



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Lloyd v. The Owners, Strata Plan EPS1830*, 2021 BCCRT 1330

B E T W E E N :

BRENDALYNN LLOYD

APPLICANT

A N D :

The Owners, Strata Plan EPS1830

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Laylí Antinuk

INTRODUCTION

1. The dispute is about a strata's response to a bylaw complaint about dog noise.
2. The applicant, BrendaLynn Lloyd, owns strata lot 52 (SL52) in the respondent strata corporation, The Owners, Strata Plan EPS1830 (strata).

3. In August 2020, Ms. Lloyd received a bylaw infraction notice (notice) sent on behalf of the strata. The notice says the strata received a written complaint about excessive noise caused when Ms. Lloyd plays with her dog. The notice asked Ms. Lloyd to remedy the noise. The strata did not take any enforcement action beyond sending the notice.
4. Among other things, Ms. Lloyd says the strata violated ss. 35 and 36 of the *Strata Property Act* (SPA) because it did not give her copies of the written complaint(s) that led to the notice. Ms. Lloyd also says the strata violated SPA section 34.1 because it did not hold a hearing within 4 weeks of her hearing request.
5. Ms. Lloyd wants me to order the strata to adhere to the SPA. Ms. Lloyd also wants me to order the strata to “cease and desist with any future frivolous, vexatious and unreasonable complaints against” her.
6. The strata says it has followed the SPA. The strata also says it has not acted on frivolous, vexatious or unreasonable complaints and that it will deal with bylaw complaints as appropriate in the future.
7. Ms. Lloyd represents herself. A strata council member represents the strata.
8. As explained below, I dismiss Ms. Lloyd’s claims.

JURISDICTION AND PROCEDURE

9. 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. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the parties that will likely continue after the CRT process has ended.
10. The CRT has the discretion to decide the format of the hearing. A hearing can occur by writing, telephone, videoconferencing, email, or a combination of these. I have decided that a written hearing is appropriate in this case. I find I am properly able to

assess and weigh the evidence and submissions before me. Keeping in mind the CRT's mandate, which includes proportionality and speedy dispute resolution, I see no reason for an oral hearing.

11. The CRT can accept any evidence that it considers relevant, necessary and appropriate, even if the evidence would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
12. In resolving this dispute, the CRT may order a party to pay money, or to do or stop doing something. The CRT may also order any other terms or conditions it considers appropriate.

Preliminary Issue – Strata council's alleged vexatious behaviour

13. In her submissions, Ms. Lloyd says that the strata has acted reprehensibly by engaging in deceit. She says the strata has shown dismissive, disrespectful, divisive, targeting, non-conciliatory attitudes and behaviour toward her, which she considers vexatious. I find Ms. Lloyd's allegations are about a failure of the strata council to fulfill its duties under SPA section 31. Notably, Ms. Lloyd quotes SPA section 31 in the Dispute Notice, which supports my finding.
14. SPA section 31 says that in exercising the strata's powers and performing the strata's duties, each strata council member must act honestly and in good faith with a view to the best interests of the strata, and must exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
15. The BC Supreme Court has said that strata council members' duties under SPA section 31 are owed to the strata corporation, and not to individual strata lot owners. See *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 267. This means that a strata lot owner, like Ms. Lloyd, cannot succeed in a claim against the strata for a section 31 breach. *Sze Hang* is a binding precedent that I must follow. So, I find that Ms. Lloyd has no standing (legal right) to make claims under SPA section 31. I will not discuss these aspects of her submissions again.

ISSUES

16. Ms. Lloyd withdrew four claims that she initially made in this dispute. So, I find that those four claims are not issues before me.
17. The remaining issues in this dispute are:
 - a. Did the strata breach the SPA?
 - b. Should I order the strata to adhere to the SPA?
 - c. Should I order the strata to “cease and desist with any future frivolous, vexatious and unreasonable complaints” against Ms. Lloyd?

EVIDENCE AND ANALYSIS

18. In a civil claim like this one, the applicant Ms. Lloyd must prove her claims on a balance of probabilities (meaning “more likely than not”).
19. I have read all the parties’ evidence and arguments. However, I will refer only to what I find necessary to explain my decision. I note that both parties supplied detailed evidence and argument about the historical conflict between Ms. Lloyd and her former downstairs neighbours. I acknowledge that these conflicts have created challenges for the parties. However, I will not comment on those historical matters further. Instead, I will focus on the issues before me, which I have listed above.

