



Civil Resolution Tribunal

Date Issued: July 14, 2020

File: ST-2020-000146

Type: Strata

Civil Resolution Tribunal

Indexed as: *LeBlanc v. The Owners, Strata Plan LMS 600*, 2020 BCCRT 783

BETWEEN:

NICOLE LEBLANC

APPLICANT

AND:

The Owners, Strata Plan LMS 600 and EVA ESMANN

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about noise and odour nuisance in a strata corporation.
2. The applicant, Nicole LeBlanc, owns strata lot 524 (SL524) in the respondent strata corporation, The Owners, Strata Plan LMS 600 (strata). The other respondent, Eva

Esmann, owns a strata lot 536 (SL536). The strata plan shows that SL536 is located directly above SL524.

3. Ms. LeBlanc says that Ms. Esmann's tenant, PJ, has been causing a continuous nuisance for the past 2 years by creating unreasonable noise, by creating unreasonable food odours and residue, and by smoking marijuana and tobacco on the balcony. Ms. Leblanc says the noises cause her to have migraine headaches, and the food odours affect her health conditions.
4. Ms. LeBlanc requests an order that PJ stop creating the noise and odours. She also requests an order that PJ be evicted.
5. The strata says Ms. LeBlanc has been complaining about noise from SL536 since before PJ's occupancy, and that she started complaining about PJ since the day he moved in. The strata also says the noises and smells are not necessarily from SL536.
6. Ms. Esmann says that Ms. LeBlanc's claims are unwarranted, and should be dismissed. She says Ms. LeBlanc complained about noise from SL536 when Ms. Esmann lived there from 1996 to 2001, and that a wood frame building cannot eliminate all sound. Ms. Esmann also says Ms. LeBlanc has complained multiple times about each of her tenants in SL536, but no one else has complained. Ms. Esmann says that Ms. LeBlanc has harassed PJ and former tenants.
7. Ms. LeBlanc and Ms. Esmann are self-represented in this dispute. The strata is represented by a strata council member. PJ is not a party to this dispute. Ms. LeBlanc originally named him as a respondent, but later he was removed as a respondent at her request.
8. For the reasons set out below, I find that Ms. LeBlanc has not proven that PJ breached strata bylaws, or that the strata failed to investigate her bylaw complaints. I therefore dismiss her claims.

JURISDICTION AND PROCEDURE

9. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the CRT's process has ended.
10. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.
11. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.
12. Under section 123 of the CRTA and the CRT rules, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

ISSUES

13. Has PJ breached any strata bylaws, and if so, what remedies are appropriate?

EVIDENCE AND ANALYSIS

14. I have read all the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding like this one, the applicant must prove their claims on a balance of probabilities.

15. The parties provided submissions about whether or not there was a personal relationship between Ms. LeBlanc and PJ. I make no findings about this, as I find it is not relevant in determining whether PJ breached strata bylaws.

16. The strata was created in 1992, and was built in 8 phases. It is a large strata corporation, consisting of several buildings and over 500 strata lots.

17. The strata filed consolidated bylaws with the Land Title Office (LTO) in August 2013, plus numerous amendments after that. The only amendment relevant to this dispute is about smoking.

18. The relevant parts of the bylaws applicable to this dispute can be paraphrased as follows:

3(1) An owner, tenant, occupant, or visitor must not use a strata lot or common property in a way that causes a 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 or another strata lot.

3(3)(b) An owner, tenant, or occupant must not make, cause, or produce undue noise, smell, vibration, or glare in or about any strata lot or common property, or do anything which will interfere unreasonably with any other owner, tenant, or occupant.

3(3)(u) An owner, tenant, or occupant must not smoke anywhere on the common property, including limited common property. For greater certainty, this includes balconies and patios.

Has PJ breached strata bylaws?

19. In the Dispute Notice and submissions, Ms. LeBlanc says that for the past 2 years, PJ has continually harassed her with odours, such as curry, fish, and garbage. She says he also stomps a lot, day and night, and that sometimes on weekend nights PJ “will run back and forth and stomp up to six hours with boots or shoes on.” She also says that when she takes a bath, she hears hammering, which indicates that PJ is “doing something with the pipes.”
20. Ms. LeBlanc says the noises and odours have a negative effect on her health conditions, and that such must keep her windows open despite the cold. She says PJ’s noises cause her stress, which gives her migraines daily.
21. Ms. LeBlanc provided no evidence, apart from her own submissions, and a written statement emailed to the CRT on May 29, 2020. As explained below, since Ms. LeBlanc has provided no evidence to confirm her observations of odours and noises, I find she has not proven her claims.
22. Some of Ms. LeBlanc’s submissions are about Ms. Esmann’s former tenants, whom she says were noisy. She also says one former tenant had a dog, contrary to strata bylaws, and others smoked marijuana. I find that the conduct of former tenants is not relevant to the issues in this dispute. While Ms. LeBlanc submits that Ms. Esmann has a history of allowing bad tenants in SL536, I find this does not prove that PJ breached strata bylaws.
23. Ms. LeBlanc says PJ continues to harass her daily, with noise and odours. In her submissions, she appears to suggest this conduct is deliberate, as PJ is “stomping” is “pumping the odors through.” I find Ms. LeBlanc has provided no evidence to support these assertions, such as recordings, event logs, or witness statements.

