



Civil Resolution Tribunal

Date Issued: June 25, 2019

File: ST-2018-006304

Type: Strata

Civil Resolution Tribunal

Indexed as: *DING v. Kang et al*, 2019 BCCRT 774

BETWEEN:

SHI DING

APPLICANT

AND:

Damanpreet Kaur Kang, Manjeet Singh Kang, The Owners, Strata Plan BCS 3771, and Greg Pryde

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a dispute about noise.

2. The applicant, Shi Ding, owns a strata lot (1708) in the respondent strata corporation, The Owners, Strata Plan BCS 3771 (strata). Ms. Ding resides in 1708 and is self represented. The strata is represented by a council member.
3. Damanpreet Kaur Kang and Manjeet Singh Kang (collectively the Kangs), co-own a strata lot (1808) in the strata, located above 1708, which they rent out to Greg Pryde (tenant). The Kangs are represented by Damanpreet Kaur Kang and their tenant is self represented.
4. The applicant claims the tenant is creating a nuisance as a result of causing noise (mostly consisting of what she describes as “loud banging”) contrary to the strata bylaws. She also claims the strata has failed to take reasonable steps to properly investigate her noise complaints, failed to enforce its bylaws, and failed to follow the *Strata Property Act* (SPA).
5. The applicant seeks the following orders:
 - a. That the Kangs install carpet throughout the bedrooms and living room in 1808 that meets “BC noise transmission standards”,
 - b. \$25,000 damages for pain and suffering, and
 - c. \$25,000 damages for loss of value of her strata lot.
6. For the reasons that follow, I dismiss the applicant’s claims.

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 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.

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 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

PRELIMINARY ISSUE

Separate Sections

11. The owner developer created separate sections within the strata at the time the strata plan was deposited at the Land Title Office (LTO) when it filed amended bylaws creating separate sections as it was permitted to do under section 192 of the SPA. The April 8, 2010 bylaw amendment states that strata lots 1 through 5 shall form the “Commercial Section” and strata lots 6 through 457 shall form the “Residential Section”. I have considered whether the residential section must also be involved in this dispute and find it does not. My reasons follow.
12. Under section 194(1) of the SPA, the strata retains its powers and duties in matters of common interest to all owners. Under section 194(2), with respect to matters that relate solely to a section, a section is its own entity and has the same powers and duties as a strata corporation to enforce bylaws, among other things.
13. Other bylaw amendments were filed in April 2010 when the sections were created as a consequence of the sections being formed that included adding bylaw 8A entitled “Powers and Duties of Sections”. Bylaw 8A(3)(xiii) states “ a separate

section of the strata corporation may enforce bylaws and rules relating to that section.”

14. Since April 2010, there have been 8 other bylaw amendments filed at LTO. My review of those amendments indicates that, in each case, the bylaw amendments were passed by the strata and that there are no bylaw amendments passed only by one section as permitted under section 197 of the SPA. Therefore, I conclude that all bylaws are strata bylaws and may be enforced by the strata. Put another way, there are no section specific bylaws that have been passed only by a section which would require enforcement by the section.
15. Further, I find that both the SPA, under section 194(2), and the strata bylaws, under bylaw 8A(3)(xiii) do not create mandatory requirements for the residential section to enforce strata bylaws but rather allow for either the section or the strata to enforce bylaws that relate to both entities.
16. There are meeting minutes provided in evidence that are entitled “Minutes of the council meeting of The Owners Strata Plan BCS3771 Residential Section” that refer to “council” throughout. It is unclear if these minutes relate to the residential section executive or the strata council. Also, some correspondence relating to the noise complaints indicate the residential section was the entity enforcing the noise bylaws and not the strata. Despite the minutes and correspondence, which I note could have been in error, the residential section has not been named as a party in this dispute, and the strata has responded by filing a Dispute Response and participating in the tribunal decision process. I infer the strata has seized itself of these proceedings and, for the reasons stated above, I find it has the authority to do so. I see no prejudice in this dispute proceeding without the residential section.

