



# Civil Resolution Tribunal

Date Issued: November 8, 2018

File: ST-2018-002574

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cherry et al v. Section 2 of The Owners, Strata Plan BCS 1165, 2018*  
BCCRT 705

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

Shirley Cherry and Brian Cherry

**APPLICANTS**

**A N D :**

Section 2 of The Owners, Strata Plan BCS 1165

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. This dispute is about the enforcement of a noise bylaw. I have amended the respondent's name in the style of cause as discussed below.

2. The applicants, Shirley Cherry and Brian Cherry (tenants) rent a strata lot (unit 224) in the respondent strata corporation section, Section 2 of The Owners, Strata Plan BCS 1165 (section).
3. The tenants say the section is not enforcing its noise bylaws. They say the residents in the strata lot above (unit 334) are “continually stomping”, which interferes with the tenants’ quiet enjoyment of unit 224. The tenants seek orders that the section enforce its bylaws and reimburse their rent paid of \$25,200 during the 12-month period of the alleged noise disturbances, as compensation for lack of peace and quiet.
4. The section says it investigated the tenants’ complaints and did not find the residents of 334 were in contravention of the section’s bylaws. It also says it is not responsible to reimburse rent paid by the tenants, as it says that is an issue the tenants should address with their landlord.
5. Shirley Cherry represents the tenants. The section is represented by a residential section executive member.
6. For the reasons set out below, I dismiss the tenants’ dispute.

## **JURISDICTION AND PROCEDURE**

7. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear

this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. 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.
10. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.
11. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator). Tribunal documents incorrectly show the name of the respondent as Residential Section of The Owners, Strata Plan BCS 1165. However, based on bylaw 1.2 of The Owners, Strata Plan BCS 1165, the correct legal name of the section is Section 2 of The Owners, Strata Plan BCS 1165. Given the parties operated on the basis that the correct name of the section was used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the section's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

## **ISSUES**

12. The issues in this dispute are:
  - a. Has the section taken appropriate steps to address the tenants' noise complaints?
  - b. If not, what is an appropriate remedy?

## **EVIDENCE, BACKGROUND & ANALYSIS**

13. I have read all of the submissions and evidence provided, but refer only to information I find relevant to provide context for my decision.
14. In a civil proceeding such as this, the applicant tenants must prove their claim on a balance of probabilities.
15. The relevant bylaws of the section are those registered May 28, 2015. Subsequent bylaws have been filed at the Land Title Office, but I find they do not apply here.
16. Bylaw 8.1(b) says a resident or visitor must not use a strata lot in a way that causes unreasonable (including repetitive) noise.
17. Bylaw 13 addresses hard-surface flooring and requires all residential strata lot owners with hard floor surfaces, such as tile or hardwood, to take reasonable steps to satisfy neighbour's noise complaints, including ensuring that no less than 60% of hard floor surfaces are covered with area rugs or carpeting. Hard flooring surfaces in kitchens, bathrooms and entrance ways are exempt.

### ***Has the section taken appropriate steps to address the tenants' noise complaints?***

18. The evidence suggests that the tenants first started to identify noise complaints in March 2017. A significant portion of the tenants' evidence is their handwritten notes and emails complaining of noise. The tenants kept an extensive log record of dates and times they allege noise and "stomping" occurred in unit 334. On May 11, 2017, the tenants sent a registered letter to the section and their landlord's agent.
19. The residential section executive minutes of May 25, 2017 show discussion on a noise complaint received by the section and direct the manager to confirm the source of the noise with the complainant and that the hard-surface flooring bylaw is being followed. The minutes do not indicate any specifics of the complaint or who made it but I find it reasonable to conclude the minutes were referring to the tenants' complaint sent by registered letter on May 11, 2017.

20. The tenants say the section never reviewed their concerns and that the section's caretaker declined to evaluate the noise. I disagree.
21. Based on emails in evidence, I find the section issued a letter to unit 334 about the noise complaint against them on approximately June 8, 2017, although a copy of the letter was not provided in evidence. The tenants admit that the section's caretaker attended their unit 224 on at least 1 occasion and advised them that the level of noise was not unreasonable.
22. It is undisputed that a residential executive member met with the resident owner of unit 334 on June 12, 2018 at the unit and observed that the hardwood flooring in the living room of unit 334 met the requirements of bylaw 13 as it "was covered with rugs".
23. It is also undisputed that the owner of unit 334 moved out of unit 334 on June 16, 2017. Despite the change in unit 334 occupants, the tenants continued to file noise complaints.
24. The residential section executive minutes of August 30, 2017 also identify a noise complaint involving a person living above the complainant as being "very noisy" and that one owner disputed a noise violation letter to them on June 21, 2017. Again, the minutes do not disclose any further details of the complaint but I infer the minutes refer to the tenants' complaint. The tenants also admit that the section's caretaker contacted the resident of unit 334 by telephone in August 2017, and that the noise stopped for 3 days as a result. Given the variation of unit 334 occupants, I find it unlikely that there was consistently unreasonable noise.
25. While it is unclear what specific actions were taken by the section, I cannot conclude it took no action as alleged by the tenants. Again, the tenants have the burden of proof in this dispute.
26. On balance, I find the tenants have failed to prove their claim that the section failed to act on their noise complaints.

27. On the contrary, the evidence suggests the section did take some action although clearly it did not meet the tenants' expectations.

28. For these reasons, I dismiss the tenants' claims.

29. As a result, I need not address the tenants' request for reimbursement of rent.

## **TRIBUNAL FEES AND EXPENSES**

30. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the respondent section was successful in this dispute and did not pay tribunal fees or claim expenses, I make no order in this regard.

31. The section corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

## **ORDER**

32. I order that the tenants' claims, and therefore this dispute, are dismissed.

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J. Garth Cambrey, Vice Chair