



# Civil Resolution Tribunal

Date Issued: January 11, 2021

File: ST-2020-005911

Type: Strata

Civil Resolution Tribunal

Indexed as: *Tran v. The Owners, Strata Plan VIS 6828*, 2021 BCCRT 28

BETWEEN:

HELEN TRAN

**APPLICANT**

AND:

The Owners, Strata Plan VIS 6828

**RESPONDENT**

AND:

HELEN TRAN

**RESPONDENT BY COUNTERCLAIM**

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**REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. This dispute is about noise complaints and related issues.
2. The respondent and applicant by counterclaim, The Owners, Strata Plan VIS 6828 (strata) is a strata corporation existing under the *Strata Property Act* (SPA). The applicant and respondent by counterclaim, Helen Tran, owns strata lot 51 (unit 306) in the strata. Ms. Tran says the tenants of unit 406, directly above, make excessive noise. Unit 406's tenants and owner(s) are not parties to this dispute.
3. Ms. Tran says the strata has not addressed her noise complaints. She seeks an order that the strata enforce its noise bylaw against unit 406 through fines, or by adding soundproofing between the units at its cost. For the loss of enjoyment of her strata lot, Ms. Tran seeks \$4,500. Ms. Tran is self-represented.
4. The strata says it investigated Ms. Tran's complaints but found the noise from unit 406 was not unreasonable and did not contravene its bylaws.
5. In the counterclaim, the strata says Ms. Tran has been the subject of noise complaints and has escalated tension with the unit 406 tenants. It seeks orders that Ms. Tran stop creating a nuisance, stop causing unreasonable noise and stop unreasonably interfering with the rights of the unit 406 tenants to use and enjoy their strata lot. The strata is represented by a strata council member.
6. For the reasons that follow, I find the strata has failed to adequately address Ms. Tran's noise complaints and I order it to take steps to investigate and address the complaints. I also dismiss the strata's counterclaim.

## **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 by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties in this dispute call into question each other's credibility. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.
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 Ms. Tran's claim are:
  - a. Did the strata adequately investigate Ms. Tran's noise complaints?
  - b. Was the noise from unit 406 unreasonable or a nuisance?
  - c. What remedies, if any, are appropriate?
12. The issues in the strata's counterclaim are:

- a. Should Ms. Tran should be ordered to comply with the strata's noise bylaw?
- b. Is the strata entitled to any other remedies it referred to in submissions?

## **EVIDENCE AND ANALYSIS**

### ***Background***

13. As the applicant in this civil dispute, Ms. Tran must prove her claims on a balance of probabilities. In the counterclaim, the strata must prove its claims to the same standard. 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 2009 and consists of 68 strata lots on 4 floors. Ms. Tran purchased unit 306 on the third floor and moved in on April 24, 2020.
15. The strata filed a complete set of bylaws in the Land Title Office on March 13, 2017.
16. Ms. Tran relies on bylaw 3(1), which provides, in part, that an owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that a) causes a nuisance or hazard to another person, b) causes unreasonable noise, or c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot. I refer to these parts of bylaw 3(1) as the strata's noise bylaw.
17. The most frequent subject of Ms. Tran's noise complaints is footsteps from the toddler in unit 406. She also complains about banging sounds she suspects come from the toddler dropping toys on the floor. To a lesser extent, she hears the father's footsteps as he goes out to the balcony to smoke or vape. She says the noise starts every morning between 5 and 6 a.m., which wakes her up and often prevents her from falling back to sleep. On days the unit 406 parents work, it stops at 8 a.m. She says there is also noise in evenings, every day, when the toddler returns home around 5:30 until the toddler goes to bed around 6:45 p.m. On Saturdays, Wednesdays and sometimes other days, one or more parents stays home with the toddler, so Ms. Tran hears the noise, off and on, all day unless the tenants leave the unit. In submissions,

Ms. Tran said the toddler was recently waking up as early as 4 a.m. and running back and forth, throwing things or marching in place.

