



# Civil Resolution Tribunal

Date Issued: May 4, 2022

File: ST-2021-004961

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ross v. The Owners, Strata Plan NW 962*, 2022 BCCRT 532

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

STEPHEN ROSS

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 962

**RESPONDENT**

**A N D :**

GABI BOSWELL

**RESPONDENT BY THIRD PARTY CLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Leah Volkers

## INTRODUCTION

1. This dispute is about noise complaints and bylaw enforcement in a strata corporation.
2. The applicant, Stephen Ross, owns strata lot 95 (SL95) in the respondent strata corporation, the Owners, Strata Plan NW 962 (strata). The strata allowed the owners of strata lot 105 (SL105) to replace carpeted floor with laminate flooring in April 2021. Mr. Ross says SL105's new flooring does not comply with the strata's flooring bylaws.
3. Mr. Ross also says he and his family have dealt with constant noise since the new flooring was installed. Mr. Ross says the strata has failed to enforce its flooring and noise bylaws. Mr. Ross asks for orders that the strata either remove SL105's laminate flooring and fix the subfloor, or soundproof SL95's ceiling. Mr. Ross also asks for \$8,000 to compensate him for his loss of enjoyment of SL95.
4. The strata says SL105's flooring alteration was approved under the strata's bylaws. The strata says it investigated Mr. Ross' noise complaints and the noise emanating from SL105 is reasonable. The strata says Mr. Ross is not entitled to any of his claimed remedies.
5. The strata also filed a third party claim against the respondent by third party notice, Gabi Boswell, seeking contribution and indemnity from her if the strata is found liable for Mr. Ross's claims. Ms. Boswell co-owned SL105 with PB when the laminate flooring was installed and signed an indemnity agreement with the strata. Ms. Boswell and PB no longer own SL105. PB is not a party to this dispute.
6. Ms. Boswell says she should not be required to indemnify the strata if it is found liable for Mr. Ross's claims. She says she complied with the strata's requirements for installing the laminate floor. She says it was unfair of the strata to lead her to believe there would be no issues with laminate flooring if the proper underlay was installed, and then seek to recover under the indemnity agreement. Ms. Boswell also says the appropriate respondent by third party claim is SL105's current owner, who assumed Ms. Boswell's obligations under the indemnity agreement when they purchased SL105. SL105's current owner is not a party to this dispute.

7. Mr. Ross is represented by his spouse, DR. The strata is represented by a strata council member. Ms. Boswell is self-represented.
8. For the reasons that follow, I dismiss Mr. Ross's claims, the strata's third party claim, and this dispute.

## **JURISDICTION AND PROCEDURE**

9. 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.
10. 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.
11. 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.
12. 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.

### ***Bylaw amendments and enforcement***

13. In his submissions, Mr. Ross says there was a “complete overhaul of bylaws in one vote” at the strata’s December 18, 2018 annual general meeting (2018 AGM). He says this included 26 pages of 37 new bylaws, including bylaw 8(3), which changed the requirements for flooring alterations. Mr. Ross says that the bylaw amendments should have been voted on separately. I note that SPA section 128 sets out bylaw amendment procedures, and does not prohibit multiple bylaw amendments at one time. Mr. Ross did not raise this issue or claim any remedies arising from the strata’s bylaw amendment procedure in his dispute application. Therefore, I find the strata did not have proper notice of this issue and it would not be procedurally fair for me to consider it in this decision.

### **ISSUES**

14. The issues in this dispute are:

- a. Do SL105’s laminate floors breach the strata’s flooring bylaws?
- b. Did SL105’s owners breach the noise bylaw?
- c. Were the strata’s actions in dealing with SL105’s flooring alterations and noise complaints significantly unfair to Mr. Ross?
- d. Is Mr. Ross entitled to any of the following remedies?
  - i. An order that the strata either remove SL105’s laminate flooring and fix the subfloor, or soundproof SL95’s ceiling
  - ii. \$8,000 in damages.
- e. Is Ms. Boswell bound by the alteration agreement?
- f. If yes, to what extent must Ms. Boswell indemnify the strata for any remedies ordered?

