



Civil Resolution Tribunal

Date Issued: July 26, 2019

File: ST-2018-008645

Type: Strata

Civil Resolution Tribunal

Indexed as: *Monuik v. The Owners, Strata Plan VR 2406*, 2019 BCCRT 911

B E T W E E N :

Leslie Monuik

APPLICANT

A N D :

The Owners, Strata Plan NW 1841

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Leslie Monuik (owner), owns strata lot 18 (SL18) in the respondent strata corporation, The Owners, Strata Plan NW 1841 (strata).

2. The owner claims the resident in the strata lot above SL18 (neighbour), who is not a party in this dispute, installed laminate flooring in their strata lot without the strata's approval, contrary to strata's bylaws. The owner also claims the unauthorized laminate flooring is causing unreasonable noise in her strata lot either from the neighbour's bed banging the floor or from the neighbour's cat.
3. The owner seeks orders that the strata enforce its bylaws by requiring the neighbour to replace the unauthorized laminate flooring with carpet, completing a sound transmission test, and paying her \$5,000.00 in damages for pain and suffering.
4. The strata requests that I dismiss the owner's claims.
5. The owner is self-represented, and the strata is represented by a strata council member.
6. For the reasons that follow, I dismiss the owner's claims and this 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 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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
11. 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.

ISSUES

12. The issues in this dispute are:
 - a. Was the strata required to approve the installation of laminate flooring in the neighbour's strata lot?
 - b. Has the strata reasonably investigated the owner's noise complaints?
 - c. What remedies, if any, are appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

13. I have read all 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 must prove each of her claims on a balance of probabilities.
15. The strata is a residential strata corporation located in Delta, B.C. comprising 85 strata lots in 2 buildings. It was created in 1982 under the *Condominium Act (CA)* and exists under the *Strata Property Act (SPA)*.
16. The strata repealed and replaced all of its bylaws in August 1990. On December 5, 1995, the strata further amended its bylaws by filing new bylaws at the Land Title Office. All of these amendments were made under the CA. On January 1, 2002, the

Standard Bylaws under the SPA replaced all bylaws filed under the CA except those that were in conflict with the Standard Bylaws and were not in conflict with the SPA. (See section 17.11 of the *Strata Property Regulation* (regulation)).

17. Based on my review of the filed bylaws, there are no bylaws that conflict with or otherwise amend the relevant Standard Bylaws I have set out below.
18. The relevant bylaws to this dispute are summarized as follows:

Bylaw 3(1): An owner, tenant, occupant or visitor must not use a strata lot in a way that:

- (a) causes a nuisance to another person,
- (b) causes unreasonable noise, or
- (c) unreasonably interferes with the rights of other persons to use and enjoy another strata lot.

Bylaw 5(1)(g): An owner must obtain the written approval of the strata before altering a strata lot, if the alteration involves part of a strata lot which the strata must insure under section 149 of the SPA.

19. LTO records show the owner has owned SL18 since March 31, 2015 however, from the evidence, I infer she lived in SL18 with her mother “on and off” until her mother’s passing in 2015. It is undisputed that the owner has lived in SL18 since about March 31, 2015.
20. It is also undisputed that the neighbour purchased the strata lot above SL18 in 2010. In an undated and unsigned witness statement, the neighbour says they installed laminate flooring in 2010 after receiving verbal permission from the strata council.
21. The owner says the neighbour’s bed “bangs” on the floor which disrupts her sleep and forces her move to the couch in the living room. The owner also says that when is forced to sleep on the couch, the neighbour’s cat also keeps her awake in the early hours of the morning by playing in the neighbour’s living room.

