



Civil Resolution Tribunal

Date Issued: May 30, 2024

File: ST-2021-000846

Type: Strata

Civil Resolution Tribunal

Indexed as: *Heitner v. The Owners, Strata Plan VR 2116*, 2024 BCCRT 496

BETWEEN:

TAMARA HEITNER

APPLICANT

AND:

The Owners, Strata Plan VR 2116

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is generally about a strata corporation's alleged failure to enforce its bylaws about barbeque smoke and heat causing a nuisance and interfering with the quiet use and enjoyment of a strata lot.
2. The applicant, Tamara Heitner, is a former tenant of strata lot 21 (unit 404) in the respondent strata corporation, The Owners, Strata Plan VR 2116 (strata). Ms. Heitner

is self-represented. A strata council member represents the strata.

3. Ms. Heitner makes a number of claims against the strata that I summarize as follows:
 - a. The strata failed to investigate and enforce its bylaw about an alleged restriction to allow barbeques on balconies and patios,
 - b. The strata failed to investigate and enforce its nuisance and quiet enjoyment bylaws which caused her to:
 - i. Incur significant expenses, and
 - ii. Lose quiet use and enjoyment of 404,
 - c. The strata treated her differently than other residents because she was a tenant,
 - d. The strata failed to recognize her alleged disability, and
 - e. The strata's actions caused her landlord to evict her from 404.
4. Ms. Heitner seeks the following orders;
 - a. \$2,980.94 for the costs she incurred as a result of the strata's alleged failure to enforce its bylaws,
 - b. \$8,000.00 in damages for smoke and heat nuisance that took place,
 - c. \$25,200.00 in damages for the ongoing impact to her health and mental wellbeing,
 - d. \$5,000.00 in damages for treating her differently,
 - e. \$91,144.77 in damages as a result of her eviction, broken down as follows:
 - i. \$30,600.00 for 10 years of future increased rent payments,
 - ii. \$12,000.00 for 10 years of future transportation costs,
 - iii. \$7,392.00 for 10 years of basic cable televisions cost that was not included her rent,

- iv. \$36,000.00 for 10 years of additional stress caused by access to resource issues due to a disability, and
 - v. \$5,152.77 for moving-related expenses.
5. In submissions, Ms. Heitner claims dispute-related expenses totaling \$4,410.99 for legal fees (\$4,060.99), a doctor's note (\$50.00), and an expert opinion (\$350.00).
 6. The strata says Ms. Heitner's claims are an abuse of process. It also disagrees with all of Ms. Heitner's claims. It says it properly followed the *Strata Property Act* (SPA) and that she failed to prove any bylaws were violated or that she was treated unfairly. In summary, the strata says that Ms. Heitner has not proved her claims. The strata asks that Ms. Heitner's claims be dismissed.
 7. The strata also claims dispute-related fees of \$21,846.00 for legal fees, which Ms. Heitner disputes.
 8. As explained below, I find in favour of the strata, but I do not order payment of any legal fees for either party.

JURISDICTION AND PROCEDURE

9. 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.
10. CRTA section 11 says the CRT has discretion to refuse to resolve a claim or dispute that is otherwise within its jurisdiction. In particular, the CRT may refuse to resolve a claim under section 11(1)(a)(i) if it considers the claim or dispute would be more appropriate for another legally binding process or under section 11(1)(b) if the tribunal considers the request for resolution is an abuse of process. The CRT may exercise

its authority under section 11 at any time before the tribunal makes a final decision resolving the dispute.

11. 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. In submissions, Ms. Heitner says she requested an oral hearing and was not granted one. She also says that was able to provide written submissions even though she found it difficult to do so because of an alleged disability resulting from a 2015 concussion and neck injury, which she says makes it difficult for her focus for long periods of time, among other things. I discuss her alleged disability below, but I am satisfied that Ms. Heitner has fully explained her position.
12. Further, this dispute was started in March 2021 and has already taken significant time to reach this final adjudication stage of the CRT process. I also acknowledge the very high value Ms. Heitner places on her claims, which I have borne in mind when considering proportionality. Credibility is not a significant issue in this dispute, which I find largely turns on the documentary evidence. I am properly able to assess and weigh this documentary evidence and the written submissions before me. I find that any potential benefit of an oral hearing is outweighed by the CRT's mandate to provide economical and speedy dispute resolution. Overall, I find that an oral hearing is not necessary in the interests of justice, so I have proceeded to hear this dispute on the written submissions provided.
13. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in court.

