



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Attar v. The Owners, Strata Plan EPS4621*, 2022 BCCRT 146

BETWEEN:

MAHYAR ATTAR

APPLICANT

AND:

The Owners, Strata Plan EPS4621

RESPONDENT

REASONS FOR DECISION

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 and enforce its noise bylaw.
2. The applicant, Mahyar Attar, owns a strata lot (SL332) in the respondent strata corporation, The Owners, Strata Plan EPS4621 (strata).

3. Mr. Attar says that noise created by the residents of a strata lot located immediately next to his strata lot (3503), is unreasonable and contrary to the strata's noise bylaw. He says the strata has failed to enforce its noise bylaw and seeks orders the strata impose fines against 3503 or alternatively, add soundproofing between SL332 and 3503 at the strata's cost. Mr. Attar also seeks an order that his neighbours in 3503 (3503 owners) stop creating a nuisance, causing unreasonable noise, and interfering with his use and enjoyment of SL332. Finally, Mr. Attar seeks \$5,000 in damages for loss of enjoyment of his strata lot.
4. In a separate claim, Mr. Attar says the strata has failed to investigate his noise complaints about the elevators. He says the elevator noise causes a nuisance and transmits excessive noise and vibrations to SL332. Mr. Attar seeks an order that the strata add soundproofing between the elevator equipment and SL332 as recommended by the strata's contractor. He also seeks \$5,000 in damages for loss of enjoyment of his strata lot.
5. The strata disagrees with Mr. Attar's claims and says it properly investigated his noise complaints about his neighbours and the elevators and has taken reasonable steps to exercise its authority, including about soundproofing the elevator equipment. The strata asks that Mr. Attar's claims be dismissed.
6. Mr. Attar represents himself. The strata is represented by a strata council member.
7. As explained below, I dismiss Mr. Attar's claim about noise from the 3503 owners, but order the strata to complete upgrades to the elevator equipment as recommended by one of its professionals. I also award Mr. Attar \$850.00 in damages relating to the elevator noise.

JURISDICTION AND PROCEDURE

8. 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.

9. 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.
10. 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.
11. 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.

Preliminary Issues

Claim against non-parties

12. As noted, Mr. Attar seeks an order that the owners of 3503 stop creating a nuisance, stop creating unreasonable noise, and stop unreasonably interfering with the rights of Mr. Attar to use and enjoy SL332. However, the 3503 owners are not named parties in this dispute so I find it would be procedurally unfair for me make an order against a non-party, given they have not had an opportunity to address Mr. Attar's allegations. For that reason, I decline to address Mr. Attar's requested remedies against the 3503 owners.

Submissions and Evidence

13. Instead of providing his submissions through the CRT online portal, Mr. Attar uploaded lengthy documents as evidence for each of his claims. The documents were 80 and 82 pages long respectively for his noise claim about his neighbour and elevator noise claim. I find the uploaded documents contain both submissions and

evidence, which the strata says are grounds for the CRT to refuse to resolve this dispute because of impracticality citing *Niebuhr v. The Owners, Strata Plan BCS*, 679 2021 BCCRT 863.

14. In *Niebuhr*, a CRT vice chair issued a summary decision refusing to resolve a dispute. The vice chair found the issues in *Niebuhr* were more appropriate for another legally binding process to resolve under CRTA section 11(1)(a)(i), and impractical for the CRT to case manage or resolve under CRTA section 11(1)(c). Unlike in *Niebuhr*, there are no claims of defamation here, and the amount of evidence submitted is significantly less than 400 pieces. Also, I do not find it necessary to request additional evidence in this dispute, nor do I find there are other reasons such as complexity that would persuade me not to resolve the noise issues here. For these reasons, I find *Niebuhr* can be distinguished from the dispute before me.
15. I also acknowledge that CRT rule 7.3 addresses the Tribunal Decision Plan process and includes requiring parties to follow the direction of case managers and places limitations on the length of a party's submissions. The strata did not argue Mr. Attar acted contrary to the rule, but even if it did, I have the discretion to waive the application of a rule (rule 1.2(2)), especially considering the CRT's mandate to allow for speedy, informal and flexible processes. Therefore, even if Mr. Attar did not follow the case manager's direction, which is unproven, I allow his submissions and evidence, and will decide this dispute on its merits.