ISSUES

17. The issues in this dispute are:
 - a. Has the strata failed to follow the SPA or enforce its bylaws?

- b. Has the strata taken reasonable steps to properly investigate the applicant's noise complaints?
- c. Have the Kangs or their tenant breached the strata's bylaws?
- d. What, if any, remedies are appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

- 18. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
- 19. In a civil proceeding such as this, the applicant must prove her claims on a balance of probabilities.
- 20. The strata, located in Surrey, B.C., is a mixed-use strata corporation created April 2010 comprising 457 strata lots. There are 6 commercial strata lots located on the ground level and 449 residential strata lots located in 2 high rise towers of 26 and 21 levels located above the commercial strata lots and 4 lower parking levels.
- 21. The strata's relevant bylaws are the Standard Bylaws under the SPA plus amendments filed at the LTO on April 8, 2010 and August 18, 2011. Other bylaw amendments have been filed that are not relevant to this dispute.
- 22. The specific bylaws relevant to this dispute are summarized as follows:
 - a. Bylaw 3(1): An owner, tenant, occupant or visitor must not use a strata lot in a way that causes nuisance or hazard to another person, causes unreasonable noise, or unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot.
 - b. Bylaw 3(15)(a) and (b): An owner, tenant, occupant or visitor must not:
 - i. use a strata lot for any purpose which involves undue noise in or about the strata lot between the hours of 11:00 PM and 7:00 AM.

- ii. Make cause or produce undue noise in or about any strata lot or do anything that will interfere with any other owner, tenant or occupant.
- c. Bylaw 5(6): An owner or occupant who presently has or later installs hard floor surfaces such as wood and laminate floors or tile in a strata lot must take all reasonable steps to satisfy noise complaints from neighbours. Such reasonable steps may include but are not limited to:
 - i. Ensuring 60% of hard floor surfaces, except kitchens, bathrooms, laundry rooms and entry areas are covered with rugs or carpet,
 - ii. Avoiding walking with hard shoes or dragging furniture or heavy objects across the floor,
 - iii. Fitting chair legs with felt pads,
 - iv. Avoiding activities that will cause unnecessary noise, and
 - v. Separating noise inducing equipment from the floor with adequate cushioning.

23. The tenant lives in 1808 with his daughter.

24. LTO documents show the applicant purchased 1708 on October 15, 2016.

25. The applicant kept a noise incident log that shows 73 recorded entries between October 2016 and December 2018, the time of the alleged noise, and a brief description of the noise. About 50 of the entries indicate incident times between 10:30 PM and 7:00 AM, and of those entries, the vast majority describe the noise as the dropping of a heavy object.

26. The strata retains a security service. When the applicant first reported the initial incidents to the strata's property manager, the applicant was asked to notify the security service so that it could investigate the noise complaint, which she did. Reports from the security service provided in evidence confirm the applicant made about 50 noise complaints to the security service, about half of which were between

the hours of 11:00 PM and 7:00 AM. The security service routinely attended 1708 in an attempt to hear the noise complained of by the applicant and in most cases, could not verify the noise complaint. The security service was only able to verify a noise complaint on about 4 occasions, 2 of which did not relate to the tenant in 1808.

27. There is evidence the applicant contacted the RCMP on at least 2 occasions but no RCMP reports were provided.
28. The parties agree that the owner and/or tenant of 1808 have been fined on at least 2 occasions for noise violations during the subject period.
29. At the request of the strata, the applicant attended a hearing with the strata council on June 27, 2018, which I understand addressed the applicant's concerns the tenant and the Kangs were not being fined for the noise complaints.
30. The strata's property manager viewed 1808 on August 30, 2018. However, the property manager's attempts to gain access to 1708 in order to witness the noises appear not to have been successful due to the applicant's limited availability.
31. The applicant attended a hearing with the strata council on November 27, 2018, following which the strata wrote to her advising it did not consider the applicant's evidence and the security reports justified a fine.
32. The applicant provided 3 videos taken with her cell phone that record some of the noises. However, I do not find the videos at all compelling with regard to the level of the noise because the relative noise levels cannot be verified. Also, while noises can be heard, there is no way to verify their source.

