



# Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Chau v. The Owners, Strata Plan NW 155*, 2020 BCCRT 1161

**B E T W E E N :**

RAYMOND CHAU

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 155

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about enforcement of a strata corporation's noise bylaws.
2. The applicant, Raymond Chau, owns and lives in strata lot 109 (unit 23) in the respondent strata corporation The Owners, Strata Plan NW 155 (strata).

3. Mr. Chau says since December 2015 he has experienced a humming or rumbling noise from unit 33, the strata lot directly above his. He says he is unable to sleep in his bedroom when the noise is loud. He says he has repeatedly spoken with unit 33's occupant (who is not a party to this dispute) and the strata, but the problem has not been resolved.
4. Mr. Chau requests an order that the strata enforce its noise bylaw against the occupant of unit 33, and an order that the strata "investigate and eliminate" the noise. He also requests reimbursement of \$180.73 for things he purchased to mitigate the impact of the noise, and \$3,000 in damages for the loss of use and quiet enjoyment of his strata lot.
5. The strata says the dispute should be dismissed. It says strata council has attended units 23 and 33 multiple times to investigate the noise complaints. It says there is no proof of any noise or where the noise is coming from, and no evidence of bylaw contraventions.
6. Mr. Chau is self-represented in this dispute. The strata is represented by a strata council member.
7. For the reasons that follow, I dismiss Mr. Chau's claims and this dispute.

## **JURISDICTION AND PROCEDURE**

8. 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.
9. 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.

10. 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.
11. 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**

12. The issues in this dispute are:
  - a. Did the strata fail to enforce its noise bylaw in relation to Mr. Chau's complaints?
  - b. If so, what remedies are appropriate?

## **BACKGROUND AND EVIDENCE**

13. As the applicant in this civil dispute, Mr. Chau must prove his claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain and give context to my decision.
14. The strata was created in 1973 and comprises 180 residential strata lots in 8 buildings. Mr. Chau's unit 23 is on the second floor of a 3-floor building, directly below unit 33.
15. The strata filed a set of bylaws with the Land Title Office in December 2011. These bylaws appear to be a consolidated set of bylaws, although they are not described as such and there is no statement indicating that they repeal and replace other bylaws or the standard bylaws. However, the relevant noise bylaw is the same in the December 2011 bylaws as in the December 2001 bylaws, which repealed all

previously registered bylaws, with one exception not relevant to this dispute. The bylaw amendments after 2011 are also not relevant to this dispute.

16. The noise bylaw is bylaw 3, which says in part that a person must not use a strata lot in a way that causes a nuisance or hazard to another person, causes unreasonable noise, or unreasonably interferes with another person's right to use and enjoy their strata lot. Bylaw 3 also prohibits an owner from making, causing or producing undue noise or vibration in or about a strata lot, and from doing anything that will unreasonably interfere with any other owner, tenant or occupant.
17. Mr. Chau says he experiences a humming or rumbling noise in his bedroom. He says it comes from the ceiling, so he believes it originates in unit 33. He says the noise is constant, though some days it is louder than others, and it is louder late at night and in the early morning.
18. The following chronology of events is documented in emails and strata council minutes and is undisputed. The strata engaged different property managers over this period but for brevity I refer to them as the "property manager."
  - a. January to March 2016: Mr. Chau emailed strata council asking the strata to address the humming noise that he first noticed in December 2015.
  - b. May 2016: Strata council fined the owner of unit 33. Strata council meeting minutes said the noise was coming from a freezer. The owner was fined \$200 for "each related bylaw infraction to date" for a total of \$2,000.
  - c. May 2016 to June 29, 2017: Mr. Chau experienced no undue noise.
  - d. September 8, 2017: Mr. Chau complained to the strata through its property manager, providing an account of 10 incidents between June 29 and September 8, 2017, when he was awoken by the humming noise. The property manager said it would correspond with the owner in question.
  - e. December 8, 2017: Strata council member JV attended unit 23 to investigate the noise. The strata has not challenged, so I accept, Mr. Chau's evidence that