ISSUES

16. The remaining issues in this dispute are:
 - a. Did the strata fail to enforce its noise bylaws?
 - b. Did the strata appropriately investigate Mr. Attar's noise complaints about the elevator?
 - c. What remedies, if any, are appropriate?

BACKGROUND

17. In a civil proceeding such as this, as applicant, Mr. Attar must prove his claims on a balance of probabilities, meaning more likely than not. 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. I note that Mr. Attar did not provide reply submissions to the strata's response submissions, even though he the opportunity to do so.
18. The strata was created in April 2018 under the *Strata Property Act* (SPA). It consists of 333 strata lots in a high-rise building. Mr. Attar purchased SL332 in August 2020. SL332 is located on the 35th floor of the building, which is the top floor immediately below the mechanical rooms and roof.
19. Bylaws filed with the Land Title Office (LTO) on April 19, 2018 show the strata's bylaws are the Standard Bylaws as amended by the owner developer filing different bylaws under SPA section 245 (Form Y bylaws). I find the Standard Bylaws apply to this dispute together with the Form Y bylaws filed in April 2018. Other bylaw amendments filed with the LTO are not relevant to this dispute. The relevant bylaws are as follows:
 - 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)).
 - a. Amended bylaw 3(2) that says an owner shall not make undue noise in or about any strata lot or common property.
 - b. Standard Bylaw 8 that says the strata must repair and maintain common assets and common property that has not been designated as limited common property.

EVIDENCE AND ANALYSIS

20. I note the 2 noise issues I have identified occurred concurrently, but I have addressed them separately below.

Did the strata fail to enforce its noise bylaws?

21. 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.

22. The SPA does not set out any procedures for assessing bylaw complaints. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the BC Supreme Court stated that the SPA allows strata corporations to deal with complaints of 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

23. For the following reasons, I find the strata's actions about Mr. Attar's complaints from 3503 were procedurally fair.

24. Mr. Attar admits the most frequent subject of his noise complaints are toddler footsteps. He also suspects banging sounds he hears are from the toddler dropping toys on the floor. Mr. Attar submitted written statements from a former tenant, his mother, and his father. All 3 witnesses confirm hearing sounds from children playing they say are unreasonable.

25. Mr. Attar also provided 11 audio video recordings of the alleged noises. Most the recordings do not should the dates they were recorded, and I was only able to hear any discernable noises in 4 of the recordings, 3 were very faint sounds of a child crying and 1 was faint humming sound, which may be related to the elevator noise claim. Although it is difficult to assess volume in such recordings, I agree with the strata that the recorded noises were not loud or severe.

26. Mr. Attar began complaining to the strata about noises from 3503 on November 7, 2020. By the end of November he withdrew his complaints. However, in a December 31, 2020 email to the strata's property manager, he asked that his complaints be "brought back". Text messages he exchanged with the resident of 3503 in December show that he was trying to confirm the noises he heard were from 3503. However, the text messages confirm the 3503 resident heard the same noises, but disagreed the noises were from 3503.
27. During November and December 2020, Mr. Attar kept a log of his noise concerns as requested by the strata. He confirmed in a January 6 email to the property manager that a strata council member had attended his suite, which I infer was for the purpose of witnessing the noises. In a written statement, the strata council member confirmed they had visited SL332 several times as a friend and found the noises from 3503 to be reasonable. In particular, the council member recalled a specific evening they acknowledged they heard voices, but stated they could not hear the context of the conversation, "even with [their] ear pressed against the wall between the 2 suites".
28. A second strata council member provided a written statement that they attended SL332 in February or March 2021 at the request of Mr. Attar. They say they heard "something that sounded like a pen dropping" and described Mr. Attar's reaction as "surprisingly over the top". I have weighed the written statements of Mr. Attar's former tenant and parents against the written statements of the strata council members who attended SL332 and place more weight on the strata council members statements. I say this because of the closer relationship Mr. Attar has with his witnesses, which suggests partiality, and that the witnesses did not provide the dates they witnessed the noises.
29. In early January 2021, Mr. Attar requested a strata council hearing. At the same time, the strata wrote to the residents of 3503 advising them of the noise complaint received and that a \$200 bylaw fine was being considered by the strata. Email correspondence between the property manager and strata council members states the strata was acting to enforce its noise bylaw. I agree with the strata that it followed the procedural steps required under SPA section 135 about bylaw contraventions. The letter is not before me but the 3503 resident's response to the strata on January 25, 2021 was