18. Ms. Tran also complains in her submissions about the father's smoking, but she has not asked for a remedy related to smoking, so I have not considered that issue in this decision.
19. The strata does not dispute that Ms. Tran hears noise from the toddler, but it says the noise is reasonable and Ms. Tran is overly sensitive to noise.
20. I have not recounted every detail of the allegations traded between Ms. Tran and the unit 406 tenants, but some background provides necessary context when considering the strata's investigative approach.
21. On June 6 or 7, 2020, Ms. Tran left a note on unit 406's door. The note asked if the noise could be mitigated, such as by taking the toddler outside in the morning or teaching the toddler to walk quietly. When the toddler's father visited Ms. Tran to discuss the note, a heated discussion ensued. According to Ms. Tran, the discussion ended with the father vowing to make more noise if she continued to complain, and Ms. Tran vowing to continue to complain until the noise stopped. Tension continued to rise as the tenants made noise complaints against Ms. Tran for allegedly banging on her ceiling. Ms. Tran denied those allegations and installed a camera recording continuously in her strata lot in case of future ceiling banging allegations. The tenants did not appreciate the idea of a camera in Ms. Tran's strata lot potentially recording noises they made 24 hours a day. The tenants reported the camera to the RCMP, and an officer spoke with Ms. Tran, but did not require her to stop using the camera.
22. Ms. Tran continued to document noise disturbances in a noise log. She sent detailed reports to the strata every week or 2. She also measured the noise using a smartphone app and took videos showing the app's readings. I return to this evidence below when considering whether the noise was unreasonable or a nuisance.
23. Ms. Tran submitted her CRT dispute application on July 31, 2020.

24. On September 24, 2020, 2 strata council members attended Ms. Tran's strata lot. The strata submits that the council members found the noise to be daily living noise. It says the television, when turned on, drowned out the noise. The strata says the council members felt that while the toddler walking "had moments of jarring," it was not unreasonable given some amount of noise is to be expected between strata lots, and toddlers do not walk smoothly. The strata did not provide statements from the council members who visited Ms. Tran's strata lot on September 24, 2020.
25. Ms. Tran says the council members were there for 10 minutes, in the early evening, and did not experience the noise at its worst, which is in the early morning. It is undisputed that the council members did not bring any devices to measure or record the noise. Ms. Tran says they advised that they did not know what else could be done to address the noise.

***Did the strata adequately investigate Ms. Tran's noise complaints?***

26. Section 26 of the SPA requires the strata council to exercise the powers and perform the duties of the strata, which include bylaw enforcement. The strata council is required to act reasonably when carrying out these duties. This includes a duty to investigate alleged bylaw contraventions, such as noise complaints.
27. Section 135 of the SPA requires the strata to give an owner or tenant who is the subject of a complaint an opportunity to be heard before the strata levies a fine. Aside from section 135, the SPA sets out no procedural requirements a strata must follow when investigating a complaint. The courts have said a strata may investigate bylaw contravention complaints as its council 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.
28. Ms. Tran says the strata treated her significantly unfairly by failing to properly investigate her noise complaints. I am empowered under section 123(2) of the CRTA to make orders related to findings of significant unfairness.

29. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the court confirmed that where a strata corporation exercises discretionary authority, an owner's reasonable expectations properly form part of the significant unfairness inquiry. I find the strata's investigation of Ms. Tran's noise complaints is an exercise of discretionary authority. Consistent with several non-binding CRT decisions involving noise complaints, I find Ms. Tran's reasonable expectations form part of the significant unfairness test (see e.g., *Torok v. Amstutz et al*, 2019 BCCRT 386, and *Yang v. The Owners, Strata Plan VR732*, 2020 BCCRT 361). Accordingly, the questions are:

- a. What is or was Ms. Tran's expectation?
- b. Was that expectation objectively reasonable?
- c. If so, was that expectation violated by an action that was significantly unfair?

30. Ms. Tran says her expectation was that the strata would "investigate and remedy the bylaw infraction." I find Ms. Tran means she expected that the strata would investigate her noise complaints, determine whether its noise bylaw was contravened, and address any bylaw contravention. I find that expectation was objectively reasonable, as the SPA requires the strata to do these things.

31. For the reasons that follow, I find the strata did not meet that expectation, and acted in a manner that was significantly unfair to Ms. Tran.

32. Ms. Tran first complained about noise on May 14, 2020 through an online portal system. The property manager responded that council would review, and the property manager would advise of any actions taken. There is no evidence that council considered this complaint or took any action before Ms. Tran made a second complaint on June 3, 2020.