Background

20. The strata was created as a phased strata corporation in 2014. Currently, it is in phase 1 of its development, which consists of 66 apartment-style residential strata lots in one building. SL52 is on the third floor of the building and there is a residential strata lot directly below it.
21. In March 2014, the owner developer filed bylaws with the Land Title Office (LTO). I note that these bylaws created residential and commercial sections. However, there are no commercial strata lots in the development yet. In March 2021, the strata filed

a complete new set of bylaws with the LTO. The filed Form I confirms that the March 2021 bylaw amendment repealed and replaced all previously filed bylaws except for the pet and smoking restriction bylaws. I infer that the March 2021 bylaw package removed the residential and commercial sections. The bylaws in place when Ms. Lloyd received the notice pre-date the March 2021 amendments. I find that the bylaws relevant to this dispute are the bylaws filed with the LTO in March 2014. In any event, the noise bylaw from 2014 is almost identical to the March 2021 noise bylaw. The only difference is that the March 2021 bylaw does not mention commercial strata lots.

22. Based on my review of the bylaws, I am satisfied the bylaws relevant to this dispute are strata corporation bylaws, rather than bylaws of the residential section. The overall evidence leads me to conclude the strata must enforce the bylaws at issue.
23. I begin with the undisputed facts. As noted, in August 2020, the strata's property manager (manager) sent Ms. Lloyd a bylaw infraction notice. The notice quotes bylaw 3.1(b), which says owners must not make undue noise in their strata lots.
24. In ensuing correspondence between Ms. Lloyd and the manager, the manager incorrectly told Ms. Lloyd that "there were several complaints from several owners regarding the ongoing dog noise." During facilitation at the CRT, the strata clarified that there were multiple noise complaints from only 1 owner, not several owners. So, I find that only 1 owner made noise complaints about Ms. Lloyd's dog.
25. After the manager gave her this incorrect information, Ms. Lloyd asked the strata for the names and suite numbers of all complainants and copies of their written complaints about her dog. She made this request in September 2020. The strata did not provide Ms. Lloyd with the requested information. She repeated her request in October 2020. The strata did not respond. In November 2020, Ms. Lloyd's lawyer wrote the strata reiterating Ms. Lloyd's requests. Again, the strata did not respond. This is all undisputed.
26. Ultimately, Ms. Lloyd and the strata had a hearing about the matter in May 2021. At the hearing, Ms. Lloyd again requested copies of all the noise complaints about her dog. The strata says the complaints were emailed to Ms. Lloyd the day after the

hearing. However, Ms. Lloyd says the strata did not send her the complaints until July 22, 2021.

27. Based on Ms. Lloyd's undisputed evidence, I find that the strata sent its **manager** the complaints the day after the hearing and asked the manager to send them to Ms. Lloyd. There is no evidence to show that the manager did what the strata asked. Ms. Lloyd's undisputed evidence also shows that the strata emailed Ms. Lloyd directly with a copy of the complaints on July 22, 2021. So, I find the strata did not provide Ms. Lloyd with the records she requested until 11 months after her initial request.

Did the strata breach the SPA?

28. Ms. Lloyd argues that the strata did not comply with SPA sections 34.1 and 36. I will begin with a discussion of section 36, then turn to section 34.1.
29. SPA section 36 says the strata must make certain records available to a strata lot owner on request within either one or two weeks, depending on the request. This includes requests for correspondence sent or received by the strata.
30. Based on Ms. Lloyd's submissions and evidence, I find it clear that she intended to request copies of the written noise complaints the strata received under SPA section 36. Both parties' evidence shows that she explicitly referenced this section at the hearing. Additionally, the parties agree that Ms. Lloyd's lawyer sent the strata a letter in November 2020. I find that this letter specifically references section 36 in relation to Ms. Lloyd's request for copies of the noise complaints.
31. Based on the strata's submissions and evidence, I find it clear that the strata misunderstood Ms. Lloyd's requests prior to the hearing. I find that the strata thought it did not need to give Ms. Lloyd copies of the complaints or other information she requested because it had not imposed a penalty for the bylaw contravention under SPA section 135. The relevant part of SPA section 135 says the strata must give an owner written particulars of any bylaw complaint(s) it received before imposing penalties for bylaw contraventions. I agree that the strata did not need to follow the requirements of SPA section 135 because it did not impose a penalty on Ms. Lloyd.

