



Civil Resolution Tribunal

Date of Original Decision: December 21, 2021

Date of Amended Decision: January 5, 2022

File: ST-2021-001504

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cavin v. The Owners, Strata Plan VR 2526*, 2021 BCCRT 1329

B E T W E E N :

EDWIN CAVIN

APPLICANT

A N D :

The Owners, Strata Plan VR 2526

RESPONDENT

AMENDEDⁱ REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about noise in a strata building.

2. The applicant, Edwin Cavin, owns strata lot 11 (unit 403) in the respondent strata corporation The Owners, Strata Plan VR 2526 (strata).
3. Mr. Cavin says he has experienced unreasonable noise from unit 503, directly above unit 403. He says the strata is not enforcing its noise bylaws and not taking his noise complaints seriously. Mr. Cavin seeks orders that the strata investigate his noise complaints, hire an acoustical engineer to report on sound transfer between the strata lots, and check if unit 503's flooring is "to code". He also seeks \$3,000 in damages for loss of enjoyment of his strata lot and \$392 for noise-cancelling headphones he purchased.
4. The strata says it investigated and objectively assessed Mr. Cavin's noise complaints but found the noise from unit 503 was not unreasonable and did not contravene the strata's noise bylaws. It says Mr. Cavin's claims should be dismissed.
5. Mr. Cavin represents himself. A council member represents the strata. For the reasons that follow, I find the strata adequately investigated Mr. Cavin's complaints and he is not entitled to damages. I dismiss Mr. Cavin's claims.

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). CRTA section 2 says 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 dispute's parties that will likely continue after the CRT process has ended.
7. CRTA section 39 says 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.

8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information 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.
9. Under CRTA section 123, 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

10. The issue in this dispute are:
 - a. Did the strata adequately investigate Mr. Cavin's noise complaints, and if not, what more is the strata required to do?
 - b. Is Mr. Cavin entitled to damages for loss of enjoyment of his strata lot and reimbursement of the cost of noise-cancelling headphones?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Mr. Cavin must prove his claim on a balance of probabilities, meaning more likely than not. While I have read all the evidence and submissions, I only refer to what is necessary to explain my decision.
12. The strata was established in 1989. The strata plan shows a single building with 38 strata lots on 11 stories.

13. In 2002, the strata filed a complete set of bylaws in the Land Title Office that repealed and replaced all previously filed bylaws.
14. Bylaw 4(1)(a) says in part that a strata resident must not cause a nuisance, create unreasonable noise or unreasonably interfere with the rights of others to use and enjoy their strata lot. Bylaw 4(1)(e) prohibits “undue noise” between 10:30 p.m. and 7 a.m.
15. Mr. Cavin has owned unit 403, on the fourth floor, since August 2020. Mr. Cavin says in September 2020 he began hearing noise from unit 503. It is undisputed that unit 503’s owners at the relevant time had 2 young children. It is also undisputed that in May 2021, after Mr. Cavin filed his dispute application but before the parties made submissions, unit 503’s owners moved out.
16. Mr. Cavin says the noise from unit 503 includes the sound of a child’s pounding feet, items being repeatedly dropped, and furniture being moved. He hears it particularly in the hallway, living room and dining room. Mr. Cavin says the noise is annoying because it is intermittent, unpredictable and ongoing. He says the noise does not normally wake him, and it usually stops by 8:30 or 9 pm.
17. Mr. Cavin submits that he suspects the flooring in unit 503 is not “to code”. I infer that he means the applicable version of the BC Building Code but he does not refer to any specific provision. Strata bylaw 47, which came into effect in 2012, sets impact insulation class and sound transmission class ratings, but they only apply to new hardwood or laminate flooring alterations. There is no evidence before me about when, if ever, unit 503’s flooring was altered.

Did the strata adequately investigate Mr. Cavin’s noise complaints?

18. Section 26 of the *Strata Property Act* (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. Here, the strata acknowledges that this includes a duty to investigate noise complaints as potential bylaw contraventions.

19. Aside from SPA section 135, which addresses procedural fairness for the subject of the complaints, the SPA sets no procedural requirements a strata must follow when investigating a complaint. The courts have said that a strata may investigate bylaw contravention complaints as its council sees fit, provided it complies with the principles of procedural fairness and is not significantly unfair to any person appearing before the council: see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148.
20. The CRT has jurisdiction to determine claims of significant unfairness: see *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the 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 or unjust or inequitable.
21. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the Court of Appeal confirmed that an owner's expectations continue to inform the significant unfairness analysis. In considering an owner's reasonable expectations, the following test from *Watson* applies:
 - a. What is or was the expectation of the affected owner?
 - b. Was the owner's expectation objectively reasonable?
 - c. If so, was that expectation violated by an action that was significantly unfair?
22. Mr. Cavin says he expected that the strata council would thoroughly investigate his noise complaints. He says that expectation was violated when the strata council largely ignored or dismissed his complaints.
23. Mr. Cavin first formally complained to the strata about noise on October 13, 2020. He also complained on October 23, 2020.
24. The strata's investigation occurred from late October through the end of the year. The strata says during its investigation, it considered and discussed the following:
 - a. The interpretation of "unreasonable" and "undue" noise in the bylaws,

