



# Civil Resolution Tribunal

Date Issued: May 20, 2022

File: ST-2021-007906

Type: Strata

Civil Resolution Tribunal

Indexed as: *Read v. The Owners, Strata Plan EPS2384, 2022 BCCRT 597*

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

LANCE READ and SHARON COOPER

**APPLICANTS**

**A N D :**

The Owners, Strata Plan EPS2384

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This strata property dispute is about alleged noise.
2. The applicants, Lance Read and Sharon Cooper, are tenants in strata lot 25 (unit 512) in the respondent strata corporation, The Owners, Strata Plan EPS2384 (strata). The strata lot owners are not parties to this dispute.

3. The applicants say the residents in unit 612, directly above unit 512, have been making repeated thumping and banging noises since about April 2019. They say the residents in neighbouring unit 510 slam their door several times a week. The applicants allege these residents have been breaching the strata's noise bylaw and the strata never enforced its bylaws against them. They allege the strata's lack of enforcement is because the applicants are tenants and not owners. The applicants seek an order that the strata enforce the noise bylaws and pay them \$2,021 in damages.
4. The strata denies the applicants' claim. It says it investigated the applicants' noise complaints and found them "unwarranted". It says there was no basis to impose fines against the owners or tenants of these other units.
5. The applicants are represented by Lance Read and the strata is represented by a strata council member.
6. For the reasons that follow, I dismiss the applicants' claims.

## **JURISDICTION AND PROCEDURE**

7. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act (CRTA)*. CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
8. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral

hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

9. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Under 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.
11. Section 189.1(2)(a) of the *Strata Property Act* (SPA) requires a tenant to request a council hearing under section 34.1 prior to asking the CRT to resolve their dispute concerning a strata property matter. However, the CRT waived the hearing requirement with the strata's consent under section 189.1(2)(b). So, I find no hearing was necessary to proceed with this CRT dispute.

## **ISSUES**

12. The issues in this dispute are:
  - a. Did the strata fail to enforce its noise bylaws?
  - b. Did the residents in units 612 or 510 make unreasonable noise?
  - c. Did the strata treat the applicants significantly unfairly?
  - d. What remedy, if any, is appropriate?

## **EVIDENCE AND ANALYSIS**

13. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning more likely than not).

14. I have read all the parties' evidence and argument but refer only to what I find relevant to provide context for my decision. For example, the applicants provided some evidence about a physical altercation. I find this altercation is not directly relevant to the applicants' claim over bylaw enforcement for noise and so, I have not discussed the altercation further in this decision.

***Did the strata fail to enforce its noise bylaws?***

15. The strata plan filed in the Land Title Office (LTO) shows it was created in January 2015. The applicants rent unit 512, which is on the fifth floor of a 10-storey building.

16. The strata filed a full set of amended bylaws in the LTO on November 15, 2016. Relevant to this dispute about noise, bylaw 2.3 says a resident or visitor must not use a strata lot in a way that causes a nuisance or hazard to another person, unreasonable noise, or unreasonably interferes with another person's right to use and enjoy their strata lot.

17. Bylaw 5.2(a) says any resident or tenant may lodge a "complaint" relating to the contravention of a bylaw or rule on the attached "Schedule E". Schedule E is a "Complaint Form" and is part of the filed bylaws.

18. Bylaw 5.2(b) says that on receipt of the complaint the strata will give notice to the alleged contravener that there is a complaint against them, the particulars, and 7 days to answer the complaint or request a hearing. The council will then consider the complaint at their next meeting and give notice of their decision in writing. After complying with this subsection of the bylaw, the strata may impose a fine or penalty under bylaw 5.2(c).

19. Similar to bylaw 5.2, SPA section 135 requires the strata to follow a procedurally fair process prior to imposing a fine for a bylaw contravention against an owner or tenant.

