



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan LMS XXXX v. K*, 2023 BCCRT 393

B E T W E E N :

The Owners, Strata Plan LMS XXXX

APPLICANT

A N D :

JK AND BK

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This strata property dispute is about noise.

2. Respondent JK owns strata lot Y (SLY) in the applicant strata corporation, the Owners, Strata Plan LMS XXXX (strata). The other respondent, BK, lives in the strata lot, but is not an owner.
3. The strata is represented by a strata council member in this dispute. Mrs. K is self-represented. BK did not file a Dispute Response Form in this dispute, so is technically in default. However, based on Mrs. K's submissions, I accept that she represents both herself and BK in this dispute.
4. In the published version of this decision, I have anonymized the parties' names to protect privacy, due to Mrs. K's submissions about her family's mental health.
5. The strata says the Ks refuse to follow the strata's noise bylaw, resulting in numerous noise complaints from other owners. The strata requests an order that the Ks stop the "noise and disruption" in their strata lot. The strata also requests reimbursement of legal fees.
6. Mrs. K does not dispute that noise has occurred. However, she says the noise is the result of her daughter's mental health condition, her own and BK's mental health conditions, and the normal sounds of children playing indoors.
7. For the reasons set out below, I find in favour of the strata in this dispute, and order the Ks to stop making unreasonable noise in their strata lot. However, I dismiss the strata's claim for reimbursement of legal fees.

JURISDICTION AND PROCEDURE

8. 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.

9. 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 which includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
10. 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.
11. 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 Fines

12. This CRT dispute was filed on August 4, 2022. In its dispute application, the strata initially requested an order for payment of bylaw fines. In its subsequent submissions, the strata says the Ks paid the outstanding bylaw fines in full on August 31, 2022, but have since incurred more bylaw fines.
13. I find it would be procedurally unfair to address bylaw fines for incidents that occurred after this dispute was filed. I find those fines give rise to a separate claim, and are not part of the claims set out in the Dispute Notice. It was open to the strata to request that the CRT amend the Dispute Notice to include the new claims, but no amended Dispute Notice was issued.
14. For these reasons, I make no findings or order about payment of bylaw fines in this decision. I dismiss the claim about bylaw fines incurred before August 4, 2022, since it is moot, and I make no findings about subsequent bylaw files.

ISSUES

15. The remaining issues in this dispute are:
 - a. Must the Ks to stop making “noise and disturbance” in their strata lot?
 - b. Must the Ks reimburse the strata for legal fees, and if so, how much?

REASONS AND ANALYSIS

16. In a civil claim like this one, the strata, as applicant, must prove its claims on a balance of probabilities (meaning “more likely than not”). I have read all the parties' evidence and submissions, but below I only refer to what is necessary to explain my decision.
17. The strata filed consolidated bylaws with the Land Title Office in 2012. The strata also filed 3 sets of subsequent bylaw amendments, which I find are not relevant to this dispute. I discuss the relevant bylaws below.
18. The strata was created in 1996, and contains 83 townhouse-style strata lots. The strata plan shows that the Ks' strata lot, SLY, shares a first floor common wall with another strata lot.

Should the CRT order the Ks to stop making noise and disturbance in their strata lot?

19. Strata bylaw 4.1 says, in part, that a resident or visitor must not use a strata lot or common property in a way that causes a nuisance or hazard to another person, causes unreasonable noise, or unreasonably interferes with the rights of other persons to use and enjoy the common property or another strata lot.
20. The BC Supreme Court has said that unreasonable noise or a nuisance in the strata context is a substantial, non-trivial, and unreasonable interference with use and enjoyment of property: *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33. The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency: *St*

Lawrence Cement Inc. v. Barrette, 2008 SCC 64. The test of whether a potential nuisance is unreasonable is objective and is measured with reference to a reasonable person occupying the premises: *Sauve v. McKeage et al.*, 2006 BCSC 781.