- b. Neighbours' accounts of the nature and level of the sound from unit 503,
 - c. The unit 503 owners' account of the noise and their interactions with Mr. Cavin,
 - d. The attempts of a neighbour, BM, to facilitate a resolution between Mr. Cavin and the unit 503 owners.
 - e. Mr. Cavin's self-proclaimed sensitivity to sound and his history of complaints against neighbours at his previous residence, and
 - f. The 4 noise recordings Mr. Cavin submitted.
25. On December 30, 2021, the strata advised Mr. Cavin that it determined that the noise from unit 503 was not unreasonable. For the reasons that follow, I find the strata adequately investigated Mr. Cavin's complaint and did not treat him significantly unfairly.
26. In response to Mr. Cavin's complaints, on October 31, 2021, the strata's former president GT attended unit 503 and observed which areas were covered by rugs. GT also asked questions about the children's use of the space at different times of day. This was confirmed in a statement from KA, one of the former unit 503 owners. I accept KA's evidence as I find it was balanced and detailed.
27. The strata council directed the strata manager to write to the unit 503 owners and ask them what steps they would take to reduce the noise. According to KA, the actions they took in response to Mr. Cavin's noise complaints included:
- a. Purchasing and installing felt pads under chair legs,
 - b. Purchasing a large foam mat to place on the floor where the children played,
 - c. Discouraging running and jumping,
 - d. Encouraging the walking-age child to run on their toes to decrease impact noise, and
 - e. Allowing the children to watch cartoons in the morning to minimize noise.

28. KA said her living areas were partially covered by rugs and she was open to acquiring more rugs but was waiting to hear if the noise complaint was substantiated and more rugs were necessary. Although I acknowledge Mr. Cavin's submission that children do not generally run on their toes and that the noise disturbances persisted, I find the strata made reasonable initial requests of the unit 503 owners to attempt to reduce the noise.
29. While the strata's investigation was ongoing, BM, a strata resident on the 7th floor, offered to facilitate a resolution by speaking to Mr. Cavin and the unit 503 owners. In a statement, BM said they discussed the noise issue with Mr. Cavin on 3 occasions. They initially reported that the unit 503 owners had their "heels dug in" and were resistant to purchasing additional rugs. However, BM later reported that Mr. Cavin was "impossible" and unwilling to consider compromise. They said Mr. Cavin's rhetoric became increasingly hostile and eventually they discontinued communication with him. I find BM's evidence neutral as Mr. Cavin was not obligated to address his noise complaint through a neighbour rather than the strata.
30. Mr. Cavin points out that no strata council member attended unit 403 to hear the noise. He argues that the focus in an investigation should be on the effect, not the source, of the noise, relying on *Tran v. The Owners, Strata Plan VIS 6828*, 2021 BCCRT 28.
31. I agree with Mr. Cavin that where noise bylaws focus on nuisance or interference, determining whether the bylaws have been contravened requires consideration of the impact of the noise. The strata's investigation must be objective, as established in *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33. In *Triple P*, the court found that 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": see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64. A visit to unit 403 may have given the strata

more objective information, and demonstrated to Mr. Cavin that the strata was taking his complaints seriously.

32. That said, I find visiting a complainant's strata lot is not necessarily required in every noise complaint investigation. It is undisputed that Mr. Cavin advised the strata that he was particularly sensitive to noise and that he had hyperacusis, a disorder in loudness perception. Mr. Cavin's doctor, Dr. Wasserfall, confirmed in a May 4, 2021 letter that Mr. Cavin did *not* have hyperacusis or any medical condition related to sound perception. However, the strata did not have the benefit of this information during its investigation. I find the strata acted reasonably in considering Mr. Cavin's statements about his sensitivity to noise as part of its overall assessment of whether the noise was objectively unreasonable to an ordinary person. As well, the strata had audio recordings Mr. Cavin provided, so it was able to hear examples of the noise without attending unit 403 – although audio recordings alone without sound level measurements are of limited utility in determining objective noise levels.
33. The strata says it also considered Mr. Cavin's history of making noise complaints in his previous building. It says Mr. Cavin told the strata he moved out of his previous residence after 16 months, mostly because of unacceptable noise. Mr. Cavin does not dispute this. Mr. Cavin relies on a statement from AN, strata council president at Mr. Cavin's former residence. AN said Mr. Cavin's noise complaints were "not unfounded" and other owners also complained about noise. However, the strata did not have the benefit of AN's statement during its investigation.
34. Mr. Cavin provided a noise log as evidence in this dispute. It runs from December 18, 2020 to July 11, 2021. It is undisputed that Mr. Cavin never sent the noise log to council, so I cannot fault the strata for not considering it. Mr. Cavin sent the strata manager noise recordings in November 2020 but there is no evidence of formal complaints after October 2020.
35. In December 2020, the strata council by email discussed the various factors and concluded the noise was reasonable. I find the council appropriately grappled with the meaning of "unreasonable" and "undue" noise in its bylaws. The council referred

