



# Civil Resolution Tribunal

Date Issued: November 16, 2017

File: ST-2017-003518

Type: Strata

Civil Resolution Tribunal

Indexed as: *Flury v. The Owners, Strata Plan NW 2729*, 2017 BCCRT 115

**B E T W E E N :**

Robert Flury

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 2729

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. The applicant owner Robert Flury (owner) owns strata lot 12 (unit 12) in the respondent strata corporation, The Owners, Strata Plan NW 2729 (strata). The owner says the strata has unfairly applied the strata's bylaws in refusing to permit

the owner to install laminate flooring. The owner is self-represented and the strata is represented by a council member.

## **JURISDICTION AND PROCEDURE**

2. 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.
3. 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.
4. 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.
5. 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.
6. 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**

7. These are the issues in this dispute:
  - a. Should the owner be permitted to install laminate flooring? If not, should the strata be ordered to recognize that unit 24, with installed laminate flooring, has violated the strata's bylaws and be ordered to remove that flooring and/or be fined accordingly?
  - b. Should the owner be reimbursed \$225 he paid in tribunal fees?

## **EVIDENCE, FINDINGS & ANALYSIS**

8. While I have read all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.

### **The strata's bylaws & the SPA**

9. A review of the Land Title Registry documents indicates that the strata filed bylaws on the following dates: February 29, 1988, April 25, 1995, November 7, 2001, March 12, 2008, March 26, 2015, and March 31, 2016.
10. The strata's relevant bylaws are summarized as follows:
  - a. *Bylaw 19(h)*: An owner must obtain the strata council's written approval before making any alterations to a strata lot with respect to "installation of hardwood, laminate or any hard type tiles on the floors of upper units" (filed March 2008 [then numbered at bylaw 5(h)], March 26, 2015 and again March 31, 2016).
  - b. *Bylaw 20*: The strata council must not unreasonably withhold its approval "under subsection (1) [I infer this was intended to refer to 19(1)], but may require as a condition of its approval various things, including providing plans

and an indemnity to the strata (filed March 2008 [then numbered as bylaw 5(2)], March 26, 2015 and again March 31, 2016).

11. The 2001 bylaws did not require an owner to obtain permission to install hardwood or laminate flooring. The amendment in 2008 to then bylaw 5(h) added that requirement.
12. Section 135 of the SPA states that a strata must not impose a fine for a bylaw violation unless it has received a complaint and given the owner the particulars of it in writing, with a reasonable opportunity to answer the complaint, including a hearing if requested.
13. The strata operates through its strata council, which enforces bylaws on behalf of the strata (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 exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances (section 31 of the SPA). 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.
14. The owner bought unit 12 in March 2013. On April 13, 2017, he asked the strata for permission to install laminate flooring in his living room and hallway. In this email, he noted that there would be "proper noise reducing under lay". Shortly after, the strata responded that it would consider the request.
15. On June 19, 2017, following a council meeting, the strata advised the owner that based on "previous and current situations" relating to complaints from owners of lower units about noise from upper units, the strata would not permit laminate or hardwood flooring to be installed in the upper units, other than laundry, bathroom and kitchen areas. The strata noted this was consistent with bylaw 19H accepted by the owners in a majority vote in 2015. The strata noted that "the one upper unit" with laminate flooring had it installed about 15 years prior, before the current

bylaws, and had also installed carpet mats throughout. The strata stated that discussions with owners of ground floor units showed the general agreement that installation of laminate in upper floor units would cause aggravation between neighbours.

16. On June 21, 2017, the owner wrote the strata that council has the power to approve the installation, and to deny him approval “on the grounds of past conflicts between tenants long dead or who have moved on is unfair”.
17. A council hearing was held on July 18, 2017. On July 23, 2017, the strata wrote the owner and asked that he submit “samples of the product intended to be used” in unit 12, along with all relevant information relating to the product and method of installation. I take this to include a request for a sample of the flooring itself, not just information about the underlay. The strata wrote that the letter was a request for information to assist it in the decision-making process, noting that investigation and discussion was warranted as the owners may not have given flooring adequate consideration when the strata was built in 1987-1989.
18. In a July 24, 2017 letter to the council, the owner, among other things, questioned the strata’s statement that unit 24 had installed laminate flooring 10 to 15 years prior and that this was dealt with by another council. However, the owner also wrote “that flooring installed 15 yrs ago by the owners daughter was hardly done by a professional” (reproduced as written).
19. The owner provided the strata with a brief description of a “FloorMuffler” product, which noted it was the highest rated and most effective acoustic barrier on the market. I infer from the owner’s submission that this is what he provided to the strata, along with a printout of the type of flooring he wanted to use. However, it does not appear from the evidence before me that the owner ever gave the strata a product sample as it requested.