21. In this dispute, the strata says that for the past 2 years, the Ks have repeatedly breached bylaw 4.1 by making excessive noise and disturbing neighbours. The strata says there is constant fighting, yelling, screaming, and banging in the Ks' strata lot and the area outside it. The strata says this noise and disturbance has continued, despite the strata fining the Ks for breaching bylaw 4.1. The strata also says the owner of the adjoining strata lot has complained to the strata numerous times about noise from SLY, and has provided log entries and audio recordings documenting the noise. The strata uploaded some of these logs as evidence in this dispute.
22. As noted above, Mrs. K does not deny the strata's noise allegations. Rather, she admits to the noise, but says it is due in part to her daughter's mental health condition, and her own and BK's mental health conditions.
23. The noise logs in evidence document an ongoing pattern of noise from SLY, including stomping, banging, shrieking, screaming, and yelling. As an example, the notation for September 6, 2022 documents loud, repeated banging from 1:32 am to 2:13 am, and "shrieking, screaming, violent banging" from 11:13 am to 11:24 am that caused the building to shake.
24. Another set of logs document almost daily noise, including banging, yelling, and screaming from March 28, 2020 to January 10, 2021. The log indicates that the neighbour called the police about the noise multiple times, and the police attended and took reports.
25. Mrs. K submits that some of the noise is the normal sound of children playing indoors. While that may be, I find the noise logs document repeated noise that is not caused by child play, such as adults swearing, and also screaming and banging after midnight.

26. Mrs. K did not dispute the noise logs' accuracy, or provide contrary evidence. Based on Mrs. K's admission, and the log entries in evidence, I find the Ks have breached the strata's noise bylaw.
27. As noted above, Mrs. K says the noises are due in part to her family members' mental health conditions. No party in this dispute specifically raised the issue of accommodation under the BC *Human Rights Code* (Code). However, in an August 3, 2022 letter to the strata responding to noise bylaw complains, Mrs. K wrote that her daughter A has attention deficit hyperactivity disorder, oppositional defiant disorder (ODD) and sensory processing disorder. Mrs. K wrote that because of these medical conditions, for which A was receiving treatment, A experiences anxiety, is prone to impulse control issues, and lacks emotional regulation. This results in outbursts of stomping, shouting, screaming, slamming doors, throwing and breaking things, threatening, and striking out at the Ks. Mrs. K said they struggled to de-escalate A's behaviour. She asked the strata to remove or reduce the bylaw fines, "on compassionate grounds". There is no evidence before me about how or if the strata responded to Mrs. K's August 3, 2022 letter.
28. Section 8 of the Code says, in part, that unless there is a bona fide (genuine) and reasonable justification, a person must not, because of a physical or mental disability, discriminate against another person regarding any accommodation, service, or facility customarily available to the public. A strata corporation has a duty to accommodate occupants' disabilities, unless the accommodation would cause the strata undue hardship: see *Konieczna v. Strata Plan NW 2489*, 2003 BCHRT 38.
29. For an accommodation claim to succeed, Mrs. K would first have to prove that one or more of her family members has a disability, which triggers a duty to accommodate under the Code. She would also have to prove the disabled person was adversely impacted by the strata's enforcement of its noise bylaw, and that the disability was a factor in the adverse impact. After that, the burden would shift to the strata to establish a *bona fide* reasonable justification for its enforcement of the noise bylaw.

