



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Taffe v. The Owners, Strata Plan EPS5632*, 2021 BCCRT 1334

B E T W E E N :

MADELEINE TAFTE

APPLICANT

A N D :

The Owners, Strata Plan EPS5632, SHEINA DELORME, and PATRICK O'NEILL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about noise complaints. The applicant, Madeleine Taffe, owns strata lot 17 in the respondent strata corporation, The Owners, Strata Plan EPS5632 (strata). The respondents, Sheina Delorme and Patrick O'Neill, jointly own strata lot 31 in the strata. Strata lot 31 is directly above strata lot 17.

2. Ms. Taffe says the strata failed to investigate her noise complaints. She seeks payment of \$15,703 from the respondents as compensation for mental distress and lost income. She also seeks orders for the respondents to hire a professional to investigate sound from strata lot 17 and report back to the Civil Resolution Tribunal (CRT).
3. The respondents disagree. Ms. Delorme and Mr. O'Neill say their tenant only made reasonable, everyday living noises. The strata says Ms. Taffe refused its standing offer to pay for an acoustical engineering firm to conduct independent testing. It suggests that Ms. Taffe did so because the test results would contradict her claims.
4. Ms. Taffe, Ms. Delorme, and Mr. O'Neill are self-represented. A strata council member represents the strata.
5. For the reasons that follow, I dismiss Ms. Taffe'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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

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.

My Request for Evidence and Ms. Taffe's Late Evidence

10. The May 19, 2021 strata council meeting minutes show that the council approved spending \$5,000 to conduct a sound test. I asked the strata to provide a copy of the results of the test.
11. The parties advised that Ms. Taffe refused to provide access for the test. Ms. Taffe also provided 12 labelled pages of evidence at the time. These included emails, letters, and medical evidence. The strata provided a late reply to the evidence. I find the late evidence is relevant to the issues in this dispute. I also find the prejudice to the respondents to be minimal, so I have considered the strata's reply. Bearing in mind the CRT's flexible mandate, I admit the late evidence. In any event, I find that nothing turns on the late evidence.

ISSUES

12. The issues in this dispute are as follows:
 - a. Did the strata adequately investigate Ms. Taffe's noise complaints?
 - b. Is another strata lot occupant causing unreasonable noise to enter Ms. Taffe's strata lot in breach of the bylaws, and if so, are any remedies appropriate?

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one, the applicant Ms. Taffe must prove her claims on a balance of probabilities. I have read all the parties' submissions, including cited case law, but refer only to the evidence and arguments that I find relevant to provide context for my decision.
14. I begin with the undisputed background. Land Title Office (LTO) searches show Ms. Taffe became the registered owner of strata lot 17 in April 2019. Ms. Delorme and Mr. O'Neill became owners of strata lot 31, also in April 2019. The strata plan shows strata lots 17 and 31 are on the second and third floor, respectively. The building has a wood frame and strata lot 31 has hard-surface flooring.
15. An LTO search also shows the strata uses *Strata Property Act's* (SPA) Schedule of Standard Bylaws, with registered amendments. It is undisputed and I find that Bylaw 3(1) applies. It says that an owner, tenant, occupant, or visitor must not use a strata lot in a way that causes a nuisance, unreasonable noise, or unreasonably interferes with the rights of other persons to use and enjoy another strata lot. Bylaw 3 has additional registered amendments about pet ownership that are not relevant to this dispute.
16. It is also undisputed that strata rule 31(11) says that "quiet hours" are 10:30 p.m. to 7:30 a.m. from Sunday to Thursday, and 12:00 a.m. to 7:30 a.m. from Friday to Saturday.
17. In September 2019 Ms. Taffe began emailing the strata's property manager about pounding, plunging and dragging noises from strata lot 31. The strata wrote to Ms. Delorme and Mr. O'Neill advising that it had received a complaint and they faced a fine for breaching bylaw 3. There is no evidence on whether the strata levied a fine. The tenant moved out of strata lot 31 at the end of November 2019.
18. Ms. Taffe also provided several physician's notes about her medical conditions, which included PTSD, fibromyalgia, chronic fatigue, and recovery from cancer. Starting from December 2020, the physician wrote several notes indicating that noise disturbances

from strata lot 31 had negatively affected Ms. Taffe's health. In submissions, Ms. Taffe denied being particularly sensitive to noise.

