



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *MacKenzie v. The Owners, Strata Plan LMS1491*, 2020 BCCRT 1115

B E T W E E N :

JORDAN MACKENZIE

APPLICANT

A N D :

The Owners, Strata Plan LMS1491

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about noise bylaw enforcement. The applicant, Jordan MacKenzie, owns 2 strata lots in the respondent strata corporation, The Owners, Strata Plan LMS 1491 (strata). Mr. MacKenzie says that the strata failed to address his noise complaints and enforce its bylaws, and that he has sustained damages as a result. Mr. MacKenzie asks for orders that the strata enforce its bylaws and pay him

\$5,000 in damages. The strata denies that it failed to enforce its bylaws, and says that it responded properly to Mr. MacKenzie's complaints and is not responsible for the damages he claims.

2. Mr. MacKenzie is self-represented. The strata is represented by a member of the strata council.

JURISDICTION AND PROCEDURE

3. 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.
4. The CRT 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.
5. 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.
6. 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.
7. Under the CRTA, settlement discussions are kept confidential. Here, Mr. MacKenzie included with his evidence information about his settlement discussions with the strata. According to Mr. MacKenzie, the strata agreed to the use of this information. The strata denies that it agreed to the use of all information exchanged during the

settlement discussions, and says that it only agreed to the disclosure of its representative's personal opinion about the reasonableness of the noise.

8. In a May 25, 2020 email, Mr. MacKenzie asked the strata's representative if the strata would object to the "correspondence during the facilitation process" being included in the evidence. On May 28, 2020, the representative responded that he did not "have any problem if you say that [he] agreed the noise was unreasonable". The representative did not mention any correspondence or any information about the parties' negotiations. I find that this message does not amount to an agreement that all information about the settlement process could be disclosed. Accordingly, I have considered only the representative's personal view in my analysis and did not consider information about the parties' attempt to settle this matter during the facilitation phase of the dispute.

ISSUES

9. The issues in this dispute are:
 - a. Whether the strata has failed to enforce its bylaws, and
 - b. Whether the strata is responsible for Mr. MacKenzie's claimed damages.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, an applicant bears the burden of proof on a balance of probabilities. With the exception of evidence about the settlement negotiations as discussed above, I have considered all of the information submitted by the parties. However, I will refer to only what is necessary to provide context to my decision.
11. The strata is a wood frame structure that is approximately 40 years old. According to the strata plan, it is comprised of 100 residential strata lots.
12. The strata's bylaws address noise both in common areas and inside strata lots. Bylaw 3 requires that no resident make noise which, in the opinion of the strata council, interferes with the enjoyment of the use of any common area by other

residents. It also states that noise is to be “kept to a minimum level” between 11 p.m. and 7 a.m.

13. Bylaw 4(2) states that residents are responsible for children living in their strata lot, including “ensuring that the noise is kept [sic] a level, in the sole determination of a majority of the council, that will not disturb the quiet enjoyment of others”. Further, according to bylaw 13, a resident must not use a strata lot in a way that causes unreasonable noise or unreasonably interferes with the rights of other persons to use and enjoy another strata lot.
14. As noted, Mr. MacKenzie owns 2 strata lots. He rents out strata lot 4, which is also known as unit 110. Unit 110 is directly under the strata lot known as unit 210.
15. In October of 2019, Mr. MacKenzie’s tenant wrote to him to complain about disruptions she attributed to unit 210. The tenant, who worked at night, reported that she was unable to sleep during the day due to “screaming children and the sound of stomping or running and thrashing about on the ceiling above [her]”. On October 19, 2019, Mr. MacKenzie emailed the strata council and property manager about his tenant’s noise complaint. Mr. MacKenzie indicated that he and the tenant were interested in resolving the noise issue.
16. Mr. MacKenzie emailed the owner of unit 210 to advise of the tenant’s noise complaint and to suggest possible solutions. In his November 11, 2019 reply, the owner of unit 210 stated that he experienced noise from other strata lots, including the one occupied by Mr. MacKenzie’s tenant, and that he used ear plugs when his work schedule required him to sleep during the day. The owner stated that he had rugs and thick underlay in the master bedroom and living room areas, and that foot traffic from the children was unavoidable during the day.
17. At the strata’s request, the tenant completed a noise log between October 28 and November 10, 2019. The log documented more than 40 instances of noises attributed to children and 5 instances of appliance use. The majority of these reports were in the morning and afternoon, and the log did not identify any disruptions

