



Civil Resolution Tribunal

Date Issued: November 6, 2017

File: ST-2017-00259

Type: Strata

Civil Resolution Tribunal

Indexed as: *D.W. v. The Owners, Strata Plan BCS XXX*, 2017 BCCRT 107

B E T W E E N :

D.W.

APPLICANT

A N D :

The Owners, Strata Plan BCS XXX

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant D.W. (owner) owns strata lot 29, also known as unit 29, in the respondent strata corporation The Owners, Strata Plan BCS XXX (strata). This

dispute is about the strata's alleged failure to enforce its noise bylaws. The owner alleges the strata has failed to properly address his concerns about noise coming from unit 30, which is adjacent to unit 29. The owner is self-represented and the strata is represented by D.M., the strata council president.

2. In the published version of this decision, I have anonymized the parties' names so as not to identify the minor occupants in unit 30.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness. The tribunal also recognizes any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because I find there are no significant credibility issues or other reasons that might require an oral hearing.
6. Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders:
 - a) order a party to do something;
 - b) order a party to refrain from doing something;
 - c) order a party to pay money.

7. Section 48.1(2) of the Act is substantially similar to section 164 of the *Strata Property Act* (SPA) and addresses remedies for significant unfairness in strata property disputes. Section 48.1(2) provides that the tribunal has discretion to make an order directed at the strata, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.

ISSUES

8. These are the issues in this dispute:
- a. Has the strata conducted an appropriate investigation of the owner's noise complaints about unit 30? If not,
 - i. What further investigatory steps should be taken?
 - b. Has there been a contravention of the noise bylaw? If yes,
 - i. Should the tribunal order the strata to give unit 30 a period of 2 weeks to remedy the noise violation and if not remedied order the strata to then impose fines for further contraventions of the noise bylaw and to collect those fines?
 - ii. Should the strata be ordered to break the tenant's lease and force an eviction under sections 137 or 138 of the SPA, if other remedies fail to stop the noise?
 - c. Should there be an order that the strata enforce its noise bylaws?
 - d. Should the strata be ordered to provide the applicant with copies of documentation, upon request, to show sections 129, 130, 132 and 133 of the SPA are being enforced?

- e. Should the owner be reimbursed for certain expenses, under section 165(c) of the SPA or otherwise:
- i. \$225.00 he paid in tribunal fees?
 - ii. \$1,100.00 in legal expenses the owner incurred “to understand rights and bring this issue” to the tribunal?
 - iii. \$400.00 as reimbursement for headphones the owner bought to escape the noise?
 - iv. \$900.00 as reimbursement for the owner’s time expended over 2 years to address the issue with the strata council at a rate of \$30/hour for about 30 hours?

POSITION OF THE PARTIES

9. The owner wants the strata to enforce its noise bylaws. In particular, the owner says that there is a valid “ongoing nuisance noise claim” against unit 30 and that the strata has failed to follow through to resolve the problem. The owner wants the tribunal to order the strata to give unit 30 the opportunity to remedy the ongoing noise within 2 weeks. If the noise continues, the owner wants the strata to escalate its response through fines, collection of fines, and ultimately eviction if necessary. The owner wants the strata to provide him with all documentation proving its enforcement actions.
10. The strata says it has made every reasonable effort “with limited support” from the owner. The strata says that it has no way to identify or validate the owner’s noise complaints, in that he has provided a “noise log” every few months but with nothing else, and no formal written complaint was ever provided. The strata says that fining unit 30 every time the owner complained would be excessive and that the strata is not going to initiate an eviction process “based on a few complaints”.

