



Civil Resolution Tribunal

Date Issued: March 8, 2022

File: ST-2021-003683

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan 355 v. Kat*, 2022 BCCRT 249

BETWEEN:

The Owners, Strata Plan 355

APPLICANT

AND:

ANN KAT and DONNA HALLIWELL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about strata lot odour complaints.
2. The respondents, Ann Kat and Donna Halliwell, own a strata lot in the applicant strata corporation, The Owners, Strata Plan 355 (strata). The strata says that CB, the owner of the strata lot directly above the respondents' strata lot (apartment 306), has

repeatedly complained that the respondents' alleged use of scented laundry products, air fresheners and scented kitty litter has resulted in offensive odours entering CB's strata lot. The strata asks for an order requiring the respondents to stop using scented products.

3. The respondents deny the claim and say that they have already stopped using scented cleaning products, scented kitty litter, perfumes and air fresheners.
4. The strata is represented by a strata council member. The respondents are self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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

9. The issues in this dispute are:
- a. Do scented product odours from the respondents' strata lot violate the strata bylaws?
 - b. Should I order the respondents to stop using scented products?

BACKGROUND AND EVIDENCE

10. In a civil claim such as this one the strata, as the applicant, must prove its claim on a balance of probabilities. I have reviewed all the evidence and submissions provided by both parties, but only refer to that necessary to explain my decision.

11. The strata was created in 1976 and consists of a 5-storey apartment-style building with residential strata lots. The strata filed consolidated bylaws with the Land Title Office in August 2017. The following are relevant bylaws:

- Bylaw 4(1)(a) says an owner must not use a strata lot in a way that causes a nuisance to others.
- Bylaw 4(1)(c) says an owner cannot unreasonably interfere with another owner's right to enjoy their strata lot.
- Bylaw 4(2) says an owner must not create unreasonable smells in strata lots or use air fresheners, perfumes or deodorants in common property or use scented laundry products in the shared laundry facilities.

12. The respondents purchased their strata lot in June 2019.

13. The strata provided the following complaint statements from owners and residents:

- CB provided a September 25, 2021 statement complaining that they have smelled offensive laundry odours from the respondents' strata lot since August 2019. CB says the respondents' dryer vent and bathroom vent are located approximately 5 feet from CB's bedroom window.
- BN, resident of apartment 305, provided a September 14, 2021 statement complaining of perfume smell from the west side of building from March 2020 to April 2021.
- HR provided a September 21, 2021 statement saying that they smelled perfume odours coming from the respondents' strata lot from September 2019 to March 2020 and in January 2021.
- PR, resident of apartment 303, provided a September 9, 2021 statement saying that they smelled an offensive air freshener smell coming from the west side of the building in May 2021.
- CC, resident from apartment 204, wrote a September 28, 2020 statement saying that they smelled a sweet odour that seemed to be coming from the respondents' strata lot.

14. The strata says it issued bylaw fines against the respondents for odours on September 10, 2020, February 5, 2021 and April 28, 2021.

REASONS AND ANALYSIS

15. The strata now acknowledges that the respondents have stopped using fragranced laundry and household products. This is consistent with the respondents' submissions that they no longer use scented perfumes, air fresheners, kitty litter or laundry products. Further, the respondents provided photographs of unscented laundry products, cleaning products and kitty litter. I infer and find that the respondents are using the unscented products shown in the photographs. Since both parties agree that the respondents have stopped using scented laundry products, cleaning products and

kitty litter, I find that the respondents' strata lot is not emitting odours from the use of such products.

16. The respondents admit that they are still using scented personal hygiene products. However, the strata says that it does not claim that the use of such personal bathroom products violates the strata bylaws. So, I do not make any findings relating to the respondents' use of scented personal hygiene and bathroom products.
17. Based on the above findings, I find it unnecessary to determine whether the respondents' previous use of household products breached the strata bylaws. I reach this conclusion because the only remedy requested in the strata's application for dispute resolution is for an order asking the respondents to stop releasing household product odour.
18. An order asking someone to stop doing something is called an injunction. This is an extraordinary discretionary remedy that should only be used in the clearest of cases (*Interior Health Authority v. Statham*, 2005 BCSC 1243). Previous CRT decisions have held that injunctions should be used to address repeated wrongful conduct when other remedies, such as fines, prove ineffective (see, for example, *Athwal v. The Owners, LMS Strata Plan 2768*, 2020 BCCRT 1300 and *Barn v. The Owners, Strata Plan VR533*, 2020 BCCRT 1315).
19. I find that an injunction is not necessary in this dispute since both parties agree that the offensive odours have already stopped. Since this is the only relief requested, I dismiss this claim and I do not make any findings as to whether the respondents' household odour breached the strata's bylaws.
20. In its evidence, the strata also asks the CRT to help resolve the ongoing complaints from CB against the respondents. However, I find this issue is not properly before me since it was not included in the strata's application for dispute resolution. Further, even if this claim was properly raised in the strata's application for dispute resolution, I would refuse to resolve this claim because CB is not a party in this dispute.

CRT FEES AND EXPENSES

21. 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. Since the strata was not successful, I dismiss its request for reimbursement of CRT fees. The respondents did not request reimbursement of dispute-related expenses.

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

ORDER

23. I dismiss the strata's claim and this dispute.

Richard McAndrew, Tribunal Member