



# Civil Resolution Tribunal

Date Issued: January 12, 2022

File: ST-2021-003346

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cox v. The Owners, Strata Plan BCS 4261*, 2022 BCCRT 38

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

BRENDA COX and ERIC BERARD

**APPLICANTS**

**A N D :**

The Owners, Strata Plan BCS 4261

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION**

1. This strata property dispute is about alleged noise and a strata corporation's actions to investigate bylaw complaints.
2. The applicants, Brenda Cox and Eric Berard, rent a strata lot (unit A101) in the respondent strata corporation, The Owners, Strata Plan BCS 4261 (strata).

3. The applicants say that noise created by the residents in the strata lot located directly above them (unit A201), is unreasonable and contrary to the strata's noise bylaw. They ask for an order that the strata enforce its noise bylaw.
4. The strata disagrees with the applicants and says it has acted reasonably in the circumstances. It also says the applicants have hindered its investigation by not allowing strata representatives into unit A101 to investigate any noise. The strata asks that the applicants' claim be dismissed.
5. The applicants are represented by Brenda Cox. The strata is represented by a strata council member.
6. As explained below, I find in favour of the applicants and order the strata to investigate their noise complaints.

## **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). 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.
8. 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.
9. 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.

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 Dispute Notice shows the applicants originally requested an order against the residents of unit A201 that they stop making certain noises. The case manager involved in facilitation of this dispute stated the applicants withdrew their claim against the A201 residents, who were not named respondents. As such, I have not considered the applicants' claim against the A201 residents.
12. The remaining issues in this dispute are:
  - a. Did the strata sufficiently investigate the applicants' noise complaint?
  - b. If not, what is an appropriate remedy?

## **BACKGROUND**

13. In a civil proceeding such as this, the applicants must prove their claim on a balance of probabilities. I have read all the submissions and evidence provided by the parties, but refer only to information I find relevant to give context for my decision.
14. The strata was created in October 2011 under the *Strata Property Act* (SPA). It is a residential strata corporation consisting of about 232 strata lots in two 4-storey buildings.
15. Bylaws filed with the Land Title Office (LTO) show the strata's bylaws are the Standard Bylaws under the SPA with several amendments. I find the Standard Bylaws apply to this dispute together with an amendment filed February 11, 2014 adding bylaw 32(5) discussed below. Other bylaw amendments filed with the LTO are not relevant to this dispute. The relevant bylaws are:

- a. Standard Bylaw 3(1) that says, among other things, a resident must not use a strata lot in way that:
    - i. Causes a nuisance to another person (3(1)(a)),
    - ii. Causes unreasonable noise (3(1)(b)),
    - iii. Unreasonably interferes with the rights of other persons to use and enjoy another strata lot ((3(1)(c)).
  - b. Bylaw 32(5) that says the strata council may require owners to supply and install area rugs covering about 60% of open hardwood or laminate floor areas, and felt pads to the bottom of table and chair legs and cupboard doors.
16. It is undisputed that the applicants began renting unit A101 about April 1, 2018. The applicants complained to their landlord, the owner of unit A101, of noise from unit A201 from about October 2018. The landlord relayed the applicants' complaints to the strata. However, it was not until May 14, 2019 that the applicants wrote directly to the strata's property manager about noise from unit A201. In that email, the applicants requested a council member attend unit A101 "to witness the noise issue we are experiencing every night".
17. It is also undisputed that the applicants have been complaining to the strata of the same noises on a regular basis since May 2019. During that time, there have been 3 different occupants in unit A201.

## **EVIDENCE AND ANALYSIS**

### ***Did the strata sufficiently investigate the applicants' noise complaint?***

18. SPA section 26 requires the strata council to exercise the powers and perform the duties of the strata, which includes enforcing bylaws. The strata council is required to act reasonably when carrying out these duties, and this includes a duty to investigate alleged bylaw violations, such as noise complaints.
19. The SPA does not set out any procedures for assessing bylaw complaints. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the British Columbia Supreme Court stated

that the SPA allows strata corporations to deal with matters of complaints for bylaw violations as it sees fit, as long as it complies with the principles of procedural fairness and its actions are not significantly unfair to any person who appears before it (paragraph 52).