22. The owner says she first complained to the strata of noise coming from the neighbour's bed in November 2017. In their witness statement, the neighbour says they installed foam pads rolled in towels under the 4 bedposts of their bed about the same time. The owner agrees the neighbour took the steps described in the witness statement and admits the noise stopped until about June 2018 when she says the neighbour removed the towels and foam because they were selling their strata lot.
23. Between September and November 2018, the owner made several more noise complaints to the strata about the neighbour that resulted in the strata writing to the neighbour on 2 occasions. The strata sent identical letters dated November 19 and 22, 2018 to the neighbour advising them of several noise complaints in contravention of bylaw 3(1)(a), (b) and (c).
24. The owner requested a hearing to discuss the noise issues, which was held with the strata council on October 9, 2018. The strata wrote to the owner on October 16, 2018 advising, among other things, it would not require the neighbour to install carpeting in their strata lot because it found there was no bylaw violation, and that it would "look into" getting quotations for sound testing but would not authorize the testing using strata funds.
25. The strata obtained a proposal from BAP Acoustics Ltd. dated November 5, 2019, to conduct sound transmission testing between SL18 and the neighbour's strata lot at a cost of \$1,595 plus taxes. As discussed below, the strata elected not to proceed with the sound testing.
26. The Dispute Notice was issued November 23, 2018.

Was the strata required to approve the installation of laminate flooring in the neighbour's strata lot?

27. For the reasons that follow, I find the strata was not required to approve the neighbour's laminate flooring installation.
28. As stated above, bylaw 5(1)(g) requires an owner to obtain the written approval of the strata before altering a strata lot, if the alteration involves part of a strata lot

which the strata must insure under section 149 of the SPA. Section 149(1)(d) states the strata must insure fixtures installed on a strata lot if the fixtures are “installed by the owner developer as part of the original construction of the strata lot.” Fixtures is a defined term under regulation 9.1(1) that includes floor coverings.

29. The owner says the neighbour did not get verbal approval to install laminate flooring in their strata lot, as claimed by the neighbour, stating her mother was on the strata council at the time and her mother did not authorize it.
30. I agree with the strata, and it is clear from the wording of bylaw 5, that the bylaw does not prohibit the installation of hard surface flooring.
31. I also agree with the strata’s argument that bylaw 5(1)(g) only requires owners to obtain approval from the strata for original fixtures installed by the owner developer because of the bylaw’s reference to section 149 of the SPA. The strata says it has no way of knowing, or any records indicating, if the carpet that existed in the neighbour’s strata lot prior to the installation of laminate flooring was original carpet. Given the building’s age of about 30 years, the strata says it concluded the carpet was likely not original and that the owner was free to remove the carpet and install laminate flooring without its permission. I find this to be a reasonable conclusion based on the circumstances.
32. The owner bears the burden to prove the strata permitted the installation of the laminate flooring contrary to the bylaw and she has failed to do so. Therefore, I find the strata was not required to approve the laminate flooring installation in the neighbour’s strata lot and the owner has not breached the strata’s bylaw 5(1)(g).

Has the strata reasonably investigated the owner’s noise complaints?

33. For the reasons that follow, I find the strata has reasonably investigated the owner’s noise complaints.
34. The courts have determined that under sections 3 and 26 of the SPA, the strata, through its council, has an implied duty to enforce its bylaws. (See *Abdoh v. The Owners of Strata Plan KAS2003*, 2004 BCCA 270 at paragraph 13.)

35. The courts have also found that decisions made by the strata council must be reasonable in the circumstances. (See *Dockside Brewing Co. v. Strata Plan LMS 3837*, 2007 BCCA 183 at paragraph 56.)
36. The owner's main noise complaint is about her inability to sleep in her bedroom because of the noise of neighbour's bed above. There are very few complaints about the neighbour's cat.
37. The owner was in direct contact with the neighbour about noise issues. The evidence shows that the neighbour took steps to address the noise issues by placing sound absorbent material under their bed posts. The neighbour admits removing the material from beneath the bedposts when the strata lot was being shown to prospective purchasers but states the material was replaced after the showings. The owner does not accept this statement and says the material was not replaced but provided no proof to support her assertion. I do not find that on-line advertising depicting photographs of the neighbour's bed without sound absorbent material under the bedposts supports the owner's assertion.
38. The evidence also shows the strata responded to the owner's noise complaints and maintained a continuing dialogue with both the owner and neighbour at least until November 2018. Based on the email and text communications between the strata council members and the neighbour, I accept that there were occasions where the neighbour was working out of town and not living in their strata lot between September and February 2019 at the times the owner complained about noise.
39. The owner says the strata accepted the neighbour's account of the events over hers. To some extent I agree. Between August and September 2018, when the neighbour was residing in their strata lot, the owner submitted noise complaints to the strata. Sometime in October, the strata determined the neighbour was not residing in their strata lot and found they were not contravening the noise bylaw. This was communicated to the owner on October 19, 2018 following the owner's requested hearing.

