



# Civil Resolution Tribunal

Date Issued: June 6, 2019

File:ST-2018-007728

Type: Strata

Civil Resolution Tribunal

Indexed as: *Denis Mastroianni v. The Owners, Strata Plan EPS 2878 et al*  
2019 BCCRT 691

B E T W E E N :

Denis Mastroianni

**APPLICANT**

A N D :

The Owners, Strata Plan EPS 2878, and Section 1 of the Owners,  
Strata Plan EPS2878 and Bevan Hughes

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kathleen Mell

## INTRODUCTION

1. The applicant, Denis Mastroianni, owns strata lot 81, also known as unit 620, in the respondent strata corporation The Owners, Strata Plan EPS 2878 (strata).

2. This dispute is about the strata's alleged failure to enforce its noise bylaws. The applicant submits that the strata has failed to properly address his concerns about noise coming from strata lot 89, also known as unit PH-05, owned by Mr. Hughes, which is partially above the applicant's strata lot. The applicant and Mr. Hughes are self-represented and the strata is represented by Kath-Ann Terrett, a strata council member.

## **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, 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 123(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 123(2) provides that a 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.
8. Tribunal documents incorrectly show the name of the strata's residential section as "Strata Corporation Section 1 of the Strata Plan EPS2878" (residential section). Based on section 193(4) of the SPA and strata bylaw 1.1, the correct legal name of the residential section is "Section 1 of the Owners, Strata Plan EPS2872". In addition, the parties were contacted and the parties agreed to add the strata as a party to this dispute. Mr. Hughes was invited to comment but did not provide any submission disputing that the strata should be named.
9. 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. A central issue in this dispute is whether the strata corporation is enforcing its noise bylaws. I find it is necessary and consistent with the tribunal's mandate, pursuant to section 61, to add the strata as a party as only the strata can enforce the strata's bylaws. Therefore, I find it was necessary and fair to add the strata as a party, and I have done so. Accordingly, I have amended the style of cause above.
10. I also dismiss the applicant's claims against the residential section, as I find it is not liable for enforcing the bylaws at issue in this dispute.

## **ISSUES**

11. The issues in this dispute are:
  - a. Has the strata conducted an appropriate investigation of the applicant's noise complaints?

- b. If not, what further investigatory steps should be taken?
- c. Has there been a contravention of the noise bylaw?
- d. If yes, should there be an order that the strata enforce its noise bylaws including ordering Mr. Hughes to cease making noise and impose fines against him if he does not comply?
- e. Should the applicant be reimbursed for certain expense, under section 165(c) of the SPA or otherwise:
  - i. \$125.00 he paid in tribunal fees as well as the \$100.00 fee for the CRT decision process?
  - ii. \$2,300.00 in legal expenses the applicant incurred?

## **POSITION OF THE PARTIES**

12. The applicant wants the strata to enforce its noise bylaws. In particular, the applicant states that from 2015 until the present there have been ongoing noise issues regarding unit PH-05, and that the strata has failed to resolve the problem. The applicant wants the tribunal to order the strata to enforce its noise bylaws and order Mr. Hughes to stop making noise and impose fines if he does not comply.
13. The strata states it has made reasonable efforts to determine where the noises are coming from and if they constitute a noise bylaw infraction. The strata notes that it offered to hire a sound engineer as a way to help resolve the issue, but argues that it is reasonable that the cost of the investigation be charged back to the applicant if the noise complaint turns out to be unwarranted. It states that otherwise the strata would have to pay money for an investigation for potentially frivolous claims.
14. Mr. Hughes concedes that the applicant is hearing noises that the applicant finds bothersome, but disputes that the noises coming from his strata lot are excessive or in breach of the strata's bylaws. Mr. Hughes points out that investigations have been conducted and the noises were at times coming from somewhere else as Mr. Hughes was not in his strata lot at the times the applicant reported hearing them.