## **BACKGROUND AND EVIDENCE**

15. In a civil proceeding such as this one, Mr. Ross, as the applicant, must prove his claims on a balance of probabilities (meaning “more likely than not”). The strata bears the same burden for its third party claim. I have read all the parties’ submissions and evidence, but below I only refer to what is necessary to explain my decision.
16. The strata consists of 282 strata lots in 9 buildings. SL95 is on the 4<sup>th</sup> level a 5-level strata building that contains 3 levels of strata lots and 2 levels of parking beneath. SL105 is located directly above SL95. The strata is located in Burnaby, BC.
17. The strata filed a complete set of bylaws in the LTO in January 2019, which repealed and replaced all previous bylaws. I find these are the applicable bylaws in this dispute because the flooring changes and noise complaints all happened after January 2019.
18. Bylaw 8 addresses strata lot and common property alterations. Among other things, bylaw 8(3) says an owner must not install new flooring in a strata lot, except with the strata’s written approval. It also says the installation of hardwood type flooring requires an acoustic underlay with a Sound Transmission Class (STC) and Impact Insulation Class (IIC) rating of “72 dB or higher”.
19. Bylaw 3(1) says, in part, that an owner must not use a strata lot in a way that causes a nuisance or unreasonable noise, or unreasonably interferes with the rights of other persons to use and enjoy another strata lot.
20. Mr. Ross submitted in evidence and referenced a flooring bylaw amendment that was approved at the 2017 AGM and provided for different requirements when an owner changed the floor coverings in a non-ground floor strata lot (former bylaw 5.6). As noted above, the strata repealed and replaced all its bylaws in 2019, and did not include former bylaw 5.6 in the 2019 bylaws. As noted, SL105’s flooring was changed in April 2021. Therefore, I find former bylaw 5.6 is no longer applicable and is not relevant to this dispute.

## Chronology

21. In April, 2021, SL105's former co-owner, PB, asked for the strata's approval to install laminate flooring in SL105's carpeted open living area and hallway.
22. On April 9, 2021, the strata manager advised PB that the strata had approved their request to install laminate flooring in SL105. SL105's owners at the time were asked to sign an indemnity agreement and provide a photo of the underlay being installed.
23. Mr. Ross lives in SL95 with his spouse, DR, and their daughter. Mr. Ross says his family experienced unreasonable noise from SL105 beginning after the laminate floors were installed.
24. Mr. Ross first complained to the strata about noise from SL105 on June 3, 2021. In an email, he said he began hearing louder noises from SL105 about 3 weeks earlier, and felt like the "acoustics doubled over night". He said he heard "a lot of cracking, thumping, running, jumping and creeping sounds". Mr. Ross says he began logging noises on May 20, 2021. He said the cracking was non-stop and he could hear SL105's residents walk, run, and jump. He said he had lived in SL95 for 17 years and never had this noise transfer since 2004. Mr. Ross said he did not want a fine issued to SL105. Instead, he wanted the flooring fixed.
25. The strata advised that it would arrange for formal acoustic engineering testing to ensure the flooring installation complied with the BC Building Code requirements. On June 4, 2021, the strata manager requested BAP Acoustics Ltd. (BAP) attend SL105 and SL95 to complete STC and IIC tests.
26. On June 7, 2021, the strata manager wrote to Ms. Boswell and PB and advised them of noise complaints from the end of May 2021 to the date of the letter, and their alleged violation of bylaw 3(1).
27. On June 18, 2021, the strata manager received the BAP report for SL105 and SL95. The BAP report noted that STC and IIC ratings are determined by a laboratory measurement, but when measured between rooms in real buildings, the ratings are termed the Apparent Sound Transmission Class (ASTC) and the Apparent Impact

Insulation Class (AIIIC), respectively. The BAP report found that the ASTC rating for the entire floor-ceiling assembly between SL105 and SL95 was 49, and the AIIIC ratings were 45 and 35 in the two test locations (living room and kitchen). Both the strata and Mr. Ross rely on this BAP report, and I find it complies with the CRT rules for expert evidence. I will discuss the BAP report in further detail below.

