



Civil Resolution Tribunal

Date Issued: December 11, 2020

File: ST-2020-005060

Type: Strata

Civil Resolution Tribunal

Indexed as: *Newnes v. Bicknell*, 2020 BCCRT 1407

B E T W E E N :

SLYVIA NEWNES

APPLICANT

A N D :

MICHELLE BICKNELL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This is a dispute between neighbours about noise. The applicant, Sylvia Newnes, lives below the respondent, Michelle Bicknell. They both own strata lots in a strata corporation (strata) that consists of 3 high-rise towers built in the 1970s.

2. Ms. Newnes says that since Ms. Bicknell moved in in February 2019, she has been subjected to constant unreasonable noise. Ms. Newnes alleges that part of the problem is Ms. Bicknell's laminate flooring.
3. Ms. Newnes asks for 3 orders. The first 2 relate to Ms. Bicknell's floor. First, she wants an order that Ms. Bicknell "take responsibility" for the floor and "fix it". Second, she wants an order that a professional "deal with" the noise issue because the floor "does not conform to the strata rules regarding laminate flooring". Finally, she wants \$10,000 to compensate her for the loss of enjoyment of her home.
4. In her Dispute Notice, Ms. Newnes also asked for an order that the strata enforce the noise bylaw. It is unclear from her submissions whether Ms. Newnes still wants that order. The strata is not a party to this dispute, so to the extent that Ms. Newnes's claims are directed at the strata, I dismiss them. I address the issue of the strata's lack of involvement in more detail below.
5. Ms. Bicknell denies that she makes an unreasonable amount of noise.
6. For the reasons that follow, I dismiss Ms. Newnes's claims.
7. The parties are each self-represented.

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 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 CRT considers appropriate.

ISSUES

12. The issues in this dispute are:
 - a. Has Ms. Bicknell used her strata lot in a way that caused an unreasonable amount of noise?
 - b. If so, what remedy is appropriate?

BACKGROUND

13. In a civil claim such as this, Ms. Newnes as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
14. By way of background, this CRT dispute started when Ms. Bicknell made claims against Ms. Newnes, the strata, and another resident, RB. Ms. Newnes filed a counterclaim against Ms. Bicknell. Then, Ms. Bicknell withdrew all her claims, leaving only Ms. Newnes's counterclaim to be resolved. Therefore, in this decision Ms. Newnes is the sole applicant and Ms. Bicknell is the sole respondent.
15. The strata consists of 408 strata lots in 3 high-rise buildings. Mr. Newnes lives in strata lot 53 (SL53), which is on the 8th floor. Ms. Bicknell lives in strata lot 60 (SL60), which is directly above SL53 on the 9th floor.

16. The strata filed a complete set of bylaws in the Land Title Office on March 21, 2002. There have been several amendments since then, but none relevant to this dispute.
17. Ms. Newnes refers to 3 bylaws. Bylaw 4.1(a) says that a resident must not use their strata lot in a way that causes a nuisance to another person. Bylaw 4.1(b) says that a resident must not use their strata lot in a way that causes unreasonable noise. Bylaw 4.1(c) says that a resident must not use their strata lot in a way that unreasonably interferes with the right of another person to use or enjoy their strata lot.

EVIDENCE AND ANALYSIS

Has Ms. Bicknell used her strata lot in a way that caused an unreasonable amount of noise?

18. Ms. Bicknell purchased SL60 on February 15, 2019. SL60 has laminate flooring throughout the kitchen, dining room, living room, and bedroom. It is undisputed that the flooring was installed by a previous owner in the summer of 2018. It is also undisputed that before the laminate was installed, SL60 was carpeted.
19. Ms. Newnes's first noise complaint about Ms. Bicknell was on February 18, 2019, the day after Ms. Bicknell moved in.
20. Between March 2019 and October 2020, Ms. Newnes sent dozens of emails to the strata's property manager complaining about noise coming from SL60. I will not review emails in detail. While there were 2 stretches when Ms. Newnes did not make any complaints, first between October 2019 and February 2020, and again between August and October 2020, Ms. Newnes says that the noise was constant. I take from this that while the intensity of the noise varied over time, it was a continual problem for Ms. Newnes.
21. Most of Ms. Newnes's emails refer to thumping, banging, scraping, talking and laughing. Many of the complaints are of single thumps or bangs that wake her up at night, which Ms. Newnes attributes to Ms. Bicknell dropping items on the floor. Many

of the complaints are for noises made during the day. Several of the complaints include the sound of Ms. Bicknell's toilet flushing. For example, in one email Ms. Newnes said that she was awoken at 3:30 am by a "loud thump and then someone using the toilet".