POSITION OF THE PARTIES

The applicant

33. The applicant owner says the Kangs and their tenant owe her a duty of care not to use 1808 in a manner that interferes with her use and enjoyment of 1708. She says

the Kangs and their tenant used 1808 in an unreasonable manner by causing undue noise and did not comply with bylaw 5(6) to satisfy her noise complaints.

34. The applicant also says the strata failed to properly investigate her noise complaints and, by doing so, encouraged the tenants to make more noise because of the lack of punishment. She says the strata relied on the security service to investigate the noise complaints by attending 1708 and that the strata council members did not personally attend. The applicant also says the strata relied on its property manager to enforce its bylaws.

35. The applicant asks that I order:

- a. The Kangs install carpet throughout the bedrooms and living room in 1808 that meets “BC noise transmission standards”,
- b. \$25,000 damages for pain and suffering, and
- c. \$25,000 damages for loss of value of her strata lot.

The Kangs

36. The Kangs say the investigation records of the security service confirm that the overwhelming majority of the applicant’s noise complaints were unsubstantiated. They also say that on at least 2 occasions, noise complaints were found to be from strata lots other than 1808. They also say the flooring in 1808 is original, includes carpet in the bedrooms, and that rugs or rubber mats have been installed on remaining hard surfaces in compliance with bylaw 5(6)(a).

37. Finally, the Kangs say they have done everything they can to address the applicant’s concerns and complaints, given they are not resident in the building. They request the applicant’s claims be dismissed.

The tenant

38. The tenant also disagrees with the applicant and I infer he requests her claims be dismissed. He says that he has only once dropped a heavy object on the floor and

that his daughter may occasionally drop light objects such as cutlery or water bottles.

The strata

39. The strata disagrees with the applicant and says that it properly investigated the noise complaints by attending 1708 to listen for alleged noise and speaking with the Kangs or the tenants in 1808 about the alleged noise. It says the vast majority of investigations concluded there was insufficient evidence to corroborate the noise complaints, implying no action was necessary.
40. As for the damages claims, the strata says the applicant has provided no, or insufficient, evidence that she suffered damages amounting to \$34.25 per day over 2 years or that the alleged noise has reduced the value of 1708.
41. The strata asks me to dismiss the applicant's claims.

ANALYSIS

Has the strata failed to follow the SPA or enforce its bylaws?

42. Under section 26 of the SPA, the strata council must exercise the powers and perform the duties of the strata including the enforcement of bylaws. That duty is subject to the SPA, regulations, bylaws and rules.
43. In *Strata Plan LMS 3259 v. Sze Holding Inc.*, 2016 BCSC 32, the Supreme Court held that a strata council has discretion whether to enforce its bylaws in certain circumstances but that such discretion is limited, particularly in circumstances where the strata owners have a reasonable expectation that the bylaw will be consistently enforced.
44. There is no evidence before me that that the strata has enforced its bylaws in an inconsistent manner. As noted, the Kangs and/or their tenant were fined twice.

45. Part of the applicant's argument is that the strata did not follow section 135 of the SPA. The applicant appears to interpret section 135 as requiring the strata to send notifications of every complaint to an owner or tenant who allegedly breaches a bylaw. I find that is not what section 135 states. Rather, section 135 exists to ensure a fair process is followed before an owner or tenant is fined for a bylaw breach or required to pay the costs of remedying a bylaw breach. This is supported in *Terry v. The Owners, Strata Plan NW 309*, 206 BCCA 449, where the BC Court of Appeal found the requirements of section 135 must be strictly followed before a fine can be imposed. In other words, section 135 exists for the benefit of the owner or tenant who the complaint is about, not for the benefit of the complaining owner as the applicant seems to suggest.
46. As noted above, bylaw 5(6) requires an owner or occupant with hard flooring to take all reasonable steps to satisfy noise complaints from neighbours. It is undisputed that the flooring in 1808 is original and includes carpet in the bedrooms. It is also clear from the photograph provided by the Kangs that their tenant has installed rubber matting in the kitchen of 1808.
47. For these reasons, and my finding below that the strata has taken reasonable steps to investigate the applicant's complaints, I find the strata has not failed to follow the SPA or enforce its bylaws.