Therefore, I do not find that PJ has engaged in deliberate conduct, such as noisemaking or odour production, that would be contrary to strata bylaws.

24. In the Dispute Notice, Ms. LeBlanc says she can tell when PJ is producing the disputed odours, since the light on her “machine” turns from pink to red. I place no weight on Ms. LeBlanc’s statements about the light on the machine. First, it is unclear what the machine is. In the Dispute Notice, she says she has a Rowenta brand air purifier. In her submissions, she refers to “machines”, which suggests she has more than one machine. From the evidence, I cannot tell what kind of machines these are, what they are measuring, or how. Therefore, I am not persuaded by Ms. LeBlanc’s statements about what the display lights mean. Also, there is no documentation confirming the machine’s displays or readouts. Finally, there is no evidence that establishes that whatever air or vapour the machine is sensing comes from SL536, rather than another source. I note that there are many other strata lots in the building.
25. Ms. LeBlanc also says that PJ’s cooking and other activities leaves “residue” in her strata lot. However, she provided no evidence of the residue, such as photographs. She also provided no evidence about what the residue is made up of, and no confirmation of its source. I find that without such evidence, it would be speculative to conclude that the alleged residue was caused by cooking or other activities occurring in SL536. Again, even accepting that there is such residue (which I find is not proven), there is no confirmation that it came from SL536 and not common property, another strata lot, or the outdoors.
26. Similarly, Ms. LeBlanc also says “I often smell pot and cigarettes coming into my windows and door because he usually smokes them on the deck.” I find that Ms. LeBlanc has not provided evidence to support this claim, such as an incident log, photographs, or statements from witnesses who have observed smoking and related smells. She has also not provided evidence that such smells were produced by PJ, rather than someone else on another balcony, or outdoors.

27. The strata says it spent considerable time and effort investigating Ms. LeBlanc's complaints, but found no evidence to support her allegations. The strata says many of Ms. LeBlanc's complaints about PJ's noise and cooking odours have occurred when PJ was not home. This is consistent with the March 14, 2020 statement from PJ, provided in evidence by Ms. Esmann.
28. The strata also says the noises and smells are not necessarily from SL536. It says it is difficult to pinpoint the course of noise or odours in a wood frame apartment building, and that other neighbours have not complained about PJ.
29. The strata provided a statement from the council treasurer and the strata property manager, who say they investigated Ms. LeBlanc's complaints in July 2019. They say they visited SL524, and found only a faint curry smell. They say they observed no residue, discolouration, or sediment, contrary to Ms. LeBlanc's complaints. They say the property manager then visited SL536, and found a recent cooking smell that was not "inordinate."
30. Bylaw 3(1) says a tenant may not use a strata lot in a way that causes a nuisance to another person, or an unreasonable interference in another person's use and enjoyment of a strata lot. The BC Supreme Court has defined "nuisance" in a strata setting as an unreasonable continuing or repeated interference with a person's enjoyment and use of their strata lot (see *The Owners, Strata Plan LMS 3539 v. Ng*, 2016 BCSC 2462).
31. Similarly, bylaw 3(3)(b) says a tenant may not produce undue noise or smell.
32. I find that Ms. LeBlanc, who bears the burden of proof in this dispute, has not proven that PJ caused unreasonable or undue noise or smell. Specifically, she has not proven that the noises and smells she has identified arise from SL536. Also, she has not provided sufficient evidence to establish that these noises or smells are unreasonable or undue. I agree with the strata that some amount of noise and odour transfer are to be expected in a wood frame apartment-style building. I find that noises of normal daily living, and reasonable odours from personal or family cooking, are not undue in a residential building.

33. Since Ms. LeBlanc has not proven otherwise, I find PJ has not violated strata bylaws by producing unreasonable or undue noise or smell.
34. Under section 26 of the *Strata Property Act* (SPA), the strata council has a duty to exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules. When carrying under these duties, such as bylaw enforcement, the strata council must act reasonably. This includes a duty to investigate alleged bylaw violations, such as noise complaints.
35. Based on the evidence before me, I find the strata met its duty to investigate Ms. LeBlanc's bylaw complaints. It sent a council member and property manager to observe both strata lots at a time when Ms. LeBlanc said the odours and residue were present. An invoice provided in evidence shows that the strata paid \$1,192.59 to extend the range hood venting in SL524 and SL536.
36. For all of these reasons, I conclude that Ms. LeBlanc has not proven that PJ breached any strata bylaws. I find she has also not proven that the strata failed to reasonably investigate her complaints. I dismiss Ms. LeBlanc's claims.
37. Since I have dismissed Ms. LeBlanc's claims, I find it is not necessary to consider her requested remedies.

CRT FEES AND EXPENSES

38. Ms. LeBlanc was unsuccessful in this dispute. In accordance with the CRTA and the CRT rules I finds she is not entitled to reimbursement of tribunal fees or dispute-related expenses. The respondents did not pay tribunal fees, and did not claim dispute-related expenses, so I order none.
39. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Ms. LeBlanc.

ORDER

40. I dismiss Ms. LeBlanc's claims, and this dispute.

Kate Campbell, Vice Chair