30. To be clear, since Mrs. K has not specifically requested accommodation under the Code, and the parties did not make submissions about the Code, I am not deciding that issue in this decision. It remains open to the Ks to request an accommodation from the strata. However, since Mrs. K says the noises were related to disabilities, I find the Code accommodation analysis is relevant in deciding whether or not to grant the strata's request for an order that the Ks follow the noise bylaw.
31. Mrs. K says both she and BK have mental health conditions. But, she did not provide evidence such as medical reports to confirm those conditions. So, I have only considered A's mental health conditions in this decision.
32. The medical evidence before me does confirm that A has mental health disabilities. However, I find that evidence does not explain to what extent the disputed noise is related to A's disabilities.
33. Mrs. K provided one page of an article on ODD. I place no weight on this page, as it is incomplete, and the author and source are unclear. Also, it contains general information only, with no specific explanation of A's condition or symptoms, and no specific discussion of noise.
34. Mrs. K provided a note from family doctor Dr. Sclater, which only says A has "verbal outbursts and difficult behaviours". Dr. Sclater does specifically address noise, and does not say the K family could not comply with the noise bylaw because of A's disability.
35. Mrs. K also provided part of a report from psychologist Dr. Eslami, who assessed A in March 2022. I place limited weight on Dr. Eslami's report, as not all pages were provided. Also, like Dr. Sclater, Dr. Eslami did not specifically address noise. Dr. Eslami said A had difficulty regulating her emotions, became physical and threw things when dysregulated, and had angry outbursts daily. While one could infer that these behaviours might lead to increased noise, Dr. Eslami did not address that in the report, other than to say A is sensitive to noise. Dr. Eslami described A's symptoms, but did not mention behaviours such as yelling, screaming, or banging.

36. Also, as noted above, many of the noise incidents recorded in the log entries occurred late at night. Dr. Eslami wrote that A went to bed at 8:30 pm, went to sleep within 20 minutes, and had no insomnia, sleepwalking, or nightmares. This suggests that much of the noise was not related to A's disabilities in any event.
37. For these reasons, I find the evidence before me does not establish that the Ks cannot follow the strata's noise bylaw due to A's disabilities. Given this, and since Mrs. K admits to at least some of the noise, I find it is reasonable in the circumstances to order the Ks to follow bylaw 4.1 by not making unreasonable noise. This order is subject to any future accommodation under the Code, since as explained above, that issue was not specifically raised or argued in this dispute. I do not order the Ks to "stop making noise and disturbance", as requested by the strata. Some noise is inevitable, which is why the bylaws only prohibit unreasonable noise, and I find "disturbance" is too vague and subjective to be enforceable.

Must the Ks reimburse the strata for legal fees?

38. In its dispute application, the strata requested reimbursement of \$1,644.16 in legal fees it allegedly paid "to deal the CRT complaint filed by another owner who is constantly being disturbed by the Ks."
39. Strata *Property Act* (SPA) section 133 allows the strata to charge an owner for the strata's reasonable costs of remedying a bylaw contravention. As explained in *Nadeau v. The Owners, Strata Plan VIS 6635*, 2022 BCCRT 511, "reasonable costs" may include legal fees.
40. However, I find the strata's claim for reimbursement of legal fees is unproven. The strata provided no invoices or receipts showing payment, or itemizing what legal services it paid for. It did not provide submissions explaining the claim, or say who it paid for the legal services.
41. Also, to be entitled to payment under SPA section 133, the strata has to give the person being charged advance written notice before imposing the charge, with an

opportunity for the person to respond. There is no evidence showing the strata gave this notice to the Ks.

42. For these reasons, I dismiss the strata's claim for legal fees.

CRT FEES AND EXPENSES

43. As the strata was partially successful in this dispute, under the CRTA and the CRT's rules I find it is entitled to reimbursement of half its CRT fees, which equals \$112.50. Neither party claimed dispute-related expenses, so I order none.

ORDERS

44. I order that:

- a. The Ks must follow bylaw 4.1 by not making unreasonable noise, subject to any future accommodation under the Code.
- b. Within 30 days of this decision, the Ks must reimburse the strata \$112.50 for CRT fees.

45. I dismiss the strata's remaining claims.

46. The strata is entitled to postjudgment interest under the *Court Order Interest Act*, as applicable.

47. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under CRTA section 58, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Kate Campbell, Tribunal Member