Mr. Hughes notes that he works shift work and is often not in his strata lot. He also has three young children (5, 8, and 11) who reside with him for two 24 hour periods most weeks. He says that the children are aware of the need to keep the noise down and if they occasionally do make enough noise to be heard by the applicant, it would not be prolonged and never in the middle of the night.

15. Mr. Hughes provided an email he sent to the strata which stated that the applicant conceded in mediation that the noise was likely not coming from Mr. Hughes' strata lot. I place no weight on this email as the applicant has not confirmed that he made this statement, and, in his evidence, the applicant states that he believes the noise is coming from Mr. Hughes' strata lot.

## **EVIDENCE, FINDINGS AND ANALYSIS**

16. While I have read and listened to all of the material provided, I have only commented below on the evidence and submissions necessary for this decision.
17. The applicant submits the strata has failed to properly investigate and enforce bylaws for noise that had been ongoing for over three years.
18. The applicant's strata lot is on the 6<sup>th</sup> floor with other strata lots on both sides and behind. Above the applicant's strata lot are two penthouse strata lots, one above the west side of the applicant's strata lot, belonging to Mr. Hughes SL-89 (PH-05). There is another penthouse strata lot above the eastern portion of the applicant's strata lot (PH-03). The strata plan indicates that the penthouse strata lots are approximately evenly divided in the area of the applicant's ceiling they cover.
19. The applicant's complaints are about noise coming from above his strata lot, which he states started from the time all the parties moved into the new building in 2015. The applicant claims the noise is comprised of hammering, dragging noises, drilling, booming, pounding, thumping, tapping and banging. He states that some sounds are continuous and go on for hours, and others are single instances. He notes that the sounds also occur during sleeping hours and that he has heard the noises as early as 3:00 a.m. The noise moves around and is not fixed to one location.

20. The applicant argues that the noise coming from above his strata lot exceeds the sounds of normal living. He has made audio files of the noises which he has provided to the strata council and as evidence on this dispute. The applicant also submitted multiple emails going back to October 2015 in which he reported the noise issues.
21. An email sent from the first property management company on January 7, 2016 indicated that fines were continuing to be levied against strata lot SL89 and that the caretaker would hand deliver a notice to the door as well. It indicated that the applicant should continue to send them his concerns in writing and that they would continue to issue fines. The emails show that the applicant continued to complain about the noise throughout 2016 and into 2017.
22. In his response to this dispute, Mr. Hughes stated that when they all first moved into the building in 2015 another strata lot on his floor was performing renovations for six months between 2015 and 2016 and that this was likely the source of the noise during that period. Mr. Hughes acknowledges that at the time he received a written notice of a possible violation of the bylaws and potential penalties but says he was never fined because it was agreed it was not his fault.
23. Because I find the evidence is unclear as to whether the noise occurring during this timeframe was coming from Mr. Hughes' strata lot or another strata lot on the top floor performing renovations, I have decided to focus on the evidence of the noise complaints after this time period. However, I do find it significant that from the very beginning of this dispute a question was raised as to where the noises the applicant heard was coming from.
24. After the renovations were completed the applicant still reported noise complaints. The property management changed and the new property manager, M, noted on February 16, 2017 that there were two strata lots above the applicant. When the applicant stated the noise was located on his west side, it was pinpointed that the noise was coming from Mr. Hughes' strata lot. M stated that he would alert the strata council and ask for a formal investigation.

