



# Civil Resolution Tribunal

Date Issued: December 19, 2023

File: ST-2022-004596

Type: Strata

Civil Resolution Tribunal

Indexed as: *Midwinter v. The Owners, Strata Plan BCS 1347*, 2023 BCCRT 1117

B E T W E E N :

STEPHEN MIDWINTER

**APPLICANT**

A N D :

The Owners, Strata Plan BCS 1347

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kate Campbell

## INTRODUCTION

1. This strata property dispute is about elevator noise.
2. Stephen Midwinter owns strata lot 230 (SL230) in the strata corporation, The Owners, Strata Plan BCS 1347 (strata).

3. Mr. Midwinter is self-represented in this dispute. The strata is represented by a strata council member.
4. Mr. Midwinter has lived in SL230 since 2006. He says that since January 2020, he has been disturbed by unreasonable elevator noise, which he can hear throughout SL230. Mr. Midwinter says he has complained to the strata many times, but the strata has not resolved the problem. He says the strata has failed to properly repair and maintain the elevators.
5. Mr. Midwinter requests orders that the strata:
  - Hold a special general meeting (SGM),
  - Pay \$12,000 in damages for loss of quiet use and enjoyment of SL230,
  - Have a professional measure noise levels throughout SL230 before and after abatement work, to confirm that the final noise levels are within the guidelines from the Canada Mortgage and Housing Corporation (CMHC) and British Standard 8233 (BS8233),
  - Repair the “obsolete” elevator equipment and work with a structural engineer to mitigate the unreasonable noise,
  - Complete work recommended by Raincloud Noise and Vibration Ltd. (Raincloud), and
  - Pay \$425.60 as reimbursement for sound testing.
6. The strata says it has acted reasonably and met its duties under the *Strata Property Act* (SPA). The strata says that since Mr. Midwinter first complained about elevator noise in 2020, it has worked with contractors and engineers to resolve the problem. The strata says its contractors have conducted some repairs, and that some further repairs are pending. The strata says it is working towards modernizing the 4 elevators, as some parts are obsolete, but that it must carry out this work slowly as it may cost over \$1 million.

7. For the reasons set out below, I dismiss Mr. Midwinter's claims.

## **JURISDICTION AND PROCEDURE**

8. The Civil Resolution Tribunal (CRT) has jurisdiction (authority) over strata property claims under *Civil Resolution Tribunal Act* (CRTA) section 121. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
9. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required even where credibility is at issue. I am satisfied I can fairly decide this dispute based on the evidence and submissions provided, without an oral hearing.
10. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

### ***Anonymization Request***

11. Mr. Midwinter requested that his name be anonymized in this decision. He says his former employer had a serious "cyber security incident" in November 2022, where some of his personal information was stolen and posted on a hacker's website. Mr. Midwinter says he requests anonymity in this proceeding to try to prevent future identity theft or fraud using his personal information.
12. The strata opposes the anonymization request. It says transparency is important, and Mr. Midwinter's email, address, and phone number will not be included in the decision.
13. I place significant weight on the open court principle, as discussed in *Lipton v. The Owners*, Strata Plan VIS 4673, 2022 BCCRT 1010. Parties are generally named in CRT decisions because these are considered open proceedings. This is done to provide transparency and integrity in the justice system. The CRT generally anonymizes decisions in certain limited situations such as disputes that involve a

vulnerable party, such as a child or adult with impaired mental capacity. The CRT also anonymizes decisions in disputes that include sensitive information, such as medical issues. Other than these circumstances, the CRT generally discloses the parties' names.

14. CRT rule 9.4(2) requires the CRT to consider its "Access to Information and Privacy Policy" (Policy) when considering how to protect the privacy of parties. Page 4 of the Policy says the CRTA requires the CRT to post all final decisions on its website, but in extraordinary circumstances the CRT will not publicly identify the parties. The Policy says the CRT may anonymize a decision "if a party establishes that the need for protection of personal information outweighs the goal of transparent CRT proceedings". The Policy lists factors a tribunal member will consider when deciding to anonymize a decision. They are:
  - a. the circumstances of the case and nature of the evidence provided;
  - b. the potential impact of disclosure on the person; and
  - c. how anonymization would impact the CRT's goals of transparent decision-making processes and protection of personal information.
15. In this case, I find Mr. Midwinter provided no evidence or particulars to support his anonymization request. He provided no information about the alleged cyber security incident in November 2022, or how it relates to this proceeding. Also, he provided no information about why it makes him more vulnerable to future identity theft than most other parties to CRT disputes. For these reasons, and because of the importance of the open court principle, I deny Mr. Midwinter's anonymization request.

## **ISSUES**

16. The issues in this dispute are:
  - a. Is the elevator noise unreasonable?
  - b. If so, what remedies are appropriate?