Preliminary Issues

Amended Dispute Notice and Dispute Response

14. Ms. Heitner applied for the CRT's dispute resolution services on March 15, 2021. The Dispute Notice was issued on March 25, 2021 and the strata provided its Dispute Response on April 26, 2021. On September 14, 2021, the CRT issued an amended Dispute Notice that revised Ms. Heitner's claims and remedies. The strata provided

an amended Dispute Response on October 4, 2021. For clarity, the claims and remedies set out above are those contained in the amended Dispute Notice.

Preliminary CRT Decisions

15. The CRT issued 2 preliminary decisions in this dispute.
16. On December 30, 2021, a tribunal member considered:
 - a. Whether the CRT should refuse to resolve any of Ms. Heitner's claims under CRTA section 11(1)(a) because it would be more appropriate for another legally binding process to decide the dispute,
 - b. Whether the parties must produce additional requested documents, and
 - c. Whether the strata is represented by a lawyer without the CRT's permission, contrary to CRTA section 20.
17. The tribunal member noted that Ms. Heitner had started 2 Residential Tenancy Board (RTB) disputes against her landlord and was unsuccessful in both. In a May 7, 2021 decision, the RTB dismissed Ms. Heitner's application that she was wrongfully evicted from SL26. In a May 13, 2021 decision, the RTB dismissed Ms. Heitner's application for reimbursement of half her rent for the 7 months she had been allegedly exposed to barbecue smoke and heat. The RTB found the landlord did not interfere with Ms. Heitner's right to quiet enjoyment as set out in section 28 of the *Residential Tenancy Act* (RTA).
18. In his preliminary decision, the tribunal member acknowledged the strata's concerns about potential re-litigation of the nuisance issue in this dispute. However, he found it premature to conduct an abuse of process analysis at that time because he found the RTB decision was not final. This is because on July 5, 2021, Ms. Heitner filed a petition in the BC Supreme Court (BCSC) to judicially review the RTB decisions. So, the tribunal member paused this dispute pending the outcome of Ms. Heitner's judicial review application.
19. Given his decision to pause Ms. Heitner's claims, the tribunal member did not address whether the parties must produce additional documents or whether the strata was

represented by a lawyer contrary to CRTA section 20, so I address it here.

20. In a second CRT preliminary decision issued on July 14, 2023, the strata argued Ms. Heitner's judicial review petition had expired due to the passage of time. It asked the CRT to refuse to resolve this dispute as an abuse of process given the RTB claims were now considered final. Ms. Heitner opposed the strata's request and argued the CRT claims are different than her RTB claim for quiet enjoyment. Another tribunal member was asked to decide whether the CRT should refuse to resolve this dispute under CRTA section 11 or keep the dispute suspended under CRT rule 7.4. The tribunal member concluded on a preliminary basis only that Ms. Heitner's claims were not an abuse of process and that it was in the interests of fairness and justice to allow her claims to proceed. She also lifted the pause to allow this dispute to continue. As explained below, I agree with the tribunal member's decision that Ms. Heitner's claims are not an abuse of process and I have decided them on their merits.

The strata's use of a lawyer

21. In her submissions, Ms. Heitner comments on the strata's use of legal counsel to assist it with submissions. She says the strata was "largely represented" by a lawyer even though their lawyer is classified as a "helper" ... working in the background since the very outset...". As noted, this was as raised during the CRT's consideration of its December 30, 2021 preliminary decision but was not decided at that time. I find it necessary and helpful to decide the issue now.
22. CRTA section 20 generally requires a party to obtain CRT permission to be represented, including by a lawyer. CRT rule 1.16 also addresses representatives and helpers. A representative is someone who acts on behalf of a party, communicates directly with the CRT, and may enter into binding agreements on the party's behalf. A helper is someone who assists a party but does not represent them.
23. For strata property disputes such as this, a party does not need CRT permission to use a helper. To the extent Ms. Heitner continues to allege wrongdoing by the strata for using a lawyer to help it, I disagree. I say this because the BC Court of Appeal has found the use of a lawyer as a helper in CRT disputes is acceptable. See *The Owners, Strata Plan NW 2575 v. Booth*, 2020 BCCA 153 at paragraph 24.