EVIDENCE & FINDINGS

11. While I have read all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.
12. The owner submits the strata has failed to properly enforce noise bylaws against the unit 30 tenants (Tenants), for noise that has been ongoing almost 2 years. The Tenants have lived in unit 30 since late 2014.
13. The 93-unit strata is comprised of 14 residential buildings and 1 amenity building. Each strata lot in each building is 3 stories, with a basement, first floor, and second floor. Units 29 and 30 are adjacent in building 4, and each of them have another strata lot on the other side. In particular, unit 30 has unit 29 on one side and a corner strata lot, unit 31, on the other side. D.M. owns and occupies unit 31. The owner bought unit 29 in January 2003.
14. Broadly speaking, the owner's complaints are about noise from unit 30 (Noise), which since around early 2015 has been occupied by the current tenants (Tenants). The owner says the cause of the Noise is from the Tenants' children, one of whom was under the age of 2 at the material time. The owner says it is not normal living noise to hear in unit 29 a child's screaming, running back and forth in unit 30, with the unit 29 windows closed and TV on. Similarly, the owner complains that it is not normal living noise to have someone running into a wall dividing the two units 29 and 30, such that it shakes unit 29. The strata on the other hand had in the underlying discussions taken the position that daytime noises from children are normal living noises that are a part of strata living, apparently including the activities complained of by the owner.
15. In December 2015, D.M. noted he had had noise concerns about unit 30 also. D.M. however wrote to the effect he was attuned to loud noises and perhaps he was not the best judge of the situation. D.M. stated that almost all 'kid noise' was now 'white noise' to him, and that he seriously did not hear the Tenants. D.M. wrote that having gone for years with only one child "on our strip", they now have a

family “with some active kids”, and that it “takes some getting used to”. By January 24, 2016, D.M. stated he would abstain from any voting on the noise complaints, because “I simply do not hear what you are hearing” and that the noise from unit 30 was all “normal white noise” to him. D.M. did say that he heard the screaming over the summer with the windows open and after a discussion with the Tenants “all ended on my side”.

16. The strata filed amended bylaws in 2005. The relevant bylaws may be summarized as follows:
 - a. **Bylaw 4.1(a), (b) and (c):** A resident or visitor must not use a strata lot in a way that causes a nuisance (a), “causes unreasonable noise” (b), or “unreasonably interferes” with the rights of others to use and enjoy the common property or another strata lot (c).
 - b. **Bylaw 28.1:** The strata may fine an owner or tenant \$50 for each bylaw contravention. The council must, “if it determines in its discretion that a resident is in repeated contravention” of any bylaws, levy fines that must be immediately added to the strata fees.
 - c. **Bylaw 43.5:** Residents are responsible for the conduct of children residing in their strata lot, including ensuring that noise is kept at a level, “in the sole determination of a majority of the council”, that will not disturb the quiet enjoyment of others.
17. I turn then to the relevant chronology arising from the evidence before me.
18. Beginning in September 2015, the owner made complaints about the unit 30 noise to the strata, which generally involved running, thumping, door slamming, and screaming that primarily came from the Tenants’ youngest child. The Noise came from the Tenants’ 3 children, who were just under 2, 11, and 16 years of age. The strata wrote unit 30 on September 11, 2015 about the Noise complaints and advised that should it continue, the strata may decide to issue fines.

19. On November 2, 2015, the property manager wrote again to the unit 30 owner noting ongoing noise complaints of running, excessive thumping, yelling and screaming, and that **“these complaints are substantiated by both residents on each side of your strata lot”**. The strata asked for a meeting.
20. On November 10, 2015, a meeting was held with the owner, the strata property manager, and the unit 30 owners and Tenants. Nonetheless, on November 13, 2015, the owner at 7:37 p.m. complained of thumping noise since 6:45 p.m.
21. Later in November 2015, the Tenants responded to the owner’s complaints, and did not deny the activities causing the Noise but took the position was that whatever noise was made by their children was normal living noise and was not unreasonable.
22. On November 26, 2015, the strata property manager wrote the owner and unit 30 that the council had determined “at this time, no bylaws are being violated”. In addition to expecting normal living noise, the property manager wrote that strata owners must also understand that running, jumping etc. will greatly disturb neighbouring units and that “children must be taught to be respectful of their neighbours and to walk lightly within the unit”. Loud play must be reserved for outdoors in consideration of the other units.
23. In a December 21, 2015 email to the owner, the strata property manager stated that “basically, council was unable to come to a firm conclusion that warranted further enforcement”. The property manager suggested the owner keep a log of noise, and perhaps enlist his other neighbour to witness the noise first-hand.
24. The Noise continued. The owner’s log runs from January to December 2016. In January and February 2016, the owner made some contemporaneous complaints of the Noise to the strata at the time they were occurring, and also sent the strata and unit 30 his noise log that detailed almost daily Noise that generally lasted up to 1 to 2 hours. The owner noted that low frequency noise was more of a vibration sound rather than a recordable noise sound, which did not diminish the impact of

the Noise. That said, the owner wrote he was working on recording the Noise. It is unclear what, if anything, came from the owner's efforts in that respect. During the latter part of July and most of August, there were no entries as the Tenants were away in July and in August the male adult Tenant was home alone and there was no Noise recorded in the log during that period.

