, and occupancy agreement. I find that this includes an obligation to reasonably investigate complaints when there is a dispute about whether a violation occurred.
26. With that in mind, the co-op's approach was reasonable at first. It focused on reminding SK and Mrs. Rajabali about the noise bylaws, encouraging them to act respectfully towards each other and work together to resolve their differences. Shortly after Mrs. Rajabali's complaints started, the co-op offered to attend her unit to verify the noise was unreasonable. I disagree with Mrs. Rajabali's characterization of the co-op's offer as insufficiently serious. I find it was a reasonable, simple step for the co-op to take to assess how loud the noise really was. The co-op did not explain why it did not attend Mrs. Rajabali's unit in February 2022 when she asked. Instead, the co-op wrote to Mrs. Rajabali that it had decided to take no further action. I find that this was unreasonable.
27. After this, Mrs. Rajabali did not complain again for several months. She did not explain why. However, when she next complained in a January 24, 2023 email, she said that she had "recently" moved with her six-month-old son into a downstairs area to sleep, and heard loud noises at night. She said she had also heard those noises when she was pregnant. I infer from this that she was sleeping in an upstairs area for most of the time between February 2022 and January 2023, and therefore was not disturbed by any noise.
28. So, I find that the co-op breached Mrs. Rajabali's reasonable expectations when it told her that it would take no further action in response to her noise complaints. However, I find that this decision did not have an unfairly prejudicial effect for two reasons. First, because Mrs. Rajabali moved into an upstairs bedroom shortly

thereafter. Second, when Mrs. Rajabali complained again in January 2023, the co-op did take reasonably prompt action.

29. I find that the co-op reasonably agreed to arrange and pay for professional mediation. As noted, it took several months to schedule, but there is no suggestion this delay was the co-op's fault. However, since the failed mediation, the co-op has decided there is nothing more it can do short of terminating SK's membership. The co-op says that this is not, and has never been, a reasonable option because it has no way of verifying whether the noise is truly unreasonable. It also says that because the complaints go both ways, it would need to terminate Mrs. Rajabali's membership too, as a matter of fairness.
30. However, rather than indicating that the co-op has exhausted its options, I find this lack of objective evidence points to the main way the co-op has failed Mrs. Rajabali. I find that when faced with persistent noise complaints like Mrs. Rajabali's, the co-op must take active steps to independently and objectively determine whether the noise violates the co-op's occupancy agreement. There are several ways the co-op could have fulfilled this obligation. The co-op could have hired a professional acoustic engineering firm. These investigations are common in strata property disputes, and can include multiple days of recording in one unit without the other residents knowing when it is going to happen. This method is designed to capture intermittent, unpredictable noises like the ones Mrs. Rajabali complains of. Another common investigation is to have a some recreate the troublesome noise (for example, vacuuming) in one unit while neutral third parties in the other unit listen to the noise. This can help determine whether noise is objectively unreasonable and, if it is, whether it is from unusually loud conduct or poor sound transfer in the building.
31. I therefore find that the co-op breached Mrs. Rajabali's reasonable expectation that it would investigate her ongoing complaints. I find that the co-op's decision to do nothing was unfairly prejudicial because it left Mrs. Rajabali without an opportunity for closure. Nothing has been resolved, and Mrs. Rajabali's submissions indicate that the noise continues. I address the appropriate remedy below.

32. Mrs. Rajabali also alleges that the co-op's treatment of her has been different from its treatment of SK in response to their complaints about each other. While it is true that the co-op has not treated them identically, I find there is no evidence of inequitable treatment. I also do not agree with Mrs. Rajabali's allegation that the co-op treated her unfairly when addressing SK's complaints. The co-op never took any concrete action against Mrs. Rajabali.
33. Finally, the main non-noise complaint Mrs. Rajabali made against SK related to a December 2022 verbal altercation in the co-op's common area. SK made their own complaint to the co-op about the incident. The co-op never took any action against either of them. The co-op says it reviewed video of the incident, but it did not include audio. There is no suggestion that there were any neutral witnesses. I find that the co-op reasonably investigated what happened. Despite the long complaint history between Mrs. Rajabali and SK, this appears to have been an isolated incident where the conflict boiled over into a heated verbal altercation. In that context, I find that it was not unfairly prejudicial for the co-op to take no action in relation to Mrs. Rajabali's complaint.

What remedy is appropriate?

