



Civil Resolution Tribunal

Date Issued and Amended¹: June 1, 2023

File: ST-2022-006267

Type: Strata

Civil Resolution Tribunal

Indexed as: *Sadeghvishkaei v. The Owners, Strata Plan EPS7877*¹, 2023 BCCRT 465

B E T W E E N :

BABAK SADEGHVISHKAEI

APPLICANT

A N D :

The Owners, Strata Plan EPS7877

RESPONDENT

AMENDED¹ REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a strata property dispute about alleged violation of smoking and nuisance bylaws.
2. The applicant, Babak Sadeghvishkaei, co-owns a strata lot (A225) in the respondent strata corporation, The Owners, Strata Plan EPS7877¹ (strata). Mr. Sadeghvishkaei is self represented. The strata is represented by a strata council member.

3. Mr. Sadeghvishkaei says his next door neighbour in unit A226 (neighbour), who is not a party to this dispute, smokes marijuana contrary to the strata's bylaws. In submissions, he also says the same neighbour has caused unreasonable noise. Mr. Sadeghvishkaei says he and the co-owner of A225 are allergic to smoke and alleges the strata "has failed to resolve the root cause" of his complaint. He seeks an order of \$4,000 in damages "for injury to dignity contrary to the Code", which I infer refers to BC's *Human Rights Code* (Code). He also seeks orders that the strata obtain an expert opinion on air quality and a "proper sensor to detect smoke", which he values at \$3,850.
4. The strata says it acted reasonably in carrying out its bylaw enforcement duties under the *Strata Property Act* (SPA). It denies the smoking violations occurred and asks that Mr. Sadeghvishkaei's claims be dismissed.
5. As explained below, I dismiss Mr. Sadeghvishkaei's claims and this dispute.

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 section 123 of the CRTA and the CRT rules, 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.

Preliminary Matters

Strata as the Sole Named Respondent

10. The strata contains separate sections; a commercial section consisting of all 26 main floor, non-residential strata lots, and 91 residential strata lots in the residential section above. I considered whether the residential section should be added as respondent based on the SPA and bylaws. However, given my conclusion that Mr. Sadeghvishkaei has not proved any bylaws were breached, I did not find it necessary to seek further submissions from the parties on this matter.

Noise complaints

11. The Dispute Notice makes claims of breaches of bylaws about smoking and nuisance. On its face, I find the Dispute Notice reference to nuisance is about smoking. There are no allegations about noise. However, Mr. Sadeghvishkaei made submissions and provided evidence about noise concerns with his neighbour. The strata did not object to the noise submissions and provided response submissions about the noise allegations. However, I decline to address them because Mr. Sadeghvishkaei does not seek any remedy for alleged noise bylaw breaches.

ISSUES

12. The issues in this dispute are:
 - a. Did Mr. Sadeghvishkaei's neighbour breach the strata's smoking or nuisance bylaws?

b. If so, did the strata act appropriately?

BACKGROUND

13. As applicant in a civil proceeding such as this, Mr. Sadeghvishkaei must prove his claims on a balance of probabilities, meaning more likely than not. I have considered all the submissions and evidence provided by the parties, but refer only to information I find relevant to explain my decision.
14. The strata plan shows the strata was created in August 2021 under the SPA and includes 117 strata lots in 3 buildings. Mr. Sadeghvishkaei's strata lot is located on the 2nd level of a 4-level building immediately above commercial strata lots and next to an open parking area. The strata plan designates the balconies of residential strata lots as limited common property for use by the owner of the strata lot.
15. Land Title Office documents show the strata's owner developer filed bylaws different than the Standard Bylaws when the strata was created. I find the relevant bylaws applicable to this dispute are bylaws 3(1)(a), (c) and 3(7)(g). I summarize them as follows:

Bylaw 3(1)(a) and (c) say an owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that causes a nuisance or hazard to another person, or unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets, or another strata lot.

Bylaw 3(7)(g) says an owner, tenant, occupant or visitor of a residential strata lot shall not smoke or vape in or on any parts of the property including residential strata lots and balconies.

EVIDENCE AND ANALYSIS

Did Mr. Sadeghvishkaei's neighbour breach the strata's smoking bylaw?

16. I begin by reviewing relevant sections of the SPA and associated case law.

17. Section 26 requires the strata council to exercise the powers and duties of the strata, including bylaw enforcement. This includes a duty to enforce bylaws, such as the nuisance or smoking bylaws. When carrying out these duties, the strata council must act reasonably: see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holding Inc.*, 2016 BCSC 32 at paragraph 237.
18. The SPA does not set out any procedures for assessing bylaw complaints. The bylaws are also silent on this process. The courts have held that a strata corporation may investigate bylaw contravention complaints as its council sees fit, so long as it complies with the principles of procedural unfairness and is not significantly unfair to any person appearing before the council: see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148 at paragraph 52. In other words, the strata must be reasonable in how it assesses bylaw complaints.
19. The strata's investigation must also be objective, as established in *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502 at paragraph 33. In *Triple P*, the court found that nuisance in the strata context is an unreasonable interference, with an owner's use and enjoyment of their property. Whether an interference is unreasonable depends on several factors, such as its nature, severity, duration and frequency. The interference must also be substantial such that it is intolerable to an ordinary person. (See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64).
20. The relevant parts of SPA section 129 say that to enforce a bylaw, the strata may impose a fine or remedy a bylaw contravention. However, before imposing a fine or remedying a bylaw contravention, the strata must follow the requirements of section 135.
21. SPA section 135 sets out procedural requirements the strata must follow to impose bylaw fines and require a person to pay the cost to remedy a bylaw contravention. Under SPA section 135(1), **before** imposing fines or costs to remedy a contravention, the strata must have received a complaint, given the owner or tenant written particulars of the complaint and a reasonable opportunity to answer the complaint, including a hearing if one is requested. Under section 135(2), the strata must give the

owner written notice of its decision to impose fines “as soon as feasible”. See *Terry v. The Owners, Strata Plan NW 309*, 2016 BCCA 449 and *The Owners, Strata Plan NW 307 v. Desaulniers*, 2019 BCCA 343.

