



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Shafey v. The Owners, Strata Plan NW 1730*, 2022 BCCRT 344

B E T W E E N :

Ahmed Shafey

APPLICANT

A N D :

The Owners, Strata Plan NW 1730

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about hard flooring in a strata corporation.
2. The applicant, Ahmed Shafey, purchased a strata lot with hard flooring in the respondent strata corporation, The Owners, Strata Plan NW 1730 (strata). The strata

has demanded he change his strata lot's hard flooring to carpet. Mr. Shafey says this is unfair to him as the strata previously authorized the flooring installation, has not given him the opportunity to explore alternate solutions, and carpet aggravates his allergies. Mr. Shafey asks for an order that the strata stop demanding he change his strata lot flooring.

3. The strata says it is authorized to demand the change under its bylaws and based on noise complaints from the strata lot below Mr. Shafey's. It says Mr. Shafey should have known of the noise complaints prior to purchasing his apartment, based on the strata council's meeting minutes.
4. Mr. Shafey represents himself. The strata is represented by a strata council member.

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.

ISSUE

9. The issue is whether the strata must stop demanding Mr. Shafey change his floors to carpet.

EVIDENCE AND ANALYSIS

10. In a civil dispute like this one the applicant, Mr. Shafey, must prove his claims on a balance of probabilities (meaning “more likely than not”). I have reviewed the parties’ submissions and weighed the evidence submitted but only refer to that necessary to explain and give context to my decision. I note that Mr. Shafey provided no reply submissions despite having the opportunity to do so.

Background

11. The residential strata was created in 1981. Mr. Shafey co-purchased strata lot 42 (SL 42) in March 2021, with an April 29, 2021 closing date. SL 42 is located directly above strata lot 27 (SL 27), where LP lives. In April 2005 the strata permitted the previous owner of SL 42 to install laminate flooring. None of this is disputed.
12. The evidence shows that LP kept a log of noise from SL 42 from November 2019 to November 2021. Strata council meeting minutes show LP complained to the strata council on several occasions dating back before the council’s December 10, 2020 meeting. The January 25, 2021 minutes show the strata fined SL 42’s previous owner for violating the strata’s noise bylaw, after 2 council members reviewed LP’s noise logs and went to SL 27 to observe the noise themselves. The council members concluded that the unreasonable noise was due to a combination of the previous owner’s living habits and the 15-year-old hard flooring.

13. The March 23, 2021 council meeting minutes show the strata found ongoing noise transfer from SL 42 to SL 27, based on LP's noise logs and further complaints, despite steps taken by SL 42's prior owner to mitigate the noise. The strata decided to request that SL 42's owner replace his current flooring with carpet. This was conveyed to the former owner in an April 7, 2021 letter.
14. The May 3, 2021 council meeting minutes show LP reported that she heard sporadic noise from SL 42 every day from the new owner, who I infer is Mr. Shafey. The strata decided to grant Mr. Shafey a grace period before fining him and enforcing its previous decision demanding that SL 42 replace its flooring with carpet.
15. It is undisputed that the parties had a strata council hearing on June 28, 2021, although neither party submitted any decision of the strata following that hearing. Neither did they submit any strata council meeting minutes after May 3, 2021. However, the parties agree that the strata has now demanded that Mr. Shafey replace his hard flooring with carpet, as set out in its April 7, 2021 letter to the former owner.

Is the strata entitled to demand Mr. Shafey change his flooring?

16. Section 26 of the *Strata Property Act* (SPA) tasks the strata council with carrying out the duties and obligations of the strata, including enforcing its bylaws.
17. On August 7, 2001 the strata filed an amended set of bylaws with the Land Title Office, that I find apply here. Bylaw 3(1)(b) prohibits an owner from using a strata lot in a way that causes unreasonable noise.
18. The strata filed bylaw 3(19) on May 9, 2007 and amended it on October 17, 2014. That bylaw says:
 - a. owners cannot install hardwood, tile, vinyl or laminate flooring, except in bathrooms and kitchens,
 - b. if such flooring was previously authorized by the strata, the owner must still not unreasonably disrupt the other residents' peace and quiet, and

- c. if the strata reasonably believed noise was caused or increased by hard flooring, the strata could require remediation including removing the hard flooring and replacing it with “softer sound absorbing flooring materials”.
19. Based on LP’s noise logs and the strata’s discussion of LP’s noise complaints in the minutes described above, I find the strata reasonably believed the noise in SL 27 was caused or increased by the hard flooring. I specifically note LP referred to stomping and pounding, shoes on the floor, and snaps and crackles from the floor above. I also find SL 42’s former owner failed to reasonably mitigate the noise transfer, despite attempting to do so. So, I find the strata was entitled to require SL 42 to remove the hard flooring under bylaw 3(19), despite having previously authorized it.
20. I further find bylaw 3(19) allows the strata to enforce that decision against Mr. Shafey. As noted, LP continued to log daily noise from SL 42 after Mr. Shafey moved in, including noise that woke LP on occasion. I find such noise unreasonable. I also find the October 20, 2021 noise report provided by the strata, discussed below, supports that SL 42’s hard flooring causes, or increases, the noise heard by LP in SL 27.
21. The strata retained BAP Acoustics (BAP) to measure the impact sound insulation in the floor-ceiling assembly between SL 42 and SL 27 on October 4, 2021. According to its October 20, 2021 opinion letter, Farbod Ghanouni, an acoustic engineer performed a tap test on Mr. Shafey’s living/dining room floor. Farbod Ghanouni explained the tapping machine was placed in 4 different locations in SL 42 and that noise measurements were taken in several locations in SL 27. Further, the average background noise in SL 27 was measured and accounted for. Based on their tests, Farbod Ghanouni calculated the normalized Apparent Impact Insulation Class (AIIC) rating of the floor-ceiling at 43. The report notes that the BC Building Code recommends (but does not require) a minimum AIIC rating of 55.
22. I note that Mr. Shafey does not dispute the report, or Farbod Ghanouni’s qualifications. I find Farbod Ghanouni is qualified as an acoustic engineer to provide this expert opinion under the CRT rules and so I accept their opinion. From the report,