provided in evidence. In their response, the 3503 resident provided reasonable explanations for all of Mr. Attar's logged complaints concluding that complaints were unreasonable and mostly about their child playing.

30. Mr. Attar's requested council hearing was held on March 31, 2021. In an April 21, 2021 letter, the strata provided its written response to Mr. Attar. In the letter, the strata confirmed it had written to the 3503 residents and described their response. The letter implies the strata agreed the sounds from 3503 can all "be described as regular day to day living". The strata also noted the sounds occurred for only 30 seconds as admitted by Mr. Attar, which I find weighs against the noises being unreasonable. The letter also reminded Mr. Attar to contact the second strata council member noted above if any noises were heard in the future so the council member could witness the noise and determine if it was unreasonable. Although the letter states Mr. Attar had not contacted the council member, I find that was in error, given the council member's written statement they attended 3503 in February or March as earlier noted. Finally, the strata's letter encouraged Mr. Attar to work with the strata council by continuing to keep noise logs and that the strata would ensure the bylaws were enforced.
31. I find the overall approach taken by the strata to investigate Mr. Attar's noise concerns was reasonable. It identified his concerns to the neighbour in 3503 and had council members attend SL332 to witness the noises. Based on the April 2021 letter, it did not say it would not consider any future concerns of Mr. Attar. On the contrary, the strata agreed it would continue to address Mr. Attar's concerns by having a strata council member attend SL332 to witness noises considered to be unreasonable. Further, there was no delay in the strata taking these steps to address Mr. Attar's concerns.
32. Based on the overall evidence and submissions, I find the strata's approach to investigating and addressing Mr. Attar's noise complaints was procedurally fair and met its duty under SPA section 26.

Significant Unfairness

33. I will now consider whether the strata treated Mr. Attar significantly unfairly as found in *Chorney* and other case law discussed below.

34. 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.
35. 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.
36. In *Kunzler*, the Court of Appeal confirmed that an owner’s expectations could be considered a relevant factor in assessing significant unfairness. 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?
37. In this case, I find Mr. Attar had an objectively reasonable expectation that the strata would investigate his complaint about noise transmission from 3503 to determine if it was contrary to bylaw 3.1.
38. Based on the correspondence in evidence, I accept the noise from 3503 was unacceptable to Mr. Attar. However, the test is whether the noise was objectively unreasonable. As mentioned, I put little weight on Mr. Attar’s audio video recordings because I find it difficult to determine the severity and frequency of the alleged noises based on those recordings.
39. Although Mr. Attar submitted evidence of noise logs he kept from November 2020 to October 2021, there is no evidence he provided any logs to the strata council after the council hearing held on March 2021. I find from the evidence that Mr. Attar’s complaints were lodged with the strata in December 2020 and January 2021 leading up to request for a council hearing. Given the strata’s April 8, 2021 letter following the hearing expressly requested Mr. Attar to continue to make the strata aware of his

noise concerns and he did not, I find the strata's investigation was not final. Since Mr. Attar did not provide evidence that he raised further noise concerns with the strata, I find his expectations were not violated by an action of the strata that was significantly unfair.