28. Following receipt of the BAP report, the strata manager asked Mr. Gaudet, BAP's engineer and the report's co-author, whether the strata should complete additional soundproofing in SL105 to mitigate noise transfer. Mr. Gaudet provided a further emailed opinion that the sound insulation met the minimum requirements of the version of the Building Code in force at the time the building was built, and the current version. Mr. Gaudet also said that the Building Code requirements are "clearly not adequate in many circumstances" to result in noise transmission levels that satisfy all occupants.
29. On June 22, 2021, the strata manager advised Ms. Boswell that the strata council had met on June 21, 2021 and its position after reviewing Mr. Ross's logs, the BAP report, and attending SL95 and SL105, was that the flooring was installed properly and would not be taking any further action unless ordered by the CRT or another governing body. The strata council also directed the strata manager to advise Mr. Ross of this. It is unclear when the strata attended SL95, however, Mr. Ross does not dispute that a strata council member did so.
30. On June 23, 2021 Mr. Ross emailed the strata manager complaining of severe noise, and being woken up by the noise in the morning and during a nap.
31. On June 24, 2021 the strata manager emailed the strata council advising they had issued a nuisance letter and asking if the strata council wanted to issue a fine. There is no evidence the strata issued a fine.
32. Mr. Ross submitted his CRT dispute application on June 25, 2021.
33. On June 29, 2021, Mr. Ross sent another noise complaint and noise logs to the strata manager.

34. On July 4, 2021, Mr. Ross sent further sound recordings to the strata manager.
35. On July 25, 2021, Mr. Ross emailed the strata manager complaining of non-stop noise and asking for help. Mr. Ross said his family was getting more emotional and stressed, and said the noise never ended. Mr. Ross asked that fines be levied. Mr. Ross attached copies of text messages to and from Ms. Boswell. In them, Mr. Ross advised Ms. Boswell that his family was emotionally drained from all the noise of cracking, thumping, and running. Ms. Boswell responded that her daughter was playing barbies on the floor with her friend and there was nothing else going on to cause noise.
36. On July 25, 2021, the strata says two strata council members, BR and WW, attended SL95 to investigate further. However, the strata did not explain what the strata council members did in SL95 to further investigate the noise complaints.
37. On July 26, 2021, Mr. Ross emailed the strata manager advising that the noise was getting worse and was unmanageable. Mr. Ross attached several photographs of sound recordings ranging from 32 to 54 decibels (dB).
38. On July 27, 2021, Mr. Ross sent further noise logs to the strata manager. The strata manager responded that when the strata council members attended SL105, the floor “felt solid” and they did not note anything abnormal. Mr. Ross advised the strata manager that he would continue to file weekly complaints. Mr. Ross also advised the strata manager that when the strata council members attended at SL95, SL105 did not “make much of a move” and said it was quieter than normal. Mr. Ross says the strata council did not get a fair or full picture of the noise, and asked for the strata to have 2 to 3 people in SL95 and SL105 at the same time to get better assessment of the noise.
39. Ms. Boswell and PB sold SL105 on August 17, 2021. As noted, SL105’s new owner is not a party to this dispute.



## **ANALYSIS**

### ***Do SL105's floors breach the strata's flooring bylaw?***

40. As noted above, the strata approved PB's request to install laminate flooring in SL105. Ms. Boswell submitted two layouts of SL105. The first indicated that SL105's open living area and bedrooms were carpeted, with tile in other locations including the kitchen. The second layout shows the proposed laminate flooring located in SL105's open living area and hallway. The carpeted bedrooms and tiled kitchen remained unchanged.
41. Ms. Boswell also submitted a photograph of the underlay's information sheet with an attached sample of the underlay to the strata for approval prior to installation. The underlay's information sheet indicated it was a "Sound Guard premium acoustical underlayment" that was approved for use under floating laminates, engineered wood and luxury vinyl, with an IIC rating of 83 and an STC rating of 81. Based on this, I accept that the installed underlay had an IIC rating of 83 and an STC rating of 81. The strata and Ms. Boswell submitted photographs of the underlay installed in SL105's open living area and hallway. I find this shows underlay was installed in SL105. Mr. Ross does not dispute this.
42. Mr. Ross questions who manufactured the underlay. He submitted an email exchange with an "@soundguard.com" email address, where DR asks if they sold the underlay used in SL105. A person I infer is a representative for the company responded to DR's email and said it did not. Mr. Ross says this shows that the underlay used in SL105 is not a "Sound Guard" product. I place little weight on this evidence because Mr. Ross does not specifically dispute that the underlay had an IIC rating of 83 and an STC rating of 81, as indicated on the information sheet. Rather, I find he only questions who manufactured the underlay itself. I find it does not matter who manufactured and sold the underlay used in SL105. The issue is whether SL105's underlay met the requirements of bylaw 8.3.
43. The parties do not dispute, and the BAP report confirms, that the ASTC rating for the entire floor-ceiling assembly between SL105 and SL95 is 49, and the AIIIC ratings are

45 and 35. However, I find bylaw 8(3) does not require the floor-ceiling assembly to have a certain ASTC or AIIIC rating. Rather, I find bylaw 8(3) only required that the underlay itself have an STC and IIC rating of at least 72dB. As noted, I find the underlay had an IIC rating of 83 and an STC rating of 81. So, I accept that the underlay installed in SL105 met bylaw 8(3)'s requirement for STC and IIC ratings. I find bylaw 8(3) does not require the installed underlay to result in an ASTC or AIIIC rating of at least 72 for the entire floor-ceiling assembly.

