



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Ruttan v. The Owners, Strata Plan NW 902*, 2020 BCCRT 1328

B E T W E E N :

COLLEEN RUTTAN

APPLICANT

A N D :

The Owners, Strata Plan NW 902

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about enforcement of noise and nuisance bylaws.
2. The applicant, Colleen Ruttan, owns a residential strata lot in the respondent strata corporation, The Owners, Strata Plan NW 902 (strata).

3. Ms. Ruttan claims the strata has failed to enforce its noise and pet bylaws against Ms. X, the owner of the strata lot below hers, since 2017. She says Ms. X's dog barks loudly and frequently, which interferes with her ability to work. Ms. Ruttan asks that the strata be ordered to enforce its bylaws and remove the dog from the strata complex.
4. The strata asks that the claim be dismissed. It says it has investigated each of Ms. Ruttan's complaints and has enforced its noise bylaw against Ms. X, with letters, a fine, and a meeting. The strata says ordering Ms. X to remove her dog is unnecessary as the noise is now significantly reduced.
5. Ms. Ruttan represents herself. The strata is represented by a strata member.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. 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.
10. As a preliminary matter I note Ms. Ruttan provided new information, or evidence, in her final reply submissions in response to a letter from Ms. X's counsellor prescribing a therapy dog for Ms. X. The strata did not have the opportunity to respond to the new information and so I find it would be procedurally unfair to consider that information in this dispute. In any event, I find the counsellor's letter not persuasive for other reasons, as explained below.

ISSUE

11. The issues in this dispute are:

- a. Did the strata fail to enforce its noise bylaws in relation to barking by Ms. X's dog?
- b. If so, what is the appropriate remedy?

BACKGROUND AND EVIDENCE

12. In a civil claim such as this one the applicant, Ms. Ruttan, must prove her claim on a balance of probabilities. Except for the late evidence noted above, I have reviewed all the evidence and submissions provided by both parties, but only refer to that necessary to explain my decision.
13. The strata consists of 38 residential strata lots in a lots in a 2-storey building built in 1977. Ms. Ruttan owns strata lot 24, which is also known as #204. Ms. X and her dog live directly below Ms. Ruttan, in #104, which has a fenced in backyard.
14. Based on Ms. Ruttan's photos, I find she has carpeting on her office floor, and rugs in her living room, dining room, and hallways. Ms. Ruttan says the dog's "barking room" is directly below her office, where she works as a writer.

Bylaws

15. The following bylaws apply to this dispute:

- Bylaw 3.1 says a person must not use a strata lot or common property that causes a nuisance or hazard to another person, causes unreasonable noise, or interferes with another person's reasonable enjoyment of common property or another strata lot.
- Bylaw 4 allows an owner to have up to 2 dogs as pets.
- Bylaw 4.3 says that any person who keeps a pet which proves to be a nuisance, whether in a strata lot or on common property, may be ordered in writing by the council to control such pet in order to eliminate the nuisance.
- Bylaw 4.4 says that anyone keeping a pet that becomes the subject of a complaint about noise, viciousness, odour, being out of control or a nuisance on common property must remove the pet within 7 days' notice from the strata council. The strata must first conduct an investigation and provide suitable time for the owner to "rectify the difficulties".

Chronology of Noise Complaints and Strata's Actions

16. Ms. Ruttan provided copies of noise complaints and emails to the strata, as well as text messages to and from Ms. X. The strata provided copies of its correspondence to both Ms. Ruttan and Ms. X, as well as strata council's emails to each other. Both parties provided copies of strata council meeting minutes. From those records I have summarized the chronology of events below.

17. Between August 26 and October 24, 2017, Ms. Ruttan sent the strata 4 separate complaints about the dog in #104 barking constantly (2017 complaints). Ms. Ruttan wrote that the barking affected her ability to sleep and work in her home office. There is no indication that the strata sent Ms. X a warning letter but it did correspond with Ms. Ruttan about the complaints. By December 13, 2017 Ms. Ruttan and Ms. X were

corresponding about the barking and Ms. X was using a shock collar to control the dog's barking. Ms. Ruttan told the strata that the collar seemed to be helping.

