Civil Resolution Tribunal

Date Issued: November 4, 2022

File: ST-2022-002188

Type: Strata

Civil Resolution Tribunal

Indexed as: *Rooprai v. The Owners, Strata Plan LMS 1364*, 2022 BCCRT 1212

B E T W E E N :

GURVINDER ROOPRAI and SUKHJIT ROOPRAI

**APPLICANTS**

A N D :

The Owners, Strata Plan LMS 1364

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Kristin Gardner

## INTRODUCTION

1. This dispute is about noise complaints and bylaw enforcement in a strata corporation.

2. The applicants, Gurvinder Rooprai and Sukhjit Rooprai, are former co-owners of a strata lot (unit 309) in the respondent strata corporation, The Owners, Strata Plan LMS 1364 (strata). The Rooprais say that in March 2021, a family of 3 moved into the

one-bedroom strata lot directly above theirs (unit 405), which the Rooprais say was a violation of the strata's occupancy bylaw. The Rooprais also say the family in unit 405 created an ongoing noise nuisance. The Rooprais say that the strata failed to enforce its occupancy and noise bylaws. As a result, the Rooprais say they had no choice but to sell their strata lot.

3. The Rooprais claim $299,000, which includes $100,000 for loss of use and enjoyment of their strata lot, $100,000 for mental distress, $8,000 for strata fees, $10,000 for moving costs, $65,000 for loss of profit from prematurely selling their strata lot, and $16,000 for reimbursement of a penalty for paying their mortgage out early.

4. The strata says it properly investigated the Rooprais' noise complaints and decided there was insufficient evidence that noise from unit 405 was unreasonable. The strata also says it reasonably enforced its occupancy bylaw and the family in unit 405 moved out in January 2022. The strata says the Rooprais are not entitled to any of their claimed remedies.

5. Mr. Rooprai represents both applicants. The strata is represented by a strata council member.

## JURISDICTION AND PROCEDURE

6. 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.

7. 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.

8. 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.

9. 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

10. The issues in this dispute are:

    a. Did the strata reasonably investigate the Rooprais' noise complaints?

    b. Did the strata reasonably enforce its occupancy bylaws?

    c. Are the Rooprais entitled to any of the claimed remedies?

## BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). I have read all of the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.

12. The strata consists of a single residential strata building with 54 strata lots. The strata filed a complete set of bylaws at the Land Title Office (LTO) on December 28, 2001, which replaced the Standard Bylaws in the *Strata Property Act* (SPA). The strata filed amendments to bylaws 4.1 and 51.1 in the LTO on October 25, 2006, which are relevant to this dispute. Other various bylaw amendments filed in 2006 and in subsequent years are not relevant to this dispute.

13. Bylaw 4.1(a) says that a resident must not cause a nuisance. Bylaw 4.1(b) says that a resident must not cause unreasonable noise. Bylaw 4.1(b)(i) says that quiet hours are between 11pm and 7am, and bylaw 4.1(b)(iii) says dishwashers must not be operated between those same hours without authorization from the resident directly below the strata lot. Bylaw 4.1(c) says that a resident must not unreasonably interfere with the rights of other people to enjoy their strata lots.

14. Bylaw 51.1 says that each strata lot must be used for single family occupancy only, which the bylaw further defines as no more than 2 people in a 1-bedroom suite and no more than 4 people in a 2-bedroom suite.

15. It is undisputed that in March 2021, new owners moved into unit 405, which was directly above the Rooprais' unit 309. On April 11, 2021, Mr. Rooprai emailed the strata manager to report that for the 2 weeks since moving in, their upstairs neighbours had been extremely loud from early morning to late at night. Mr. Rooprai stated there had been loud banging, a grinding noise, and a child running and stomping their feet all day, which was becoming unbearable. The strata manager responded that the Rooprais might consider leaving a note for their neighbours about the noise, and the strata council would consider Mr. Rooprai's email at the next council meeting.

16. The strata's email evidence shows that unit 405's owners, SM and RM, emailed the strata manager on April 20, 2021 to report receiving an anonymous letter about noise, and advised they were planning to buy area rugs and take necessary precautions to reduce any disturbance. SM and RM's email also stated that while their 2.5-year-old daughter was playing on the deck the previous week, someone in the strata lot below them had intentionally banged on the ceiling.