## BACKGROUND

17. In a civil claim like this one, Mr. Midwinter, as applicant, must prove his claims on a balance of probabilities (meaning “more likely than not”). I have reviewed all the parties' evidence and submissions, but I only refer to what is necessary to explain my decision.
18. The strata was created in 2005. It consists of 2 multi-storey buildings (East and West), plus some townhomes. Both the East and West buildings have banks of elevators, which are marked as common property on the strata plan. Each building has 2 elevators. Elevators C and D are in the East building, which is where Mr. Midwinter's SL230 is located.
19. SL230 is on the 7<sup>th</sup> floor of the East building, directly below the building's roof level, where the elevator machine room is located. Mr. Midwinter says SL230's front door is located about 35 feet from the elevators.
20. Mr. Midwinter says he has lived in SL230 since 2006, and there was no elevator noise until January 2020. He says he telephoned the building manager in January 2020 to complain. The evidence shows that Mr. Midwinter repeatedly emailed the strata about elevator noise complaints, starting on July 15, 2020, and continuing until February 21, 2023.
21. Mr. Midwinter says he can hear several distinct types of elevator noise:
  - Brakes clunking,
  - Motors whining when running, and
  - Vibration and rumbling when elevator car D approaches the 7<sup>th</sup> floor.
22. He also says that since May 25, 2023, there is a new noise from the brakes dragging on elevator C.

23. Mr. Midwinter says that since January 2020, these noises have continuously woken him at night. He says the elevator noise is audible throughout SL230, and is unreasonable, annoying, and disruptive. He says it exceeds CHMC and BS8233. Mr. Midwinter says that despite calling and emailing the strata over 30 times, the strata has not resolved the problem since he first reported it in 2020.
24. The strata says that after receiving Mr. Midwinter's complaint, it promptly contacted contractors who identified elevator deficiencies and fixed them. The strata also says the only way to address the noise issue is to modernize all 4 elevators, which could cost over \$1 million. The strata says it is in the process of "commissioning multiple investigations and reports on this issue", as elevator modernization must be funded by a  $\frac{3}{4}$  ownership vote.
25. The strata says the noise readings from the elevator machine room are not the same as those in SL230. It also says it has received no other elevator noise complaints from 7<sup>th</sup> floor owners, although other strata lots are closer to the elevators than SL230. By this, I infer the strata argues that the level of elevator noise in SL230 is reasonable.

## **REASONS AND ANALYSIS**

26. The parties agree that the elevators and elevator equipment are common assets or common property that are the strata's responsibility to repair and maintain under SPA section 72.
27. The standard a strata corporation must meet in performing its duty to repair and maintain common property under SPA section 72 is reasonableness: see *Wright v. The Owners, Strata Plan #205*, 1996 CanLII 2460 (BC SC) and *Weir v. Strata Plan NW 17*, 2010 BCSC 784. The standard is not perfection. Also, the strata is entitled to prioritize its maintenance and repairs: see *Warren v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 139.
28. SPA section 72 includes a duty to remediate common property or common assets that create unreasonable noise or other nuisance: see *Chen v. The Owners, Strata Plan NW 2265*, 2017 BCCRT 113, and *Bartos et al v. The Owners, Strata Plan BCS*

2797, 2019 BCCRT 1040. These prior CRT decisions are not binding, but I find their reasoning applicable to this dispute and rely on it.

29. As explained above, Mr. Midwinter says the elevator noise in SL230 is unreasonably loud, and a nuisance. The strata disagrees, and also says it has met its duty to repair and maintain the elevators.
30. In *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502, the BC Supreme Court defined nuisance in the strata setting as a substantial, non-trivial, and unreasonable interference with use and enjoyment of property (paragraph 33).
31. The test of whether an alleged nuisance 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.
32. Based on the evidence before me, I find Mr. Midwinter has not proved that the elevator noise in SL230 is unreasonable, and therefore a nuisance.
33. I place some weight on the statement of TB and AB, who live next door to SL230. Their August 28, 2023 statement says at the beginning of 2022, they began hearing a clunking/grinding noise from elevator brakes in their bedroom, which is about 55 feet away from the elevators. They said it became gradually worse over time, and is very disturbing when they are trying to relax and sleep. They said they inquired with the strata manager and strata council multiple times, but did not get a satisfactory answer. TB and AB said the situation is unacceptable, and the noise interferes with their right to quiet enjoyment of their strata lot.
34. I find that TB and AB's statement confirms that the elevators have become more noisy over time. However, TB and AB did not comment on the noise levels in SL230, so I find their statement does not prove that the elevator noise in SL230 is unreasonable or a nuisance.