19. In January 2020, a new tenant moved in. Ms. Taffe began keeping a noise journal from January 19, 2020 to January 10, 2021. The journal generally documented thudding sounds at various dates and times. Ms. Taffe says she called the police or bylaw officers about the noise on January 22, March 8, April 30, May 1, and June 1, 2020. Emails and a video indicate she also called the police on February 17, 2020. It is undisputed that officers visited the building at least 4 times. There is no evidence, such as police reports, that show responding officers noticed any unreasonable noise during these visits.
20. On March 8, 2020, Ms. Delorme and Mr. O'Neill emailed the strata's property manager. They said that their tenant had complained about being harassed by Ms. Taffe. They also said their tenant was not making unreasonable noise. The strata scheduled a hearing for March 24, 2020, eventually held it on June 15, 2020 via videoconference due to COVID-19 precautions.
21. On June 22, 2020, the strata property manager wrote Ms. Taffe a letter. It said the strata had investigated her complaints and found them to be baseless or about noise outside of rule 31(11)'s quiet hours. The strata's lawyer also advised on June 25, 2020, that the strata would not investigate further complaints of the same type and nature that were previously considered or investigated.

Issue #1. Did the strata adequately investigate Ms. Taffe's noise complaints?

22. SPA section 26 requires the strata to enforce the strata's bylaws and rules through its council. A strata corporation will meet its obligations under SPA section 26 for noise complaints so long as it acts reasonably. See, for example, the non-binding but persuasive decisions of *LeBlanc v. The Owners, Strata Plan LMS 600*, 2020 BCCRT 783, *Jamal v. Rushton*, 2020 BCCRT 585, and *Chau v. The Owners, Strata Plan NW 155*, 2020 BCCRT 1161.

23. The strata council may investigate bylaw contravention complaints as it sees fit, so long as it 1) complies with the principles of procedural fairness and 2) does not act in a significantly unfair manner to any person who appears before it: *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148 at paragraph 52.
24. I find Ms. Taffe's claims are based in the law around significant unfairness. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. The CRT has jurisdiction over significantly unfair actions under CRTA section 123(2), which has the same legal test as cases under SPA section 164. See *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164. Significantly unfair conduct is conduct that is 1) oppressive in that it is burdensome, harsh, wrongful, lacking in probity or fair dealing, or done in bad faith, or 2) conduct that is unfairly prejudicial in that it is unjust or inequitable: *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173 at paragraph 88.
25. In *Kunzler*, the Court of Appeal confirmed that an owner's expectations could be considered as a relevant factor. I therefore use the significant unfairness test from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, as follows:
- a. What is or was the expectation of the affected owner?
 - b. Was that expectation on the part of the owner objectively reasonable?
 - c. If so, was the expectation violated by an action that was significantly unfair?
26. I find that Ms. Taffe's expectation was that the strata would investigate her noise complaints, determine whether the noise contravened any bylaws, and take appropriate steps to enforce them. I find this expectation was reasonable as the strata council is obligated to do these things under the SPA.
27. I find that the strata did not violate these expectations with a significantly unfair act. The correspondence shows that the strata did not ignore Ms. Taffe's complaints. As noted above, it sent a bylaw infraction letter to Ms. Delorme and Mr. O'Neill on October 11, 2019. It held a hearing to address Ms. Taffe's concerns about the new tenant in June 2020. I find the strata did not unduly delay the hearing because Ms.

Taffe did not immediately complain to the strata about the new tenant. Rather, the strata initially scheduled a hearing for March 2020 because of Ms. Delorme and Mr. O'Neill's March 8, 2020 email. As noted above, they said to the strata that they were concerned Ms. Taffe was harassing their tenant. When the strata delayed the hearing due to COVID-19 concerns, Ms. Taffe did not object at the time. So, I find no significant unfairness resulted from this.