40. For these reasons, I find the strata did not treat Mr. Attar in a significantly unfair manner.

Nuisance

41. Mr. Attar also argues his 3503 neighbours' noises were a nuisance. In the strata context, a nuisance is an 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. Whether or not an interference, such as noise, 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.

42. As the applicant, Mr. Attar must prove the noise was objectively unreasonable to an ordinary person and I find he has not. The only objective evidence in this dispute are the audio video recordings provided by Mr. Attar. I determined the recorded noises were not loud or severe. I also agree with the strata that the duration of the recordings were short, less than about 30 seconds, so I find the recordings weigh against the noises being unreasonable or intolerable and I find Mr. Attar has not established the noises are a nuisance.

43. For all of these reasons, I dismiss Mr. Attar's claim that the 3503 residents created unreasonable noise contrary to the bylaws and that the strata failed to properly investigate his noise complaints.

44. Having reached this conclusion, I find I need not address Mr. Attar's claim for damages.

Did the strata appropriately investigate Mr. Attar's noise complaints about the elevator?

45. Mr. Attar says he has complained to the strata about elevator noise keeping him awake at night since he moved into SL332 in August 2020, and that the strata has refused to address the noise issues. The strata takes a contrary position and says it has taken steps to address elevator noise issues even though it has reports that say the noise levels are within industry standards. There is no dispute that the elevator equipment is a common asset of the strata, located on common property and that the strata is responsible for its repair and maintenance under bylaw 8 and SPA section 72.
46. Mr. Attar describes the elevator noise as clunking, and says the noise is accompanied by vibrations. In his submissions, Mr. Attar says he provided a noise log to the strata for the period between September 1, 2020 and October 2021. However, the log reproduced in his submission was for the period January 1 through October 26, 2021. I note the log contains an identical entry for every day that reads, "loud noises all night followed by clunking sounds, sound occurs whenever elevator is in use". I discuss the elevator noise logs further below.
47. For the following reasons, I find the strata properly investigated Mr. Attar's elevator noise complaints.
48. As background, it appears from the evidence that the strata had complaints about noise and other issues from the elevator equipment, since the strata was created in 2018. This is confirmed in a report dated May 13, 2019 from KJA Consultants Inc. (KJA) addressed to the strata. Part 3 of the report is entitled "Noise Review" and states 1 of the reasons for the review was because of noise issues affecting residents of the top floor suites. Although KJA reported the noise level inside the machine room, measured at 75 dBA (decibels), was "within the acceptable range (less than 80 dBA)", it recommended the maintenance contractor "review the brake pick and hold voltages and brake lift clearances and adjust them where possible for a smoother and quieter operation". KJA also recommended the strata contact another company, Vibra-Sonic Control (Vibra-Sonic), to discuss ways to isolate and reduce elevator noise, which the strata did.

49. In a report to the strata dated September 16, 2019, Vibra-Sonic identified a number of possible causes for noise transmission and made recommendations for sequential improvements starting with installing isolation pads under the elevator drive of elevator #1 before completing the same improvements to elevators #2 and #3. The report also identified that the control panels were attached to the wall but not recommend any upgrades to them.
50. In December 2019, the strata wrote a terse letter to Elevators Ltd. (Richmond) drawing items of concern to Richmond's attention. One item was "excessive noise" that directly impacted a neighbouring but unidentified strata lot. The letter also identified some equipment changes and failures that resulted in noise issues being resolved, although the details of the work completed by Richmond to alleviate noise issues is not clear. All of this occurred prior to Mr. Attar's purchase of SL332 in August 2020 and none is disputed.
51. At some point between August 2020 and November 2020, Mr. Attar became a member of the strata council and also served on a committee to investigate the elevator noise. Based on an email from Richmond to Mr. Attar dated October 19, 2020, Richmond had completed some "adjustments to the hoist machines" that did not improve vibration transmission into SL332. Richmond was enquiring on next steps suggesting the existing isolating pads for the hoist equipment be increased from 1-inch thickness to 2-inch thickness.
52. The November 12, 2020 strata council meeting minutes say a site meeting was held with strata representatives and the strata's elevator maintenance company, Richmond, to address several noise complaints about "noise transfer from the machine room". At the strata council meeting, the strata council passed a resolution to spend up to \$3,000 to have Richmond "address this issue". Based on the parties' submissions, and a December 2020 through January 2021 email exchange between Mr. Attar, as head of the elevator committee, the strata's property manager, and representatives of Richmond, I find Richmond was given authorization to replace the 1-inch isolation pads under the elevator #1 hoist with 2-inch pads as earlier recommended by Vibra-Sonic.