during the “quiet hours” set out in the bylaws. Mr. MacKenzie provided this log to the strata council and property manager.

18. A council member provided a sound meter to the tenant to document the noise levels. Video footage of the sound meter showed readings ranging from 27 to 58.8 decibels that were said to demonstrate noise coming from unit 210. Mr. MacKenzie uploaded the videos to a website and sent the links to the strata council and property manager.
19. On December 18, 2019, the strata says it issued a bylaw infraction notice to the owner of unit 210 about the noise complaint. The owner responded by denying that he caused unreasonable noise, and noted that he was disturbed by noise from other strata lots, including unit 110. He identified a particular strata lot with a noisy washing machine and another strata lot that had recently completed renovations as other possible sources for the noise. The owner attributed the noise transference to the fact that the strata was an “old wood framed building”.
20. In early January of 2020, Mr. MacKenzie’s tenant decided to end her tenancy before the expiration of her lease due to what she described as constant noise from unit 210. Mr. MacKenzie followed up with the strata council and property manager about the status of his complaint and to ensure that it was being addressed.
21. At its January 22, 2020 meeting, the strata council considered Mr. MacKenzie’s complaint, the videos of the sound meter, and the other owner’s response. According to the minutes, the council determined that the noise was “well below the allowed level”. The council decided not to take further action on Mr. MacKenzie’s complaint.
22. Mr. MacKenzie was not satisfied with this response, and asked for action from the strata. He requested the data from the sound meter but, after some delays, the strata council determined that the meter had not recorded anything and there were no data to share.

23. The strata set this item for its council meeting in March 2020. It is not clear whether the matter was discussed at that meeting as Mr. MacKenzie commenced this dispute before it occurred.

Enforcement of Noise Bylaw

24. Mr. MacKenzie submits that the strata did not take his complaint seriously and failed to enforce the bylaws or take swift and decisive action to stop his neighbours from making so much noise. He says that he has lost more than \$11,000 in rent because of the excessive noise, but is claiming \$5,000 in damages in the hope that this will send a message to the strata that it should take complaints seriously.

25. The strata says it properly responded to and investigated Mr. MacKenzie's complaints. It says that it considered the readings from the sound meter and contacted an acoustic engineer about the matter. I note that there is no opinion or correspondence from an acoustic engineer or other industry professional in the evidence before me. For the reasons set out below, I find that nothing turns on this.

26. According to section 26 of the *Strata Property Act* (SPA), a strata council is required to perform the duties and exercise the powers of the strata, including enforcing the bylaws. This includes a duty to investigate complaints about alleged bylaw contraventions.

27. Before a strata corporation levies a fine pursuant to a bylaw complaint, it must comply with the requirements of section 135 of the SPA. This section says that a strata corporation must not impose a fine, require a person to pay the costs of remedying a contravention, or deny a person the use of a recreational facility for the contravention of a bylaw or rule unless the strata corporation has received a complaint about the contravention, given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint.

28. In this case, the strata obtained information from Mr. MacKenzie and his tenant before issuing the December 18, 2019 letter to the owner of unit 210. The strata gave the owner an opportunity to respond to the complaint, and considered this

response when making the decision about whether to take action. I acknowledge that Mr. MacKenzie would have preferred a faster response from the strata. However, I find that the evidence does not support Mr. MacKenzie's position that the strata was "stalling" in dealing with his complaint, and find that the strata instead was investigating the complaint and following the requirements of section 135 of the SPA. I find that the strata did not fail to address Mr. MacKenzie's complaint.