- JV concluded the noise was unacceptable and advised the strata council to fine unit 33's occupants.
- f. December 12, 2017: Mr. Chau attended a strata council meeting to discuss the noise issue. Strata council resolved to fine unit 33's owner \$200.
  - g. April 24, 2018: Strata council reversed the \$200 fine after investigation revealed the source of the noise was not a humidifier as "originally thought."
  - h. May 17, 2018: The property manager explained to Mr. Chau that a strata council member, ML, attended unit 33 and had the occupant turn the humidifiers on "full blast" and found they were not producing the noise Mr. Chau was experiencing. ML believed the humming noise was coming from the strata's pool pumps. ML suggested the occupant of unit 33 place foam pads under the humidifiers anyway. It is unclear whether or not this happened.
  - i. May 26, 2018: Mr. Chau advised ML and the strata that the pool cannot be the source of the noise as the pool pump shuts off at 11 p.m. and the noise worsens around that time. However, he said the noise had been reduced by 80% since ML's investigation on April 19, and he had been able to sleep at night.
  - j. October 10, 2018: After Mr. Chau reported that the noise had returned, strata council member KH attended unit 23, but there was no humming noise at the time.
  - k. January 6, 2019: KH attended unit 23 again. According to Mr. Chau's email to KH, which is undisputed and which I accept, KH heard the noise and agreed it was coming from unit 33.
  - l. February 25, 2019: Mr. Chau attended the strata council meeting and presented on the noise issue. The minutes show strata council asked the property manager to conduct 2 in-suite inspections (presumably of units 23 and 33) to determine the source of the noise.
  - m. March 2019: The strata council, Mr. Chau and the occupant of unit 33 agreed to an investigation plan that involved late night noise investigation.

- n. May to August 2019: Strata council member DM was available late at night to investigate, but on multiple occasions Mr. Chau advised him not to come either because the noise decreased before DM arrived or other noises were causing interference.
  - o. August 28, 2019: DM attended unit 23 around 11:30 p.m. Mr. Chau's undisputed evidence, which I accept, is that DM determined that the noise sounded like a dishwasher, but it was not loud enough for him to "do anything about." Despite this, Mr. Chau says he was unable to sleep in his bedroom that night.
  - p. January 8, 2020: Mr. Chau complained to DM that the noise in his bedroom on January 4 forced him to sleep in the living room, only to be awoken at 4:30 a.m. by what he suspected was unit 33's washing machine. Strata council asked the property manager to issue a demand to inspect unit 33 to determine if there had been a breach of the strata's bylaws, which prohibit washing machines in strata lots. The property manager advised Mr. Chau that strata council was reviewing its options and authority regarding his noise complaints unrelated to the washing machine and asked Mr. Chau to continue to document his complaints.
  - q. April 3, 2020: Mr. Chau reported to the property manager humming noise in his bedroom "every minute of every day since January 17, 2020" (emphasis in original). He said it was loudest from 11 p.m. to 7 a.m. He said it was only non-existent during a scheduled power outage. The property manager advised that strata council had resolved to conduct a suite inspection but that it was unsafe to proceed with suite inspections until "after this COVID-19 threat is lifted."
  - r. Mr. Chau filed this CRT dispute in June 2020.
19. Mr. Chau provided 3 witness statements about the noise in unit 23. In a joint statement, two witnesses whose relationship to Mr. Chau is not explained said that on July 25, 2020, they observed a loud and irritating sound coming from directly above Mr. Chau's bedroom. In another statement, Mr. Chau's registered massage

therapist said she heard a humming noise in Mr. Chau's bedroom ceiling sometime in 2019 and again on August 6, 2020. The witnesses described the noise as that of a fan, dehumidifier or air conditioner.

20. Mr. Chau submitted a letter about possible sources of the noise from AB, a technical operations coordinator for commercial and industrial buildings. The opinion provided in evidence does not meet the criteria for expert evidence set out in CRT rule 8.3. Therefore, I find the opinion is not expert evidence. That said, the strata did not challenge AB's evidence or qualifications, and I accept that the opinion is from a person experienced in maintenance of electrical and mechanical systems. AB said he observed noise coming from the ceiling of Mr. Chau's bedroom on visits in January, March and June 2020. In his view, the noise was coming from a device with a rotational component, such as the type used in fridges, air conditioners, dehumidifiers and fans. He said the noise, pitch and frequency coming from such devices can change over time due to wear. AB said he could not determine the source of the noise because he could not access unit 33.

## **ANALYSIS**

### ***Did the strata fail to enforce its noise bylaw in relation to Mr. Chau's complaints?***

21. Section 26 of the *Strata Property Act* (SPA) requires the strata council to exercise the powers and perform the duties of the strata, including the duty to enforce bylaws. The strata council is required to act reasonably when carrying out these duties. This includes investigation of alleged bylaw contraventions, such as noise complaints.
22. 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).
23. For the reasons that follow, I find the strata's enforcement of its noise bylaw was reasonable, and that it did not breach its duty to enforce its noise bylaw.