25. On March 1, 2016, the strata council wrote the unit 30 owners that there had been complaints of Noise from unit 29. The letter stated that "after the hearing", the council deemed **the noise bylaws had been breached on multiple occasions**, and that council was directing its property manager to send "a letter, and or fines" to the unit 30 owner "until the matter is resolved".
26. On March 8, 2016, the strata council wrote the owner and the unit 30 owner advising that after a March 1, 2016 hearing the strata concluded that **the noise bylaws had not been breached** but that "excessive noise after 10 p.m. does constitute a noise bylaw violation" and that if violations continued the strata would direct the property manager to act accordingly and send out warning letters and fines. I am unable to reconcile the strata's March 1 and 8, 2016 letters, but one plausible explanation is that violations referenced in the March 1, 2016 letter related to noise after 10 p.m.
27. On March 16, 2016, a maintenance contractor for the council, K, emailed the owner with his "noise report" following inspections and sound testing with the use of an electronic decibel metering device and physical presence in units 29, 30 and 31. The owner did not object to K doing the testing or to his reported results. K's report noted its staff were not certified sound engineers and did not have any formal training in the sound testing field. K concluded that most noises fell within acceptable daytime limits. In order to register +65dB on the decibel meter or physically hear louder thumping sound waves, one would have to be walking heavy-heeled, jumping up and down stairs, jumping on floors and slamming doors. **If those activities were occurring, K's opinion was that the resulting noise would be excessive in the circumstances** (my bold emphasis added). As noted

above, the owner's Noise complaints were of heavy walking, running, thumping, jumping up and down, and banging into walls.

28. On March 21, 2016 the owner complained to the strata of Noise again, to which the strata apparently did not respond. However, that same day, the strata property manager wrote the unit 30 owners about the ongoing Noise complaints and that **council agreed that "some noise complaints" were legitimate and that bylaw violations had occurred** (my bold emphasis added). The property manager wrote that this letter constituted a "final warning" and that should further noise violations occur in the strata's opinion, bylaw fines would be issued. No details were set out in the letter as to which Noise complaints were accepted as proven or over what period of time. It is also unclear why the strata did not take steps to impose a fine against unit 30 at this time, given the November 2015 and March 8, 2016 correspondence.
29. Strata council meeting minutes for March 2016 note K's testing and meeting with the affected units with the council. The minutes state that council found "some noise complaints were unreasonable and some were justifiable".
30. The owner followed up with a June 27, 2016 email to the strata and asked for copies of correspondence sent to unit 30, as provided for under sections 35 and 36 of the SPA. The owner followed up on July 11, 2016, and reiterated that K's testing had determined that the noise coming from unit 30 constituted a nuisance and that the strata had directed the property manager to start fining as necessary. It is unclear why the owner was pressing the issue of fines in July 2016, when elsewhere he has indicated that in July 2016 there was no Noise occurring as the Tenants were away.
31. On July 25, 2016, the strata responded to the owner's July 13, 2016 email and stated that "as for noise complaints, nobody can act until a log has been forwarded" to the property manager or the council. The strata did not offer to attend unit 29 to hear the noise first-hand.

32. Generally speaking, save for July and August 2016 when the Tenants were largely away, the Noise continued throughout the balance of 2016. The owner continued to regularly send the strata logs of the Noise, which detailed the time the Noise began and a general description of it, such as running or thumping. In some cases the duration of the Noise was indicated.
33. In September 2016, the owner wrote the strata with his noise log from August 29, 2016. Among other things, the owner wrote that he believed that because council did not notify him in March 2016 what its next steps would be, he was 5 months behind in resolving the Noise issue. The strata responded that there were some “extended duration” noises that did “make a difference”. The Noise log appended to the owner’s email included daily noise that lasted up to 1 hour at a time, with the latest noise occurring at 9 p.m.
34. On September 26, 2016 at 7:32 p.m., the owner specifically complained to the strata about Noise, including a child’s screaming, that was occurring and had been ongoing for 15 to 20 minutes. The owner also sent the strata a log of near-daily Noise for the period of September 7 to October 12, 2016, similar to the earlier logs with some days having multiple entries with Noise either being a single or event or lasting about 20 to 30 minutes. In these logs, there were only 2 occasions of noise extending past 10 p.m., namely: September 26, 2017 when thumping noise lasted from 9 to 10:02 p.m. and October 10 when running noise lasted from 9:50 p.m. to 10:15 p.m.
35. Later Noise logs from October 12 to December 4, 2016, similar to those provided previously, had 2 instances of Noise past 10 p.m., namely 2 episodes of thumping at 10:30 p.m. and 10:05 p.m. on October 17 and 21, 2016.
36. On October 26, 2016, the strata wrote the owner as well as the unit 30 owners and Tenants, with its decision following a council meeting. The strata reviewed the bylaws and attached the owner’s noise log, and advised that the strata had determined that **“the majority of the complaints submitted are not actionable”** (my bold emphasis added). The strata further acknowledged that excessive noise