53. As previously noted, on January 6, 2021 Mr. Attar requested a strata council hearing to discuss all of his noise concerns.
54. By January 30, 2021, Richmond had completed the work, and on that date, Mr. Attar emailed the property manager saying he was not certain what work Richmond did, but that the sound in SL332 was now louder than before.
55. The next piece of evidence I have is the March 31, 2021 strata council meeting minutes that confirm Mr. Attar's hearing occurred. About the elevator noise issue, the minutes state the strata would continue to take suggestions from Mr. Attar because it was "working to find a solution" and Mr. Attar was part of the elevator committee. The April 8, 2021 letter from the strata to Mr. Attar after the hearing simply stated that the strata was aware the work completed by Richmond did not resolve the noise issues in SL332 and that the strata council was working with Richmond to come up with a solution. The strata also invited Mr. Attar's recommendations as part of the elevator committee.
56. There are further gaps in the evidence, but a strata council member's written statement says they attended SL332 on May 11, 2021 with Mr. Attar and representatives of Richmond. The strata council member says he and the Richmond representatives concluded there was no excessive noise from the elevators. They say Richmond provided a follow up email confirming that conclusion, but such an email is not in evidence. However, the May 12, 2021 strata council meeting minutes seem to confirm the council member's statement. The minutes say an inspection occurred and that a formal report on the findings was not available. The minutes also say the strata council believed the elevator equipment was in "great working condition and the assessment provided the mechanical noise is minimal". The conclusion reached by the strata council as stated in the minutes was that nothing more could be done to mitigate the noise and that a "permanent noise-free solution is likely unnecessary" and would be costly.
57. Despite what was reported in the May 2021 minutes, the strata commissioned an acoustic report from BAP Acoustics (BAP) dated June 15, 2021. The report says BAP attended the site on June 9, 2021 "to measure and assess the level of noise in two

units”. The time of the data collection appears to be about 10 a.m.. The units investigated were SL332 and another strata lot on the 35th floor. Based on this report, I find Mr. Attar was not the only owner complaining of elevator noise. Noise data was collected continuously over a 5-minute period while the elevators were operated by the BAP engineer and strata caretaker. The noise was described in the report as “a whirring sound followed by a clonking sound” which I find matches the description given by Mr. Attar.

58. The report states the measurements were taken in accordance with the standards and procedures applicable to professional good practice “used in presentations made in legal proceedings”. Elsewhere in the report BAP notes there is little published guidance available for assessing elevator noise but one such guide is British Standard 8233 – Guidance on Sound Insulation and Noise Reduction in Buildings (BS8233). According to BAP, BS8233 states the upper guideline values for a bedroom is 25 dB and that it measured an average of 33 dB in the bedroom of SL332. The conclusion reached by BAP was that the maximum noise levels resulting from the elevator operation exceed the limit criteria recommended under BS8233. BAP further stated that although elevator operation is not required to comply with BS8233, it is reasonable for occupants of residential units to expect elevator noise to comply with published standards.
59. The BAP report also stated that it inspected the elevator machine room. The report noted that rubber isolation pads had been installed under the hoist gear but that if the bolts were highly torqued, the isolation pads would have limited effect. The report recommend the bolts be loosened “a little” suggesting the level of the whirring noise should be reduced. BAP also recommended that the control cabinet housing the switching gear attached to the wall should be remounted on a steel frame on top of steel spring isolators, along with connecting conduits. According to BAP, this would be a way to reduce the more dominant clonking noise.
60. In submissions, the strata says the BS8233 standard is not applicable in Canada and that even if it was, the BAP reported the elevator operation is not required to comply with the standard. The strata also says it “has initiated an ongoing investigation into