24. I place significant weight on the undisputed evidence that 4 different strata council members visited units 23 or 33 to investigate Mr. Chau's noise complaints between 2016 and August 28, 2019. The strata fined the owner of unit 33 in 2016 and again in 2018, although the 2018 fine was reversed after further investigation. Mr. Chau may not have agreed with the strata council's conclusions about the source of the noise, but after investigations in 2016 and 2018 he confirmed substantial noise reduction and went months without making a noise complaint.
25. Based on Mr. Chau's text messages with DM in 2019, I find the strata demonstrated considerable diligence and flexibility so that it could experience what Mr. Chau felt was the worst of the noise late at night, often after 11 p.m.
26. It is unclear on what basis DM concluded that the noise in 2019 was coming from a dishwasher. I agree with Mr. Chau that it seems unlikely that a dishwasher would run continuously throughout the night. However, I find that Mr. Chau accepted DM's conclusion that the noise bylaw was not breached. There is no evidence that Mr. Chau sought a formal decision from council. The evidence shows that Mr. Chau did not lodge any new noise complaints between August 28, 2019 and January 6, 2020.
27. Although Mr. Chau provided statements from four people who attended his home and heard the noise, I find that the statements do not establish a bylaw contravention. I also note most of the observations occurred after Mr. Chau started this dispute and are therefore of limited relevance in determining whether there was a noise bylaw breach. AB's statement discussed possible sources of the noise, but I find it does not assist in determining whether the noise was unreasonable. Mr. Chau provided no recordings of the sound or objective measurement of the noise level. A persistent noise is not necessarily an unreasonable noise or a nuisance.
28. Although my conclusion on the evidence is that the strata has not failed to enforce its noise bylaw, the strata has a duty to investigate Mr. Chau's new noise complaints since January 2020. I find the nature of the Mr. Chau's complaints has changed, such that the strata cannot rely on DW's August 2019 conclusion that the noise was not a bylaw breach. In particular, Mr. Chau reported the noise being constant for most of



the first 3 months of 2020. Given there has been no definitive conclusion about the present source of the noise and given the strata has posited at different times that the source of the noise was a humidifier, a freezer, a washing machine, a dishwasher, and a pool pump, further investigation is warranted.

29. The strata says it is planning to investigate unit 33, but this has not yet been possible due to the COVID-19 pandemic. The reasonableness of the strata's delay in investigating Mr. Chau's 2020 noise complaints must be considered in the context of the COVID-19 pandemic. The Provincial Health officer declared a public health emergency on March 17, 2020. I find the strata's decision not to demand entry into strata lots for noise bylaw enforcement reasonable given what little was known about COVID-19 transmission in early 2020.
30. However, this does not mean that the strata can avoid its bylaw enforcement duties until, as the property manager said in its April 5, 2020 email to Mr. Chau, "after this COVID-19 threat is lifted." COVID-19 is likely with us for the foreseeable future. There are safety measures that can be taken to minimize the risk of transmission, including physical distancing, mask-wearing, and following other guidance from the Provincial Health Officer. A strata that chooses to delay investigation indefinitely may be liable for damages for failing to enforce its bylaws.
31. As I have found that the strata did not breach its obligation under the SPA to enforce its noise bylaw, it follows that Mr. Chau's claims for damages and reimbursement of expenses are dismissed (see *Ruthe v. The Owners, Strata Plan BCS 1023*, 2020 BCCRT 605, which is not binding but I find persuasive).
32. I provide the following non-binding comments in an effort to assist the parties moving forward. My finding that the strata did not fail to enforce its noise bylaw should not be interpreted as an endorsement of its position in this dispute that Mr. Chau "simply suffers from over sensitive hearing." The evidence shows that on the 2 occasions the strata took concrete action (fining unit 33's owner in 2016 and investigating and recommending pads under the humidifiers in unit 33 in April 2018), Mr. Chau reported significant noise reduction for a substantial period. The improvements were

unfortunately not permanent, but they strongly suggest that the noise affecting Mr. Chau was coming from unit 33 and can be reduced with unit 33's cooperation. That should encourage that strata that investigation will produce positive results.

33. When the strata investigates Mr. Chau's 2020 complaints, if the strata determines that a bylaw contravention has occurred, the SPA requires it to take steps to address the contravention, whether by imposing fines or taking remedial action under SPA section 133. If the strata determines that no contravention has occurred, it should have some objective evidence on which to base its conclusion (see *Tollasepp v. The Owners, Strata Plan NW 2225*, 2020 BCCRT 481).

## **CRT FEES AND EXPENSES**

34. As Mr. Chau was unsuccessful in this dispute, in accordance with the CRTA and the CRT's rules I find he is not entitled to reimbursement of his CRT fees. Neither party claimed dispute-related expenses.
35. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses to Mr. Chau.

## **ORDERS**

36. I dismiss Mr. Chau's claims and this dispute.

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Micah Carmody, Tribunal Member