occurrences may have happened during daytime hours from time to time, but that council could not reasonably be expected to discern those differences from one another. There was no mention of K's testing or his conclusions about running and jumping constituting excessive noise. The strata wrote that "excessive scrutiny is not in itself a reasonable means" to determine whether a bylaw violation has occurred. In short, the strata concluded it was a balancing of interests in determining whether the Noise was unreasonable, and ultimately the strata concluded that the Noise was not, save for any Noise that occurred after 10 p.m. from September 2016 onwards which would constitute a nuisance. The strata concluded that young children will make noise and this is not unreasonable in most respects. The strata subsequently confirmed for the owner that its decision was informed by legal advice obtained from Clark, Wilson LLP.

37. On November 2, 2016, D.M. emailed the owner that the strata's October 26, 2016 letter was in the mail and that it took some time as it was an "intricate decision" involving a "sensitive discussion".
38. On November 18, 2016, the strata wrote the unit 30 owners and Tenants to impose 3 bylaw fines of \$25 each, for a total of \$75, for "continued contravention of the strata's noise bylaws". The letter stated the fines imposed were only for the instances of noise that occurred past 10 p.m. and only from September 2016 onwards. The strata asked that they ensure the children were not causing excessive noise in unit 30, "particularly after 10 p.m. going forward". Based on the evidence before me, this appears to be the first and only instance that the strata imposed a fine against unit 30 for the owner's Noise complaints. It is unclear what post-10 p.m. Noise formed the basis of the fines, and I note the owner's Noise logs for September and October 2016 disclosed 4 episodes of Noise after 10 p.m.. It is also unclear why the strata decided only Noise after September 2016 was "actionable", although I infer the strata concluded that it would be unfair to fine unit 30 for older instances.

39. In December 2016, the owner wrote the strata again with further Noise logs, similar to those previously submitted. The strata responded that it was not sure what to do with them as the owner's "case is closed", but that if the owner wanted to file another noise complaint he must write a formal letter to do so.
40. On January 5, 2017, the strata published council meeting minutes in which it stated that council agreed at this point the issue seemed to be a personality conflict and that neither side seemed willing to flex to solve the problem. The council stated that "determining whether a genuine bylaw violation had occurred was extremely difficult, and council was not prepared to continue to debate these issues further". Council further wrote that it was agreed that these owners and residents (units 29 and 30) should "also be held accountable to solve their issues, rather than simply registering complaints and responding". The strata stated it required units 29 and 30 to come up with lists that they each could do to resolve the Noise concerns.
41. On January 25, 2017, the strata's property manager wrote the owner and the unit 30 owners and Tenants, and acknowledged that the strata buildings were not built to be "soundproof" and that it is reasonable to expect some noise transference. The strata was built based on a minimum Sound Transmission Class (STC) of 50dBA, which would stop only conversation and quiet radio from transferring through the wall. The manager further wrote:
- It remains clear that the matter continues to pertain to 'living noises', and that excessive yelling, screaming, fighting, partying and music that are typically the source of most normal noise complaints is clearly not the case in this situation.
42. On February 2, 2017, the owner requested a council meeting about ongoing Noise concerns. It is apparent from the tenor of the strata's responses that it was growing increasingly frustrated with the owner's ongoing Noise complaints that were substantially the same as those that predated the council's October 26, 2016 decision that the Noise was not unreasonable.

43. On February 21, 2017, the owner wrote the strata and noted that as discussed at the meeting that night, the only person from the strata council who had been in unit 29 was K, who had attended “as a Contractor on behalf of Strata Council” and the property manager.
44. In its Response to this dispute, the strata stated that upon legal advice it would have council members visit unit 29 when noises are occurring and “would use this as a basis to assist with enforcement measures”.