44. I find Mr. Ross's main complaint is with the noise transmission into SL95 since SL105's underlay and laminate flooring was installed. I find this is a different issue than whether SL105's floors comply with bylaw 8(3), and I will address it further below.

45. In submissions, Mr. Ross also says the strata did not follow bylaw 8(1) when approving SL105's flooring alteration. Among other things, bylaw 8(1) requires an owner seeking to alter their strata lot to submit certain information, including a detailed plan of the proposed alteration, the name of the contractor who will design, construct and inspect the alterations, and proof of liability insurance for the contractor who will design, construct and inspect the alteration. First, I find the evidence shows Ms. Boswell and PB submitted a detailed plan of the proposed alteration, as required by bylaw 8(1). Second, I find Mr. Ross has not explained why the strata's alleged failure to obtain the contractor's name or proof of their liability insurance is relevant to his noise complaints arising from SL105's flooring. Finally, Mr. Ross did not request any remedies for the strata's alleged failure to obtain all of the information required under bylaw 8(1) when it approved SL105's new flooring. Given the above, I find it is not necessary to address this issue further.

***Did SL105's owners breach the noise bylaw?***

46. As noted, bylaw 3(1) says, in part, that an owner must not use a strata lot in a way that causes a nuisance or unreasonable noise, or unreasonably interferes with the rights of other persons to use and enjoy another strata lot.

47. 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 noise is unreasonable depends on several factors, such as its nature, severity, duration, and frequency. The interference must also be substantial, meaning it is intolerable to an ordinary person, viewed objectively. See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64. This generally means that a resident's subjective noise complaints will not be enough to prove that noise is unreasonable. Rather, I find that Mr. Ross must provide objective evidence that the noise is unreasonable to an ordinary person. This could include observations from neutral parties, decibel readings, or professional reports.
48. The focus of this analysis is on the noise itself, not the noise's cause. Several CRT decisions have concluded that "everyday living" noises can be unreasonable. So, the fact that Mr. Ross's complaints appear to mostly be the result of normal activities does not necessarily mean that the noise was reasonable. See, for example, *Lucas v. The Owners, Strata Plan 200*, 2020 BCCRT 238.
49. The evidence is clear that the noise from SL105 bothered Mr. Ross and his family considerably. The strata's primary argument is that Mr. Ross has failed to prove that the noise was objectively unreasonable. For the following further reasons, I agree with the strata and I find Mr. Ross has not proved that the noise was unreasonable.
50. Both Mr. Ross and the strata rely on the BAP report and a second BAP report for another strata lot in another strata building in the same complex (2<sup>nd</sup> BAP report).
51. As noted, the BAP report found that the ASTC rating for the entire floor-ceiling assembly was 49, and the AIIIC ratings were 45 (living room) and 35 (kitchen) in the two test locations. The BAP report said that either the 1975 or the 1980 National Building Code applied, but in either case, required an STC rating of at least 45 between "dwelling units". The report said the 1975 National Building Code did not have a requirement to control impact sound transmission through the floor-ceiling assembly, and the current BC Building Code recommends, but does not require, a minimum IIC rating of 55. The BAP report concluded that the floor-ceiling assembly

ASTC rating of 49 met the requirements of the 1975 National Building Code. It also said that the AIIIC ratings of 45 and 35 fell below the BC Building Code recommendation, but are typical of ratings achieved by many ceramic tile and wood-joist floor-ceiling assemblies in residential buildings.