the elevator noise and continues to attempt to find solutions” and that Mr. Attar is aware of the strata’s view because he is a member of the elevator committee.

61. As I have noted, Mr. Attar did not submit any reply submissions, and there is no documentary evidence before me dated after the June 15, 2021 BAP report. Therefore, I am left to decide this claim on the evidence I have before me. Given there is no dispute about the consultant reports’ findings, I accept the reports’ findings are accurate.
62. As I have mentioned, SPA section 26 requires the strata council to exercise the powers and perform the duties of the strata in a reasonable manner. So the question is whether the strata acted unreasonably.
63. I accept that Mr. Attar was disturbed by elevator noise and find the strata would not have taken the steps it did to attempt to address the noises if it did not also agree. There is no dispute about any of the reports provided, both before Mr. Attar’s purchase of SL332 in August 2020 or after. The fact that the strata invested elevator noise before August 2020, implies the noise was an issue with other owners. Further, the BAP report suggests at least 1 other strata lot owner on the 35th floor also expressed concern over elevator noise at the same time as Mr. Attar. Taken together, I find the reports and actions of the strata confirm Mr. Attar is not overly sensitive to the elevator noise.
64. The courts have found that strata corporation is entitled to rely on and be guided by the advice of professionals: see *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74 at paragraph 56. Further, as noted in *Weir v. Strata Plan NW 17*, 2010 BCSC 784, a strata corporation may have several reasonable options available to undertake necessary repairs. The fact that 1 of the options may be a more cautious approach or even turn out in hindsight to be the less wise or preferable course of action will not give the court (or tribunal) a basis for overturning a strata council’s decision regarding the repair option selected, as long as the option selected is a reasonable one. None of the consultant reports obtained prior to the BAP report found the elevator noises were outside acceptable standards, so based on *Leclerc* and

Wier, I find the steps taken by the strata up to and including the BAP report were reasonable.

65. The same tests for significant unfairness and nuisance apply to the elevator noise as applied to the neighbour's noise discussed above and I have considered both.

Significant unfairness

66. I find Mr. Attar had an objectively reasonable expectation that the strata would investigate his complaint about elevator noise and act on the consultants' recommendations.

67. Based on the correspondence in evidence, I accept the elevator noise was unacceptable to Mr. Attar. As for the elevator noise logs Mr. Attar provided in submissions, there is no evidence the logs were provided to the strata, as the strata suggests. Absent such evidence, and given the strata's position is undisputed, I find that Mr. Attar did not provide the logs to the strata.

68. The best objective evidence about the level of elevator noise in SL332 are the decibel readings reported by BAP in June 2021. Even though the standards used by BAP are not governing standards, I agree with the comments in the BAP report and find it is reasonable for Mr. Attar to expect elevator noise to comply with published standards. Based on the BAP report, there are other things the strata can do to address the elevator noise. Following *Leclerc* and *Wier*, the strata has some discretion to follow the recommendations of its professionals. However, I find the strata's actions to do nothing as a result of the BAP report to be unreasonable and harsh to Mr. Attar. This is especially true given my earlier finding that Mr. Attar is not overly sensitive to the noises, and considering the BAP recommendations are similar to earlier recommendations given to the strata by Richmond and Vibra-sonic.

69. For these reasons, I find the strata has treated Mr. Attar in a significantly unfair manner by not doing anything about the elevator noise. I order the strata to complete the work recommend by BAP, which I note is similar to that recommended by Vibra-sonic.