25. The strata filed new bylaws at the Land Title Office in June 2015 and then amended bylaws in October 2017. The amended bylaws did not refer to the issues involved in this dispute. The relevant bylaws may be summarized as follows:
- a. **Bylaw 6.1(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, common assets, or another strata lot (c).
  - b. **Bylaw 30.1:** The strata may fine an owner or tenant \$200 for each bylaw contravention.
  - c. **Bylaw 31.1:** Except where specifically stated to be otherwise in these bylaws, if an activity or lack of activity that constitutes a contravention of a bylaw or rule continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.
  - d. **Bylaw 48.2:** 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.
26. I turn to the relevant chronology arising from the evidence before me.
27. The minutes from the May 2, 2017 strata council meeting indicated that the reported noise disturbance between the strata lots on the 6<sup>th</sup> floor and the penthouse level continued. The nature of the noise complaints consisted of heavy footsteps, thumping, running, and dropping heavy objects on the floor.
28. The strata council minutes indicated that one contact was made between the applicant and the council president when a noise disturbance was reported, but the noise stopped when the council president arrived at the applicant’s strata lot. The minutes stated that the applicant would continue to monitor the situation and contact the council president when the noise disturbance happened again.

29. According to the applicant's email he sent to M on October 22, 2017, on September 29, 2017 the council president attended at the applicant's strata lot and heard music which she thought was coming from Mr. Hughes' strata lot. The applicant was told that recordings of the noise were going to be performed. On November 3, 2017, the applicant stated in another email to M that the attempt to resolve the issue by calling a council member to come to his strata lot was cancelled after only one attempt and that his other calls for this purpose had gone unanswered. Instead, the applicant was told to record the noises. The applicant continued to report noise disturbances throughout December 2017.
30. On December 29, 2017, the applicant sent the strata an audio sample which he said sounded like a mallet was being used. M emailed the applicant on January 6, 2018 and indicated that he had stood in the hallway outside the applicant's strata lot the previous evening and heard a low frequency vibration coming from the elevators. The same day the applicant wrote M back and explained that he was not referring to the noise coming from the elevator but the noise coming from Mr. Hughes' strata lot. He provided an audio sample of a noise he described as a "boom, boom, boom" from the previous evening. The applicant said that the time pattern of the noises was random and not predictable.
31. The applicant continued to report the noise disturbance and provide audio samples through March 2018. M responded to the applicant on March 8, 2018 and informed him that some of the noise was coming from renovation work in a different strata lot and that if the noise coming from Mr. Hughes' strata lot resulted from normal daily living, which is not excessive, the strata did not have the capacity to do anything about it. M also indicated that the council members had visited the applicant's strata lot and deemed the noise level acceptable. It suggested if the applicant was sensitive to noise he consider making acoustic improvements to his strata lot.
32. An email communication between the applicant and M dated March 19, 2018 indicated that renovation work had been performed, which should have ended in the first week of March. The applicant stated that he heard hammering the morning of March 19, 2018 and that he knew somebody was in Mr. Hughes' strata lot as he



also heard vacuuming. The applicant in the same email thread also complained of noise coming from Mr. Hughes' strata lot on March 23, 2018.

33. On March 23, 2018, M emailed the applicant and explained that his noise complaint had been discussed in the March 7, 2018 strata council meeting and that council wanted to listen to the noise firsthand before making any further decision on fines or further actions. He stated that the council president was willing to give the applicant her cell phone number to call when the noise occurred so she could go to the applicant's strata lot to listen. In the alternative, the council was also open to a sound test which would involve scheduling an appointment to go to the applicant and Mr. Hughes' strata lots and then try to imitate the sounds above while the members in the applicant's strata lot listened.
34. The applicant responded that he was concerned that the sound test seemed easy to manipulate and to cheat. He said that he had the council president's number but that it was difficult to use due to his health issues. The applicant is confined to a wheelchair and has medical restrictions which keep him housebound.
35. M replied stating that he believed the issues were due to the location of the applicant's strata lot in relation to the strata lots above because the applicant's bedroom was right below "somebody's" activity area. He indicated that in new buildings the developers make the top floor bigger without considering potential sound transmission.
36. On April 2, 2018, the applicant emailed M and provided an audio sample he had taken from the previous Friday of what he called noise inundation from Mr. Hughes for the entire day.
37. On April 8, 2018, the applicant emailed M and stated that he did not accept the explanations that the noises were just from Mr. Hughes's dinner preparation or waking up in the morning, or from the elevator. On April 9, 2018, the applicant emailed M and noted that despite the fact that they had decided that Mr. Hughes could not be the source of the noise, the noise continued. The applicant indicated that he was frustrated that the matter was still not resolved. The applicant continued