40. While the strata consulted with the neighbour about the owner's complaints in September and October, it did not objectively investigate them, such as having a council member physically attend the owner's strata lot to assess the noise issues. I infer from the strata's submissions that it accepted the neighbour's advice they were not living in their strata lot it and determined the neighbour could not have caused the noise if they were not there. I find the strata's conclusion to be reasonable.
41. The owner also says that the strata council accepted that the neighbour violated the noise bylaw by issuing the November 19 and 22, 2018 bylaw violation letters to the neighbour. I disagree, even though I find it unusual the strata issued the letters after informing the owner there was no violation of the noise bylaw. The letters indicate that the strata received complaints about noise and that it could take further action, but the letters did not confirm the bylaw violations.
42. I agree with the strata that the owner did not submit further complaints after November 2018. The evidence confirms the owner continued to log noise issues up to at least February 2019, but she appears not to have reported them to the strata.
43. Based on the evidence before me, I cannot find the strata acted unreasonably in the circumstances, when it investigated the owner's noise complaints. Having said that, I commend the neighbour for being so actively involved, at least initially, in trying to address the owner's concerns. If that were not the case, I may have reached a different conclusion.

What remedies, if any, are appropriate?

44. Given my conclusion that the neighbour's laminate flooring installation did not require permission, I dismiss the owner's request for the strata to enforce its bylaw 5(1)(g) by requiring the neighbour to re-install carpet in their strata lot.
45. In their witness statement, the neighbour says they will not be selling the strata lot and that they will be moving back into the strata lot in the summer of 2019. In an effort to further address the owner's noise issues the neighbour states they have agreed to install noise-reducing cork underlay, fabric underlay and an oversized rug

to cover the majority of their bedroom floor. Photographs provided in evidence appear to show this has been completed. The neighbour also states they intend to put fabric underlay and a rug in their living room and carpet runners in their hallways and entrance area.

46. Based on the neighbour's stated intentions, and that the owner did not report further noise issues to the strata after November 2018, I find it is appropriate for the strata to wait and see if the neighbour's additional soundproofing eliminates the owner's noise concerns. I therefore dismiss the owner's request that the strata proceed with sound testing.
47. If the neighbour does not follow through with their stated intentions, or if the owner still has noise concerns after the additional soundproofing is installed by the neighbour, I would encourage the strata to follow through with an objective investigation of the owner's new noise complaints as it is required to do under its bylaw 3(1). This might include having a council member or independent person observe the noise levels or proceeding with sound testing.
48. Nothing in this decision restricts the owner from starting a fresh dispute on new noise complaints if the strata fails to reasonably enforce its bylaws in the future.
49. Given my conclusions above, I dismiss the owner's claim for \$5,000.00 in damages for pain and suffering.
50. I also note the owner did not provide any supporting evidence to substantiate that she experienced pain and suffering as a result of her allegations. While she did submit evidence that she has a lower back issue, there was no link to the circumstances in this dispute.

TRIBUNAL FEES AND EXPENSES

51. 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. Here, the strata was the successful party but did not pay

tribunal fees or claim dispute-related expenses. The owner either had her fees refunded or waived and did not claim dispute related-expenses. I therefore order no reimbursements.

52. 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

53. I dismiss the owner's claims and this dispute.

J. Garth Cambrey, Vice Chair