



# Civil Resolution Tribunal

Date Issued: December 17, 2020

File: ST-2020-005240

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VIS 2421 v. Dowse*, 2020 BCCRT 1426

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

The Owners, Strata Plan VIS 2421

**APPLICANT**

**A N D :**

Barbara Dowse

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## INTRODUCTION

1. This is a strata property dispute about alleged noise bylaw violations.
2. The applicant, The Owners, Strata Plan VIS 2421 (strata) is a strata corporation existing under the *Strata Property Act* (SPA), and is represented by a strata council member.

3. The respondent, Barbara Dowse, owns strata lot 8 (SL8) on the second floor in the strata's building, and represents herself.
4. The strata says it has received complaints from 2 other strata owners about Ms. Dowse creating unreasonable noise contrary to the strata's bylaws. The strata says, after investigation, it concluded Ms. Dowse breached its bylaws and that continued breaches are occurring despite the strata's requests for her compliance. The strata asks that Ms. Dowse be ordered to comply with the strata's noise bylaws.
5. Ms. Dowse denies the allegations and says she has not acted contrary to the strata's noise bylaws. She asks that this dispute be dismissed.
6. For the reasons that follow, I dismiss the strata's claim and this dispute.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. The CRT has discretion to decide the format of the hearing, including in writing, by telephone, videoconferencing, email, 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.
9. 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.

10. 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**

11. The issues in this dispute are:
- a. Has the strata established that Ms. Dowse contravened its noise bylaw?
  - b. If so, what, if any, order is appropriate?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil proceeding such as this, the strata, as applicant, must prove its claims on a balance of probabilities.
13. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
14. The strata is a residential strata corporation created in July 1992 under the *Condominium Act* that continues to exist under the SPA. It consists of 12 strata lots in a single 3-storey building located in Comox, B.C.
15. The strata filed consolidated bylaw amendments in the Land Title Office (LTO) on September 30, 2016. A further set of consolidated bylaws was filed on August 14, 2019 that did not amend the noise bylaws. I infer the Schedule of Standard Bylaws under the SPA do not apply. Given the period of time relating to this dispute starts in late 2018, I find the September 30, 2016 bylaws are relevant.
16. The applicable bylaws are those contained in bylaw 3(1) that address the use of property. I reproduce them here.
- (1) An owner, occupant or visitor must not use a strata lot... in a way that :-
- a) causes a nuisance or hazard to another person,

- b) causes unreasonable noise,
- c) unreasonably interferes with the rights of other persons to use and enjoy... another strata lot....

17. Ms. Dowse admits the flooring in her strata lot was removed and replaced with hardwood flooring in 2013. However, I note the strata does not have a bylaw making owners responsible for alterations, nor is there evidence of a signed agreement where Ms. Dowse indemnifies the strata for issues arising from her strata lot alterations.

***Has the strata established that Ms. Dowse contravened its bylaws?***

18. As mentioned, Ms. Dowse owns a second floor strata lot. The majority of noise complaints received by the strata were from the owner of the strata lot directly below Ms. Dowse's strata lot. The evidence suggests the neighbour below Ms. Dowse was also the strata council president at some point during 2018 and 2020 when the complaints were received although the exact timeframe is unclear. There was also a 13-month period from February 2019 to March 2020 where no complaints were received. In March and June 2020, 2 complaints were received from Mrs. Dowse's immediate neighbour located on the second floor.

19. The initial letter from the strata lot below SL8 in December 2018 complained of "rapid heavy heel walking (thumping)" as Ms. Dowse moved around her strata lot, "lack of control when grandchildren are visiting", and "loud volume sound" from a television in the early morning hours. Similar complaints from the same owner were made on December 27, 2018 and January 13, 2019 and, except for the television volume, appear to be about noise during daytime hours.

20. Ms. Dowse provided a lengthy response to a letter from the strata on January 19, 2019. The strata's letter is not before me, but Ms. Dowse responded to the accusations from the downstairs owner in detail and provided reasons she felt supported her position the claims were unfounded and harassing.

21. On January 20, 2019, the downstairs owner wrote to the strata stating that the noises had "significantly improved" and asked the matter "be put in abeyance pending

continued assessment”. Ms. Dowse’s lawyer wrote to the downstairs owner in May 2019 denying their claims.