17. On May 1, 2021, Mr. Rooprai emailed the strata manager that despite leaving a note, the noise from unit 405 had continued and was waking them as early as 6am. Mr. Rooprai also reported that the unit 405 occupants ran their dishwasher past 10 pm. The strata's new strata manager, US, responded by inviting the Rooprais to attend the next council meeting on May 18, 2021, which was held through Zoom.

18. The evidence shows that SM and RM emailed US on May 17, 2021 to report repeated “intense banging” from the Rooprais’ strata lot that was scaring their daughter. Their email stated that SM went to speak to the Rooprais, and that the Rooprais told them they banged on their ceiling out of frustration about the noise from SM and RM’s child, which the Rooprais do not deny. SM and RM asked US to send “a notice” to the Rooprais about the banging.

19. The May 18, 2021 council meeting minutes stated the council was working on noise complaints received from “a couple owners”. The email evidence shows the strata council then arranged an informal meeting between 3 council members and the Rooprais on May 30, 2021 to discuss their noise complaints. The strata council arranged a similar meeting with SM and RM on June 1, 2021. The strata says it scheduled these meetings in an attempt to facilitate a private resolution, but it is undisputed the meetings did not result in any final solution.

20. The strata proceeded to issue warning letters to the owners of both units 405 and 309. The June 4, 2021 warning letter to unit 405’s owners referred to a complaint that neighbours had been disturbed during the quiet hour period and by them running their dishwasher very late at night. The June 4, 2021 warning letter to the Rooprais, referred to a complaint that they caused a nuisance by banging on the ceiling. The strata advised in each letter that the owners could respond to the complaint in writing or request a hearing, though there is no evidence before me that they did so.

21. Instead, the evidence shows that Mr. Rooprai and SM exchanged phone numbers and that Mr. Rooprai would text SM when he was being disturbed by noise in unit 405. The texts before me show that Mr. Rooprai texted SM several times in June 2021 and on July 8 and August 25, 2021. Most of Mr. Rooprai’s texts to SM were sent on weekdays between 8pm and 9pm. SM generally responded to the texts with thanks and that he would deal with the noise. There is no evidence before me that the Rooprais advised the strata about ongoing noise during this period.

22. On August 26, 2021, Mr. Rooprai emailed US to “formally complain” about unit 405’s continued excessive noise and for violating the occupancy bylaw, specifically

referring to bylaw 51.1. The Rooprais say they first became aware of bylaw 51.1 in June 2021, but they had wanted to try and work the noise issue out informally with unit 405.

23. On August 30, 2021, Mr. Rooprai asked US when his complaints would be dealt with. US responded that the strata council was seeking legal advice about the situation, and as the strata's Annual General Meeting (AGM) was scheduled for mid-September, the new strata council would address the complaints at its next regular meeting.

24. The Rooprais allege that the strata failed to adequately address their complaints about noise and occupancy bylaw violations, ultimately causing them to prematurely sell their strata lot.

25. I turn first to the Rooprais' noise complaints.

### *Did the strata reasonably investigate the Rooprais' noise complaints?*

26. 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, and I find that this includes a duty to reasonably investigate noise complaints.

27. 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. While the Rooprais do not use this language, I find that their claim is that the strata acted significantly unfairly by failing to reasonably investigate their noise bylaw complaints. The CRT can make orders to remedy significantly unfair actions or decisions by a strata under section 123(2) of the CRTA.

28. 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 discretionary decisions or actions were significantly unfair. I find that the Rooprais' 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.

29. 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 the Rooprais' expectation?

    b. Was that expectation objectively reasonable?

    c. Did the strata violate that expectation with a significantly unfair action or decision?

30. I find that the strata's response to the Rooprais's initial complaint was reasonable. As noted, the strata invited the Rooprais to a council meeting and held individual meetings with the Rooprais and unit 405's owners to discuss the complaint, ultimately issuing a June 4, 2021 warning letter to unit 405. At that point, I find the evidence shows the owners tried to work on the noise problem themselves and did not involve the strata again until the end of August 2021.

31. On September 3, 2021, US sent the Rooprais a letter on the strata's behalf outlining a process for the strata to verify the Rooprais' complaint that they were experiencing noise that was "unreasonable for a family oriented apartment complex". The process required the Rooprais to knock on one council member's door when they were being disturbed, and that council member would try to reach another council member to also attend the Rooprais' strata lot. The letter advised that the Rooprais were permitted to exercise this process only between 1pm and 10pm, not more often than

twice per week until the council members reported that they had enough information to either validate or invalidate the complaint.