22. There are also several complaints that deal with loud talking and laughing late at night, which Ms. Newnes attributes to Ms. Bicknell hosting parties.
23. On October 4, 2019, 4 strata council members conducted a sound transmission test, with 2 strata council members in each strata lot. The October 29, 2019 strata council meeting minutes refer to this test but do not say anything about the outcome.
24. The strata appears to have fined on Ms. Bicknell more than once for breaching the noise bylaw, but the evidence is not clear about how many times. The letters imposing the fines are not in evidence.
25. RB lives in strata lot 54 (SL54), which is beside SL60 on the 9th floor. He is also Ms. Newnes's romantic partner. According to his statement, RB spends most of his nights with Ms. Newnes in SL53. He generally confirms that there has been continuous noise from SL60 in SL53 since Ms. Bicknell moved in.
26. RB also complained to the property manager about several noisy social gatherings that went late into the night. I address the relatively small number of complaints about late night parties separately below.
27. I turn first to the vast majority of Ms. Newnes's complaints, which again were about bumping, thumping, talking and laughing. Based on the fact that some of Ms. Newnes's complaints included the sound of a toilet flushing, I find that most of the noise that bothered Ms. Newnes was caused by Ms. Bicknell going about normal activities in her home.
28. As an owner, Ms. Newnes cannot enforce bylaws against another owner. Only the strata can enforce bylaws. So, in order to succeed, I find that Ms. Newnes must prove that the noise was unreasonable based on the common law of nuisance. In the strata context, a nuisance is an unreasonable interference with an owner's use and

enjoyment of their property: *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502. Whether or not an interference, such as noise, is unreasonable depends on several factors, such as its nature, severity, duration and frequency. The interference must also be substantial such that it is intolerable to an ordinary person: *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

29. So, just because Ms. Bicknell was not doing anything unusual or inconsiderate does not mean that the noise she made was reasonable. The focus is not on the cause of the noise, but its effect. Several CRT decisions have found that noise was unreasonable even though the resident making the noise was doing normal everyday activities like walking and talking. For example, in *Lucas v. The Owners, Strata Plan 200*, 2020 BCCRT 238, the CRT found that the noise from footsteps and voices was unreasonable. In *Moojelsky v. The Owners, Strata Plan K 323 et al*, 2019 BCCRT 386, the CRT found that the noise from “everyday living” was excessive. In *Torok v. Amstutz et al*, 2019 BCCRT 386, the CRT found that squeaking and creaking from a laminate floor was unreasonable, even though it was caused by the resident walking around.
30. Based on the emails and Ms. Newnes’s submissions in this dispute, I have no difficulty concluding that Ms. Newnes subjectively found the noise from SL60 intolerable. It is clear that the noise has had a significant impact on Ms. Newnes’s life. However, this does not end the matter. Like the bylaws, the law of nuisance uses the language of reasonableness. This requires me to determine not whether Ms. Newnes found the noise intolerable, but whether an ordinary person would have found the noise intolerable. Put another way, was Ms. Newnes unusually sensitive to noise or was the sound transfer between the strata lots so bad that the sounds of everyday living from SL60 were unbearable in SL53? As the applicant, Ms. Newnes must prove that the noise was objectively unreasonable.
31. Unlike the previous CRT disputes mentioned above, there is no objective evidence before me about the amount of noise in SL53. In *Moojelsky*, the owner took a video that showed a mobile phone app measuring the decibel levels of ambient and peak noises. The strata council president also attended to hear the noise, and she

corroborated that the sounds of footsteps were so loud that she would not be able to live with them. In *Lucas*, the owner produced audio recordings of the noise. A strata council member corroborated her complaints in a statement. There was also a sound engineering report that confirmed that the sound transfer between the strata lots was high. In *Torok*, the property manager confirmed the level of noise by having 2 people walk around in the strata lot above the owner's strata lot. The property manager also recorded the decibel level and produced a report calling the noise "annoying" and "a problem". In *Suzuki v. Munroe*, 2009 BCSC 1403, the court gave little weight to either the parties' or the witnesses' subjective evidence about how loud the air conditioner at issue was, and instead relied on the objective evidence of noise level measurements.

32. In this dispute, there are no video or audio recordings of the noise. There are no readings from a decibel meter. There have not been any professional tests done on Ms. Bicknell's floor to measure the sound transfer between the strata lots. There is no statement from the strata's security guard, who attended SL60 several times in response to noise complaints. There is no direct evidence from any of the 4 strata council members who participated in the sound test in October 2019. In his statement, RB says that he was present for this test but all he says about it was that one of the strata council members "seemed quite surprised".
33. Further, while RB's statement generally corroborates Ms. Newnes's complaints, I do not consider him to be an objective witness since he was previously a party in this dispute and is Ms. Newnes's romantic partner. Also, his statement contains nearly identical language to Ms. Newnes's submissions, which suggests that they worked together in drafting his statement. In particular, RB's statement describes the noise as "various types of bumps, thumps, furniture scrapes, talking and laughing. The noise occurs at all times of the day and night". In her submissions, Ms. Newnes says that "the noise occurs at all times of the day and night and is of a continuous nature, including bumps, thumps, furniture scrapes, talking and laughing". So, I place little weight on RB's statement as objective evidence of the amount of noise in SL53.

