



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Baxter v. The Owners, Strata Plan BCS 3128*, 2023 BCCRT 559

B E T W E E N :

RICHARD BAXTER

APPLICANT

A N D :

The Owners, Strata Plan BCS 3128

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Richard Baxter, co-owns strata lot 40 in the respondent strata corporation, The Owners, Strata Plan BCS 3128 (strata). The strata refused to give Mr. Baxter permission to replace carpet with laminate flooring in his 2 bedrooms. Mr.

Baxter wants an order that the strata council approve his request. Mr. Baxter represents himself.

2. The strata says its decision to deny Mr. Baxter's alteration request was made in accordance with its bylaws and based on valid concerns about noise transmission in the wood-framed building. The strata says I should dismiss the claim. The strata is represented by a council member.
3. As I explain below, I find the strata's decision was made in accordance with its bylaws and was not significantly unfair to Mr. Baxter, so I dismiss his claim.

JURISDICTION AND PROCEDURE

4. 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.
5. 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. Based on the evidence and submissions provided, I am satisfied that I can fairly decide this dispute without an oral hearing.
6. 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 the parties and witnesses questions of and inform itself in any other way it considers appropriate.
7. 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.

ISSUE

8. The issue in this dispute is whether the strata's denial of Mr. Baxter's alteration request was contrary to its bylaws or significantly unfair to Mr. Baxter.

EVIDENCE AND ANALYSIS

9. As the applicant in this civil proceeding, Mr. Baxter must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
10. The strata was created in 2008 and includes 56 strata lots in a 4-level building. Mr. Baxter purchased strata lot 40 on the third floor in February 2021.
11. In July 2022, Mr. Baxter submitted an alteration approval request to replace carpets with laminate flooring in his 2 bedrooms. He provided the strata with his contractor's information and a specification sheet for the underlay he planned to install, which had an impact insulation class (IIC) rating of 77 and a sound transmission class (STC) rating of 76.
12. The strata council met in August 2022 and decided not to approve Mr. Baxter's request. The reason, as stated by the strata manager in a September 7, 2022 email, was that council believed that carpet removal would likely increase noise transmission and could create future noise complaints. Mr. Baxter requested a hearing, which was held on September 21, 2022. The strata council did not change its decision.
13. I turn to the relevant bylaws. The strata filed a complete set of bylaws in the Land Title Office in June 2021, and the parties agree that these are the bylaws applicable to this dispute. Bylaw 6(a) says that owners must obtain the strata's written approval before altering a strata lot in certain ways, including altering the parts of the strata lot that the strata must insure under section 149 of the *Strata Property Act*. That includes original fixtures built or installed on a strata lot by the owner developer, which may include the bedroom carpet. Bylaw 6(b) says the strata must not unreasonably withhold its approval.

14. Bylaw 41 is specific to hard-surface flooring. It says:

An Owner shall not be permitted to install additional hardwood or laminate flooring or tiling beyond what the developer installed originally if they reside above the first floor units without written permission from Council.

15. There is a potential conflict between bylaw 6 and bylaw 41. Bylaw 6 says that owners are entitled to alter their strata lots, provided they obtain the strata's approval, which the strata must not unreasonably withhold. In contrast, bylaw 41 prohibits owners from installing hard surface flooring unless they obtain the strata's permission. Unlike bylaw 6, bylaw 41 does not include the requirement that the strata must not unreasonably withhold permission.

16. In submissions, the parties referred to bylaw 41 but not bylaw 6, so I take both parties' positions to be that bylaw 41 is the applicable bylaw. I agree. Under the *Interpretation Act*, a strata bylaw is a regulation and is thus subject to the principles of statutory interpretation. One such principle is that where 2 provisions potentially conflict, the more specific provision generally overrides the more general one (see *B.L.S. v D.J.S.*, 2022 BCSC 764, at paragraph 64). Applying that principle here, I find that the owners intended the strata to have broad discretion to refuse permission when an alteration involves replacing carpet with hard-surface flooring.

17. This interpretation is consistent with other non-binding CRT decisions such as *The Owners, Strata Plan VR 211 v. Knight*, 2020 BCCRT 193 and *Quan v. The Owners, Strata Plan LMS 4582*, 2019 BCCRT 826. Although those decisions were about bylaws governing common property alterations rather than strata lot alterations, I find the principle applies equally here. That principle is that if one bylaw requires the strata not to unreasonably withhold permission, then the strata council has broad discretion when making decisions under another bylaw that omits this requirement. The reasoning is that if the owners did not want the strata council to have such broad discretion, it would have been easy to include an explicit reasonableness requirement.

