



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Kandrack v. The Owners, Strata Plan VIS3364*, 2022 BCCRT 1278

B E T W E E N :

TIMOTHY JAMES KANDRACK

APPLICANT

A N D :

The Owners, Strata Plan VIS3364

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about an outdoor carpet in a strata corporation.
2. The applicant, Timothy James Kandrack, owns a strata lot (SL7) in the respondent strata corporation, The Owners, Strata Plan VIS3364 (strata).

3. Mr. Kandrack says the owner of the strata lot above his (SL16) placed an artificial turf carpet on a limited common property (LCP) deck designated for SL16's exclusive use. Mr. Kandrack says the carpet collects water with heavy rains which eventually overflows onto an LCP patio designated for SL7's exclusive use. Mr. Kandrack says the overflowing water is loud, wakes him up at night, and is a severe health and safety risk. Mr. Kandrack also says it has damaged his patio furniture. Mr. Kandrack asks for an order that the strata fix this issue and have the carpet removed.
4. The strata disputes Mr. Kandrack's claims. It says the carpet is permitted on the deck, and does not result in any unreasonable overflow onto Mr. Kandrack's patio. The strata says it did not find any nuisance, hazard, unreasonable noise or other bylaw violation related to the carpet.
5. Mr. Kandrack is self-represented. 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.

Damaged patio furniture

10. As noted, Mr. Kandrack says the water run-off damaged his patio furniture in his application for dispute resolution. However, he provided no submissions or evidence in support of this, and did not claim any remedy for the allegedly damaged patio furniture. Therefore, I have not addressed it in this dispute.

New issues and requested remedies in submissions

11. In his submissions, Mr. Kandrack raised various other issues with the strata and SL16's owner, and requested additional remedies that were not included in his application for dispute resolution. These included a request that a lattice on the deck be lifted 4 inches, and a request that the strata update its bylaws to restrict carpets and limit the placement of planters and pots. In his final reply submissions, Mr. Kandrack also requested the strata provide apology letters. I find the strata has not received fair notice of Mr. Kandrack's issues and requested remedies raised only in argument to allow the strata to adequately respond. So, I have not addressed them in this dispute.

ISSUE

12. The issue in this dispute is whether SL16's deck carpeting is dangerous or a nuisance, and if so, what remedies are appropriate?

EVIDENCE AND ANALYSIS

13. In a civil proceeding such as this one, Mr. Kandrack, as the applicant, must prove his claims on a balance of probabilities (meaning more likely than not). I have reviewed all the parties' submissions and evidence, but I only refer to what I find relevant to provide context for my decision.
14. The strata filed consolidated bylaws in the Land Title Office in July 2020. I find these are the bylaws applicable to this dispute. I will address the relevant bylaws below.
15. Mr. Kandrack says SL16's owner placed the carpet on the deck in 2021, and it was overhanging the deck's edge by 3 inches. Mr. Kandrack says that before the carpet was placed on the deck, water flowed "naturally" off the deck onto the flashing "with some drips" but mostly "gently flowing onto the wall and down".
16. Mr. Kandrack says after the carpet was placed on the deck, rainwater pooled in the carpet and pouring off the deck in bursts. He says it was like "Niagara Falls" off the deck, with a "constant wave" and "loud splashing". Mr. Kandrack says it is uncomfortable to listen to with heavy rains and has affected his quality of life, sleep and exacerbated his depression.
17. Mr. Kandrack says he has complained to the strata council about SL16's owner's carpet and "given them options", but the strata "will not budge". As noted, Mr. Kandrack asks for an order that the strata "fix this issue" and have the carpet removed.
18. The strata says it investigated Mr. Kandrack's complaints, and had SL16's owner trim the carpet back in April 2021 so it did not hang over the deck's edge. Mr. Kandrack does not dispute that the carpet was trimmed back from the deck's edge. It is undisputed that the carpet being cut back did not resolve the water run-off and noise.
19. The strata says it determined that the carpet was not causing excess water run-off and noise. The strata says Mr. Kandrack's complaints about excess water-run off and noise are related to extreme rainfall weather events. The strata says the noise from the water run-off is not a result of the carpet, and is not excessive or a nuisance. The

strata says rain is a weather event beyond its control, and even if the carpet is removed from the deck, the rain will continue.

20. The strata provided a statement from one of its strata managers, HM. HM said they investigated Mr. Kandrack's complaints about the carpet. HM said they confirmed that each deck is bare aggregate that slopes away from the strata building. HM said the deck has no drains, and so the carpet on the deck does not obstruct any drains. HM said they observed the carpet on the deck, and the carpet had the same slope as the deck so rainwater would follow the deck's slope and fall off the edge of the deck. HM said they observed rainwater would follow the deck's slope whether the carpet was there or not, but did not provide details on how it was observed.
21. HM said the strata council concluded the carpet was not the cause of excessive rainwater runoff from the deck. HM said the strata council investigated other possible causes of excess water run-off from the deck, including a broken gutter. HM also says the strata hired a contractor to repair the gutter, which was completed in June 2022. Emails and a June 10, 2022 invoice from A to Z Gutters (A to Z) indicate that the strata hired A to Z fixed a "leaking corner" and gutter outside SL16. I infer the gutter was near SL16's LCP deck. Mr. Kandrack says the carpet was causing the water issue off the deck, not the gutter.
22. Mr. Kandrack says several strata managers attended at both SL7 and SL16 after he complained about the carpet. He says the strata managers either had no idea the kind of problems these carpets can cause, or failed to properly inform the strata council that the carpets are a "bad idea".