22. On March 4, 2020, the next door neighbour to Ms. Dowse emailed the downstairs neighbour, apparently in their capacity as council president, to say that Ms. Dowse had been “cluttering and banging about in the kitchen” in the early morning hours of February 28, 2020 for “about an hour”. According to the email, this was a daily occurrence. According to another letter from the next door neighbour, the issues had improved marginally by June 15, 2020.
23. In March and June 2020, the downstairs neighbour made further complaints were made that identified concerns about doors opening and closing, loud activity in the early morning hours, and noise complaints about Ms. Dowse’s grandson.
24. The SPA does not set out any procedures for accessing bylaw complaints. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the British Columbia Supreme Court (BCSC) stated that the SPA allows strata corporations to deal with matters of complaints for bylaw violations as it sees fit, as long as it complies with the principles of procedural fairness and its actions are not significantly unfair to any person who appears before it (paragraph 52). In other words, the strata must be reasonable in how it assesses bylaw complaints.
25. The procedure followed by the strata is not disputed. The strata first reviewed correspondence dated between October 2018 and June 2020 that documented noise complaints against Ms. Dowse. It also reviewed Ms. Dowse’s responses to those complaints. It then had “general, and discreet discussions with other residents” in order to “gain [insight] into sound transfer issues within the building”. Finally, the strata conducted sound tests on June 24 and 25, 2020.
26. The strata first “tested” the sound between 2 other strata lots on the third and second floors that were not involved in this dispute. It then “tested” SL8 and the strata lot below. As explained in the Dispute Notice, the testing consisted of someone in the downstairs strata lot listening to a person walking around the strata lot above. The strata submits that it was satisfied there is sound transfer between strata lots based

on “ongoing day-to-day activities but determined that “unacceptable noise” was easily generated with someone walking at a gait that exceeded “normal”.

27. While the strata’s procedure appears to be a reasonable approach, I find the strata’s investigation was not objective, which is the test established in *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33. In *Triple P*, a nuisance in the strata context is an unreasonable interference, such as noise, with an owner’s use and enjoyment of their property. Whether an interference 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.
28. Further, 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.
29. As set out in *Triple P*, the focus of the test 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, which is the case here. For example, in *Lucas v. The Owners, Strata Plan 200*, 2020 BCCRT 238, the CRT member 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 member found that the noise from “everyday living” was excessive. In *Torok v. Amstutz et al*, 2019 BCCRT 386, the CRT member 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 correspondence in evidence, I accept the noise from SL8 was unacceptable to the complaining owners, but that is not the test. Rather, as I have mentioned, the test is whether the noise was objectively unreasonable.
31. Unlike the CRT disputes mentioned above, there is no objective evidence before me about the level of noise in SL8. 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 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".

32. In this dispute, there are no audio or video recordings, or decibel meter readings of the noise. Nor have there been any professional tests done on SL8's floor or walls to measure the sound transfer between strata lots. Additionally, there is no direct evidence from any of individuals who participated in the sound tests in June 2020.
33. I find the strata's testing was not objective and therefore difficult to assess against a reasonableness standard. For that reason, I find the strata has not established that Ms. Dowse breached the strata's noise bylaws. Accordingly, I dismiss the strata's claim and this dispute.
34. I will briefly address the strata's requested remedy, even though I have dismissed this dispute. Although the strata determined Ms. Dowse breached of parts of the strata's bylaw 3(1), a conclusion I do not agree with, the strata did not impose bylaw fines. The strata's only remedy is for an order that Ms. Dowse stop contravening the strata's noise bylaws. I note that an owner in a strata corporation always has an obligation to abide by the strata corporation's bylaws. Therefore, even if the strata was successful, which it was not, the only relief I could grant the strata would be to reinforce relief it already had.
35. Nothing in this decision prevents the strata from imposing bylaw fines for future breaches of its noise bylaws, provided the strata has objective evidence establishing a bylaw breach, and follows the procedural requirements of the SPA for imposing fines.

## **CRT FEES AND EXPENSES**

36. Under section 49 of the CRTA and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Dowse is the successful party but did not pay CRT fees or claim dispute-related expenses. Therefore, I make no order for CRT fees or expenses.
37. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Dowse.

## **ORDER**

38. I dismiss the strata's claim and this dispute.

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J. Garth Cambrey, Vice Chair