24. Therefore, I find the strata's use of a lawyer as a helper in this dispute did not contravene the CRTA.

Character limit for arguments

25. CRT rule 7.3(5) generally limits the length of a party's arguments to 20,000 characters per claim. Both parties argued the other party exceeded the maximum character count. I have not considered the parties' arguments on this matter as CRT staff advised that both parties were granted extensions on their maximum character counts so, I find neither party contravened the rule.

ISSUES

26. The issues in this dispute are:

- a. Are Ms. Heitner's claims an abuse of process?
- b. Did the strata fail to investigate Ms. Heitner's complaints or enforce its bylaws?
- c. Did the strata treat Ms. Heitner significantly unfairly?
- d. Did the strata's actions cause Ms. Heitner's landlord to evict her?
- e. What is an appropriate remedy, if any?

BACKGROUND, EVIDENCE, AND ANALYSIS

27. As the applicant in a civil proceeding such as this, Ms. Heitner must prove her claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to information I find relevant to explain my decision.

28. The strata is comprised of 23 residential strata lots in a single 4-storey building. It is governed by the SPA. SL26 is located on the fourth storey near the middle of the building. The strata plan shows all balconies and patios are limited common property.

29. The strata filed a complete new set of bylaws with the Land Title Office (LTO) on

October 29, 2001 that replaced all previously registered bylaws and the Standard Bylaws under the SPA. It filed additional bylaw amendments with the LTO on February 15, 2011, but I find those amendments are not relevant. The October 2001 bylaws are applicable to this dispute. I summarize the relevant bylaws as follows.

Bylaw 4.1 says (in part) that a resident must not use a strata lot, common property, or limited common property in a way that:

- (a) causes a nuisance or hazard to another person,
- (c) unreasonably interferes with the rights of other people to use and enjoy the common property or another strata lot.

Bylaw 44.9 says in its entirety (my emphasis):

A resident must not display or erect fixtures, poles clotheslines, racks, storage sheds and similar structures permanently or temporarily on limited common property, common property or land that is a common asset. *Despite the foregoing, the placing of items on the limited common property balconies or patio areas shall be limited to free standing, self contained planter boxes or containers, summer furniture and accessories.*

30. The strata filed further amendments on April 29, 2021, after this dispute had started, that added bylaw 4.7, which permitted certain barbeques on limited common property subject to certain conditions, and replaced bylaw 44.9, which clarified the items that could be placed on limited common property. The result of the bylaw amendments were that certain barbeques were expressly permitted on patios and balconies. I find the April 2021 bylaw amendments had little impact on this dispute, as I discuss below.
31. Ms. Heitner began renting 404 in 2015. She was a tenant until about May 22, 2021, when she moved out because 404 had sold and the new owner stated they wanted to occupy it.
32. It is undisputed that Ms. Heitner began to complain of smoke and heat from neighbouring barbeques in March 2020. She first complained to her landlord who

passed on her complaints to the strata. She sometimes copied strata council members or the strata manager with her emails. By about September 2020, Ms. Heitner's communications were primarily with the strata through its strata manager.

Are Ms. Heitner's claims an abuse of process?

33. As earlier noted, the CRT issued a preliminary decision on July 14, 2023. The decision considered whether Ms. Heitner's claims in this dispute were an abuse of process given the May 13, 2021 RTB decision that found her landlord did not interfere with Ms. Heitner's right to quiet enjoyment as set out in section 28 of the RTA. The tribunal member found Ms. Heitner's claims here were not an abuse of process. I agree and adopt the tribunal member's reasoning, which I summarize below.

34. As explained by the tribunal member at paragraphs 13 and 14 of her decision:

[13] Abuse of process engages the inherent power of a court, or tribunal, to prevent the misuse of its procedure in a way that would bring the administration of justice into disrepute. It should only be applied where proceedings are exceedingly unfair, vexatious, or oppressive (see *Fontaine v. Canada (Attorney General)*, 2019 BCCA 178). Abuse of process applies the desirability for decision finality, avoiding multiple proceedings, protecting the integrity of the administration of justice, and preventing the use of other forums to challenge a judicial or administrative decision (see *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52).