### Procedural Fairness

20. I have considered whether the strata actions toward the applicants were procedurally fair and find they were not. My reasons follow.
21. On June 6, 2019, the applicants provided a noise log from unit A201 during the week prior. The applicants described “loud and heavy walking” or “thumping”, “banging noises”, and living room furniture noise, which the applicants say happened every 1 to 10 minutes. The majority of the noises were logged between about 7 pm and 11 pm but some were identified between 1 and 2 am. The strata’s bylaws do not address times when residents are expected to be quiet.
22. Also on June 6, 2019, the unit A101 owner requested a hearing with the strata council which occurred on June 11, 2019. Ms. Cox attended the hearing with the owner to discuss the applicants’ noise concerns with unit A201. Details of the hearing are not before me, but there is no evidence the strata contacted the owner or the applicants after the hearing, despite repeated follow up emails from both enquiring what action the strata would take. The email evidence is that the applicants asked the strata for a response at monthly intervals following the hearing. The strata finally wrote to the Unit A201 resident about the noise complaints threatening a fine. The applicants were not advised of the strata’s letter to unit A201 as evidenced by the applicants’ October 9, 2019 email which shows the applicants were still requesting the strata’s response to their initial complaint.
23. Strata representatives knocked on the suite door of A101 a few times over 1 week in June 2019, as provided in witness statements from past strata council members provided by the strata. I do not agree with the strata that the applicants refused to grant access to unit A101 or otherwise hindered the strata’s noise investigation simply because they did not answer their door when strata council members knocked. There could be several reasons why the applicants did not answer the door, including that

they were not home or did not hear the knocking. The parties disagree about whether the strata notified the applicants it would attend unit A101. However, I find that is not determinative in deciding whether the strata sufficiently investigated the applicants' complaints.

24. The strata has an obligation to reasonably investigate bylaw complaints, such as this one about noise, and I find attempting to gain access to a particular strata lot by only knocking on the door is not reasonable. Further the January 15, 2020 council meeting minutes stated the strata would follow up with the applicants by email to access unit A101, but there is no evidence it did so.
25. In submissions, the strata says the noises complained of were "regular noises one would expect living in a wooden framed building" and were "normal daily noises". The strata also says that Ms. Cox disclosed to certain strata council members that she has a sensitivity to "external noises". Ms. Cox does not dispute this but says the noises they experienced were not "normal" and have "always been so loud that it would vibrate our pictures on the wall, and many times the percussion of the noise could be felt inside our chests. A normal daily living noise should never be felt in such a way".
26. The strata says it determined the noises experienced by the applicants were "normal daily noises" as result of correspondence it exchanged with the owner of unit A201 and inspections of unit A201 by its caretaker. The strata also says, that based on its caretaker inspections of unit A201, it determined that area rugs were in place covering over 60% of the hardwood flooring, as described in bylaw 35(2), but that does not mean noise transmissions from unit A201 to unit A101 were eliminated or unreasonable.
27. It is undisputed that at the June 2019 council hearing, the strata advised the applicants to contact the strata's caretaker to witness the noise. The applicant did this some months later in March 2020, but in a March 7, 2020 email the strata's property manager advised the caretaker had no role in the bylaw enforcement process and was unable to determine if a bylaw had been violated. The implication of the property manager's email was that the caretaker would not be able to assist.

28. The evidence suggests there were no inspections conducted by the strata in unit A101, other than by the caretaker, which was dismissed by the property manager. That the strata relied on its caretaker to inspect unit A210 but not unit A101 is inconsistent.
29. I find a reasonable approach to the alleged bylaw contravention in the circumstances of this dispute would have been for the strata council members, or other representatives, to witness the allegedly unreasonable noises from within unit A101 before reaching the conclusion they were “normal daily noises”. I find the fact that Ms. Cox may be sensitive to noise to be greater reason for a strata representative to hear the noises firsthand before determining whether they were reasonable.
30. Based on the overall evidence and submissions, I find the strata excluded the applicants from its noise investigation, perhaps unintentionally, which I find was procedurally unfair to the applicants.