33. In her second portal complaint, Ms. Tran noted her first complaint was marked "resolved" but she was not given any information about what happened. She said the

noise problem persisted. The property manager responded that the building is family friendly, so noise from children playing is to be expected during the day, but the property manager would discuss “ideas” to reduce noise with the unit 406 tenants. Those ideas were not stated, and it is not clear whether or when that discussion took place.

34. Ms. Tran requested and was granted a hearing about her noise complaints, which took place by videoconference on June 16, 2020. Council wanted to attend Ms. Tran’s strata lot and hear the noise before the hearing, but Ms. Tran did not agree to delay the hearing beyond 4 weeks. At the hearing, Ms. Tran presented notes and video recordings of the noise. She also addressed a noise complaint that unit 406 had filed against her for having a party, which she explained was a wake.
35. According to its July 23, 2020 decision, the strata council chose to discuss with unit 406’s owner, CB, whether the tenants could take additional actions to reduce noise, noting the tenants had “already placed mats in various areas.” Council also decided to determine if unit 406’s flooring had been changed (the flooring was original, council later confirmed), and to discuss with its property manager solutions implemented in other strata corporations. Council noted that noise and activity during daytime hours is to be expected.
36. The strata does not explain how it knew the tenants had placed mats on the floor, or when the tenants did so. The strata also does not explain why it decided to contact CB rather than the tenants. Although the strata submits that it previously sent a notice to unit 406 suggesting they put down “carpeting”, this notice is not in evidence.
37. The unit 406 tenants provided a joint statement. They said they have lived in unit 406 since May 2019 with no prior complaints. Most of their evidence relates to how they feel Ms. Tran is invading their privacy by recording noise and making noise complaints. Because the tenants are not parties in this proceeding, I have not addressed these privacy concerns.
38. The tenants also say they do their best to limit noise by having area rugs, limiting their toddler’s use of certain toys in the mornings, and taking him out in the afternoons



when they do not work (Wednesdays and Saturdays). The tenants do not indicate whether they placed any rugs or mats in response to Ms. Tran's noise complaints. The tenants do not mention receiving a request to put down rugs or mats.

39. CB also provided a statement. She said she previously lived in unit 406 with a 3-year-old and never received a noise complaint in the 8 years she lived there. CB said her tenants are courteous, respectful and mindful of their community living situation. She said there were no noise complaints about the unit 406 tenants until Ms. Tran moved in. CB said the tenants put area rugs to the living room, and foam mats in the play area. She does not say whether this was before or after Mr. Tran's noise complaints.
40. I find that a proper investigation of the noise complaints would have involved, at minimum, discussing the noise complaints with the tenants, as they were the source of the noise and the subject of the complaints. There is no direct evidence the strata did this. The strata submits that it asked the property manager to send a letter to unit 406 about noise and to ensure thick mats were down, but there is no such letter in evidence.
41. There is no also evidence that the strata visited unit 406 to confirm the presence of rugs or mats, or the extent of coverage. If any new rugs or mats were placed after the complaints, I find the strata failed to follow up to confirm whether the rugs or mats reduced noise.
42. In an August 11, 2020 email, the property manager advised Ms. Tran that the strata had discussed the noise issue with CB and the unit 406 tenants, and "additional mats" were put down. It is not clear when or where the mats were put down, what they were made of, or whether they had any effect on noise transmission. Ms. Tran says if any mats were put down, they had no effect. This is supported by her detailed noise log and complaints.
43. In the same August 11 email, the property manager advised Ms. Tran that strata council had decided not to send bylaw infraction letters to unit 406 because the noises were considered regular living noises as opposed to loud music, TV or parties. However, regular living noises may amount to a nuisance or unreasonable noise,

depending on their intensity, duration and timing (see e.g., footsteps and children running in *Moojelsky v. The Owners, Strata Plan K 323 et al*, 2019 BCCRT 698, or creaking from a laminate floor caused by normal walking in *Torok*, above). The wording of the noise bylaw, which prohibits uses of a strata lot that cause a nuisance, unreasonable noise, or unreasonable interference, indicates that the strata's focus should be on the effect, not the source, of the noise.