I find the flooring in SL 42 has insufficient impact noise insulation. So, I find the floor increases, or causes, the noise heard in SL 27.

23. Overall, I find the strata is entitled, under SPA section 26, bylaw 3(1) and bylaw 3(19) to demand Mr. Shafey replace his hard floor.
24. I agree with Mr. Shafey that bylaw 3(19) says the strata can require an owner to replace hard floor with “softer sound absorbing flooring materials”. The amended bylaw does not specifically require carpet, as did the earlier version of the bylaw. However, Mr. Shafey has not provided any explanation or evidence to show what other types of “softer sound absorbing flooring materials” exist which would sufficiently reduce the impact noise transfer between SL 42 and SL 27. As the applicant, Mr. Shafey has the burden to prove other such materials exist, and I find he has failed to meet that burden.

Significant Unfairness

25. Although Mr. Shafey does not use this particular phrase, I infer he argues the strata’s decision is significantly unfair to him as he just purchased the strata lot.
26. CRTA section 123(2) gives the CRT the power to make an order directed at a strata or a section to remedy a significantly unfair action or decision. This provision mirrors section 164(1) of the SPA, which gives the same or a similar power to the BC Supreme Court.
27. In *Reid v. Strata Plan LMS 2503*, 2001 BCSC 1578, affirmed 2003 BCCA 126, the court said a significantly unfair action is one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342 the court confirmed that an owner’s reasonable expectation is a relevant factor to consider when assessing significant unfairness.

28. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, the court applied a “reasonable expectations” test when considering whether a discretionary action of council was significantly unfair. The test asks: What was the applicants’ expectation? Was that expectation objectively reasonable? Did the section violate that expectation with a significantly unfair action or decision?
29. I find Mr. Shafey’s expectation that he be allowed to keep the hard floor, or attempt to find a solution other than replacing the flooring, is not objectively reasonable. Mr. Shafey acknowledges that he received strata council minutes prior to March 20, 2021. Contrary to Mr. Shafey’s argument, I find those minutes contain reference to LP’s noise complaints from SL 42 at the December 10, 2020 and January 25, 2021 meetings. Further, the minutes specifically note the ongoing nature of LP’s noise complaints from SL 42 and the strata’s conclusion that the hard floor is to blame. I find it unreasonable to expect the strata not to take action against SL 42.
30. Further, I find bylaw 3(19) clearly sets out the strata’s authority to require an owner to remove their previously authorized flooring, if it causes or increases noise. It is unclear whether Mr. Shafey obtained a copy of the strata’s bylaws prior to purchasing SL 42, however I find they were available to him from the LTO. So, I find Mr. Shafey could have reasonably informed himself of the strata’s bylaws.
31. Even if Mr. Shafey’s expectation that the strata allow him to attempt to solve the noise problem was reasonable, I find the strata’s decision requiring him to replace the floor is not significantly unfair. Mr. Shafey provided no evidence that he took steps to reduce the impact noise coming from his apartment. Nor did he explain what could be done to reduce the noise. I specifically note the photos taken by Farbod Ghanouni show no floor coverings such as rugs or mats on most of Mr. Shafey’s living area floor. Further, the strata provided Mr. Shafey a grace period before taking steps to enforce its decision. So, I find the strata did not act in bad faith or unfairly.

32. There is no indication that the strata has acted prejudicially or treated Mr. Shafey any differently than other owners.
33. I accept Mr. Shafey's argument that carpet would worsen his pre-existing dust mite allergies, as this is supported by an October 28, 2021 medical note from Dr. Manstein Kan. However, the note does not explain how much worse the condition would be, or whether certain types of carpet might be better than others. Further, although Mr. Shafey says he has not budgeted for the expense of floor removal, he provided no evidence or explanation about how much it would cost and whether that cost would be a burden to him. Overall, I find Mr. Shafey has failed to prove that removing his hard flooring would be oppressive, burdensome or harsh. So, I dismiss his claims.

CRT FEES and EXPENSES

34. 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. As the successful respondent the strata is entitled to reimbursement of the \$100 in CRT fees it paid. Neither party claimed any dispute-related expenses.
35. The strata must comply with section 189.4 of the SPA, which includes not charging Mr. Shafey with his proportional share of the strata's expenses related to this dispute.

ORDERS

36. I dismiss Mr. Shafey's claims.
37. I order Mr. Shafey to reimburse the strata \$100 in CRT fees within 14 days of this decision.
38. The strata is also entitled to post judgment interest under the *Court Order Interest Act*.
39. 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.

Sherelle Goodwin, Tribunal Member