



Civil Resolution Tribunal

Date Issued: February 28, 2020

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Hsu v. The Owners, Strata Plan BCS4311*, 2020 BCCRT 234

B E T W E E N :

SHIH TING HSU and CHING-YI HSU

APPLICANTS

A N D :

The Owners, Strata Plan BCS4311

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. The applicants, Shih Ting Hsu and Ching-Yi Hsu (owners), own a strata lot in the respondent strata corporation, The Owners, Strata Plan BCS4311 (strata). The strata levied a \$50 fine against the owners' strata lot for breaching noise bylaws in April 2019.

2. The owners seek reimbursement of the \$50 they paid for the fine. They deny they were noisy and provide several other justifications for reimbursement, which I will discuss below. The owners also seek an order for the strata to stop falsely accusing them of making noise. The strata disagrees and says the fine should stand as it was levied properly under the *Strata Property Act* (SPA)
3. Shih Ting Su represents the owners. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.
5. The tribunal has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, or a combination of these. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the evidence and submissions provided.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
7. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. The issues in this dispute are as follows:
 - a. Must the strata reimburse the owners \$50 for the fine they paid for allegedly contravening noise bylaws?
 - b. Should the tribunal order the strata to stop falsely accusing the owners of making excessive noise?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant owners bear the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. On April 17, 2019, the strata's property manager received an emailed complaint about excessive noise. The strata provided the email as evidence but redacted the complaining owner's name. The owner described hearing sounds coming from the owners' strata lot at the time it was sent, which was 11:15 p.m. The owner heard pots and pans banging and footsteps, as if someone were walking in heels. The owner wrote that the sounds had been ongoing daily "for a few weeks now", lasting until midnight.
11. The strata also provided as evidence a video recording with sound. The strata says the complaining owner presented this video at a May 7, 2019 hearing. The complaining owner advises the footage is from April 17, 2019. The video does not have a timestamp, but I infer it was taken close in time to when the owner sent the written complaint. The video shows the owners' front door, identified by unit number. I find the audio sounds like pots or pans occasionally hitting each other and the noise appears to come from the owners' strata lot.
12. The strata's bylaws are registered in the Land Title Office. Bylaw 3(1)(b) says that an owner must not use a strata lot in a way that causes unreasonable noise.

13. Bylaw 34(5) says all owners and tenants always have the right to quiet and peace in their residence, and that excessive noise is not permitted. It also says 10:00 p.m. to 7:00 a.m. daily is a quiet period in accordance with the Burnaby Noise or Sound Abatement Bylaw, during which owners are expected to take special care and attention to not make noise. The Burnaby bylaw is not in evidence.
14. The owners say that there “must be scientific instruments involved if there is to be proof of excessive noise”. I disagree. The test of whether noise is unreasonable or a nuisance is based on a standard of reasonableness, after considering all of the surrounding circumstances. There is no requirement that a noise reach a certain decibel range or other measurement in order to be considered unreasonable: see *Torok v. Amstutz et al*, 2019 BCCRT 386 at paragraph 47 and *Moojelsky v. The Owners, Strata Plan K 323 et al*, 2019 BCCRT 698 at paragraph 48, which are not binding upon me but persuasive.
15. Based on the written complaint and the video recording, I find the owners breached bylaws 3(1)(b) and 34(5) by making excessive noise past 10:00 p.m. The email complaint described noise at it was happening. The time sent shows the excessive noise occurred more than an hour past the start of the quiet period. The video corroborates the email complaint by showing the owners’ strata lot was the source of the noise. This noise included banging pots and pans that could be heard outside the strata lot’s door.
16. The video lacks any audio recording of loud footsteps. However, I accept that the owners’ footsteps contributed to creating unreasonable noise, based on the written complaint. In the circumstances, I find the noise was objectively unreasonable and interfered with the right of the complaining owner to quiet and peace.
17. The owners provided little evidence to support their position. They say they have a quiet lifestyle. They note that Ching Yi Hsu was in a car accident in May 2018 and has a prescription for acupuncture for neck and back pain. They say this prevents her from engaging in noisy activity. I disagree, as there is no medical evidence

before me that says both owners cannot walk or move pots and pans, which would create the sorts of noises complained of.

18. The owners also say that the building “has noise transmission problems”. This submission is not consistent with the owners’ position that they find it “physically impossible to make excessive noises”. In any event I place no weight upon this submission as it is not supported by evidence.
19. The owners also say that the noises may be coming from another source. I attach little weight to this given the April 17, 2019 recording.
20. I also note there is a history of noise complaints against the owners. The strata provided emails dated October 24, 2017 and September 14, 2018 from individuals complaining about excessive noise from the owners’ strata lot after 11:30 p.m. The strata wrote the owners about these prior noise complaints and warned of enforcement measures. A September 26, 2017 letter resulted in an October 18, 2017 written warning to the owners. Two subsequent letters dated October 18 and 24, 2018 also resulted in a November 10, 2018 written warning to the owners, after a hearing.
21. The prior warnings do not mean that the owners necessarily breached noise bylaws in April 2019. However, I am also unable to conclude that the owners have been historically quiet neighbors, as the owners suggest.
22. The owners did not specifically say that the strata violated SPA section 135, which says that before imposing a bylaw violation fine, the strata must have received a complaint about the contravention, given the owner written particulars of the complaint, and provided a reasonable opportunity to answer the complaint, including a hearing if requested. However, they say that the strata should have advised of the identity of the complaining owner. They also say they should have been able to speak to the owner.
23. Based on the correspondence in evidence, I find that the strata complied with SPA section 135. In its April 26, 2019 letter, the strata wrote the time and date of the

bylaw contravention, provided a summary, and cited bylaws 3(1)(b) and 34(5). I find that, even without the identity of the complaining owner, the written particulars were sufficient for the owners to understand the complaint against them. The strata also provided the owners an opportunity to respond, which they did through a May 5, 2019 email and by attending a May 7, 2019 hearing. There is no obligation for the strata to compel the complaining owner to speak to the owners before levying a fine.

24. In a May 8, 2019 letter, the strata advised that strata council had unanimously decided to fine owner \$50 instead of the maximum allowable of \$200. The owners paid the fine.
25. The owners say that are not being treated fairly as the strata's representative in this dispute lives in the strata lot below them. I find the allegation of unfairness to be speculative and unsupported by any evidence. The evidence shows the strata warned the owners twice. I note that bylaw 23(1) says the strata may fine an owner up to \$200 for a contravention of a bylaw. The owners were fined \$50, which is less than the maximum permissible, and fined by the strata council, rather than an individual. These factors do not suggest any unfairness.
26. In summary, I find the owners breached bylaws 3(1)(b) and 34(5). I dismiss the owners' claim for reimbursement of the \$50 fine.
27. This leaves the issues of whether I should order the strata to stop falsely accusing the owners of making excessive noise. I decline to make such an order. The owners have provided no foundation for me to make that order.

TRIBUNAL FEES AND EXPENSES

28. Under section 49 of the CRTA, 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 in this case not to follow that general rule. The strata is the successful party and did not claim for any fees or expenses. I therefore order none.

29. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

30. I dismiss the owners' claims and this dispute.

David Jiang, Tribunal Member