52. In the 2<sup>nd</sup> BAP report, BAP completed tests in a different strata lot in the strata, with a floor-ceiling assembly that had carpeted flooring in the open-living area. The 2<sup>nd</sup> BAP report found that the ASTC rating for the entire floor-ceiling assembly was 55, and the AIIIC ratings were 58 (carpeted living room) and 47 (kitchen) in the two test locations. The BAP report concluded that the floor-ceiling assembly ASTC rating of 55 met and exceeded the requirements of the 1975 National Building Code. It said that the AIIIC rating of 58 met the current BC Building Code recommendation. It also said the AIIIC rating of 47 fell below the recommendation, but was similar to ratings achieved by many wood-joist floor-ceiling assemblies in residential buildings, which are typically in the range of AIIIC 40 to 50.
53. Mr. Gaudet also provided a further emailed opinion on July 21, 2021 that the floor-ceiling assembly in SL95/SL105 does not meet at STC/IIC rating of 72. However, he went on to say that it was not possible for any floor-ceiling assembly in a wood-frame building to obtain that rating. He said the underlay only obtains that rating in a laboratory setting. Mr. Gaudet said carpet can increase the IIC rating, but the best that could be expected is between IIC 55 and 60.
54. The strata says the two BAP reports show that the noise in SL95 was reasonable, and was typical for a wood-joist building. Mr. Ross says the two BAP reports show the noise was unreasonable. He says the ASTC and AIIIC ratings are worse in SL95/SL105 than in the other strata lot tested, with a carpeted floor. I agree that the carpeted living area in another strata had a higher AIIIC rating than the uncarpeted living area tested in SL95/SL105. However, the uncarpeted kitchen area in the other strata lot also had higher AIIIC rating than the uncarpeted kitchen area in SL95/SL105. I also note that both reports state that the measurements performed on nominally identical constructions and acoustical conditions may produce different results. Given this, I find the absence of carpeted flooring does not, by itself, make the noise

unreasonable. Further, I accept the BAP report's stated opinion that the ratings in SL95/SL105 were typical of those in wood-joint floor ceiling assemblies in residential buildings.

55. Mr. Ross submitted various screenshots from websites that provide opinions that bare floors should achieve an IIC of 55, that cracking and squeaking results from the flooring having excessive movement, and why subfloors need to be level, among other things. However, I find these webpages do not meet the CRT rules for expert evidence and I give them less weight than the BAP reports and Mr. Gaudet's evidence.
56. Mr. Ross also referred to expert opinion evidence in *Lucas v. The Owners, Strata Plan 200*, 2020 BCCRT 238, another CRT decision. In *Lucas*, a sound report said a test result of AIIIC 43 was "relatively poor". However, I find this does not assist me in determining whether or not the noise in SL95 was unreasonable. I also do not have the sound report referred to in *Lucas*, and so I find it is not helpful.
57. Mr. Ross provided the sound recordings, noise logs, and witness statements as objective evidence of the noise.

### **Sound recordings and noise logs**

58. Mr. Ross provided several short videos of sound recordings in evidence dated between June 2021 and January 2022. Those sound recordings show decibel (dB) readings between 30dB and 60dB, with most readings between 30dB and 45dB. There is audible cracking and clicking throughout the videos. One of the videos was recorded at 2 A.M., however, I find the videos were generally recorded during the day. I accept that the videos record sounds emanating from SL105. The strata does not dispute this. However, I find the videos do not record constant, loud, or excessive sounds, and do not prove that the sound was intolerable. I also find the timing of the recordings shows that the sounds often occurred in the morning and evening, when residents would typically be moving about their strata lot. Finally, Mr. Ross did not explain the significance of these dB readings. In his submissions, Mr. Ross says that the City of Burnaby bylaws set maximum threshold levels for continuous noise from one unit to another at 55 dB, and for non-continuous noise at 75 dB, between 7 am

and 10 pm. Mr. Ross did not submit the Burnaby bylaws in evidence. However, even if I accepted this assertion, I note that the recorded dB ratings in evidence do not generally exceed either the City of Burnaby's alleged 55dB maximum threshold level for continuous noise or the 75 dB threshold for non-continuous noise in any event.

59. Mr. Ross also provided what he says are 12 random pages from a noise logbook that spans from June 2021 to December 2021. The noise logs repeatedly note clicking, cracking, popping, clicking shoes, walking, recliner dropping, among other noises. The noise logs mostly note noise in the morning and the evening, but also note noise at other times throughout the day. The noise logs do not frequently note noise overnight. As with the videos, I accept that noise logs record sounds emanating from SL105 on a regular basis. However, I also find the timing of the recordings also shows that the sounds often occurred in the morning and evening when residents would typically be moving about their strata lot. I find they do not show that the sound was intolerable to an ordinary person.