44. The strata relies on the absence of noise complaints before Ms. Tran moved in, including when CB lived in unit 406 with her young child. I find that is not a sufficient reason not to investigate. There could be many reasons the previous occupants of unit 306 did not complain about noise. Each noise complaint must be considered on its own merits.
45. The strata refers to *Chiang v. The Owners, Strata Plan LMS 4482*, 2019 BCCRT 389 related to noise complaint investigation and "unacceptable behaviour". In *Chiang*, the applicant owner made a noise complaint about a child stomping during the day. The occupant of the strata lot above alleged that the applicant banged on the ceiling. The strata corporation determined that the single noise complaint did not warrant further action. The strata corporation also wrote to the applicant about her tactics. The CRT dismissed the applicant's request for an order that the strata corporation retract its letter. I find *Chiang* is distinguishable from this dispute because Ms. Tran is asking the strata to enforce its noise bylaw and not to retract a letter. As well, *Chiang* involved a single noise complaint, not an ongoing noise issue.
46. Ms. Tran says the strata has taken sides. I find the evidence and the strata's submissions do indicate a lack of objectivity and impartiality.
47. For example, the strata says the unit 406 tenants have "done their best" to reduce noise but does not explain what the tenants did or how the strata confirmed that the noise was reasonable. The strata says Ms. Tran is harassing the unit 406 tenants, and invading their privacy. I find these allegations are not supported by the evidence. Ms. Tran has appropriately documented the noise she heard in her strata lot, and her contact with the unit 406 tenants has been limited.

48. The strata submits that Ms. Tran's June 7, 2020 note to the unit 406 tenants demonstrated discrimination toward children. In that note, Ms. Tran asked the tenants if it was possible to teach the toddler how to walk quietly. She admitted in the letter that she did not know the answer. I find the note was a reasonable attempt at resolving a noise dispute between neighbours.
49. The strata conveys and appears to endorse CB's view that no matter who resides in unit 406, Ms. Tran will continue to "complain, harass and annoy them due to her unreasonable expectations." The strata submits that Ms. Tran's behaviour has affected the unit 406 tenants' ability to live a normal life and caused undue stress on CB. I find these submissions unsubstantiated by the evidence.
50. The strata also says Ms. Tran is harassing the strata council by making noise complaints. I find Ms. Tran's noise complaints are supported by the evidence, and the strata is obligated under the SPA to investigate them.
51. Overall, I find the evidence and the strata's submissions indicate that the strata did not approach Ms. Tran's noise complaints with objectivity and impartiality.
52. The strata submits that it has sent emails and letters, and says if Ms. Tran had given it more time before bringing a CRT dispute it would have investigated further. It is not clear to which emails and letters the strata refers, because there are no written warnings to CB or the unit 406 tenants in evidence. The only bylaw contravention warning letters in evidence are those the strata sent to Ms. Tran. I find the strata had sufficient time to investigate the issues. As noted, Ms. Tran first complained on May 14, 2020, and has continued to provide regular, detailed complaints. The strata's duty to enforce its bylaw is not suspended when a CRT dispute is filed.
53. Although the strata visited Ms. Tran's strata lot on September 24, 2020, there is no written report or documentation of the findings, and no suggestion that the strata visited unit 406 to confirm the noise-reduction measures in place or investigate noise-reduction options. The strata also made no attempt to objectively measure the noise or determine whether it was reasonable by objective standards. The visit occurred more than 4 months after Ms. Tran's initial complaint. It was in the late afternoon,

when background noise is usually higher. In the early morning, noise can be perceived as more disturbing, according to the City of Vancouver Noise Control Manual cited by Ms. Tran.

54. While observing the noise was a step in the right direction, I find it was insufficient to discharge the strata's investigatory obligations, given the number and character of Ms. Tran's complaints. Although strata submits that following the September visit it asked the property manager to send a letter to unit 406 about noise and to ensure thick mats were down, there is no such letter in evidence, and no indication that the strata followed up on any request.
55. I conclude that the strata's failure to adequately investigate Ms. Tran's noise complaints, its refusal to enter unit 406, and its position that Ms. Tran's legitimate noise complaints were harassment, amounted to conduct that was significantly unfair to Ms. Tran. I address the appropriate remedies below.