to a definition of “undue” meaning “excessive or extreme”. It considered the fact that the noise complaints occurred during the day, not during the quiet hours stipulated in bylaw 4(1)(e). I find that the bylaws contemplate stricter standards for noise during quiet hours. The council also considered that children are allowed to live in the building and some noise from young children is to be expected. I find these are important considerations and the strata council appropriately engaged with them.

36. Mr. Cavin says the strata council initially supported his noise complaints, but that support was thwarted by former president GT. The evidence shows that GT became more dismissive of Mr. Cavin’s complaints after the unit 503 owners and others complained that Mr. Cavin banged on his ceiling with a broom or something similar. However, I find the strata council’s emails demonstrate internal deliberation and debate, not initial substantiation of Mr. Cavin’s complaints followed by undue deference to GT’s views. I find the emails show the strata council approached the complaints with an open mind.
37. As noted, the strata informed Mr. Cavin in writing about its decision on the noise complaints on December 30, 2020. Mr. Cavin says he requested a hearing and the strata did not attempt to arrange a hearing.
38. The strata says it never received Mr. Cavin’s hearing request. The evidence shows Mr. Cavin sent his hearing request to GT’s email on January 18, 2021. GT was president until May 2021. Based on GT’s December 13, 2021 email to strata council advising that he had stopped communicating with Mr. Cavin, I find it likely that he blocked Mr. Cavin’s emails without notice. However, Mr. Cavin had already been told to send all complaints to the strata manager. I find that Mr. Cavin could have emailed the strata manager to request a hearing, like he did to complain about noise. I find the strata’s failure to hold a hearing was not significantly unfair given Mr. Cavin only sent one email to the president, which likely wasn’t received. Mr. Cavin still had a way to request a hearing and there is no evidence he followed up with the strata manager after not receiving a response from Mr. Cavin. Significant unfairness requires something more than mere prejudice or trifling unfairness: see *Reid*.

39. While the strata's investigation was not perfect, I find it was thorough enough in the circumstances. It was not objectively reasonable for Mr. Cavin to expect to dictate the process or result. The outcome of the strata's investigation was not what Mr. Cavin hoped for, but this does not mean the strata failed to address the matter or take his complaints seriously. The evidence before me does not establish that the strata's investigation lacked probity or fair dealing, or was unjust or inequitable
40. In declining to order the strata to take additional steps, such as sound transmission testing, I have considered that the noise disturbances have decreased since the former unit 503 owners moved out. Mr. Cavin documented only 2 disturbances between June 1 and July 11, 2021, and I find they were comparatively mild disturbances. That said, nothing in this decision prevents Mr. Cavin from making future noise complaints or relieves the strata from its duty to investigate future noise complaints.
41. In summary, I find that the strata adequately investigated Mr. Cavin's noise complaints and enforced its bylaws as required by the SPA. I find the strata was not significantly unfair to Mr. Cavin. Accordingly, I dismiss this claim.

Is Mr. Cavin entitled to damages for loss of enjoyment of his strata lot or reimbursement for noise-cancelling headphones he purchased?

42. As noted, Mr. Cavin seeks \$3,000 in damages for loss of enjoyment of his strata lot. From his submissions, he bases this amount on other CRT decisions involving noise complaints. However, a consistent thread in those decisions is a finding that the strata corporation failed to adequately investigate the complaints and treated the owner significantly unfairly. That is not the case here.
43. Mr. Cavin bears the burden of establishing that the noise he experienced was objectively unreasonable. Although I agree with Mr. Cavin that there is no specific decibel level of noise that constitutes a nuisance, he has not provided any noise level measurements. While I do not doubt that Mr. Cavin found the noise from unit 503's children annoying and stressful, I find that he has not proven that the noise rose to the level of objectively unreasonable. Therefore, I find Mr. Cavin is not entitled to

damages or reimbursement for his noise-cancelling headphones. Accordingly, I dismiss this claim.

CRT FEES AND EXPENSES

44. In accordance with the CRTA and the CRT's rules, as Mr. Cavin was unsuccessful I find he is not entitled to reimbursement of his CRT fees. The strata did not pay CRT fees or claim dispute-related expenses.

45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Cavin.

ORDER

46. I dismiss Mr. Cavin's claims and this dispute.

Micah Carmody, Tribunal Member

ⁱ Amendment Note: The decision has been amended under section 64 of the *Civil Resolution Tribunal Act* to reflect to correct file number for this dispute.