to report noise and provide recorded samples. On April 15, 2018, the applicant again reported noise starting at 7 a.m. and continuing until after 10 a.m. consisting of pounding, banging, grinding, and other sounds. He asked for specific details of how council and management would proceed with its obligation to investigate and resolve the issue. The applicant reported a noise disturbance again on April 30, 2018.

38. The applicant requested a hearing on May 2, 2018. It was decided that the hearing would be held in the applicant's strata lot on May 10, 2018. M sent the applicant a letter on May 14, 2018 which stated that council was able to conduct sound tests by mimicking the noises heard in the applicant's strata lot by accessing Mr. Hughes' strata lot and replicating the sounds. It noted that some tests were successful and others were not. Council stated that one of the conclusions of the test was that there may be different sources for the noises heard other than Mr. Hughes' strata lot. It also stated that Mr. Hughes had been advised to try to cut down the duration of noise such as children running. It asked the applicant to continue logging and emailing records of the noises to M. It also said that this would assist the council in determining who was responsible for the noise and following up with Mr. Hughes' strata lot and other strata lots.
39. The applicant continued to report noise throughout June 2018. The July 3, 2018 strata council minutes indicate that on May 10, 2018 several council members and M visited the applicant's strata lot on May 10, 2018. It stated that council experienced the level of noise inside the applicant's strata lot coming from the strata lot above. The minutes state that council did not know if the noise level heard inside the applicant's strata lot constituted a disturbance. It said that council would research ways to possibly physically measure the decibel level inside the strata lot and compare it against the set of acceptable levels.
40. On August 5, 2018, the applicant sent an email to council via M and indicated that the level of noise experienced during the May visit were not representative of the type and level of noise he heard. He suggested that because Mr. Hughes was notified of the investigation taking place this tainted the results. He also stated that

his audio samples were being ignored. The applicant sent a follow-up email to M on August 5, 2018 and noted that when the hearing was held he was instructed to continue to keep a log of the times and dates of the noises and that he had been doing so. He also referred to the fact that during the hearing it was said that “sound tests” being conducted were the extent of what needed to be done and that council had explicitly stated that that they did not need to be called to hear the noise nor were sound test measurements going to be performed.

41. In the same email the applicant pointed out that it was stated in the July 2018 minutes that council was going to look into the possibility of performing sound test measurements. He indicated that he had been told this as far back as September 2017 but nothing was ever done. The applicant expressed his frustration that the suggestion of sound testing was on and then off again without any resolutions. He also indicated he was unhappy with the fact that the council would not communicate with him as to where things stood. He asked for guidance as to what he should be doing and that council explain their reasons for their decisions. The applicant continued to report noise throughout August 2018.
42. The August 26, 2018 strata council noted that the applicant was still reporting the noise disturbance. It directed M to obtain a quote from an acoustic engineer for a proposal to perform a sound test to verify the noise level and whether it constituted a disturbance. It decided that if the result came back positive that the strata would pay for the report and take appropriate action. However, if the report indicated that the noise was within a tolerable level, the applicant would be responsible for the cost.
43. M emailed the applicant and informed him of council’s proposal. He noted that acoustic reports usually cost between \$1,500.00 and \$2,500.00. The applicant stated that he was confused as to why the acoustic testing was back on the table and had several questions about the timing, what would constitute a disturbance, amongst other things.