35. In making my decision, I place significant weight on 4 reports in evidence documenting elevator sound testing.

36. The first noise report is from KJA, an elevator design company the strata hired to conduct a maintenance inspection in July 2021. KJA reported:

- Compared to industry standards, the overall quality of elevator maintenance in the categories of “Performance and Operation”, “Cabs, Doors and Lobbies”, and “Machine/Control Room” was marginal rather than adequate.
- The machine noise measured in the elevator control and machine space was within expected levels. The maximum sound pressure was 74 dbA, and the expected standard is to below 80 dbA.
- The peak noise level in the machine room exceeds 80dBA during machine startup and braking. KJA recommended adjusting the brake settings to reduce the noise level.
- There could be sound transmission through the building’s structure that would resonate the machine noise to other parts of the building. Assessing this would require working with a structural engineer.
- There is excessive vibration and rumbling noise when approaching floor P (basement parking level).
- The selector is excessively noisy when travelling and should be reviewed to eliminate noise.

37. KJA recommended numerous other repairs not specifically related to noise levels.

38. The second and third elevator noise testing reports are from Raincloud. The strata hired Raincloud specifically to conduct noise testing. The testing happened in June 2022.

39. Raincloud’s June 17, 2022 report says a senior technologist conducted a site review of the elevators, and measured sound levels in SL230 and other places. The report



says the sound levels measured in SL230 were not particularly useful due to daytime activity inside and outside the building. The technologist suggested taking additional readings at night.

40. Raincloud's report says:

- The noise from the running elevator machine was not very noticeable in SL230 over the daytime ambient noise, but the "clunk" from the elevator brake was clearly audible.
- The brake noise from elevators C and D is "quite high", and reaches peak sound levels over 80 dBA in the elevator room.

41. Raincloud recommended the following steps to reduce elevator noise in SL230:

- Step 1 – review seismic braces on elevator D to see if they are necessary, and remove them if possible.
- Step 2 – adjust hemi-grommets and seismic anchors to ensure grommets can spin freely to ensure they are not pinching and creating a short circuit for vibrations. Once complete, reassess noise level to see if is acceptable. If still unacceptable, move to step 3.
- Step 3 – replace rubber isolation pads with 25 millimeter thick engineered pads made specifically for the loads at each point.

42. Raincloud provided a follow-up report dated August 24, 2022, after completing further investigations and adjustments. Raincloud reported:

- It was not possible to remove the seismic braces, but they could be loosened enough so they do not exert pressure on the steel frame of the elevator machine.

- The hemi-grommets were very tight and could not spin freely, even after the nuts were removed. The technician suspected that the holes were too small for the hemi-grommets to function as intended.
- Noise measurements taken in the elevator room showed no significant differences from previous levels.

43. Raincloud recommended:

- Lift the elevator machines to remove the existing isolation pads and grommets.
- Replace the isolation pads with 25 millimeter thick engineered elastomeric pads designed specifically for the loads at each point.
- Replace the hemi-grommets.
- If required, drill out the mounting holes of the elevator machines so that the holes are 3 millimeters larger in diameter than the sleeve of the hemi-grommet.
- Ensure that the anchor bolts are perpendicular to the floor and they are not angled in such a way that they will pinch the hemi-grommets once the elevators are put back in place.
- If any anchor bolts cannot meet this criteria, new anchors may need to be installed in a different location.

44. The third noise report in evidence is from MJM Acoustics Ltd. (MJM). Mr. Midwinter hired MJM to do sound testing in SL230. MJM's report says:

- The sound readings were taken between 16:00 and 18:00 on April 25, 2022, in SL230's kitchen, living room, and bedroom.
- In all 3 locations, there were audible spikes in ambient sound levels when the elevator was in use.

- In the kitchen, the ambient noise level was 42 dB. When the elevator was in use, the noise level average was 56.8 dB. The highest level during elevator use was 63 dB. The average level of elevator noise above the ambient sound level was 10.4 dB.
  - In the living room, the ambient noise level was 44 dB. When the elevator was in use, the noise level average was 54.4 dB. The highest level during elevator use was 56 dB.
  - In the bedroom, the ambient noise level was 43 dB. When the elevator was in use, the noise level average was 51.6 dB. The highest level during elevator use was 53 dB. The average level of elevator noise above the ambient sound level was 8.6 dB.
45. Since it is not disputed, I find that the KJA, Raincloud, and MJM reports are admissible as expert evidence under the CRT rules. I place significant weight on all these reports, with particular weight on the MJM report, since it contains the only objective, measured evidence about the noise levels in SL230.
46. As noted in prior CRT decisions, such as *Morgan v. The Owners, Strata Plan 704*, 2020 BCCRT 979, and in a CMHC publication provided in evidence by Mr. Midwinter, the CMHC recommends a maximum elevator noise level of NC 20 within residences.
47. Mr. Midwinter provided a document from “engineeringtoolbox.com” showing that Noise Criteria (NC) 20 correlates with equipment decibel levels of 25-30 dB(A). I note that MJM’s readings were in dB, not dB(A). However, I find MJM’s evidence shows that the decibel levels from elevator noise measured inside SL230 were significantly under NC 20. Specifically, the average level of elevator noise in the kitchen was 14.8 dB, the average level in the living room was 10.4 dB, and the average level in the bedroom was 8.6 dB. Similarly, even the highest elevator noise reading (with the ambient noise subtracted) was 21 dB, which is less than NC 20.
48. I find the elevator noise MJM measured inside SL230 is also under the levels set out in the British Standards Institution’s “Guidance on sound insulation and noise