18. However, that discretion is not limitless. One limit on that discretion is that section 121(1)(a) of the *Strata Property Act* (SPA) says that a bylaw is not enforceable to the extent that it contravenes the *Human Rights Code* (Code). Mr. Baxter refers to his wife's health concerns, without elaborating, as a reason for his request. He says he is willing to provide a doctor's note as evidence, should it be required. However, parties are told during the CRT's process to submit all relevant evidence. In any event, Mr. Baxter does not claim that the strata failed to accommodate his wife's disability under the Code. Further, his wife is not a party to this dispute. So, I have not considered the strata's possible duty to accommodate Mr. Baxter's wife because the issue is not before me.

19. Another limit on the strata's discretion is that strata decisions and actions cannot be significantly unfair to an owner or tenant. I consider this below.

Was the strata's refusal significantly unfair to Mr. Baxter?

20. The CRT has authority to make orders remedying a strata corporation's significantly unfair act or decision under CRTA section 123(2). That provision contains similar language to SPA section 164, which allows the BC Supreme Court to make orders remedying significantly unfair acts or decisions. The legal test for significant unfairness is the same for CRT disputes and court actions (see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113).

21. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed the legal test for significant unfairness. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner or tenant's objectively reasonable expectations are a relevant factor, but are not determinative.

22. 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 owners' expectation?
- b. Was that expectation objectively reasonable?

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

23. In the Dispute Notice, Mr. Baxter said the strata unreasonably denied his request. In submissions, Mr. Baxter says the strata has effectively taken the position that no non-ground-floor strata lots can have hard-surface flooring. He says this is contrary to bylaw 41, which does not prohibit hard-surface floors. He says the bylaw contemplates that the strata will, in some cases, grant permission to install hard-surface floors, but the strata has not explained in what cases it will do this, or how his application was deficient. I take from this that his expectation was that the strata would either approve his application or provide the standard he must meet to have his application approved.
24. I find that expectation was not reasonable. First, nothing in the SPA or the bylaws requires the strata to set out exactly what is required for hard-surface flooring approval.
25. Second, the strata had valid reasons for refusing to grant approval. The strata says the building was built with carpeted bedrooms to mitigate sound transmission through the wood-framed structure. It says Mr. Baxter's bedrooms are directly above the bedrooms of the strata lot below. The strata says the right to quiet enjoyment of the strata lots below is a primary concern for the owners. I find this a legitimate concern. Court and CRT decisions show that noise complaints and the enforcement of noise bylaws is a significant challenge for strata corporations in residential buildings. The replacement of carpet with hard-surface flooring is a common trigger for noise complaints in those disputes.
26. Mr. Baxter did not provide evidence, expert or otherwise, about whether his proposed flooring and underlay would reduce noise transmission to the same extent as the current carpet. Although he provided the underlay's IIC and STC ratings, he provided no evidence about what those ratings mean. Further, the evidence indicates that the ratings apply "with concrete condominiums" and it is unclear how the ratings apply to

a wood-framed building. Given all this, the strata's concern about noise transfer appears to be well-supported.

27. I also note that the CRT, like a court, should generally give strata councils deference when exercising discretionary power under their bylaws because they are best placed to assess what is in the best interests of the strata community (see *The Owners, Strata Plan LMS 463 v. Mak*, 2023 BCCRT 271). Applied here, I find that the strata council's decision to reject Mr. Baxter's application is entitled to deference because the strata is in the best position to balance owners' interests in improving their strata lots with owners' interests in minimizing noise transfer and disturbance.
28. Mr. Baxter points out that other non-ground-floor strata lots have hard-surface flooring in the bedrooms. His evidence includes real estate listings for at least 4 other strata lots in the building. The strata does not dispute this evidence but says it has never approved any hard-surface flooring in bedrooms, so these owners have done so in contravention of the bylaws. As there is no evidence to the contrary, I accept the strata's evidence that it has not approved hard-surface flooring in bedrooms in other strata lots. This means I find that the strata has not treated Mr. Baxter differently from other owners, for example by holding him to a different standard. In other words, the strata did not act in bad faith, or treat Mr. Baxter unfairly.
29. Mr. Baxter bought strata lot 40 knowing it had carpeted bedrooms. He knew or ought to have known that bylaw 41 existed. He does not say he had any assurance that the strata would approve his request to replace the carpets with hard-surface flooring. There is no evidence that living with carpets imposes a significant burden or hardship on him.
30. For these reasons, I find that Mr. Baxter has not shown that the strata's decision to reject his hard-surface flooring application was contrary to the strata's bylaws or significantly unfair, and I dismiss Mr. Baxter's claim.

CRT FEES AND EXPENSES

31. Based on the CRTA and the CRT's rules, as Mr. Baxter was unsuccessful I find he is not entitled to reimbursement of CRT fees. Neither party claims dispute-related expenses.
32. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mr. Baxter.

ORDERS

33. I dismiss Mr. Baxter's claims and this dispute.

Micah Carmody, Tribunal Member