### Significant Unfairness

31. I will now consider whether the strata treated the applicants significantly unfairly as found in *Chorney* and other case law discussed below.
32. While the applicants do not expressly claim they were treated significantly unfairly by the strata, I find their submissions can be characterized as such. 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.
33. The courts and the CRT have considered the meaning of “significant unfairness” in many contexts and have equated it to oppressive or unfairly prejudicial conduct. 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 and/or unjust or inequitable. See also *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
34. In *Kunzler*, the Court of Appeal confirmed that an owner’s expectations could be considered a relevant factor in assessing significant unfairness. In this case, it is the

applicant tenants' expectations that must be considered. 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?

35. In this case, I find the applicants had an objectively reasonable expectation that the strata would investigate their complaint about noise transmission from unit A201 to determine if it was contrary to bylaw 3.1. The strata's investigation must be also 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).
36. Based on the correspondence in evidence, I accept the noise from unit A201 was unacceptable to the applicants, but that is not the test. Rather, as I have mentioned, the test is whether the noise was objectively unreasonable. Further, it is the strata's responsibility to objectively investigate noise complaints, not the applicants. I put little weight on the applicants' audio video recordings because I find it difficult to determine the severity and frequency of the alleged noises based on those recordings.
37. The parties agree the noise might have subsided at times, but based on the submissions and evidence, I do not find the applicants' noise issue ever stopped. The strata confirms in its submissions that the applicants made ongoing noise complaints from time to time "from 2019 to 2021". This is true even when the residents of unit A201 changed in July 2020. Rather, I find the applicants made regular complaints of noise and repeatedly asked for the strata's assistance in resolving the issue, including at 2 council hearings, but received little if any assistance from the strata.
38. As mentioned, the strata did not keep the applicants informed of its investigation, nor did it reply to many of the applicants' emails. I have found the strata relied on its



caretaker's investigations of unit A201 but expressly stated the caretaker had no role in the bylaw enforcement process for unit A101. I have also found the strata did not take reasonable steps to gain access to unit A101. While there is evidence the strata wrote to the residents of unit A201 about the noise complaints and potential bylaw fines, I find the strata ultimately determined the noises were normal daily noises, in part based on comments from unit A201, without including the applicants in its investigation process.

39. For these reasons, I find the strata failed to take a reasonably objective approach to investigate the applicants' noise complaints such that its actions were significantly unfair to the applicants.

### ***What is an appropriate remedy?***

40. I find it appropriate to grant the applicants' request and order the strata to investigate the applicants' noise complaints within the 60 days of this decision. The strata must take a reasonably objective approach to its investigation as I have discussed. This could involve strata council members attending unit A101 when the noises are occurring or the strata retaining a professional engineer familiar with sound transmission to conduct a noise transmission test.
41. The strata must also give as much advance written notice as possible to the applicants to access unit A101, including details of how the investigation will be completed. The strata must immediately provide the applicants with written results of its investigation, including a copy of the engineer's sound test report if one is obtained. Finally, the strata must take appropriate action based on the results of its investigations.

### **CRT FEES AND EXPENSES**

42. 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. The applicants were successful in this dispute and paid \$225.00 in CRT fees, so I order the strata to reimburse them that amount. Neither party claimed dispute-related fees, so I make no order for that.

## ORDERS

43. I order that the strata must:

- a. Within 30 days of this decision, reimburse the applicants \$225.00 for CRT fees.
- b. Within 60 days of the date of this decision, investigate the applicants' noise complaints, on a reasonably objective basis, to determine if the noises from unit A201 comply with bylaw 3.1 and enforce the bylaw if it finds the noises contravene bylaw 3.1. The strata must immediately convey its findings of the investigation, or the findings of a professional engineer it retains, to the applicants in writing, and include a copy of the engineer's report, if one is obtained.

44. The applicants are entitled to post-judgement interest under the *Court Order Interest Act*, for CRT fees.

45. 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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J. Garth Cambrey, Vice Chair