### **Witness statements**

60. Mr. Ross provided seven witness statements in evidence. The witnesses gave the following evidence:

- a. RF is DR's sister. RF said they have been visiting DR and her family in SL95 at least once a year for the past 16 years, typically for medical reasons. RF said its usually quiet when they visit. However, RF said on the last visit in July 2021 for surgery, they were surprised by the amount of noise coming from above. RF said they chose to leave early due to the noise level and felt they could recover at home better. RF said they could hear people upstairs as they walked across the floor. There were clicking and popping noises from the flooring, and they could hear dog nails scraping across the floor, and when something was dropped it was loud enough to make RF jump. They said they could not watch TV quietly because the noise from upstairs drowns out the volume.

- b. RayF is DR's brother-in-law. RayF said they visit and stay with DR and Mr. Ross annually, and its typically quiet. RayF said on their most recent visit, the noise was all they could hear. RayF said they could hear a pet playing, keys dropping, residents walking across the floor, the floor cracking and popping. RayF said they were shocked. RayF said the noise was extreme compared to visits made over the past 16 years.
- c. JY has been DR's friend for 7 years. JY said they witnessed excessive noise in SL95 on November 25, 2021. JY said the floor was creaking and the walking sounded more like heavy footsteps. JY said in combination the noise was excessive and not normal. JY said they found it disruptive and annoying over their 2-hour visit. JY said they do not recall the noise being this excessive prior to the floors being changed.
- d. CK has been a strata resident for 8 years, and is friends with Mr. Ross and DR. CK said they have been to SL95 on several occasions and never heard excessive noise before. CK says they visited in August 2021 and could hear constant walking, shuffling, popping and cracking from upstairs. CK said they could hear every movement and it was very unnerving. CK said the amount of noise they heard from the people upstairs walking and reasonably moving around was excessive. CK said they live on the ground floor and very rarely hear their upstairs neighbour unless they are vacuuming.
- e. SB has been DR's friend for 4 years. SB said they visited DR numerous times at SL95, and their daughters would play together. SB said when they visited on July 31, 2021, DR's upstairs neighbours were moving around, which made excessive noise. SB said they heard banging, crackling, creaking, squeaking. SB said at times it was so loud it make them jump. SB said the noises seemed to be coming from everywhere and echoed. SB said a child running around upstairs sounded like an earthquake, and dropped items "made loud booms".

- f. CR is Mr. Ross's sister. CR said they are a frequent visitor at Mr. Ross's home since 2004. CR said they visited on July 28, 2021 for dinner. CR said that during that time, they were constantly disrupted with noise from the upstairs apartment. CR said they heard pounding over their head from one end of the ceiling to the other. CR also heard a creaking sound with every step that was taken. CR said when the floor was cleaned, it was another loud interruption. CR said they could not believe how loud and invasive the noise was. CR said the increased noise was most noticeable in the last three months and was never like this previously.
  - g. HL is a strata resident. HL said they heard loud sounds coming from above SL95 on July 30, 2021. HL said the loud sounds were from a 10-year-old resident walking about and were unusually loud and disruptive. HL said they heard wood boards creaking from the movements and occasional thumping sounds. HL said the sounds were constant during their 30-minute visit. HL said they live in a ground floor strata lot with neighbours above. HL said there was a stark difference between the noise in their strata lot and the noise in SL95. HL says the strata lot above theirs is carpeted. HL says they can hear residents above them walking, but the volume from their movements tends to be muffled or muted.
61. While observations from neutral parties can be helpful evidence in determining whether noise is unreasonable, I find that these statements are not enough prove that the noise was intolerable to an ordinary person. First, I note that the statements were mostly provided by Mr. Ross and DR's friends and family. Therefore, I find they are not entirely objective. Second I accept that SL95 was noisy when the witnesses attended. However, I find that the witness statements primarily focused on the increase in noise following the flooring alterations in SL105, rather than the level of noise itself. In saying this, I acknowledge that there were varying levels of noise in SL95 that were observed by all the witnesses, and I find that at times the noise was significant. However, while I accept that there was increased noise in SL95 following the flooring alterations in SL105, I find the witness statements do not establish that the increased noise was objectively intolerable.