18. On June 13, 2018 Ms. Ruttan advised the strata that she barely heard the dog, and when she did, Ms. X dealt with the barking quickly.
19. Ms. Ruttan filed a noise complaint about the dog's excessive barking again on December 8, 2019 (2019 complaint). Ms. Ruttan said the barking had been sliding back to its previous level over the previous few months.
20. On December 19, 2019 the strata sent Ms. X a bylaw infraction warning letter about the dog's excessive barking. The strata referred to bylaws 3.1 and 4.3 and required Ms. X to correct the "sudden change" in the dog's behaviour
21. In January 2020 the strata asked Ms. Ruttan if the barking was still an issue. Ms. Ruttan responded that she still heard the dog from time to time, but it was not particularly excessive noise worthy of a complaint.
22. Ms. Ruttan filed a noise complaint on April 9, 2020, with barking logs which showed that the dog barked on 9 occasions, up to 10 minutes at a time, over the course of 2 hours. Ms. Ruttan said the barking was preventing her from working as a writer, now that she was home more often due to the Covid-19 restrictions. Ms. Ruttan filed a second noise complaint on April 14, 2020, with barking logs showing 8 to 22 barking incidents per day.
23. The strata sent Ms. X a bylaw contravention warning letter on April 17, 2020 regarding both of Ms. Ruttan's April 2020 noise complaints. The strata referred to bylaws 3.1, 4.3 and 4.4 and said it required Ms. X to correct the dog's barking. It said the next complaint would result in a fine.
24. Ms. Ruttan filed a third noise complaint on April 20, 2020. The included barking log showed 5 to 19 barking instances per day with one instance lasting 9 minutes. Ms. Ruttan filed a fourth noise complaint on April 27, 2020 with barking logs and an audio clip of the sound. The log showed 6 to 12 barking instances per day, with the longest instance lasting 6 minutes.

25. Ms. Ruttan's complaints about #104, and her complaint about a different dog barking in the complex, were discussed by the strata council at their April 30, 2020 meeting. Council members had spoken to both dog owners about the barking behaviour.
26. On May 4, 2020 Ms. Ruttan advised council that, but for one day that week, the barking was more tolerable. Between May 6 and May 20, 2020, Ms. Ruttan filed 5 more noise complaints with barking logs and audio clips. The barking logs showed an average of 10 occurrences per day, with a maximum duration of 10 minutes per day during the week of May 6, 2020 and a range of 0 to 10 occurrences per day with a maximum of 2 to 4 minutes' duration by May 20, 2020.
27. Ms. Ruttan asked for a strata council hearing. At the May 19, 2020 meeting Ms. Ruttan explained that the dog's barking interfered with her ability to work as a writer. Ms. Ruttan asked that the strata remove Ms. X's dog under bylaw 4.4. The strata told Ms. Ruttan that Ms. X had been using an audio barking control device since the beginning of May 2020 and had purchased another device to allow her to communicate with the dog while she was out of her unit. The strata had canvassed Ms. X's neighbours, none of whom were bothered by the barking. The strata offered Ms. Ruttan free use of the amenity room to write.
28. At the May 28, 2020 strata meeting the council decided to fine Ms. X for the noise complaint. The strata did not submit as evidence their bylaw infraction fine letter to Ms. X but I infer the letter was sent sometime after the May 28, 2020 strata council meeting.
29. On May 29, 2020 the strata told Ms. Ruttan that it decided not to request Ms. X to remove her dog, but to fine her for the noise bylaw infractions in April and May instead. The strata wrote that Ms. X had been making serious efforts to control the dog, using devices. The strata also spoke with Ms. X's other neighbours before making the decision, who were not bothered by the barking. The strata wrote that it would continue to monitor the barking.
30. In a June 11, 2020 email Ms. X's next-door neighbour wrote that she only hears Ms. X's dog barking when outside, and very infrequently. The strata did not provide any

evidence from Ms. X's neighbours about their perceptions of the dog barking, around the time of the strata's May 2020 investigation.

31. Based on strata council meeting minutes, I find there were no further noise complaints to the strata in June 2020.

ANALYSIS

Did the strata fail to enforce its noise bylaw?

32. Under section 26 of the *Strata Property Act* (SPA), a strata corporation must enforce its bylaws, subject to some limited discretion, such as when the effect of the breach is trivial (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32). Based on Ms. Ruttan's barking logs and submissions of the effect of the noise on her ability to sleep, and work, I find the noises complained of were not trivial. So, I find the strata must enforce its noise bylaws in these circumstances.