***Was the noise unreasonable or a nuisance?***

56. In a strata setting, nuisance is defined as an unreasonable continuing or repeated interference with a person's enjoyment and use of their strata lot (see *The Owners, Strata Plan LMS 3539 v. Ng*, 2016 BCSC 2462). This conduct, as well as unreasonable noise of any kind, is also prohibited under bylaw 3(1).
57. Although I am not bound by it, I agree with the Vice Chair's statement in *A.P. v. The Owners, Strata Plan ABC*, 2017 BCCRT 94, that the test for whether noise is unreasonable is objective rather than what the owner experiences. It is not necessary that noise reach a particular decibel range in order for it to be considered unreasonable. Instead, the determination must be made based on all of the relevant facts (see *Torok*, above, the reasoning in which I find persuasive).
58. Ms. Tran provided witness statements from friends or acquaintances who visited her strata lot. Generally, the witnesses describe hearing loud or heavy stomping from above in the evening. Two witnesses said the footstep noise was loud enough to

interfere with conversation. One witness who spent the night was awoken by stomping in the early morning.

59. Ms. Tran's boyfriend, GC, provided a statement. He said he moved in September 9, 2020. He described the noise as "loud, deep thumps that vibrate throughout the rooms." He said he takes calls for work with a headset covering his ears and still hears the thumping. He described the noise as very annoying and distracting. He sometimes wakes from the noise to see Ms. Tran awake and upset that she cannot fall back to sleep.
60. Although Ms. Tran's witnesses are not entirely independent, I accept that they described the noise as they heard it. I find the witnesses' evidence is sufficient to overcome the strata's submission that Ms. Tran is particularly sensitive to noise, because the noise wakes others and is loud enough to interfere with conversation. Even without the witness statements I would reach the same conclusion based on the noise meter recordings, discussed below.
61. Ms. Tran submitted a hand-written noise log covering June 5 to October 13, 2020. It consists of 134 pages, most of which have 2 columns. Each entry describes the time, type of noise (such as stomping or something dropping) and the duration of the noise. On August 15, 2020, she made 117 entries for noise disturbances ranging from less than 5 seconds to more than 1 minute. On September 19, 2020 she made 180 such entries. Overall, I find Ms. Tran's noise log is a reliable record establishing that she is frequently disturbed by the noise from unit 406.
62. Ms. Tran's noise complaints document regular sleep disturbance in the early mornings between 5 a.m. and 8 a.m.
63. Ms. Tran says the toddler's footsteps cause light fixtures in her strata lot to rattle. The audio in some of Ms. Tran's videos confirms that something in her strata lot rattles if the toddler walks or runs in certain places. Ms. Tran used an app on a phone to record the sound level in some of her videos. The readings show a baseline between 20 and 40 dB, depending on traffic noise. They show peak noise from footsteps over 70 dB.

64. The strata says Ms. Tran is not an expert so her allegations are not professionally proven. The strata also argues that her videos are taken at or near the ceiling. In some videos the sound recording device is held or taped at or near the ceiling, which may have the effect of exaggerating the sound intensity. However, in many other videos the recording devices are held at standing or sitting height and still show high decibel readings. The strata has made no attempt to measure the noise to refute Ms. Tran's observations, so I accept Ms. Tran's sound level readings as the best available evidence.
65. Ms. Tran refers to World Health Organization (WHO) noise guidelines, which the BC Supreme Court relied on in *Suzuki v. Munroe*, 2009 BCSC 1403. The WHO guidelines, discussing noise-induced awakenings, say it is important to limit the number of non-continuous noise events exceeding 45 dB. The court in *Suzuki* also considered various municipal bylaws, which required nighttime noise not to exceed 45 dB.
66. The strata says reasonable noise is allowed between 6 a.m. and 10 p.m., but it has no bylaws to that effect. The strata appears to rely on Langford noise bylaws, but those bylaws prohibit any noise that disturbs the peace. They do not set times of the day when residential noise disturbances are allowed. The Langford noise bylaws say construction noise is lawful between 7 a.m. and 7 p.m., which suggests a reasonable person may expect relative quiet before 7 a.m.
67. Given the ongoing, documented noise complaints, the strata should be able to support its conclusion that its bylaws have not been contravened through objective evidence obtained through an investigation. There is no such evidence here. The lack of prior complaints, the fact that Ms. Tran lives on the third floor, and the fact that the strata is "family friendly" are not enough.
68. I find Ms. Tran's noise level readings, together with her videos, detailed noise log, and witness statements, establish that the noise she has experienced, at least in the early morning hours, is objectively unreasonable. I find Ms. Tran has endured

unreasonable noise that amounted to a repeated interference with her enjoyment and use of her strata lot.