62. Mr. Ross also says his daughter, MR, has autism. Mr. Ross says MR has been unable to cope with the noise from SL105 since the laminate flooring was installed, and did not have issues with the noise beforehand. Mr. Ross submitted a March 2015 assessment from Interior Health Children's Assessment Network (IHCAN) that shows MR was diagnosed with Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder. The assessment also notes that MR would benefit from low sensory stimulating environments to learn alternative coping behaviours when angry or frustrated. The strata does not dispute this. I accept that MR benefits from a quiet environment and the increased noise has been difficult for MR given her autism diagnosis.
63. As noted, I accept that SL95 was noisier after SL105's floors were replaced. I acknowledge that the increased noise has been particularly bothersome to Mr. Ross, his partner DR, and their daughter MR, because of MR's autism diagnosis. However, the test for nuisance is not whether there is increased noise with laminate flooring than there was with the previously carpeted floor. Rather, as noted, the test is whether the noise itself is objectively intolerable to an ordinary person.
64. As noted above, Mr. Ross bears the burden of proving his claims. Having carefully weighed the evidence before me, I find that it does not establish the noise emanating from SL105 was unreasonable. In making this finding, I place significant weight on the BAP report, which states that the ASTC and AIIIC ratings for the floor-ceiling assembly between SL95 and SL105 were typical for wood-joint style residential buildings. I also place significant weight on the noise complaints and noise logs that mostly noted noise during waking hours, with few complaints about sleep disturbance. It is also undisputed that SL105's bedrooms remain carpeted. Finally, the available evidence does not establish the significance of Mr. Ross's sound recordings. Given all the above, I find SL105's former or current owners have not breached bylaw 3(1) from May 2021 onwards by causing noise that unreasonably interfered with Mr. Ross's right to use and enjoy SL95.

***Were the strata's actions in dealing with the flooring alterations and noise complaints significantly unfair to Mr. Ross?***

65. Mr. Ross also challenges the adequacy of the strata's response to his noise complaints and says the bylaws are not being enforced. I find that this is a separate issue from whether the noise itself was unreasonable. The strata says that it reasonably investigated Mr. Ross' noise complaints after the laminate flooring was installed.
66. SPA section 26 requires the strata council to perform the duties of the strata, which includes enforcing bylaws. The strata must act reasonably in response to complaints about bylaw infractions, and I find that this includes a duty to reasonably investigate noise complaints.
67. The SPA does not set out any specific procedures for addressing bylaw complaints. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the BC Supreme Court said that the SPA gives the strata discretion about how to respond to bylaw complaints, as long as it complies with principles of procedural fairness and does not act in a significantly unfair way to any person, including the person making the complaint. With that, while the applicants do not use this language, I find that his claim is that the strata acted significantly unfairly by failing to reasonably investigate his bylaw complaints. The CRT can make orders to remedy significantly unfair actions or decisions by a strata under section 123(2) of the CRTA.
68. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, the BC 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, unjust or inequitable. In *King Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342, the BC Court of Appeal confirmed that the reasonable expectations of an owner may also be relevant to determining whether the strata's actions were significantly unfair. I find that Mr. Ross's reasonable expectations are relevant in this dispute, consistent with previous CRT decisions about how a strata corporation enforces its bylaws. See, for example, *Tran v. The Owners, Strata Plan VIS 6828*, 2021 BCCRT 28. The test for assessing an

owner's reasonable expectations is from *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44:

- a. What was Mr. Ross's expectation?
  - b. Was that expectation objectively reasonable?
  - c. Did the strata violate that expectation with a significantly unfair action or decision?
69. I find the strata acted reasonably in obtaining the BAP report, as it has done with other strata lots that have noise complaints. Mr. Ross also does not dispute that strata council members attended at SL95 to investigate the noise. However, he says they only stayed for 8 minutes, and have refused to return to SL95 to listen to noise for longer. The strata did not specifically address this allegation. However, given that it obtained the BAP report which provided the opinion that the noise transference level was typical for wood joist buildings, I find it was not significantly unfair for the strata to rely on the objective findings in the BAP report rather than a strata council member's subjective assessment of the noise. I also note that it was open to Mr. Ross to obtain his own expert report to provide as evidence in this dispute.
70. The strata also submitted the March and April 2021 strata council meeting minutes that address noise complaints from another strata lot. As in this dispute, the strata obtained a report from BAP for the noise complaint, and determined the noises were ordinary living noises to be expected based on the building's age. The strata found the noise did not constitute a contravention of its bylaws. So, I find the strata did not treat Mr. Ross differently from how it treated other strata residents with noise complaints.
71. Mr. Ross says at the 2018 AGM, the strata assured owners that "there should not be any noise transference" with the underlay required by bylaw 8(3). In the 2018 AGM minutes in evidence confirm the strata specifically noted that the flooring bylaw was "amended to permit hardwood flooring on second and third floors but imposes a sound barrier equivalent to what is found in concrete buildings so there should not be