ANALYSIS

45. At the outset, I note the strata’s January 25, 2017 letter requiring the occupants of unit 29 and unit 30 to take responsibility and come up with lists of how to solve the problem. While I appreciate the challenges involved in a noise complaint, the strata’s response there was inappropriate. The strata has an obligation under the SPA to investigate a noise complaint and enforce the strata’s bylaws. It cannot essentially offload that burden to the individual units to sort out themselves.
46. I turn next to the issue of what must the strata do when faced with a noise complaint. Once it has been determined that a bylaw contravention has occurred, council does not have the discretion to choose not to enforce a bylaw, as having such discretion would destroy the predictability provided by giving notice to owners of the bylaws by filing them in the Land Title Office. Enforcement of bylaws is mandatory, as set out in section 26 of the SPA. The strata does have discretion as to the amount of a fine, up to the maximum set out in the strata’s bylaws.
47. In the case before me, the strata has in some instances chosen to not enforce the noise bylaws, as in part shown by the strata’s inconsistent statements in 2015 and 2017 as to whether unit 30 violated the noise bylaws. The strata submits that if it fined unit 30 “every time” the owner complains the fines would be excessive. I cannot accept this submission. I say this given the frequency of the Noise complaints, the strata’s own acknowledgement on November 2, 2015, March 2016, and September 2016 that there were some valid Noise complaints, K’s noise

testing conclusions, and that unit 30 was only fined a total of \$75 for 3 violations in one November 2016 letter.

48. For the majority of the owner's Noise complaints, the strata council has determined in its discretion that it has not been established there was a contravention of the noise bylaw at all. In particular, the strata has ultimately concluded that only noise after 10 p.m. was unreasonable noise from unit 30, and with the strata considering only upon Noise complaints after September 2016.
49. The strata submits it had "made every reasonable effort" with "limited support" from the owner. I disagree. The owner has been entirely responsive to the strata's communications and has provided the noise logs at the strata's request. If by "limited support" the strata means the owner has not done things to be less bothered by the noise, I find that is not the test.
50. The challenge with the strata's position is that it has not acted reasonably. In March 2016, the strata's contractor K did some testing and found that loud thumping, banging, jumping on stairs all produced excessive noise. It is actually that sort of noise that the owner had been complaining about. Contrary to the strata's January 2017 letter, the owner's complaints are for the most part not "normal living noises". I note that I do include a young child's occasional screaming or yelling as being a normal living noise and find that that it is not unreasonable. However, I find there is no reason why the occupants of unit 30 cannot reasonably avoid running, banging walls, jumping up and down, and that their persistence in doing so is unreasonable. Isolated instances of children running or jumping may well be 'normal living noise' and not unreasonable, but there is no dispute about the frequency of the owner's complaints that were made to the strata both contemporaneously often and contained in the log that the strata directed him to keep and submit.
51. The strata also submits that it should not have to "take his word" on "whatever noise complaint he has" and that it has "no way to identify or validate his complaints". The strata submits that the owner "provides us with a 'noise log' every

few months, with nothing else” and that he has never written a formal complaint. These submissions are inaccurate and disingenuous. Clearly, the strata treated the owner’s noise complaints in late 2015 through 2017 as being a formal complaint and certainly there is nothing in the evidence before me to suggest that it required the owner to communicate his noise complaints differently. It was the strata that asked the owner to keep the noise log. The owner also contacted the strata with Noise concerns on several occasions at the time they occurred, as noted above. The strata never indicated to the owner that it took the position the Noise was not occurring, and from the evidence before me neither did unit 30. While inconsistent at times, the strata’s ultimate conclusion was that the Noise was not unreasonable because children will make noise and that it is simply something to get used to and is part of normal living.

52. The strata, as noted in its Response to this proceeding, could attend at unit 29 while the Noise is occurring. The strata has not explained its conflicting March 2016 conclusions: that there were bylaw violations and then that there were none. The strata has also not addressed K’s conclusions and that the nature of the owner’s complaints were those very activities that K said would produce excessive noise.
53. Section 27(2) of the SPA states that the owners may not interfere with council’s discretion to determine, based on the facts of a particular case, whether a person has contravened a bylaw, whether a person should be fined, or the amount of the fine. However, the strata must act reasonably. I have found the strata has not done so.
54. Section 135 of the SPA sets out a procedure for investigating a complaint, which includes providing the subject owner or tenant the opportunity to be heard, before any fine is levied. This protection is for the benefit of the owner or tenant that is the subject of the complaint, not the person making the complaint. Notably, there is otherwise no particular complaint procedure set out in the SPA and a strata council is permitted to deal with complaints of bylaw violations as the council sees fit, so

long as it complies with the principles of procedural fairness and is not “significantly unfair” to any person who appears before the council (*Chorney v. Strata Plan VIS 770*, 2016 BCSC 148). As discussed further below, I find the strata’s approach has been significantly unfair to the owner.