20. Section 26 of the SPA 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.

21. 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).
22. Based on the strata's bylaw 5.2, I find the process for the applicants to complain about a noise bylaw contravention required them to fill out and submit a Complaint Form to the strata.
23. The evidence shows that the applicants submitted 1 Complaint Form to the strata about noise from unit 612 on January 14, 2020 and the applicants' landlord submitted 1 Complaint Form about noise from unit 612 on January 11, 2021. I refer to these 2 complaints as "formal complaints" because they were submitted by following the bylaw 5.2(a) process. I discuss the formal complaint details more specifically below.
24. For the reasons that follow, I find the strata took reasonable enforcement action that was consistent with the SPA and its bylaw in response to each of the 2 formal complaints about alleged noise from unit 612.
25. The applicants submitted no Complaint Form about noise from unit 510. In the absence of a Complaint Form, I find the strata had no requirement under bylaw 5.2 to take any enforcement action against unit 510 for the alleged door slamming. So, I have discussed it no further in deciding the enforcement issue.

#### January 14, 2020 Noise Complaint

26. The applicants' only formal complaint about noise from unit 612 was made on January 14, 2020. In their Complaint Form, the applicants described the contravention as: "Almost daily, intermittent/hourly thump thump thump pounding on their floor – our ceiling as if a hard ball or cane is being dropped" (as written).

27. After receiving the applicants' Complaint Form, the strata council through a strata manager from Fraser Property Management (FPM) sent the unit 612 owners a "Bylaw or Rule Infraction - Notice of Complaint" letter. The January 28, 2020 letter told the owners that the strata had received a complaint concerning a violation of bylaw 2.3(a). It summarized the applicants' complaint of "loud pounding and thumping on floor of unit" and told the owners to ensure this did not occur in the future. The strata also notified the owners of potential fines if they failed to comply with the bylaw and gave them the opportunity to respond to the complaint before imposing a fine.
28. One of the unit 612 owners, responded to the letter that their unit was not the source of the noise and suggested the noise was likely from somewhere else.
29. On February 26, 2020, Mr. Read emailed his landlords, who own unit 512, and told them he was recording the noise from unit 612 and asked the landlords to follow up with the strata. FPM was copied on this email. However, there is no follow up correspondence, such as an email or letter, from the landlords or the applicants about further noise in 2020.
30. As mentioned, the strata says its council decided that no further action was warranted and it undisputedly did not fine the unit 612 owners.
31. Given the applicants did not follow up to complain about continuing noise in 2020, I find the noise likely stopped or was within an acceptable volume. In the circumstances, I find it was reasonable that the strata took no further action.
32. Even if they had been making unreasonable noise, I find the strata's progressive approach of notifying the owners of the applicants' concerns and allowing them the opportunity to stop their behaviour was reasonable and procedurally fair. I find the strata met its duties to the applicants under bylaw 5.2 and SPA section 26 by reasonably enforcing its bylaw 2.3 in 2020. I dismiss this aspect of the applicants' claim.

### January 11, 2021 Noise Complaint

33. The next correspondence about a noise complaint is in January 2021.
34. In early January, the applicants sent 'informal' emails to the strata manager alleging noise from unit 612. On January 8, 2021, the strata manager emailed the applicants and reminded them they needed to submit their complaint on the official Complaint Form.
35. On January 11, 2021, the applicants' landlord "AS" submitted a Complaint Form to the strata. AS wrote that their tenants (the applicants) had complained to them about items dropped on the floor of unit 612 in the early morning and late evening and that they believed the item was a dog toy. They also wrote that the applicants had complained of consistent thumping and knocking at various hours of day and night over about a 1-year period. The landlord asked the strata to take the following actions: "(1) communicate noise complaints to unit 612. (2) Levy fines if deemed appropriate".
36. On January 12, 2021, the strata manager sent the unit 612 owners a Notice of Complaint about the potential bylaw 2.3 breach. As in 2020, the strata manager's letter identified the noise concerns and told the unit 612 owners to observe the bylaws and stop the behaviours. They warned the owners that failure to comply with the bylaws might result in fines and gave the owners an opportunity to respond before it imposed any fines.
37. I find the strata manager sending this letter and giving the unit 612 owners the opportunity to respond before imposing fines was consistent with bylaw 5.2 and SPA section 135.
38. On January 19, 2021, the unit 612 owners responded to the Noice and told the strata manager that when their "roommate" moved in on December 30, 2020 they had a dog with some loud toys. They told the strata manager they voluntarily got rid of the loud toys after the first couple of weeks into January and denied then making constant loud noises. They also said their unit was often empty and suggested the noises might be coming from elsewhere.