***What remedies are appropriate?***

69. Ms. Tran suspects there is a lack of soundproofing between units 306 and 406 and wants the strata to add soundproofing at its cost. She also wants the strata to begin imposing weekly fines on the unit 406 tenants before determining the best method of reducing noise transfer between the strata lots.
70. The strata acknowledges that its bylaws provide for fines up to \$200 for noise bylaw contraventions. It says it has found in the past that warning letters are usually effective, and when they are not, the strata will impose fines.
71. As noted, the SPA requires the strata to investigate noise complaints and enforce the noise bylaw. However, because the SPA gives the strata enforcement options, I decline to make a specific order about what remedial measures the strata must take. SPA section 129 allows the strata to impose fines or to do work on or to a strata lot or common property under section 133. If the strata does such work, it can require an owner or tenant who contravened the bylaw to pay the reasonable costs of remedying the contravention.
72. Ms. Tran submits that the strata should be required to hire an acoustic professional to measure the Apparent Impact Insulation Class rating (a measure of a floor's ability to suppress impact noise, usually measured with a tapping machine) and compare it to objective guidelines such as the BC Building Code or Vancouver's Noise Control Manual. The strata did not specifically oppose this suggestion. I agree that involving a professional to measure sound transfer and provide recommendations to reduce sound transfer would be a useful starting point. It will provide the strata and the involved owners and tenants with independent and professional measurements and suggestions. I therefore order the strata, within 45 days, to hire an acoustical engineer to measure and report on impact sound transfer between units 406 and 306 and report on options to reduce noise transfer. I also order the strata to provide the report to Ms. Tran within 7 days of receiving it.

73. If the strata determines that there is unreasonable noise, based on the engineer's report or otherwise, it must undertake remedial measures. The strata has the power to require a flooring upgrade where the nature of the flooring is such that the strata cannot properly enforce the noise bylaw (see *Bobiash v. The Owners, Strata Plan BCS 2656 et al*, 2019 BCCRT 670). However, I find such an order would be premature as there is insufficient evidence that the strata will not be able to enforce the noise bylaw through less costly measures. For example, Ms. Tran suggests specialty rugs, mats or carpeting designed for impact noise reduction, or thick cork pads over the laminate flooring. An acoustical engineer should be able to assist the strata in assessing these and other options.
74. I order Ms. Tran to allow reasonable access to unit 306 for the engineer's work. The strata will need access to unit 406 but because unit 406's owner(s) and tenants are not parties to this dispute I cannot make orders that bind them. The strata, however, can enter any strata lot if it follows the requirements in bylaw 7.
75. As for damages, Ms. Tran seeks \$4,500 for the loss of enjoyment of her strata lot. She bases that on 3 months of mortgage payments and strata fees. She does not explain the connection between her enjoyment of her strata lot and her mortgage payments and strata fees.
76. In *Ng*, the BC Supreme Court said that in cases of nuisance, a remedy should be made without undue delay once the respondent is aware of the nuisance. The court found that a strata lot owner had brought to the strata's attention facts that required investigation, and failure to conduct that investigation amounted to an omission to use reasonable care to discover the facts.
77. A tribunal vice chair applied the reasoning in *Ng* in *Chen v. The Owners, Strata Plan NW 2265*, 2017 BCCRT 113. In *Chen*, a strata lot owner complained to the strata corporation about noise from a common property hot tub pump. The vice chair found the strata corporation failed to properly investigate and remedy the noise nuisance caused by the pump for 2.5 years, which was significantly unfair to the owner. The



vice chair awarded the owner \$4,000 in damages for loss of enjoyment of her strata lot.