sound transference”. I infer that when the strata referred to the “second and third floors” it was referring to the strata buildings’ upper levels containing strata lots, without reference to any parking levels beneath. As noted, SL95 is located on the 4<sup>th</sup> level of a strata building, and SL105 is on the 5<sup>th</sup> level, which I find are the same levels as the second and third floors referred to by the strata in the AGM meeting minutes.

72. The owners voted to include bylaw 8(3) and allow for the installation of hardwood-type flooring. SL105’s flooring complies with that bylaw. In *Parlett and Watson v. Owners SP LMS2706*, 2000 BCSC 1565, the court said the bylaws reflect the will of the owners to adopt bylaws by passing a special resolution (now 3/4 vote). I interpret this statement to mean that significant weight should be given to the democratic rights of owners to adopt bylaws specific to their strata corporation. Such a view has been upheld by the BCSC on several occasions where the court has determined it should not interfere with the democratic government of a strata corporation, except where absolutely necessary. See for example, *Lum v. Strata Plan VR519 (Owners of)*, 2001 BCSC 493 and *Oldaker v. The Owners, Strata Plan VR 1008*, 2007 BCSC 669.
73. Mr. Ross says the strata enforced its flooring and noise bylaws against a resident of another strata lot with fines and legal action. April 2018 strata council meeting minutes in evidence confirm this. However, September 2017 strata council meeting minutes confirm the flooring alterations in that strata lot were unapproved and resulted in excessive noise. Despite this, there is no indication that the strata ordered the flooring be replaced. I also note that in this dispute, the flooring alterations in SL105 were approved and the strata did not find the noise to be excessive.
74. Mr. Ross also says the strata showed complete disregard for a child with autism. Mr. Ross said the strata advised him he could pay to soundproof SL95’s ceiling, and the strata would “fast track it”. Mr. Ross did not say why he did not do so, but says he was offended by the letter and it shows the strata does not have the best interest of the owners in mind. As noted above, I accept the noise was particularly bothersome because MR is autistic. However, I find that none of Mr. Ross’s requested remedies are based on specific allegations of discrimination or alleged breaches of the *Human*

*Rights Code*. So, I have not considered this allegation further in my analysis of whether the strata treated Mr. Ross significantly unfairly in dealing with his noise complaints and the flooring alterations.

75. Mr. Ross also says SL95 has depreciated due to the noise, while SL105 appreciates with new laminate floors. However, the available evidence does not establish this. So, I have not considered this allegation further.

76. On balance, I find Mr. Ross has not shown the strata treated him significantly unfairly when investigating his noise complaints and addressing the flooring alterations.

***What remedies, if any, are appropriate?***

77. I have found that SL105's flooring alteration complied with bylaw 8(3), the noise emanating from SL105 was not unreasonable under bylaw 3(1), and the strata did not treat Mr. Ross significantly unfairly in the manner it addressed the flooring alterations and his noise complaints. Given this, I find Mr. Ross is not entitled to any of his claimed remedies.

***The strata's third party claim against Ms. Boswell***

78. As noted, the strata started a third party claim against Ms. Boswell seeking contribution and indemnity from her if the strata was found liable for Mr. Ross's claims. Mr. Ross was unsuccessful in his claims against the strata, and I have not ordered the strata to do anything or pay any money. So, I find the strata has no basis to claim contribution or indemnity from Ms. Boswell, and I dismiss the strata's third party claim against Ms. Boswell.

**CRT FEES AND EXPENSES**

79. 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. As Mr. Ross was unsuccessful, I find he is not entitled to any reimbursement. The strata paid \$125 in CRT fees to file its third party claim. However, as I have also

dismissed the strata's third party claim, I find the strata is not entitled to any reimbursement.

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

## **ORDER**

81. I dismiss Mr. Ross's claims, the strata's third party claim, and this dispute.

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Leah Volkens, Tribunal Member