



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Chiang v. The Owners, Strata Plan LMS 4482*, 2019 BCCRT 389

B E T W E E N :

Po Yu Emmy Chiang

APPLICANT

A N D :

The Owners, Strata Plan LMS 4482

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about bylaw enforcement. The applicant, Po Yu Emmy Chiang, says that the respondent, The Owners, Strata Plan LMS 4482 (strata), failed to properly investigate complaints she made about another resident and a complaint that resident made against her. She seeks an order that the strata retract a warning

letter issued to her and amend the minutes of a strata council meeting to reflect the retraction. The strata disagrees with the applicant's position.

2. The applicant is self-represented. The respondent is represented by a member of the strata council.

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 121 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.
4. 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.
5. 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.
6. Under section 123 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.

ISSUE

7. The issue in this dispute is whether the strata should retract a March 29, 2018 warning letter issued to the applicant and amend the minutes of a January 31, 2018 council meeting to reflect the retraction.

BACKGROUND AND EVIDENCE

8. The applicant bears the burden of proof on a balance of probabilities. Both parties provided submissions and evidence in support of their respective positions. While I have considered all of this information, I will refer to only that which is necessary to provide context to my decision.
9. The strata is a leasehold strata corporation located on land owned by the University of British Columbia and is comprised of 64 strata lots. The applicant is a leasehold tenant of strata lot 21, which is also known as suite 205, and an owner as defined under the *Strata Property Act* (SPA). The strata is a wood-frame building and it would appear that noise transference between strata lots is an issue.
10. In 2001, the strata adopted the standard bylaws in the SPA. This version of the bylaws addressed the use of property at bylaw 3. Among other things, bylaw 3(1) states that an owner, tenant, occupant or visitor must not use a strata lot, the common property (CP), or common assets in a way that (a) causes a nuisance or hazard to another person, (b) causes unreasonable noise, or (c) unreasonably interferes with the rights of other persons to use and enjoy the CP, common assets or another strata lot.
11. The strata added a bylaw to address excessive noise in an amendment that was filed at the Land Title Office in January of 2010. The new bylaw 3(2)(h) stated that residents “must not be making excessive noise within their units, between the hours of 11 pm and 7 am, this includes refraining from the use of noise making appliances, loud stereos, parties, banging cupboards, dragging of chairs across floors, running, jumping, etc.”

12. The applicant has made a number of complaints about bylaw infractions about parking and noise. In 2015, the applicant was particularly disturbed by noise emanating from suite 305, which is the strata lot directly above hers. Evidence before me shows that the previous occupants of suite 305 felt that the applicant's behaviour surrounding her noise complaints amounted to harassment. A June 25, 2015 letter from a lawyer retained by the applicant reminded the strata of its obligation to enforce its bylaws and investigate complaints.
13. In the years that followed, the applicant continued to be disturbed by noises from other strata lots. The disruption she felt appears to have increased after the applicant retired in December of 2017 and was home more often during the day.
14. On January 22, 2018, the applicant wrote to the strata's property manager to complain about what she described as excessive noise coming from suite 305. The applicant described the impact of the noise, which she attributed to a young child in the unit, and which she said is not drowned out by loud music from a stereo. The applicant stated that there is no reason why a young child should be stomping, jumping and running when the parents know that "undue noise is disruptive and intrusive in a wood-frame building". The applicant asked that the owner of suite 305 comply with the bylaws.
15. On January 31, 2018, the owner of suite 305 made a complaint to the strata about the applicant's behaviour. The owner reported that, on that date, the applicant banged on the ceiling in an apparent response to noise made by a child. According to the occupant, the banging was aggressive and resulted in her children being frightened and crying. She asked the strata for assistance in solving the issue with the applicant, and stated that residents should be able to go about their regular activities "without feeling like they are trapped in their apartments or that they need to maintain spa levels of quiet".
16. The noise issue was discussed at a January 31, 2018 meeting of the strata council. The minutes show that the strata council determined that the January 22 complaint about noise made by a child during the day did not warrant any further action. The

strata council discussed the complaint about “very aggressive and threatening tactics” made in response to daytime noise made by a child. The strata directed the property manager to send a letter to the owner who made the noise complaint. The identities of the parties involved in the complaints are not revealed in the minutes.

17. On February 13, 2018, the applicant wrote to the strata’s property manager to complain about the ongoing noise generated by the occupants of suite 305. She described loud and disruptive noises that begin at about 9:00 in the morning, and which “only subside when I mimic them with my door and cupboards”. The applicant noted that the minutes of the recent council meeting indicated that she would be receiving a warning letter, and suggested that the council review her complaint and refrain from making biased or unfair decisions.
18. On March 29, 2018, the strata’s property manager wrote to the applicant in response to her noise complaint. The property manager stated that the strata had determined that the noise did not constitute a bylaw infraction and had decided not to pursue the matter further.
19. In a second March 29, 2018 letter, the property manager addressed the “alleged harassment and threatening” behaviour from the applicant towards the occupants of suite 305. He stated that, as the suite had been sold and the occupants moved out, their specific issues were no longer a direct concern for the strata council. However, the council remained concerned about the new occupants of suite 305 and others in the building. The property manager stated that the letter constituted a warning from the strata that the applicant cease her continued harassment of her neighbours and “learn to live harmoniously” in the strata community. The letter concluded by saying that it must be accepted that there will be noise heard from other units in a wood-frame building.
20. The applicant requested a hearing in response to the warning letter. The hearing took place at the April 9, 2018 meeting of the strata council. According to the minutes of the strata council, an owner expressed “concerns about bylaw infraction

enforcement, and other related concerns". The strata council decided to take no further action on the matter.