34. Ms. Newnes's observations are inherently subjective and therefore difficult to assess against a reasonableness standard. I find that the evidence before me does not establish that the noise of everyday living from SL60 was unreasonable.
35. I draw a different conclusion about the small number of complaints about social gatherings in SL60. As mentioned above, RB complained about several parties to the property manager. According these complaints, RB called security to report these parties while they were happening. Ms. Bicknell says that she does not host parties and occasionally has had 1 or 2 guests over. In the end, it does not matter how many guests Ms. Bicknell had over. What matters is the amount of noise.
36. I find that Ms. Bicknell made an unreasonable amount of noise on roughly 6 occasions by hosting social gatherings that went into the early hours of the morning. I rely primarily on RB's complaints to the property manager, because he did not ever complain to the property manager about any "everyday living" noise. Also, while RB says that he spends most of his nights in SL53 with Ms. Newnes, some of his complaints about social gatherings were because he could hear them through the walls in SL60. This suggests that they were quite loud. While I agree with Ms. Bicknell that there is no bylaw that says she is not allowed to talk or laugh at night, I find that what is a reasonable amount of noise varies based on the time of day. That said, I find that these occasions were rare.
37. In summary, I am satisfied that Ms. Bicknell breached the noise bylaw by creating an unreasonable amount of noise at night on roughly 6 occasions in 18 months. I find that Ms. Newnes has failed to prove that the vast majority of the noise from SL60 was unreasonable.

If so, what remedy is appropriate?

38. As mentioned above, Ms. Newnes asks for 2 orders that are directed at making the floor more soundproof. Because of my conclusion that Ms. Newnes did not prove that Ms. Bicknell made an unreasonable amount of everyday living noise, I find that there is no basis for any orders about Ms. Bicknell's floor. In other words, I find that the evidence before me does not establish that substandard soundproofing or flooring

material was responsible for the unreasonable amount of noise from the social gatherings Ms. Bicknell hosted late at night. I reach this conclusion, in part, because RB could hear these social gatherings in SL54, which again is beside and not below SL60.

39. I therefore dismiss Ms. Newnes's claims about Ms. Bicknell's floor.

40. As for damages, I find that the fact that Ms. Bicknell occasionally breached the noise bylaw does not necessarily mean that she is liable to pay damages for causing a nuisance. Ms. Bicknell would be liable in nuisance if her actions unreasonably interfered with Ms. Newnes's use and enjoyment of SL53. Again, whether the interference is unreasonable depends on factors such as its duration, severity, character and frequency.

41. I recognize that loud noise at night seems to have had a greater impact on Ms. Newnes's enjoyment of her strata lot than similar noises during the day. However, I find that Ms. Bicknell's occasional breaches of the noise bylaw do not entitle Ms. Newnes to damages. In each of the above CRT disputes in which an owner received damages for nuisance because of noise, the noise was found to be constant or continuous and long-lasting (see also *Pope v. Yas*, 2019 BCCRT 1350). I find that the roughly 6 instances of unreasonable noise over an 18 month period were not frequent or lengthy enough to constitute a nuisance.

42. Therefore, I dismiss Ms. Newnes's claim for damages.

43. I note that Ms. Newnes did not make a claim against the strata. It is the strata's responsibility to enforce the strata's bylaws, including investigating noise complaints and remedying contraventions of the noise bylaw. Where poor soundproofing between strata lots may be a cause of a noise problem, the strata may need to hire professionals to investigate and recommend ways to reduce it. In several disputes, the CRT has ordered the strata corporation to take such steps, including in *Torok*, *Moojesky* and *Lucas*. Because the strata is not a party to this dispute, I did not consider whether the strata has done enough to investigate Ms. Newnes's noise complaints or to reduce the noise transfer between the parties' strata lots. Nothing in

this decision prevents Ms. Newnes from bringing a new CRT claim against the strata for failing to properly address her noise complaints. I make no comment about the merits of such a claim.

TRIBUNAL FEES AND EXPENSES

44. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Newnes was unsuccessful so I dismiss her claim for CRT fees and dispute-related expenses. Ms. Bicknell did not claim any dispute-related expenses.

DECISION AND ORDER

45. I dismiss Ms. Newnes's claims, and this dispute.

Eric Regehr, Tribunal Member