reduction for buildings” (BS8233). Mr. Midwinter provided that document in evidence, and like the CMHC publication, it has been used in other CRT disputes as a guideline for elevator noise in strata buildings.

49. BS8233 says on page 32 that the maximum decibel levels due to elevator noise in a is 25 dB for a bedroom, 30 dB for a living room, and 35 for other areas. MJM's report indicates that he measured elevator noise is significantly less than these levels.
50. I note that the overall decibel levels were higher than this, but there is no expert opinion before me explaining that the CHMC NC 20 guideline, or the BS8233, should be assessed based on overall noise levels (including ambient noise), as opposed to spikes from elevator noise only. Rather, BS8233 page 32 says:

The maximum recommended noise levels within the living accommodation due to lift [elevator] operation should not exceed the values given in Table 5 [25 dBL for a bedroom]...

NOTE These figures relate solely to lift noise levels and do not account for any other noise sources.

51. Based on this information, and in the absence of contrary expert or technical evidence before me, I find the CHMC NC 20 guideline and the BS8233 guideline should be interpreted as including only elevator noise, and excluding ambient noise. Mr. Midwinter bears the burden of proof in this dispute, and I find Mr. Midwinter has not proved his assertion that the elevator noise in SL230 exceeds recommended guidelines.
52. I also place some weight on the fact that MJM did not say in its report that the elevator noise levels in SL230 were higher than any guidelines, including from the CMHC or BS8233. MJM simply measured the noise, and did not provide an opinion on how the elevator noise fit within these noise standards, or other standards such as those from the World Health Organization (WHO). Similarly, neither KJA nor Raincloud provided that opinion.

53. I find the fact that MJM, KJA, and Raincloud all reported that elevator noise was audible in SL230 does not prove that the noise levels are unreasonable, or a nuisance. Rather, I find MJM's specific measurements suggest otherwise. Also, KJA reported that the machine noise measured in the elevator control and machine space was within expected levels. KJA reported loud braking noise, but said it could be addressed by adjusting the brake settings.
54. Having weighed all the evidence before me, I find it does not establish elevator noise in SL230 is unreasonable, and a nuisance. In making this finding, I place particular weight on MJM's report, since it includes numerous measurements of sound levels inside SL230. I note that while Raincloud suggested nighttime sound testing in SL230, the strata did not act on that suggestion, and there is no evidence before me to suggest that MJM's evidence (which Mr. Midwinter provided) is inaccurate.
55. I find the evidence also shows that the strata has taken some steps to address elevator noise, including work done by Raincloud. The strata also had its regular elevator maintenance contractor, City Elevator Ltd., to investigate the noise problem in November 2021 and make adjustments. Significantly, the strata hired TK Elevator (Canada) Limited to address the deficiencies in KJA's report. This work was completed by July 13, 2021.
56. Mr. Midwinter wants the strata to do more work on the elevators. However, I find he has not proved that the strata's approach to elevator repairs was unreasonable. Again, the standard is not perfection. The strata only has a duty to make repairs that are reasonable in the circumstances: *Wright*. Determining what is reasonable may involve assessing whether a solution is good, better, or best: *Weir*. Also, an owner cannot direct the strata how to conduct its repairs: *Swan v. The Owners, Strata Plan LMS 410*, 2018 BCCRT 241.
57. Finally, I note that at the May 1, 2023 SGM, strata owners approved a  $\frac{3}{4}$  vote resolution to withdraw up to \$150,000 from the contingency reserve fund for elevator safety testing and brake repairs. Mr. Midwinter says this step is insufficient, since the repairs are contingent on the outcome of the testing. However, I find the step was

reasonable in the circumstances, and was democratically approved by the strata ownership.

58. For all of these reasons, I dismiss Mr. Midwinter's claims.

## **CRT FEES AND EXPENSES**

59. 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. It paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

60. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses to Mr. Midwinter.

## **ORDER**

61. I dismiss Mr. Midwinter's claims and this dispute.

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Kate Campbell, Tribunal Member