28. I find the strata conducted a reasonable investigation. It considered Ms. Taffe's noise journal and the correspondence of Ms. Taffe, Ms. Delorme, Mr. O'Neill, and the tenant. In an October 21, 2020 letter, the strata's lawyer also advised Ms. Taffe's lawyer that the tenant told the strata that he was not responsible for the noise and was out most of the day, during the times of some of the complaints. In the Dispute Notice, Ms. Taffe said the noise lasted an average of 8 to 12 hours, which I find was inconsistent with the tenant's correspondence that he was out working during weekdays.
29. Ms. Taffe points out that the strata did not send anyone to listen for noise in her strata lot. I would normally weigh this factor heavily in Ms. Taffe's favour. However, Ms. Taffe refused the strata's offer to conduct sound testing. Given this refusal, I find it unlikely that Ms. Taffe would have provided the strata access to her strata lot to listen for noise. I therefore place less weight on this factor in these circumstances.
30. Similarly, I find the strata's conclusions were reasonable. Ms. Taffe's noise journal generally described thudding noises from upstairs, mostly during daytime or early evening hours, that were not during the quiet times outlined in rule 31(11). The complaints were also similar to those Ms. Taffe made about the previous tenant that moved out in November 2019. I find the strata reasonably concluded the noises were consistent with everyday living sounds.
31. I also find the strata's decision to refrain from investigating further complaints of the same type and nature was reasonable in these particular circumstances. As noted above, Ms. Delorme and Mr. O'Neill expressed concerns that Ms. Taffe was

harassing their tenant. I find they had a reasonable basis for this belief because Ms. Taffe repeatedly called police and bylaw officers to visit.

32. For these reasons, I find the strata adequately investigated Ms. Taffe's complaints.

Issue #2. Is another strata lot occupant causing unreasonable noise to enter Ms. Taffe's strata lot in breach of the bylaws, and if so, what remedies are appropriate?

33. As noted above, bylaw 3(1) prohibits unreasonable noise and nuisance. Noise is a form of nuisance. In the strata context, nuisance is a substantial, non-trivial and unreasonable interference with an owner's use and enjoyment of their property. See *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502. The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency. See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64. The test of whether noise is unreasonable is objective and is measured with reference to a reasonable person occupying the premises. See *Sauve v. McKeage et al.*, 2006 BCSC 781.

34. I find it unproven that unreasonable noise entered Ms. Taffe's strata lot. As noted above, the strata offered to conduct noise testing, which Ms. Taffe refused. When a party fails to provide relevant evidence without a reasonable explanation, the CRT may draw an adverse inference against them. I find that Ms. Taffe's refusal to provide access for the testing is similar to a failure to provide relevant evidence. In other words, I find that Ms. Taffe must provide a reasonable explanation for refusing the testing. If she does not, I find it open for me to conclude that she refused because she did not believe the test would support her claims.

35. I find that Ms. Taffe did not provide a reasonable explanation for her refusal for the following reasons. Ms. Taffe expressed doubt that the testing would be able to detect the noise. She provided a summary of a phone conversation she had with MG, an employee or principal of BAP Acoustics. MG provided no direct evidence, so I place little weight on Ms. Taffe's summary. In any event, in the summary MG did not say

that noise testing was ill-advised or worthless. He only said that “confirming noise disturbances” was difficult and time consuming.

36. Further, Ms. Taffe described the noise in her journal as loud or extremely loud. As noted above, in the Dispute Notice she said it lasted an average of 8 to 12 hours. She also requested independent noise testing as one of her remedies. So, I find her refusal to allow testing to be inconsistent with her claim that the noise was objectively unreasonable in duration, frequency, and severity.
37. As evidence, Ms. Taffe provided a June 1, 2021 statement from a friend or acquaintance, TS. TS wrote that in April and May 2021 they visited Ms. Taffe and heard constant thudding and stomping from the above strata lot. They said it “almost seems like the noises are done intentionally”. While I put some weight on TS’ evidence, I place greater significance on Ms. Taffe’s refusal to provide the strata access for noise testing.
38. Ms. Taffe also provided recordings and a decibel reading from a meter. I place little weight on them as there is no evidence about the method of recording or how accurate the meter was. Previous CRT decisions have found that audio recordings are of limited use in noise disputes. See, for example, my non-binding decision of *Gool v. The Owners, Strata Plan BCS4368*, 2021 BCCRT 1146, citing *Ruthe v. The Owners, Strata Plan BCS 1023*, 2020 BCCRT 605 at paragraph 51. While not binding, I find the reasoning in these decisions applicable and persuasive.
39. Given the above, I find it unproven that the sound from strata lot 31 was unreasonable or a substantial, non-trivial, or unreasonable interference. I therefore dismiss Taffe’s claims.

CRT FEES AND EXPENSES

40. 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.

41. I dismiss Ms. Taffe's claims for reimbursement. The respondents paid no CRT fees and claimed no dispute-related expenses, so I order none.
42. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Taffe.

ORDER

43. I dismiss Ms. Taffe's claims and this dispute.

David Jiang, Tribunal Member