39. The strata did not then impose fines on the owners or tenant in 612. As mentioned, the strata says it determined that the complaints and fines were unwarranted. I note the landlord did not then follow up with any further noise complaints and the applicants did not submit their own Complaint Form in 2021.
40. Enforcement is not about just issuing fines. I find the strata did enforce the bylaws after receiving AS's formal complaint by sending notice to unit 612 and requiring them to stop any bylaw contravention on threat of a fine. As in 2020, I find the strata's progressive approach to bylaw enforcement was procedurally fair and consistent with the bylaws and SPA.
41. For this proceeding, the applicants submitted 4 audio recordings of noises that they say came from unit 612. In the Dispute Response, the strata said it never received a copy of any audio recordings but does not say anything specific about it in argument. The parties' evidence does not establish whether or not the applicants sent the audio recordings or part of them to the strata in 2021.
42. In any event, I am not persuaded after listening to the audio recordings several times that the recorded noises actually came from unit 612. There are no independent witness statements to the noise or about the source of the recorded noise. There is also no expert evidence before me with an opinion or analysis of the recordings. I find the submitted evidence is not enough to establish that the recorded noise came from unit 612.
43. Taking these findings together, I conclude that the applicants have not proven that there was unreasonable noise from unit 612 or that the strata failed to reasonably enforce its bylaws. I dismiss this aspect of the applicants' claim.

***Did the strata treat the applicants significantly unfairly?***

44. Under CRTA section 123(2), if the strata's decision or action towards an owner or tenant is "significantly unfair", the owner or tenant might be entitled to a remedy, including damages.



45. SPA section 164 sets out the BC Supreme Court's authority to remedy significantly unfair actions. CRTA section 123(2) has the same language as SPA section 164.
46. 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.
47. In *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, Madam Justice Garson of the Court of Appeal applied a "reasonable expectations" test that asks:
- a. What was the applicants' expectation?
  - b. Was that expectation objectively reasonable?
  - c. Did the strata violate that expectation with a significantly unfair action or decision?
48. The applicants' evidence included a series of 2021 emails that they labeled as "complaints". The strata manager was included or copied on some of these emails but most were addressed or directed to others: their landlords, the Residential Tenancy Board, and the Superintendent of Real Estate. I infer the applicants submitted these emails to show they made many complaints about noise from neighbouring units.
49. However, I find complaints made to these other entities are not bylaw contravention complaints. If the applicants expected that the strata would enforce its bylaws in response to these complaints, I find their expectation was not reasonable. Had the strata treated these emails as formal bylaw contravention complaints, I find it would have been contrary to bylaw 5.2.
50. I find it apparent from the submitted evidence that the applicants knew or ought to have known they needed to submit a Complaint Form to make a bylaw contravention complaint to the strata. The Complaint Form is included as a Schedule to the bylaws,

the applicants used the Complaint Form in January 2020, and the strata manager reminded the applicants they had to submit a Complaint Form in 2021 after they sent informal complaint emails. So, I find the applicants could have only had a reasonable expectation that the strata would start enforcement action if they submitted a complaint on the Complaint Form as required by bylaw 5.2.

51. I have already concluded that the strata took reasonable enforcement action in response to both the applicants' January 2020 Complaint Form and their landlord's 2021 Complaint Form. I have also concluded that the strata's progressive enforcement action complied with the SPA and bylaw 5.2. I agree with the strata that fines were not warranted in the circumstances. The evidence also does not lead to a conclusion that the unit 612 or unit 510 owners or tenants made or continued to make unreasonable noise or that further investigation into the noise was necessary.
52. The applicants have not established that the strata treated them differently from other owners when enforcing its bylaws. The submitted records indicate that the strata followed the same progressive enforcement process in response to the applicants' complaints and as it did in response to complaints by others against the applicants. There is no evidence of differential treatment.
53. For the above reasons, I conclude that the strata did not treat the applicants significantly unfairly in response to their noise complaints or through its bylaw enforcement actions or decisions. So, I find no basis to order the strata to take any further bylaw enforcement action or to award the applicants damages. I dismiss the applicants' claim.

## **CRT FEES AND EXPENSES**

54. 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 the unsuccessful party, I find the applicants are not entitled to any reimbursement. The strata did not pay any CRT fees nor claim any expenses.

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

**ORDER**

56. I dismiss the applicants' claims and this dispute.

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Trisha Apland, Tribunal Member