Nuisance

70. Mr. Attar's final argument is that elevator noise is a nuisance. As the applicant, Mr. Attar must prove the elevator noise was objectively unreasonable to an ordinary person as set out in *Triple P* and *Barrette*. The only objective evidence in this dispute is the audio video recordings provided by Mr. Attar, and the testing results completed by BAP. Mr. Attar provided 11 audio video recordings of the alleged noises. Most the recordings do not show the dates they were recorded. Also, I was only able to hear any discernable noises (other than very faint sounds of a child crying) in 1 recording, that of a faint humming sound which may be related to the elevator noise claim. Although it is difficult to assess volume in the recording, I agree with the strata that the recorded noise was not loud or severe.
71. However, the BAP report identifies the elevator noises to be frequent and about 30 seconds in duration. In order to meet the test for nuisance, the noise must also be substantial such that it is intolerable to an ordinary person as set out in *Triple P* and *Barrette*. During the 5 minutes of elevator testing, the BAP report identifies 26 events where the sound level exceeded the maximum 25 decibels in the bedroom of SL332. While it is likely the elevators were operating more frequently during the BAP testing, I find the BAP report establishes the elevator noises meet the nuisance threshold.

Damages

72. As noted, Mr. Attar claims \$5,000 in damages for loss of enjoyment of SL332. He says his damages amount is based on 1 month of mortgage payments and strata fees, plus expenditures he made on earplugs, headphones, noise machines and noise dampening curtains. However, in numerous CRT noise disputes, damages have been awarded on pure loss of enjoyment, unrelated to expenditures made by the successful party. Mr. Attar cites *Chen v. The Owners, Strata Plan NW 2265*, 2017 BCCRT 113 and *Tollasepp v. The Owners, Strata Plan NW 2225*, 2020 BCCRT 481 as CRT decisions where damages were awarded. In *Chen*, a strata lot owner complained to the strata corporation about noise from a common property hot tub pump. A CRT 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 and awarded the owner \$4,000 in damages for loss of enjoyment of their strata lot.

73. In *Tollasepp*, a CRT member found noise from a neighbouring strata lot was significantly unfair and awarded damages of \$1,500. The member considered several CRT decisions involving noise-related nuisance and noted damages awarded in those decisions ranged from \$500 for limited instances of balcony noise to \$5,000 for nearly 3 years of droning and living noise. While *Chen* and *Tollasepp* are not binding on me, I find the reasoning persuasive and adopt it here.

74. In this dispute, I find Mr. Attar first complained of elevator noise in October 2020 as noted in email correspondence between Mr. Attar and Richmond. Based on the frequency and the nature of the noise, I find the strata must pay Mr. Attar \$850.00 in damages for loss of enjoyment of his strata lot. I find he is entitled to pre-judgment interest on this amount under the *Court Order Interest Act* (COIA) calculated from October 1, 2020, which I find, based on the evidence, is a reasonable date when the strata council first learned of his noise complaint, until the date of this decision. I calculate pre-judgment interest to be \$5.20.

CRT FEES AND EXPENSES

75. 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. Mr. Attar was partly successful in this dispute and paid \$225.00 in CRT fees. Therefore, I order the strata to reimburse Mr. Attar ½ half of his CRT fees or \$112.50.

76. Neither party claimed dispute-related expenses, so I order none.

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

ORDERS

78. Within 90 days of this decision, I order the strata to complete upgrades to the elevator equipment as recommended in the June 15, 2021 BAP report.
79. Within 30 days of this decision, I order the strata to pay Mr. Attar \$967.70, broken down as follows:
- a. \$850.00 in damages,
 - b. \$5.20 in pre-judgment interest under the COIA,
 - c. \$112.50 for CRT fees.
80. Mr. Attar is entitled to post-judgment interest under the COIA, as applicable.
81. I dismiss Mr. Attar's remaining claims.
82. 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.

J. Garth Cambrey, Vice Chair