29. The next consideration is whether the strata failed to enforce its bylaws. Mr. MacKenzie's evidence references a news article written about other CRT decisions that address noise in strata properties. Although CRT decisions may be persuasive, they are not binding authority. I will consider the specific wording of the strata's bylaws and the particular circumstances of this case in my analysis.
30. When faced with a noise complaint, a strata council has the discretion to determine the scope of the investigation required and whether the noise levels amounted to a breach of the bylaws. The courts have held that a strata corporation may investigate bylaw contravention complaints as its council sees fit, so long as it complies with the principles of procedural unfairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148).
31. Mr. MacKenzie says that the strata's investigation was inadequate, and points out that members of the strata council did not attend the strata lot to experience the noise. However, I do not find this omission to be significant as the strata had the video footage showing the measurements of the noise from the sound meter. I find that this was sufficient objective evidence of the noise levels. Further, as the strata also obtained input from the tenant, Mr. MacKenzie, and the other owner, I find that the investigation was reasonable and did not create unfairness for any party.
32. Mr. MacKenzie also takes issue with the strata's decision about whether the noise amounted to a breach of the bylaws. There is no dispute that there is some degree of sound transmission between strata lots. Mr. MacKenzie says that he does not expect his strata lots to be "quiet as a crypt", but submits that the level of noise from

unit 210 was unreasonable. He describes the upper decibel range shown on the sound meter as being “as loud as a normal conversation between two people”.

33. I acknowledge that the strata representative’s personal opinion was that the noise from unit 210 was unreasonable. However, one member’s opinion does not determine the council’s decision.
34. Although the evidence contains discussion of disruptions from appliance use, the tenant’s written complaint and the noise log show that most of the incidents were attributed to children. As discussed above, the bylaw 4(2) contains specific wording about child-related noise, and allows the majority of the strata council to determine whether such noise is reasonable. Bylaw 13 does not refer to the council’s opinion for what amounts to unreasonable noise, which I find involves a more objective standard for noises that are not child-related.
35. As noted, when making the decision about whether the noise from unit 210 amounted to a bylaw breach, the strata council had the benefit of information from Mr. MacKenzie, the tenant, the owner of unit 210, and objective information from the video footage of the sound meter. Bylaw 4(2) allows the strata council to determine the level of noise from children that will be found to disturb the quiet enjoyment of others. It does not require that the strata council consult with or obtain an opinion from an industry professional to assist with the determination. In addition, the bylaws do not contain specific ranges of decibel readings that will be considered to be reasonable or unreasonable.
36. Mr. MacKenzie’s evidence is that the noise is equivalent to the level of a conversation. Given the degree of latitude the bylaws give to the strata council when considering noise from children and the fact that almost all of the reported disruptions involved such noise, I find that the strata’s decision about the noise level was reasonable.
37. Nothing in the SPA or the bylaws requires that every complaint result in a fine or particular action by the strata. The fact that the strata council did not fine the owner of unit 210 in this instance does not mean that the strata council neglected to

perform its duties or exercise the powers of the strata. I find that the evidence does not support the conclusion that the strata failed to enforce the bylaws, and dismiss Mr. MacKenzie's claim for an order that the bylaws be enforced.

38. Nothing in my decision alters the strata's responsibility to investigate and address any future noise complaints involving unit 210 or any other strata lot.
39. Given my finding that the strata acted reasonably in dealing with the noise complaint, I find that it is not responsible for the damages claimed by Mr. MacKenzie. Accordingly, I dismiss his claim.

CRT FEES AND EXPENSES

40. Under section 49 of the CRTA, and the CRT rules, the CRT generally will order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. MacKenzie was not successful, I dismiss his claim for reimbursement of tribunal fees.
41. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. MacKenzie.

ORDER

42. I dismiss Mr. MacKenzie's claims and this dispute.

Lynn Scrivener, Tribunal Member