44. The applicant hired a lawyer who wrote to the strata council and stated that the strata had an obligation to investigate the noise while it was occurring and hire and pay for an appropriately qualified sound testing professional. The lawyer also stated that the strata had to provide the applicant with documentation proving that it was enforcing its bylaws, and also not treat the applicant significantly unfairly with regard to his noise complaints.
45. It was the lawyer's opinion that the noise bylaw was being breached by Mr. Hughes and possibly by his children when they stayed there. The lawyer stated that the noise far exceeded the usual sounds of everyday living in a strata complex. The lawyer noted that the applicant had been complaining about the noise since November 2015 and that the strata had not acted reasonably in dealing with the applicant's concerns and had treated him significantly unfairly.
46. On October 3, 2018, M emailed the applicant and noted that council wished to know if he was still experiencing the noise disturbance because they had not received an updated log since the letter from the applicant's lawyer. The applicant replied that the noise had lessened but not gone away. The applicant believed it was because Mr. Hughes had been put on notice regarding potential sound testing.
47. As recently as February 8, 2019, Mr. Hughes submitted that the applicant's noise complaints were often occurring at times when he was not in his strata lot. On this date, the applicant contacted the strata by email and stated that there were bangs and heavy thuds coming from the strata lot, including at 12:30 p.m. When the strata council contacted Mr. Hughes, he was at work and not in his strata lot.
48. As evidence on this dispute, the applicant has provided numerous audio recordings dating from 2015 to early 2019. I have listened to these recordings and note that they do indicate sounds as described by the applicant. However, the recordings are brief so I am unable to determine the duration of the noise. Also, I cannot conclude with any certainty how loud the noises actually are or where they are coming from.

49. I note that the May 2018 sound test resulted in the council indicating in the minutes that the sounds might not be coming from Mr. Hughes' strata lot and that this needed to be investigated.
50. The strata representative submitted that it attended the strata lot on four occasions and were unable to hear noises which would constitute a bylaw infraction. It also noted that council attempted to re-create the noises but were unable to hear an unreasonable level of noise in the applicant's strata lot during the testing.
51. I note that the four visits are detailed in the evidence. There was also one to Mr. Hughes' strata lot. I find that these visits were not conclusive. Regarding the visit of January 2018, M decided to stand outside the applicant's door and he heard noise from the elevator. This impromptu visit was not in response to a specific noise complaint and the applicant was clear that he was not complaining about noise from the elevator. Further, the May 10, 2018 planned sound test was also not conclusive, with council indicating that they could hear noise in the applicant's strata lot but they did not know if it rose to the level of a disturbance. They indicated they would consider testing decibel levels inside the strata lot. I also acknowledge the applicant's claim that under the artificial testing circumstances the sounds did not duplicate the level of the real life sounds he experienced.
52. Based on this, I find that the visits to the applicant's and Mr. Hughes's strata lots were inconclusive and in fact support the position that further investigation is necessary. Council itself indicated that they were considering this.
53. Further, the strata argues that it gave the applicant phone numbers he could call so they could attend on other occasions when the sounds were occurring. However, the council members also told the applicant this was not necessary and to record the sounds and email them his log and the audio. I find that four visits about noise complaints over a three year period does not support the position the council was carrying out a proper investigation.
54. The strata says someone from council spoke with surrounding strata lot owners to determine if they witnessed similar noises at similar time that they found to be

unreasonable but none of the other strata lots were able to corroborate the noise complaints. There is no evidence on the file to support this. There are no witness statements or even an indication of who exactly performed this aspect of the investigation. Therefore, I place little weight on this evidence.