21. On April 11, 2018, the applicant wrote to the strata to summarize the arguments she made at the hearing. The applicant disputed the allegations made against her, and stated that the strata did not properly investigate these accusations before concluding that she was guilty of harassing her neighbours. According to the applicant, she gets along with "every other owner and had never threatened, intimidated or bullied anyone during the 17 years as a resident" at the strata. The applicant asked that the council retract the March 29, 2018 letter and amend the minutes of the January 31, 2018 council meeting.
22. The strata's property manager replied in a letter dated April 18, 2018. He stated that the March 29 letter was private, for her information only, and not a bylaw infraction letter. As the strata was not investigating further or taking action, there was no need for the warning letter to be retracted, and the minutes would not be amended as there is nothing in them that was incorrect. The property manager advised of the strata's decision that it would not retract the letter or amend the minutes.

POSITION OF THE PARTIES

23. The applicant's position is that her upstairs neighbour falsely accused her of harassing and threatening behaviour, and that the strata did not properly investigate the allegations. She says that the strata issued the warning letter without providing evidence or the outcome of an investigation, and did not cite any bylaws.
24. The applicant says that it was not fair or reasonable for the strata to issue a warning against her based on unsubstantiated harassment allegations and not based on violations of bylaws or rules. The applicant states that the strata must enforce bylaws and rules, not arbitrate interpersonal conflicts between owners. She characterises the strata's actions as unfairly prejudicial and oppressive, and states that the strata refuses to investigate her noise complaints. According to the applicant, the allegations were baseless and the strata's action was significantly

unfair. In the applicant's view, the strata failed to follow its own procedure and due process. The applicant requests that I order the strata to rescind the warning letter and amend the January 31, 2018 meeting minutes.

25. The strata's position is that the applicant's claim should be dismissed. The strata says that it does not always launch an investigation when it receives noise complaints. The strata says that, during the hearing of the matter, the applicant claimed that she responded the way she did because the child was being malicious and making noise with the intent of disturbing her peace. The strata says it found the applicant's retaliatory action to be concerning, but did not consider it to be a bylaw infraction. In the strata's view, the noise the applicant finds to be unacceptable is daily living noise that is to be expected in a multi-unit dwelling.
26. The strata says it has the responsibility to promote peaceful co-existence and a respectful environment, and that one person's right do not trump another's. The strata suggested that the applicant is antagonistic towards the strata council due to a previous disagreement she had with another strata council member, and acts in a punitive manner if she does not get her way. According to the strata, previous residents have found the applicant's behaviour to be harassing and 1 member of the strata council is "terrified" of the applicant. The strata's position is that other residents should not live in fear of disturbing the applicant and her unreasonable expectations about noise levels. The strata says it issued the warning letter to send an appropriate message and deter further escalation.

ANALYSIS

27. The thrust of the applicant's argument is that the strata failed to investigate her noise complaints or the allegations made against her and, as a result, the March 29, 2018 warning letter should be rescinded and the meeting minutes altered to remove reference to the matter.
28. The evidence before me establishes that the strata considered the contents of the applicant's complaint and discussed the matter with the owner of suite 305, who

provided her own explanation for the events. On that basis, the strata determined that there had been no breach of a bylaw. I do not find that the evidence supports the conclusion that the strata ignored or failed to investigate the applicant's complaints. Further, I am satisfied that the applicant has not established that the strata dealt with her complaints in a different manner than those made by other residents.

29. I have also considered the applicant's submissions that the strata acted in an unfair manner in sending the warning letter. The March 29, 2018 warning letter communicated the strata's view that the applicant's behaviour was not acceptable. It set out expectations for future interactions, and reminded the applicant that noise was to be expected in a communal living environment. The strata's approach appears to have been guided to some extent by reports from other strata residents about their interactions with the applicant.
30. As noted by the applicant, the warning letter did not refer to any bylaw or rule. I find that this warning letter did not amount to a discipline letter. I am not satisfied that a discussion of behavioural expectations amounts to discipline. Further, despite the fact that the letter did not impose or threaten to impose any penalty, the applicant was granted a hearing under section 135 of the SPA. I am satisfied that she had an opportunity to address the matter with the strata council and was not treated in a manner which could be considered to be procedurally unfair.
31. The applicant also suggested that the strata treated her in a significantly unfair manner as contemplated by section 164 of the SPA. This section permits the remedy of a significantly unfair "action or threatened action by, or decision of, the strata corporation, including the council, in related to the owner or tenant", which is identical to section 123(2) of the Act. I do not find that a discussion of behavioural expectations at the January 31, 2018 strata council meeting or the subsequent March 29, 2018 letter to the applicant constitutes a significantly unfair action, given the strata relied on reports from other strata residents about the actions of the applicant.

32. I acknowledge the applicant's dissatisfaction with the strata council and her disagreement with its characterization of her behaviour. However, I do not find that the strata disciplined her, or acted in a manner that was unfair or contrary to the bylaws, or any rules or procedures. Accordingly, I decline to make the orders requested by the applicants and I dismiss her claims.

TRIBUNAL FEES AND EXPENSES

33. 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 and reasonable dispute-related expenses. As the applicant was not successful, I dismiss her claim for reimbursement of her tribunal fees.

34. The strata must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

DECISION AND ORDERS

35. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member