22. I turn now to the sequence of events and strata’s actions in this dispute.
23. On July 9, 2022, Mr. Sadeghvishkaei emailed the strata alleging his neighbour was smoking marijuana on their balcony, which included a video. He emailed a second complaint and video to the strata on July 16, 2022. The strata wrote to the neighbour on July 18, 2022 advising of the smoking complaints citing bylaws 3(1)(a) and (c) and 3(7) and giving them 2 weeks to respond. I find the letter complied with SPA section 135 requirements.
24. The strata sent a second smoking bylaw violation letter to the neighbours on August 2, 2022, about a July 21, 2022 smoking complaint, but the details of who made that complaint are unclear.
25. The neighbour emailed the strata manager on August 2, 2022, asking to speak with them about the smoking complaints. This eventually led to the strata inviting the neighbour to attend the next strata council meeting scheduled in September 2022.
26. In further emails exchanged between the neighbour and the strata manager in September 2022, the neighbour confirmed they did not smoke, and were not smoking on the 3 dates in July that were noted in the strata’s letters. The September 19, 2022 strata council meeting minutes show the neighbour attended the meeting and asserted they did not smoke. The strata manager then wrote 2 letters to the neighbour dismissing the smoking complaints set out in their letters of July 18 and August 2, 2022.
27. The strata manager emailed Mr. Sadeghvishkaei on October 11, 2022 that the strata council had reviewed his smoking complaints and had spoken to the neighbour, who confirmed he did not smoke. The strata manager also said the resident in the strata lot on the other side of the neighbour (in A227) said they had never smelled smoke or seen the neighbour smoking. The strata manager said the strata council suspected the smoke was coming from the ground level commercial strata lots and would take

the matter up with them. Although not expressly stated, I take it from the strata manager's email that the strata decided not to pursue Mr. Sadeghvishkaei's smoking complaints against his neighbour. This is confirmed in the minutes of the October 12, 2022 strata council meeting, which also show Mr. Sadeghvishkaei attended the meeting.

28. About this time, Mr. Sadeghvishkaei stated in an email to the strata manager that his neighbour had admitted smoking marijuana. However, there is no evidence to support this assertion, such an email from the neighbour or a witness statement to that effect. So, I do not accept Mr. Sadeghvishkaei's assertion.
29. On December 22, 2022, following further smoking complaints, a strata council member attended the hallway at or near the neighbour's strata lot after Mr. Sadeghvishkaei sent her a text message that he smelled smoke in the hallway. The strata council member reported that she did not smell smoke after checking the entire hallway.
30. The strata also obtained a letter from the resident in A227 dated December 29, 2022. The letter states they did not have any issues with smoke from the neighbour and had only smelled smoke near the elevator, which is not near their strata lot. The letter also states in the summer, they "spend most of their days" on their balcony with the sliding glass door and windows open and have had no issues about smoke.
31. In addition to the foregoing, the strata posted notices in August and September 2022 reminding occupants that smoking is prohibited.
32. None of this is disputed.
33. I have reviewed the videos and do not find they support Mr. Sadeghvishkaei's allegation his neighbour, or any other person with his neighbour, was smoking at the alleged times. I accept the videos show the opaque diving glass between the balconies of A225 and A226 from Mr. Sadeghvishkaei's balcony. However, I do not see any smoke in the videos, either rising over the top or from around the side of the glass divider.

34. I have also considered the strata's investigation of Mr. Sadeghvishkaei's complaints. I find the strata reasonably responded to his complaints by bringing them to his neighbour's attention in writing. After reviewing the video evidence and speaking with the neighbour and the A227 resident, the strata reasonably concluded there was no bylaw breach. The strata also arranged for a strata council member to physically investigate the hallway outside the neighbour's strata lot in response to a specific complaint, which did not result in confirmation of any smoke.
35. In summary, I find the strata acted reasonably in addressing Mr. Sadeghvishkaei's complaints. I also find that Mr. Sadeghvishkaei has not proved his neighbour was smoking on his balcony or in his strata lot. Accordingly, I find the neighbour has not breached the strata's no smoking bylaw.
36. In the absence of any proven smoke, I do not need to consider Mr. Sadeghvishkaei's submissions about Code violations or air quality. I dismiss Mr. Sadeghvishkaei's claims and this dispute.

CRT FEES AND EXPENSES

37. 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. The strata is the successful party but did not pay CRT fees or claim dispute-related expenses. Therefore, I order none.
38. Under section 189.4 of the SPA, the strata may not charge any dispute-related expenses against Mr. Sadeghvishkaei.

ORDER

39. I dismiss Mr. Sadeghvishkai's claims and this dispute.

J. Garth Cambrey, Vice Chair

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Amendment Note: Paragraph 2 and the citation were amended to correct an inadvertent typographical error in the respondent's name under authority of section 64 of the *Civil Resolution Tribunal Act*.