33. A strata may investigate bylaw contravention complaints as it sees fit, provided 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). The standard of care that applies to a strata council is not perfection, but rather "reasonable action and fair regard for the interests of all concerned" (see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 61) Further, section 27(2) of the SPA states that the owners may not interfere with council's discretion to determine, based on the facts of a particular case, whether a person has breached a bylaw, whether a person should be fined, or the amount of the fine.

34. The CRT has jurisdiction to determine claims of significant unfairness because the language in section 164 of the SPA is similar to the language of section 123(2) of the CRTA (formerly section 48.1(2)), which gives the CRT authority to issue such orders (see *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119).

35. The courts and the CRT have considered the meaning of “significantly unfair” in a number of contexts, equating it to oppressive or unfairly prejudicial conduct. *In Reid v. Strata Plan LMS 2503, 2003 BCCA 128*, the British Columbia Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.

36. The British Columbia Court of Appeal has also considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589, 2012 BCCA 44*. The test established in *Dollan* was restated in *The Owners, Strata Plan BCS 1721 v. Watson, 2017 BCSC 763* at paragraph 28:

- a. What is or was the expectation of the affected owner or tenant?
- b. Was that expectation on the part of the owner or tenant objectively reasonable?
- c. If so, was that expectation violated by an action that was significantly unfair?

37. I find Ms. Ruttan had an objectively reasonable expectation that the strata would investigate her noise complaints, decide whether the strata’s bylaws had been breached, and take action to enforce the bylaws where breached. I do not find Ms. Ruttan’s expectation that the strata enforce bylaw 4.4 by requiring Ms. X to remove her dog from the strata complex is objectively reasonable in these circumstances, as explained below. I find the strata has investigated the complaints, found the barking violated the noise bylaws, and has enforced the bylaws and so has not acted in a significantly unfair manner.

38. Ms. Ruttan says the strata should enforce bylaw 4.4 and require the dog to be removed. From Ms. Ruttan’s submissions I infer she argues this step is necessary due to the length of time the noise bylaw infractions have been occurring, the effect the noise has had on her ability to work and enjoy her own strata lot, and Ms. Ruttan’s perception that the steps taken by the strata so far appear not to be resolving the noise nuisance. For the reasons set out below, I disagree.

39. I find the strata concluded that the dog barking rose to the level of unreasonable noise or nuisance, as it referred to bylaw 3.1 in its warning letters to Ms. X in December

2019 and again in April 2020. Although the strata's May 2020 letter fining Ms. X was not submitted, I find the strata determined Ms. X breached bylaw 3.1 due to the dog barking noise, based on the strata's May and June 2020 meeting minutes. Therefore, I find it likely the strata fined Ms. X for causing an unreasonable noise, contrary to bylaw 3.1. As noted above, I agree that the dog barking noise was unreasonable, and not trifling, based on Ms. X's barking logs, audio clips, and submissions.

40. I disagree with Ms. Ruttan that she has been subjected to persistent, unreasonable noise from #104 for the past 5 years, as the evidence indicates that the 2017 and 2019 complaints were resolved. Specifically, I find Ms. Ruttan was satisfied with the reduced level of noise from #104, as set out in her December 2017 and June 2018 emails to the strata. I note that Ms. Ruttan contacted Ms. X about barking noises in June 2019. I find the June 2019 barking was a singular episode which Ms. Ruttan chose not to file a complaint about and so find it does not support an ongoing, persistent nuisance.

41. I also find that, although barking continued after the December 2019 complaint, Ms. Ruttan did not perceive it to be particularly excessive, based on her January 2020 correspondence with the strata. So, I find the barking has not continued at the level of a nuisance, on an ongoing basis since 2017. Based on Ms. Ruttan's 9 complaints between April 9 and May 20, 2020, I find the complained of barking noise continued, off and on, over the course of 6 weeks.

42. It is undisputed that the strata determined the barking in April and May 2020 was an unreasonable noise, or a nuisance. However, that does not mean that the strata must enforce bylaw 4.4 and require the dog be removed. Bylaw 4.4 requires the strata to conduct an investigation into the noise complaint first. I find the strata did that here, by meeting with both Ms. X and Mrs. Ruttan, and by speaking to some of Ms. X's neighbours, as set out in its strata council meeting minutes and its May 29, 2020 letter to Ms. Ruttan.