32. I note that the Rooprais say that this letter was “fraudulent” because it was dated May 19, 2021. They allege the strata backdated the letter to misrepresent that it attempted to address their noise complaints four months earlier than it had. I find the evidence does not support the Rooprais’ allegation. The email evidence shows that US apologized to the Rooprais on September 21, 2021 for issuing the letter with the wrong date. The strata does not suggest that the process set out in the letter was developed before September 2021 and says the May date was a clerical error. I accept the strata’s submission on this point, and find the letter was intended to be dated September 3, 2021, the date it was undisputedly sent.

33. In any event, the Rooprais objected to the strata’s suggested process to verify their noise complaints, noting they were not comfortable having multiple council members in their strata lot due to the COVID-19 pandemic. In a September 29, 2021 email, US advised the Rooprais that the council had been given legal advice that the noise complaint had to be “validated by the council”. So, US invited the Rooprais to suggest a different process for the council to verify their noise complaint.

34. In a November 3, 2021 email, the Rooprais proposed a meeting with the council president and another specific council member to show them video evidence of the noise they had collected over the past several months. On November 5, 2021, US responded that the requested council member was unavailable for personal reasons but confirmed the president and another member would meet the Rooprais on November 10 to view their video footage. In response, the Rooprais said they would wait a reasonable time to meet with their requested council member or would meet with the president alone. The strata declined the Rooprais’ offer and said their only option was to accept a meeting with the strata’s chosen members. In their November 13, 2021 response, the Rooprais retracted their request for a meeting.

35. The Rooprais say the strata gave unit 405 a warning based on their initial noise complaint, but then unreasonably decided it needed to verify that same noise to

proceed with further action. Essentially, I find the Rooprais expected the strata council to start imposing fines against unit 405 as of their second complaint on August 26, 2021. For the following reasons, I find that expectation was not objectively reasonable.

36. I find the strata was obligated to investigate the Rooprais' noise complaints before imposing any fines. As noted, I find the strata was not likely aware of any ongoing noise issues after its June 4, 2021 warning letter. Further, the evidence shows the Rooprais' complaints were generally about noises of everyday living, such as walking, a young child running and jumping, and "random thuds and bangs". So, I find the strata reasonably relied on legal advice it says it received, to verify that the noise was "unreasonable". I acknowledge the Rooprais' argument that the strata's proposal was imperfect given that the noise often occurred for only a few seconds at a time and could be minutes or hours apart. However, I find the strata's proposal was a reasonable attempt to investigate the noise.

37. I also find the strata reasonably agreed to the Rooprais' proposed meeting to view their video evidence. I disagree that the strata was "unnecessarily difficult" in failing to accept the Rooprais' requested council members attend the meeting. While the Rooprais say they were uncomfortable with the strata's proposed member because they did not follow COVID-19 protocols and their demeanor was "daunting", I find the Rooprais made no attempt to communicate these concerns or request any accommodations for their protection before withdrawing their meeting request.

38. It is unclear why the Rooprais did not simply send the strata council members their video and sound evidence and the numerous noise logs that are filed as evidence in this dispute. I find the evidence shows the Rooprais were extremely bothered by the noise from unit 405. However, the test of whether noise is unreasonable is objective and is measured with reference to a reasonable person occupying the premises: see *Sauve v. McKeage et al.*, 2006 BCSC 781. The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency: 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.

39. Overall, I find the strata promptly responded to and made reasonable attempts to investigate the Rooprais' noise complaints. I find the Rooprais' expectation that the strata would take further action against unit 405 in the absence of any verification that the noise qualified as a bylaw breach was not objectively reasonable. Further, in the end, it was the Rooprais who effectively ended the strata's investigation attempts. Given the above, I find the Rooprais have not shown the strata treated them significantly unfairly when investigating their noise complaints.

### *Did the strata fail to properly enforce the occupancy bylaw?*

40. It is undisputed that unit 405 was a one-bedroom strata lot, and that a family of 3 lived in it during the relevant period, in breach of bylaw 51.1.

41. The Rooprais argue that the strata knew or should have known that unit 405's owners were in violation of the strata's occupancy bylaw from the date they moved in because new owners must complete forms listing who is living in the unit. The strata did not specifically respond to this allegation. However, even if the strata knew about the breach once SM and RM had moved in, bylaw enforcement is generally a complaint driven process. This means that the strata will not investigate potential bylaw violations without first receiving a complaint. In *The Owners, Strata Plan BCS945 v. Miller*, 2021 BCCRT 1111, a tribunal member found such an approach was not an abdication of the strata's responsibility to enforce bylaws. While not binding on me, I agree with this conclusion.