34. Mrs. Rajabali asked for four non-monetary orders. Three of them are aimed at the co-op providing "transparency" about its decisions in response to Mrs. Rajabali's complaints. I dismiss these claims because the co-op has fully explained its perspective on these issues in this dispute. I also note that sections 128 to 130 of the *Cooperative Association Act* provide Mrs. Rajabali with the right to copies of certain co-op records. If she wants access to any of those records, she may request them from the co-op.
35. The fourth order is for the co-op to implement rule 25, specifically by initiating adjudication. I agree that adjudication may be a step the co-op could take to resolve the issues between Mrs. Rajabali and SK, but I find ordering it now would be premature. First, rule 25.5 specifically gives the co-op discretion about whether to initiate adjudication. I find that the decision about whether to do so will necessarily depend on what the co-op's investigations reveal. The co-op may determine that SK

and Mrs. Rajabali are both making unreasonable noise, or that only one of them is, or that neither of them is. That outcome will inform what step the co-op takes next, which may be adjudication but may also be termination of one or both of them, or may be to do nothing.

36. So, I order the co-op to objectively investigate Mrs. Rajabali's noise complaints. I leave it to the co-op to determine how to do so, but it must be within 60 days of this decision.
37. I note that the co-op has been attempting to find a new unit for SK, although it has apparently been difficult because one of the residents of SK's unit has mobility needs that limit the units that would be suitable. If, however, SK moves out of unit 22, there is no need for the co-op to continue investigating Mrs. Rajabali's complaints, and my order will no longer apply. The co-op may also stop investigating if Mrs. Rajabali moves.
38. Finally, Mrs. Rajabali claims \$5,000 in damages. She says that the noise from unit 22 and the co-op's failure to address it have caused her tremendous stress and anxiety. She says that the noise frequently woke up her infant at night, which was burdensome.
39. In the strata context, the CRT has awarded residents damages when a strata corporation has failed to enforce its bylaws, typically when there is a proven nuisance. Here, Mrs. Rajabali did not prove that the noise is a nuisance. However, the CRT has awarded modest compensation even without a proven nuisance. This is because leaving complaints unaddressed allows disputes between residents to fester, exacerbates the resident's frustration with their living situation, and precludes the possibility of closure.⁶
40. I agree with that approach, but I find that Mrs. Rajabali is not entitled to damages for the period February 2022 to January 2023. The primary reason for my finding is that there is no evidence that noise from unit 22 bothered her during this time. I make a

⁶ See *Wilkins v. The Owners, Strata Plan LMS1946*, 2022 BCCRT 336, and *Ahn v. The Owners, Strata Plan LMS 4634*, 2023 BCCRT 258.

different finding about the period from December 2023 to when Mrs. Rajabali made her submissions in April 2024. The co-op should have been investigating during this time but was doing nothing. I find that Mrs. Rajabali is entitled to modest damages to compensate her for this unfairly prejudicial failure to act. Given it was a short period of time and there is no proven nuisance, I find that \$400 is appropriate.

CRT FEES AND EXPENSES

41. 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. Mrs. Rajabali was partially successful, so I find she is entitled to reimbursement of half of her \$225 in CRT fees, which is \$112.50.
42. She also claimed \$120 in dispute-related expenses. I dismiss her \$30 for printing expenses because the CRT's process is all online so printing the materials was her choice. The other \$90 was for registered mail. She provided no receipt for this, only a credit card statement showing a \$40.15 purchase from London Drugs and tracking information for three letters. There is only one respondent, so I infer she had difficulty getting the co-op to pick up the letter. On a judgment basis, I award her \$15 in service costs.
43. The *Court Order Interest Act* (COIA) applies to the CRT. Mrs. Rajabali is entitled to pre-judgement interest on from February 1, 2024, a date I find reasonable in the circumstances, to the date of this decision. This equals \$12.19.

ORDERS

43. Within 30 days of this decision, I order the co-op to pay Mrs. Rajabali a total of \$539.69, broken down as follows:
 - a. \$400 in damages,
 - b. \$12.19 in prejudgment interest, and
 - c. \$127.50 in CRT fees and dispute-related expenses.

44. I order that the co-op reasonably and objectively investigate Mrs. Rajabali's noise complaints within 60 days of this decision. If the current residents of unit 22 or Mrs. Rajabali moves, the co-op may stop investigating.
45. Mrs. Rajabali is also entitled to post judgement interest under the *Court Order Interest Act*, as applicable.
46. I dismiss Mrs. Rajabali's remaining claims.
47. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Eric Regehr, Vice Chair