### **Should the owner be given permission to install laminate flooring?**

20. The owner's position is essentially that it is unfair for the strata to have permitted the installation of laminate flooring in unit 24 and to have refused the owner the same permission. The owner says the difference in treatment shows the council is biased. The owner says he has complied with the strata's requests for information about the type of soundproofing he intends to install.
21. As for the owner's bias claims, I find they are unsupported. Those claims are based simply on the fact unit 24 was some years ago granted permission to install laminate flooring and that the strata has refused the owner such permission under the current bylaws. That alone is not evidence of bias. There is no evidence before me that the strata has arbitrarily or unfairly singled out the owner for different treatment.
22. The strata is correct when it says it must enforce bylaws, and has no authority to amend or exempt someone from them. The strata says unit 24 was given permission to install laminate flooring, under the strata's former 2001 bylaws. I accept the flooring in unit 24 was installed in around 2002, based on the evidence summarized above, including the owner's July 24, 2017 letter to the strata. As noted by the strata, the bylaws have been replaced 3 times since.
23. As noted above, the 2001 bylaws did not have any requirement for an owner to seek permission from the strata to install hardwood or laminate flooring. Thus, I cannot reconcile that fact with the strata's submission that unit 24 was granted permission under the 2001 bylaws. The parties' submissions were relatively brief. On balance, I infer that the strata simply acknowledges that unit 24 installed laminate flooring when the 2001 bylaws were in effect and that the strata knew this at the time. I find that even if council formally granted permission to unit 24 for some reason, there was no bylaw in place to specifically require it.

24. The owner requested permission to install laminate flooring in April 2017, when bylaws 19 and 20 were in effect. The owner therefore requires the strata council's permission, which must not be unreasonably withheld.
25. Even if the strata had given permission to unit 24 under similarly worded bylaws as those that apply to the owner, that fact is not determinative. In other words, given bylaws 19 and 20, I must still consider overall whether the strata acted reasonably towards the owner.
26. The evidence before me supports the strata's conclusion that the majority of owners do not favour the installation of hardwood or laminate flooring in upper units, and that this conclusion would apply in the owner's case.
27. The owner is correct in his submission that the strata does not require a vote of the owners in order to exercise its responsibilities under section 20 of the bylaws, as the strata council is empowered to make the decision. It is also true that in order to change the bylaws (an outcome the owner does not seek), the strata would need to put that to the owners for a vote. However, I find there is nothing inappropriate in the strata taking into consideration the interests of all owners in making its decision about whether to grant permission to the owner, and to this end I note the council's view of the flooring issue as being "so contentious". While I have found an owners' vote is not required, I also note the owner's acknowledgement that if his request were put to the owners for a vote, he would not succeed. I find this is further evidence of the negative impact the owner's installation of flooring would have on the strata.
28. I find the owner is not entitled to an order that he be permitted to install laminate flooring. First, it is not clear to me that he has complied with the strata's requests for samples of the flooring and the other supporting evidence request. Second, and more importantly, I find the strata has not unreasonably withheld permission. Put another way, I find the strata's position on the evidence is not significantly unfair to the owner.

29. The analysis for what constitutes significant unfairness is set out in my earlier decision in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCR 94, which is not binding upon me but which I adopt in this case. In particular, while the impact on the owner and perhaps others similarly situated on upper floors may seem unfair to him, I am unable to conclude the strata's actions were "significantly unfair". I find the strata has provided good reasons for its position in this particular case. To that end, the owner has acknowledged there could be noise transference following laminate flooring installation and that "the lower units in [his] building could be adversely affected". I dismiss the owner's claim for permission to install laminate or hardwood flooring in unit 12.

### **Remedies against unit 24**

30. Given my conclusion above, I must address the owner's request that I order the strata to recognize unit 24 is in violation of the bylaws and that with a view to equal treatment they be either ordered to remove their flooring or be fined.
31. I note the owner argues that he wants to see written approval for unit 24's flooring installation, which I infer from the strata's submission no longer exists in writing if it ever did. Nonetheless, as to the owner's requests in his submissions for copies of documentation about the permission granted to unit 24, the strata has an obligation to provide documentation in accordance with sections 35 and 36 of the SPA. No order was requested in this respect, and therefore I do not make one.
32. The owner(s) of unit 24 is not a party to this dispute. The strata says that unit 24 was given permission to install laminate flooring under the strata's bylaws filed in 2001. In his submissions, the owner appears to recognize that unit 24's installation was done years ago, and I have found above based on the evidence the installation of flooring in unit 24 took place in around 2002. I have also found above that that installation did not require permission, but in any event the strata approved it. The owner's argument is essentially that regardless of when unit 24's flooring was installed, it shows bias towards him if the strata does not permit him to have the same flooring. I have also found above there is no evidence of bias.



33. The material point on this issue is that the strata acknowledges unit 24 was given permission for laminate or hardwood flooring installation, and I have found that unit 24's installation was done in around 2002 when no permission was required. As such, based on the evidence before me I find unit 24 never violated a bylaw when it installed hardwood or laminate flooring.
34. Given my conclusions above, I find there is no basis to order the strata to require unit 24 to remove their flooring or to order the strata to fine that unit, because I have no evidence that unit 24 has violated any bylaws. The current bylaws affecting the owner's request for permission do not impact unit 24's flooring that was already installed before the current bylaws came into effect. That the owner is currently being refused permission to install laminate flooring is not a basis to order the strata to fine or direct unit 24 to remove its flooring.
35. The strata was successful in this dispute. 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 see no reason to deviate from that general rule. I dismiss the owner's claim that the strata to reimburse the owner \$225 he paid in tribunal fees. The strata did not pay any tribunal fees or claim any dispute-related expenses.

## **DECISION & ORDER**

36. I dismiss the applicant's dispute.

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Shelley Lopez, Tribunal Vice Chair