Is SL16's deck carpeting dangerous or a nuisance?

23. Bylaw 4(1) says a resident must not use a strata lot or common property in a way that, among other things:
 - (a) Causes a nuisance, security risk or hazard to another person.
 - (b) Causes unreasonable noise or unreasonably disturbs other residents at any time, and in particular between 10:30 pm and 7:00 am.

(c) Unreasonably interferes with the rights of other person to use and enjoy the common property, LCP, common assets or another strata lot.

24. In *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502, the court defined nuisance in the strata setting as a substantial, non-trivial, and unreasonable interference with use and enjoyment of property (paragraph 33).
25. 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.
26. I find that Mr. Kandrack, who bears the burden of proof in this dispute, has not proven that SL16's deck carpeting caused a nuisance, unreasonable noise, or unreasonably interfered with Mr. Kandrack's right to use and enjoy his strata lot, LCP, or common property.
27. Specifically, he has not proven that the water run-off and noise he has identified arises from SL16's owner's carpet. Even if he did, Mr. Kandrack also did not provide sufficient evidence to establish that the noise and water run-off is unreasonable or undue, or otherwise a nuisance.
28. Mr. Kandrack submitted 5 videos of water running off the deck during what I find was a significant rainfall event. The videos do not show that the carpet caused the water run-off or noise. Mr. Kandrack did not provide other evidence to prove that the carpet caused the water run-off and noise. I also find the videos do not obviously show that the water run-off and noise is unreasonable. I find some amount of water run-off and associated noise is to be expected during significant rainfall events.
29. Mr. Kandrack also provided a statement from CF. CF said they were having dinner with Mr. Kandrack in September 2021 when it was "mildly raining" and heard "a lot of water overflowing somewhere". CF said it sounded like a pipe had burst because it

was so loud and there was so much water. CF said Mr. Kandrack told them it was the result of the strata lot above with carpet on the deck.

30. I find that CF's statement is not enough prove that the carpet caused the water run-off and noise, or that the noise was unreasonable to an ordinary person. First, I infer CF is Mr. Kandrack's friend and therefore not entirely objective. Second, I find much of CF's statement restates Mr. Kandrack's position on the carpet causing the water run-off and noise. I accept that CF heard water run-off noise when having dinner with Mr. Kandrack. However, I find CF's statement does not establish either that the carpet caused the water run-off and noise, or that the noise was objectively unreasonable.
31. Mr. Kandrack did not identify the frequency or duration of the alleged water run-off and noise, or provide other evidence that shows when the water run-off and associated noise occurred. There is also no objective measurement of the water run-off noise. Therefore, I find Mr. Kandrack has not met his burden of proving the water run-off noise was unreasonable.
32. Mr. Kandrack also provided a July 21, 2022 doctor's note from Dr. Likhrovick-Fournier. It noted that Mr. Kandrack reported his sleep was disturbed by "excessive noise secondary to flow of water from the deck above". The note also said Mr. Kandrack believed it was directly related to carpet that was installed on the deck above. Dr. Likhrovick-Fournier noted that Mr. Kandrack's disrupted sleep is negatively impacting his depression. I place no weight on this doctor's note because I find it largely restates Mr. Kandrack's subjective complaints and opinion about the cause of the water run-off and noise. In the absence of evidence that proves the carpet caused the water run-off and noise, I find this doctor's note does not establish that the carpet was nuisance or caused unreasonable noise.
33. Since Mr. Kandrack has not proven otherwise, I find SL16's deck carpeting is not a nuisance or hazard, contrary to bylaw 4(1). The evidence does not show that the carpet created excess water run-off or unreasonable noise, or was otherwise a nuisance that unreasonably interfered with Mr. Kandrack's use of his strata lot or common property, including LCP.

34. Bylaw 8(1)(c)(c) says the strata is responsible to repair and maintain LCP chimneys, stairs, balconies, patios and other things attached to the exterior of a building. I find this includes the LCP deck designated for SL16's exclusive use. However, Mr. Kandrack has not proved the deck caused unreasonable noise, or was otherwise a nuisance or hazard. So, I find the evidence does not show that the strata failed to maintain and repair the deck.
35. For all of these reasons, I conclude that Mr. Kandrack has not proven that SL16's deck carpeting is dangerous or a nuisance. I also find Mr. Kandrack has not proven that the strata failed to repair and maintain the deck. I dismiss Mr. Kandrack's claims.

CRT FEES AND EXPENSES

36. Under CRTA section 49, 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 Mr. Kandrack was unsuccessful, I dismiss his fee claim. The strata did not pay any CRT fees and neither party claimed any dispute related expenses, so I award none.
37. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Kandrack.

ORDER

38. I dismiss Mr. Kandrack's claims and this dispute.

Leah Volkens, Tribunal Member