42. So, I find the strata's obligation to enforce the occupancy bylaw was triggered when the Rooprais made their August 26, 2021 complaint.

43. The evidence shows that US emailed SM on August 30, 2021 about a possible breach of the occupancy bylaw, only 4 days after the Rooprais' complaint. The email stated that the strata council would discuss the issue at its next meeting.

44. Following SM and RM's attendance at an October 13, 2021 council meeting, US sent them an October 18, 2021 letter advising that the council disagreed with their argument that a small child is not a person. The letter stated that the council had

decided they were in breach of bylaw 51.1 and it allowed them 6 months to resolve the issue, failing which the strata might impose fines. The evidence shows that by November 1, 2021, SM and RM had listed unit 405 for sale, and that they moved out of the strata in January 2022.

45. The Rooprais argue that giving unit 405's owners 6 months to comply with the bylaw was too long. I disagree. I find the strata had discretion to determine how it would enforce the occupancy bylaw, and that it provided a reasonable a solution to a complicated situation. Under the circumstances, I find it would have been procedurally unfair for the strata to fine unit 405's owners without giving them a reasonable time to comply.

46. I find the Rooprais have not shown the strata's actions in enforcing the occupancy bylaw was burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable. That is, I find the Rooprais have not established the strata treated them significantly unfairly.

### *Remedies*

47. Given my conclusions above, I find it is unnecessary to consider the Rooprais' requested remedies in any detail. However, even if they had established the strata treated them significantly unfairly, I find their claims that they sold their strata lot prematurely as a result, along with the associated financial losses, are unproven. The Rooprais provided no evidence about when they listed their strata lot for sale, when it sold, its list price, or its sale price. They also provided an address outside BC for the purpose of this dispute, which they did not explain. So, I would not have awarded the claimed moving expenses, profit loss, or mortgage penalty reimbursement.

48. The Rooprais also did not explain their claim for $8,000 in strata fees, and they provided no evidence about their monthly fees. To the extent that they are claiming a refund of paid strata fees, I find there is no provision in the SPA or the strata's bylaws that entitles an owner to a strata fee refund. In *Stewart v. The Owners, Strata Plan KAS 2601*, 2020 BCS 809, the BC Supreme Court confirmed that payment of strata fees is mandatory for all strata owners under the SPA and cannot be waived or

withheld in protest of strata actions. So, I would not have awarded the claimed $8,000 in strata fees.

49. Further, claims for mental distress require supporting medical evidence. See *Lau v. Royal Bank of Canada*, 2017 BCCA 253. The Rooprais provided no medical evidence in this dispute, so I would have dismissed that claim.

50. Finally, the Rooprais' claim for $100,000 for loss of use and enjoyment of their strata lot would have required them to prove both that the strata acted significantly unfairly in its investigation of their noise complaints and that the noise was, in fact, unreasonable. Because I found the strata did not treat the Rooprais' significantly unfairly, it was unnecessary to determine whether the noise from unit 405 breached the bylaws.

51. However, even if the Rooprais' had proven the strata acted significantly unfairly, I would not have found the noise was unreasonable. The Rooprais' noise logs recorded only a few instances of noise before 7am or after 9pm. Their video evidence was not time-stamped and while the recorded noise was audible, I find it was not particularly loud and it generally lasted for only a few seconds at a time. The Rooprais provided no decibel meter readings of the noise, no professional testing to measure the sound transfer between the strata lots, and the only witness statements are from the Rooprais' own family members, who I find are not objective. So, in the absence of any proven unreasonable noise, I would not have awarded the claimed damages.

52. In any event, as I found above that the Rooprais have not proven the strata treated them significantly unfairly, I dismiss their claims.

## CRT FEES AND EXPENSES

53. 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 Rooprais were unsuccessful, I find they are not entitled to any reimbursement. The strata did not pay any fees. While the strata made a claim for dispute-related

expenses, it provided no evidence or submissions to establish that it incurred any dispute-related expenses, so I dismiss the strata's claim.

## ORDER

54. I dismiss the Rooprais' claims, the strata's claim for dispute-related expenses, and this dispute.

Kristin Gardner, Tribunal Member