55. The phrase “significantly unfair” has been interpreted to be simply a plain language version of earlier terms “oppressive or unfairly prejudicial” (see *Chow v. Strata Plan LMS 1277*, 2006 BCSC 335). As noted in *Chow*, oppressive conduct is “burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith”.
56. In the recent decision in *The Owners, Strata Plan BCS 1721 v. Watson*, 2017 BCSC 763, the court restated the test for determining significant unfairness as set out in *Dollan v. Strata Plan BCS 1589*, 2012 BCCA 44. While that test was considered under section 164 of the SPA, as referenced above I find it would equally apply to an analysis under section 48.1(2) of the Act. In particular, in *Watson* the court stated (my bold emphasis added):

The test under s. 164 of the [SPA] also involves **objective assessment**. [The *Dollan* decision] requires several questions to be answered in that regard:

- 1) What is or was the expectation of the affected owner or tenant?
- 2) Was that expectation on the part of the owner or tenant objectively reasonable?
- 3) If so, was that expectation violated by an action that was significantly unfair?

57. I also note the court’s further comments in *Dollan* (my bold emphasis added):

There is no doubt that in making a decision the Strata Corporation must give consideration of the consequences of that decision. However, in my view, **if the decision is made in good faith and on reasonable grounds, there is little**

room for a finding of significant unfairness merely because the decision adversely affects some owners to the benefit of others. ...

58. To the extent the owner expects the strata to properly investigate noise complaints it receives and enforce bylaws when a contravention has been determined, that is a reasonable expectation. The owner made contemporaneous complaints about the Noise as well as submitting a Noise log as requested by the strata.
59. The strata's failure to properly investigate whether the pre-10 p.m. Noise was excessive, as suggested it would be by K, was significantly unfair to the owner. The result of that failure is that for the most part the strata has failed to enforce its noise bylaws to the extent violations may have occurred. The strata's own evidence from time to time, as noted above, acknowledged that there was excessive noise but the strata failed to do anything to enforce the noise bylaws until the \$75 fine issued in November 2016.

Remedies

60. The owner relies upon sections 129 through 133 of the SPA, which discuss the strata's rights and obligations to enforce bylaws and impose fines. The owner further relies upon sections 137 and 138 of the SPA, if the noise levels from unit 30 remain unchanged after fines imposed and unpaid or if the unit 30 tenant is uncooperative. Section 137 and 138 empower eviction of the tenant for "a repeated or continuing contravention of a reasonable and significant bylaw or rule", by the landlord and strata, respectively.
61. The strata operates through its strata council, including the enforcement of bylaws (sections 4 and 26 of the SPA). Each council member must act honestly and in good faith with a view to the best interests of the strata, and to exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances (section 31 of the SPA). The owner submits D.M. should recuse himself because he had earlier abstained from deciding whether unit 30 had violated the noise bylaw. In the context of providing submissions to the tribunal, I find there is nothing

inappropriate in D.M. representing the strata in this proceeding given that his role amounted to simply submitting the strata's earlier documented evidence and reiterating its position.

62. That said, D.M. by his own account (as set out in emails in evidence) expressed the view that he was attuned to loud noises given his own lifestyle and could no longer hear the Noise or be bothered by the sounds coming from unit 30. For that reason, D.M. had apparently chosen to abstain from participating in the Noise assessment, at least at one point. I find the same reasoning should apply in future, and that D.M. should not participate in any future council decisions about noise complaints involving unit 29. I say this because the test of whether noise is unreasonable is based on what an objective ordinary person would perceive, and D.M. has made it clear that he considers himself to have built up an extraordinary tolerance to noise.
63. However, I have found above that the strata must properly investigate the owner's ongoing noise complaints and that it must enforce the strata's bylaws. Enforcement includes fines and collection of those fines, if unreasonable noise does not stop. The strata must comply with section 135 of the SPA before assessing any fines, which is not necessarily the "fine after 2 weeks" order sought by the owner.
64. Enforcement may also include eviction under sections 137 or 138 of the SPA, which I consider to be a last resort. I am not prepared to make contingent future orders about collecting any unpaid fines or eviction, particularly as the unit 30 owners and Tenants are not parties to this dispute. The strata must do as I have ordered, which is to properly investigate the owner's noise complaints. Such investigation includes attending unit 29 while the noise is occurring, and, if the concerns remain unresolved, hiring an appropriately qualified sound testing professional. I am not saying that the strata must simply accept the owner's own subjective assessment. The test is whether a reasonable person would find the