Has the strata taken reasonable steps to properly investigate the applicant's noise complaints?

48. Based on emails provided in evidence, it appears the strata relied on the security service to investigate the noise complaints of the applicant whenever possible. The applicant argues that strata council members never attended 1708, which she says shows that the strata did not properly investigate her complaints. I do not find much merit in the applicant's argument given that when security personnel reported noise was occurring, the strata took steps to contact the tenant and the Kangs and fined them on at least 2 occasions.

49. It is not that the strata failed to act once it learned that unreasonable noise was coming from 1808. Indeed, there were 2 instances where security staff attended the applicant's strata lot, agreed there was unreasonable noise, and found the noise was not coming from 1808 but rather other strata lots in the tower. On 2 other occasions, the strata held hearings with the applicant.
50. I also find the strata can properly rely on its staff to determine the facts of a noise complaint. That is, in this case, if the noise level is reasonable. Despite the applicant's assertions that the strata relied on its staff or property manager to determine if the noise bylaws were being breached, I do not find that to be the case. Rather, I find the correspondence indicates the decisions of the strata not to impose fines were made by the strata council and not its security staff or property manager.
51. Further, it appears the applicant's request for council member participation only occurred after this dispute was started. The applicant's email suggests she did not agree the property manager properly investigated her complaints and also disagreed with the strata's decision not to impose fines following her November 27, 2018 hearing.
52. Additionally, the applicant provided witness statements signed by 2 of her neighbours attesting to noise occurring on 5 occasions between October 2017 and October 2018. However, there is no evidence to suggest that these statements were not considered by the strata when it decided not to impose fines.
53. Finally, the strata arranged to view 1808 in August 2018 and did not identify any bylaw breaches of the owner or tenant. Also, on September 17, 2018, the property manager offered to attend 1708 but it is unclear if access to 1708 was arranged. However, I find this request further supports the steps taken by the strata were reasonable.
54. Based on the overall evidence, I find the applicant has failed to prove that the strata has not taken reasonable steps to investigate her noise complaints. Given I have also found the strata has acted in accordance with the SPA and bylaws, I dismiss the applicant's claim against the strata.

Have the Kangs or their tenant breached the strata's bylaws?

55. While I agree with the applicant that the Kangs and their tenant owe her a duty of to ensure noise levels in 1808 are in keeping with the strata bylaws, I do not agree the noise generated in 1808 was unreasonable, except for perhaps the times the strata imposed fines.
56. The applicant says the strata's failure to properly investigate her noise complaints encouraged the tenants to make more noise because of the lack of punishment. This statement is inconsistent with other statements made by the applicant such as that the noise issues subsided after her hearing with the strata, and I reject it.
57. Further, as noted, there was nothing unusual found in 1808 when the strata's property manager inspected it in August 2018.
58. It also appears reasonable steps have been taken in accordance with bylaw 5(6) regarding the steps taken by the Kangs and their tenant in addressing the applicant's noise complaints.
59. For these reasons, other than the times fines were imposed for noise bylaw violations, I find the applicant has failed to prove either the Kangs or their tenant have breached the strata's noise bylaws.
60. It follows that I dismiss the applicant's claims against the Kangs and their tenant.

What, if any, remedies are appropriate?

61. Given my dismissal of the applicant's claims, I find I need not address her requested remedies.

TRIBUNAL FEES AND EXPENSES

62. 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. I see no reason to deviate from the general

rule in this case. I find the strata was the most successful party but did not pay any tribunal fees or dispute related expenses. I decline to order reimbursement of the applicant's tribunal fees.

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

ORDER

64. I dismiss the applicant's claims, and therefore this dispute.

J. Garth Cambrey, Vice Chair