78. In *Tollasepp v. The Owners, Strata Plan NW 2225*, 2020 BCCRT 481, I considered several CRT decisions that applied *Ng* and *Chen* in the context of a strata corporation's failure to adequately investigate noise complaints and ordered the strata corporation to pay damages. The damages awarded in those tribunal decisions ranged from \$500 for limited instances of balcony noise to \$5,000 for nearly 3 years of droning and living noise.
79. In determining damages, I have considered that as of the time of CRT submissions Ms. Tran had been complaining of noise for 7 months. I accept that Ms. Tran has experienced early morning sleep disturbance nearly every day in that period. I also accept that because she works and studies from home, the noise at times disrupts her ability to focus and take calls. Ms. Tran says she can hear the footsteps even when wearing noise-cancelling headphones, which disrupts her work and schooling. She says when the unit 406 tenants are home, she stays in her den where the noise is quietest. Ms. Tran says the noise makes her head throb and causes headaches when combined with exhaustion from waking early. She says the noise is inescapable and anxiety-inducing.
80. I have also considered that not every instance of footsteps Ms. Tran noted in her noise log may amount to an unreasonable noise, particularly after 7 a.m. Weighing all the evidence about the noise, and the time period at issue, I find the sum of \$2,000 is appropriate.
81. Ms. Tran says the damages award should be increased because she had to respond to the police complaint from the unit 406 tenants about her security camera, and because the father in unit 406 yelled at and threatened her. I find these were separate incidents and the strata had no control over them and could not reasonably be expected to prevent them, so I find they do not increase Ms. Tran's damages.

***Is the strata entitled to any orders against Ms. Tran?***

82. In the counterclaim, the strata requests an order that Ms. Tran stop a) creating a nuisance, b) causing unreasonable noise, and c) unreasonably interfering with the rights of the unit 406 tenants to use and enjoy their strata lot.
83. This request corresponds to the strata's noise bylaw. The strata is responsible for enforcing its bylaws. Ms. Tran is already required to comply with the strata's bylaws, so ordering her to do so would have no effect. I decline to grant this order.
84. The strata also requests that Ms. Tran apologize to the unit 406 tenants for the stress she has allegedly caused. The CRT generally does not order parties to apologize because forced apologies are unlikely to be productive or helpful. Also, the unit 406 tenants are not parties to this dispute and there is no evidence they asked for an apology.
85. In submissions, the strata says it would like Ms. Tran to stop leaving notes for unit 406 and banging on her ceiling, and to leave the unit 406 tenants alone. Claims for "restraining orders," "no contact orders," "cease and desist orders" and similar claims that cannot be linked to the categories listed in section 121 fall outside the CRT's strata property jurisdiction. I therefore decline to issue the requested orders.
86. The strata asks Ms. Tran to stop making allegations toward the tenants. If the allegations are noise complaints, I find making such an order would be inappropriate because the SPA and the strata's bylaws require residents to address noise disturbances through the complaint process.
87. In conclusion, I find the strata is not entitled to any orders against Ms. Tran.

**CRT FEES, EXPENSES AND INTEREST**

88. 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. I see no reason in this case not to follow that general rule. I therefore order the strata to reimburse Ms. Tran for \$225 in CRT fees. As the strata's

counterclaim was unsuccessful, it is not entitled to reimbursement of the \$125 CRT fees it paid.

89. The *Court Order Interest Act* (COIA) applies to the CRT. Ms. Tran is entitled to pre-judgement interest on the damages award from May 14, 2018, the date of her first unaddressed complaint, to the date of this decision. This equals \$81.03.
90. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Tran.

## **ORDERS**

91. I order that within 45 days of the date of this decision, the strata must, at its cost, hire an acoustical engineer to measure and report on impact sound transfer between units 406 and 306 and report on options to reduce impact sound transfer between the 2 strata lots. The strata must require the engineer's findings be set out in a written report.
92. I order that within 7 days of receiving the acoustical engineer's report, the strata must provide a copy of it to Ms. Tran.
93. I order that Ms. Tran must allow reasonable access to her strata lot for the acoustical engineer's assessment.
94. I order that within 30 days of the date of this decision, the strata must pay Ms. Tran a total of \$2,306.03, broken down as follows:
  - a. \$2,000.00 in damages,
  - b. \$81.03 in prejudgment interest under the COIA, and
  - c. \$225.00 in tribunal fees.
95. Ms. Tran is also entitled to post-judgement interest under the COIA, as applicable.
96. The strata's counterclaims are dismissed.

97. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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Micah Carmody, Tribunal Member