43. The strata determined the barking noise was not so unreasonable that dog removal was required. Ms. Ruttan disagrees and provided text messages from her neighbour in #205, who wrote that the dog barking had woken her around 8:30 am on a few

occasions, which she found annoying. I find #205's annoyance does not amount to unreasonable noise or nuisance. In the strata context, nuisance is a substantial, non-trivial interference with an owner's use and enjoyment of their property, and that interference is unreasonable (see *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502). So, I disagree with Ms. Ruttan that the dog barking created unreasonable noise or nuisance for other owners.

44. Ms. Ruttan argues that the dog barking has had a significant impact on her ability to work as a writer, as it interrupts her concentration and has, on occasion, reduced her to tears. I find the dog barking interfered with Ms. Ruttan's use and enjoyment of her own strata lot and that the situation has caused Ms. Ruttan great stress. However, that is not determinative of whether bylaw 4.4 should be imposed against Ms. X.

45. Bylaw 4.4 can only be enforced once the strata has provided Ms. X with suitable time to rectify the dog barking situation. As I find the dog barking has not been an unreasonable noise or nuisance since 2017, I disagree with Ms. Ruttan that the strata has given Ms. X several years to control the dog barking noise. Rather, I find Ms. X had approximately 6 weeks to rectify the situation, the time between Ms. Ruttan's first and last 2020 complaints. That being said, I consider that the dog barking as unreasonable noise is a repeated issue, which is a factor for imposing stricter penalties for the behaviour.

46. I find that the strata considered Ms. Ruttan's complaints and submissions, as well as Ms. X's efforts to control the behaviour in making its May 29, 2020 decision not to enforce bylaw 4.4 against Ms. X. I agree with the strata that Ms. X took steps to control the barking including buying and using 2 bark control devices and addressing the barking more quickly when it occurred. It is undisputed that Ms. X also takes the dog to daycare during the day, which I find is another step toward controlling the barking noise from #104. I also find the strata considered the outcome of meetings with both Ms. Ruttan and Ms. X, where it took steps to encourage both parties to make efforts to reduce the impact of the barking noise on Ms. Ruttan's enjoyment of her own strata lot.

47. I disagree with Ms. Ruttan that Ms. X's efforts are insufficient to control the unreasonable barking. Ms. Ruttan says that the bark control devices only work after the dog has started barking, which is unacceptable. I find that some barking is to be expected in a strata complex which allows up to 2 dogs per strata lot. I further find that number of times the dog barked per day, and the duration of each barking session, significantly decreased over the months of April and May, based on Ms. Ruttan's barking logs. I further find that, on some days, there were no recorded instances of the dog barking at all. This shows that the noise is much reduced from Ms. Ruttan's first complaint and that Ms. X has taken steps to rectify the problem.

48. I place no weight on the July 2020 letter from Ms. X's counsellor, which states that Ms. X should be accommodated in keeping a therapy or comfort dog. This is because the counsellor does not set out his qualifications to provide such an opinion, or the facts on which his opinion is based. Further, the July 2020 letter did not exist when the strata made its May 19, 2020 decision and therefore the strata did not, and could not, consider it.

49. I disagree with Ms. Ruttan that the strata should have enforced bylaw 4.4 against Ms. X on May 19, 2020, simply because it had referred to that bylaw in its April 17, 2020 warning letter to Ms. Ruttan.

50. On balance, I find the strata's May 19, 2019 decision not to rely on bylaw 4.4 and require Ms. X to remove her dog is reasonable given the steps Ms. X has taken to control the dog barking and the resulting reduction in the noise occurrences. I do not find the strata acted in a significantly unfair manner toward Ms. Ruttan in making that decision on May 19, 2020. The strata council is required to govern in the best interests of all owners, which often conflict with the interests of individual owners (see *Oakley et al v. Strata Plan VIS 1098*, 2003 BCSC 1700). I decline to order the strata to enforce bylaw 4.4 and require Ms. X to remove her dog, at this time.

51. It is open to the strata to consider whether it should enforce bylaw 4.4 in the future, should it determine that Ms. X again violates the noise and nuisance bylaw in the same manner in the future.

52. As Ms. Ruttan was unsuccessful in her claim, I find she is not entitled to reimbursement of any CRT fees or dispute-related expenses, in accordance with the CRTA and the CRT's rules.

53. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Ruttan.

ORDER

54. I dismiss Ms. Ruttan's claims and this dispute.

Sherelle Goodwin, Tribunal Member