55. I accept that during two different time periods noises could be attributed to renovations. However, the applicant has provided numerous emails and audio recordings that suggest he complained about sounds outside these limited time frames.
56. As noted, the strata submits it is willing to arrange sound testing but that it is reasonable to charge the cost of testing back to the applicant if the noise complaint is found to be unwarranted, otherwise council would not be protected against being forced to pay for the investigation of potentially frivolous claims.
57. I do not find this a reasonable position. I first note that the applicant has been complaining about the noise for three years. At multiple points over that span council has suggested that there is an issue with noise which might be a breach of the bylaws. They have suggested that it could be due to a flaw in the building's construction. It is not the applicant who has repeatedly suggested that professional sound testing is necessary but rather the strata council. Based on this, I do not find that the applicant's claim is frivolous, but rather one that the strata has itself on more than one occasion indicated has merit and is worthy of investigation.
58. The strata says that it has not failed to enforce its bylaws because a breach of its bylaws had not yet been found. They also state that the strata should not be responsible for fees, expenses or interest as the strata has taken reasonable actions to investigate the applicant's noise disturbance complaints.
59. The challenge with the strata's position is that it has not acted reasonably. The strata has not made a consistent effort to attend at the applicant's strata lot while the noise is occurring and it has not followed up, such as by ordering professional sound testing.

60. 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.
61. 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 applicant.
62. 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".
63. 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 123(2) of the Act. In particular, in *Watson* the court stated: The test under s. 164 of the [SPA] also involves objective assessment. [The *Dollan* decision] requires several questions to be answered in that regard:
- a. What is or was the expectation of the affected owner or tenant?

b. Was that expectation on the part of the owner or tenant objectively reasonable?

c. If so, was that expectation violated by an action that was significantly unfair?

64. I find that the applicant's expectation that the strata properly investigate his noise complaints is a reasonable expectation. The applicant made contemporaneous complaints about the noise as well as submitting a noise log as requested by the strata. I find that the strata's failure to properly investigate whether the noise was excessive, was significantly unfair to the applicant. Because the strata council has visited the applicant's strata lot previously and indicated that there was noise but could not assess whether it was excessive, I find that further investigation is necessary. Under bylaw 6.1, the test is whether a reasonable person would find the noise excessive or unreasonable and professional sound testing is the best way to help measure whether the noise is unreasonable and where the source is located.

### ***Remedies***

65. I find that the strata must properly investigate the applicant's ongoing noise complaints and that it must enforce the strata's bylaws.

66. The strata must properly investigate the applicant's noise complaints by arranging for professional sound testing. The testing must occur over time, as the evidence indicates that the noise is intermittent.

67. If excessive noise contrary to bylaw 6.1 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. The strata could explore sound-dampening measures with the parties or an agreement about times when noise is allowable.

68. Nothing in this decision prevents the applicant from making noise complaints to the strata in future, and in that event it would be in the applicant's best interest to do so at the time the noise is occurring. However, regardless of the possibility of the applicant making future noise complaints, I find the strata must arrange to conduct an appropriate investigation and enforce its bylaws which includes arranging and



paying for the professional testing. The cost of the testing must not be charged back to the applicant.

## **TRIBUNAL FEES, EXPENSES AND INTEREST**

69. I will next address the applicant's claims for expenses. Because I find that investigation is necessary before it can be determined whether Mr. Hughes breached the noise bylaws, I make no order against him to reimburse the applicant for fees or expenses.

70. I turn to the applicant's claim of \$2,300.00 for legal expenses, which he incurred beginning in June 2018, before this tribunal dispute commenced. As noted in the tribunal's rules, the tribunal generally does not provide reimbursement of legal fees except in extraordinary cases, and I see no reason to deviate from that general rule here. I dismiss the applicant's claim for \$2,300.00 in legal expenses.

71. The applicant was substantially 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. Given my finding that the strata failed to reasonably investigate the applicant's noise complaints, I find the strata must reimburse the applicant the \$225.00 he paid in tribunal fees.

## **DECISION AND ORDERS**

72. I dismiss the applicant's claims against the residential section.

73. I order that the respondent strata must arrange for a qualified sound professional to do noise testing.

74. I order the strata to reimburse the applicant \$225.00 in tribunal fees, within 21 days.

75. 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 dispute are allocated to the applicant.

76. 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 123.1 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.
77. 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 123.1 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.

---

Kathleen Mell, Tribunal Member