noise excessive or unreasonable, and professional sound testing is one way to help measure whether the noise is unreasonable.

65. If excessive noise is occurring, the strata must take steps to enforce its bylaws, so long as the noise continues. The strata's goal must be to have the bylaw violations stop, and so if unreasonable noise continues then the strata should escalate its enforcement efforts. It is not appropriate for the strata to simply label this issue as a personality conflict and leave it to units 29 and 30 to resolve between them.
66. As for the owner's concerns about documentation being provided to prove the bylaws are being enforced under the SPA, I find the strata must provide the owner with copies of documentation upon request, as described in sections 35 and 36 of the SPA.
67. In summary, nothing in this decision prevents the owner from making noise complaints to the strata in future, and in that event it would be in the owner's best interest to do so at the time the noise is occurring. The strata must make arrangements with the owner to have council members, other than D.M., attend unit 29 to hear the noise first-hand. Further professional testing may be required if the noise continues. I find the strata must conduct an appropriate investigation and enforce its bylaws.
68. I will next address the owner's claims for expenses.
69. I turn to the owner's claim of \$1,100.00 for legal expenses, which he incurred primarily in 2016 and early 2017, before this tribunal dispute commenced. The tribunal had strata property jurisdiction as of July 2016. I am not persuaded that the owner reasonably needed to hire legal counsel to assist him in his dealings with the strata. Further, nothing prevented the owner from filing a tribunal proceeding after July 2016. I find it would be inappropriate to award the owner his legal expenses that he incurred before this dispute, and that conclusion similarly applies to the extent the legal expenses arose after the tribunal proceeding began. As noted in the tribunal's rules, the tribunal generally does not provide

reimbursement of legal fees and I see no reason to deviate from that general policy here. I dismiss the owner's claim for \$1,100.00 in legal expenses.

70. The owner claims \$400 for headphones that he says he used to escape the noise when it became unbearable. The owner has not provided any receipt to substantiate this claim, and I find \$400.00 to be an excessive amount for headphones without more evidence. I dismiss this \$400.00 claim.
71. The owner also claims \$900.00 that he says represents 30 hours of his time at \$30 per hour, time he spent addressing the noise issue with the council. I do not consider it appropriate to make such an award for the owner's own time spent addressing his dispute with the strata. Owners often have disputes with a strata and I find the SPA does not contemplate compensation for an owner for the time spent addressing the dispute itself. In any event, I find the time estimate of 30 hours and the \$30 per hour rate to be too speculative. I dismiss the owner's claim for \$900.00.
72. The owner was substantially successful in this dispute, although I recognize I have not granted him all of the remedies requested. Under section 49 of the Act, and the tribunal's rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I find the strata must reimburse him the \$225.00 he paid in tribunal fees.

DECISION & ORDER

73. I order the respondent strata to properly investigate any future noise complaints from the owner, which includes attending unit 29 to hear the noise while it is occurring. If upon attendance at unit 29 and hearing the offending noise the strata concludes the noise is not unreasonable, the strata must arrange for a qualified sound professional to do noise testing if noise complaints continue to be received by the strata.

74. I order the strata to enforce its noise bylaws to the extent violations of the noise bylaws have been determined. Enforcement may include fines, and if the noise bylaw violations continue it may include collection of any unpaid fines and eviction, as provided under the SPA. I order the strata to comply with sections 35 and 36 of the SPA in respect of any requests for documentation from the owner.
75. I order the strata to reimburse the owner \$225.00 in tribunal fees, within 21 days.
76. The owner's remaining claims are dismissed.
77. I further order that the public version of this decision anonymize all parties, so as to protect the identity of the minor Tenants in unit 30, who are not parties to this dispute.
78. Under section 167 of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to this claim are allocated to the owner.
79. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.
80. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and

leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Tribunal Vice Chair