32. However, when asked, the strata must provide owners with copies of correspondence it sent or received under SPA section 36. The strata's evidence shows that it received the noise complaint at issue by email, a form of correspondence. So, I find that the strata should have provided Ms. Lloyd with the email complaint under SPA section 36. I also find that the strata should have done this within 2 weeks of Ms. Lloyd's original request (see SPA section 36(3)). So, I find that the strata breached SPA section 36. That said, Ms. Lloyd has now undisputedly received a copy of the noise complaint plus several other historical complaints made by her former downstairs neighbours.
33. Now, I turn to SPA section 34.1. Section 34.1 requires the strata to hold a hearing within 4 weeks of an owner's written request. Ms. Lloyd requested a hearing in writing on March 30, 2021. The strata held the hearing approximately 6 weeks later on May 10, 2021. This is all undisputed.
34. The strata says May 10 was its first scheduled meeting after Ms. Lloyd's hearing request. The strata says it offered Ms. Lloyd an earlier hearing date at Ms. Lloyd's convenience. Ms. Lloyd does not dispute this, so I find that the strata offered an earlier hearing date. I also infer that an earlier hearing date would have met the SPA's requirements. Ms. Lloyd says, and I accept, that she agreed to the May 10 date as a "courtesy".
35. While the wording of section 34.1 is strict, I do not find that the strata breached this section's requirements. The strata undisputedly offered Ms. Lloyd an earlier hearing date but she agreed to meet 6 weeks after her hearing request as a courtesy. In the circumstances, I consider the strata to have fulfilled its section 34.1 duties. To my mind, it would be unfair to hold the strata to strict compliance with section 34.1 when Ms. Lloyd herself did not.
36. To summarize, I find that the strata breached section 36 of the SPA but not section 34.1. I also find that Ms. Lloyd has now received a copy of the complaint correspondence she requested under section 36. So, I find it unnecessary to order the strata to comply with section 36 by giving her copies of the correspondence.

Should I order the strata to adhere to the SPA?

37. As noted, Ms. Lloyd asks me to order the strata to adhere to the SPA. I will not make this order because I find it unnecessary and unenforceable. The strata must already adhere to the SPA, both now and in the future. I find it would serve no meaningful purpose to order the strata to do what it must already do.
38. Additionally, I find that this order would be a prospective order. A prospective order is an order about future events that have not happened yet. In general, the CRT does not make prospective orders and I see no reason to make one here. Again, the strata must already adhere to the SPA. No order I make will change that obligation.
39. I decline to order the strata to adhere to the SPA.

Should I order the strata to “cease and desist with any future frivolous, vexatious and unreasonable complaints” against Ms. Lloyd?

40. Ms. Lloyd also asks me to order the strata to cease and desist with future frivolous, vexatious and unreasonable complaints against her. However, I find that she has not proven that the strata has acted on frivolous, vexatious or unreasonable complaints about her in the past. More on this below. Additionally, this is another request for a prospective order. I will not grant this order because, as noted, the CRT does not usually grant prospective orders.
41. Furthermore, the strata says it has never brought forward frivolous or vexatious complaints against Ms. Lloyd. It says its decisions to write Ms. Lloyd bylaw infraction letters in the past were based on evidence and probability. I agree. Nothing in the evidence suggests that the strata has acted on complaints about Ms. Lloyd that were frivolous, vexatious or unreasonable. On the contrary, the evidence shows that the strata has explicitly refused to act on complaints that did not relate to the strata's bylaws. For example, based on the emails in evidence, I find that the strata refused to take any action when Ms. Lloyd's former downstairs neighbours complained that she was spying on them.

42. Additionally, the strata says it felt that the noise complaint at issue here had merit because:
- a. Ms. Lloyd's dog is large,
 - b. Ms. Lloyd has laminate flooring, and
 - c. The building's sound insulation is less efficient than might be hoped.
43. Ms. Lloyd herself says her dog is large. She does not deny having laminate floor. Significantly, she does not deny playing with her dog on the laminate flooring in SL52. Additionally, when responding to the notice, Ms. Lloyd said that the building "is not a soundproof building as originally marketed to prospective buyers." So, I find that Ms. Lloyd's own evidence and submissions support the strata's reasons for deciding that the noise complaint had merit. Given this, I find that the noise complaint at issue was not frivolous, vexatious or unreasonable.
44. In short, I find that the strata has only acted on reasonable complaints about Ms. Lloyd's potential bylaw infractions. Put differently, I find that the strata has not acted on frivolous, vexatious or unreasonable complaints about Ms. Lloyd in the past. So, I find no factual foundation for the requested "cease and desist" order. It would not make sense for me to order the strata to stop doing something that I have found it has not done.
45. For all these reasons, I decline to make the "cease and desist" order.

CRT FEES AND EXPENSES

46. 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. I see no reason to depart from this rule here. The strata was the successful party, but it did not pay CRT fees or claim any dispute-related expenses. So, I make no order for reimbursement.
47. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Lloyd.

ORDERS

48. I dismiss Ms. Lloyd's claims and this dispute.

Laylí Antinuk, Tribunal Member