[14] Abuse of process has been applied where the litigation before the court is, in essence, an attempt to relitigate a claim which has already been determined in another court, or tribunal proceeding (see *Skender v. Farley*, 2007 BCCA 629). The prior decision of the court or tribunal must be final, but the parties need not be the same.

35. The tribunal member agreed with the strata that the RTB decisions were now final based on the BCSC Rules that require a petition to be renewed within 12 months, which Ms. Heitner's petition for judicial review was not. So, the tribunal member completed a full abuse of process analysis and found Ms. Heitner was not attempting

to relitigate at the CRT the same issue decide by the RTB in its May 13, 2021 decision.

36. As the tribunal member pointed out, Ms. Heitner's RTB claim was that the barbeque smoke breached her right to quiet enjoyment under section 28 of the RTA. Her claim here is that the barbeque smoke and heat was a nuisance or hazard to her, and that it interfered with her right to use and enjoy 404. At common law, nuisance must be intolerable to an ordinary person. See *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64. In the strata context, a nuisance is a substantial, non-trivial, and unreasonable interference with the use and enjoyment of property. Whether an interference is unreasonable depends on several factors, such as its nature, severity, duration, and frequency. See *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502.
37. The tribunal member pointed out that while the test for nuisance in a strata context, and that for loss of quiet enjoyment under section 28 of the RTA are similar, the tests are not the same. The wording in each test is different. The RTB analysis was focused on the landlord's actions in addressing the smoke and heat complaints, whereas the CRT claim is focused on the strata's actions. Even though both claims are based on the same set of facts about barbeque smoke and heat, this alone does not mean the CRT claim is an abuse of process. See *Pan Afric Holdings Ltd. v. Athabasca Holdings Ltd.*, 2018 BCCA 113.
38. Further, Ms. Heitner's CRT claims are not solely about whether the barbeque smoke and heat were a nuisance. Her claims also include allegations the strata failed to reasonably investigate her complaints and enforce its bylaws. She also claims the strata acted significantly unfairly toward her because she was a tenant. Finally, Ms. Heitner claims the strata's failure to act damaged her relationship with her landlord, which in turn resulted in her eviction.
39. For these reasons, I find Ms. Heitner's claims in this dispute are not an abuse of process.

Did the strata fail to investigate Ms. Heitner's complaints or enforce its bylaws?

40. SPA section 26 requires the strata council to exercise the powers and perform the duties of the strata, which includes enforcing bylaws. The strata council is required to act reasonably when performing these duties. I have previously found that a strata corporation's duty to enforce its bylaws includes a duty to investigate alleged bylaw infractions, such as the smoke and heat complaints made by Ms. Heitner here. See for example, *Cox v. The Owners, Strata Plan BCS 4261*, 2022 BCCRT 38 and *Abanilla v. The Owners, Strata Plan LMS 739*, 2021 BCCRT 1292
41. The SPA does not set out any procedures for assessing bylaw complaints. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the BCSC stated at paragraph 52, that the SPA allows strata corporations to deal with matters of complaints for bylaw violations as it sees fit, as long as it complies with the principles of procedural fairness and its actions are not significantly unfair to any person who appears before it. In other words, the strata must be reasonable in how it assesses bylaw complaints.
42. Ms. Heitner's claims are that barbeque smoke and heat from neighbouring strata lot balconies and patios below 404 were a nuisance or hazard to her, contrary to bylaw 4.1(a), and that the smoke and heat interfered with her right to use and enjoy 404, contrary to bylaw 4.1(c). She claims the smoke and heat had a greater effect on her because of a disability she has. She also claims that bylaw 44.9, in force at the time, did not permit owners to have barbeques on their limited common property decks or patios.

Bylaw 44.9

43. I will first address bylaw 44.9. The language used in bylaw 44.9 does not expressly prohibit barbeques. The strata appears to interpret the bylaw to be about storage of items on balconies and that it did not prohibit the use of barbeques. However, the bylaw uses "place" rather than "store". Therefore, another interpretation is that the bylaw only permitted the listed items to be placed on a balcony or patio, which includes "summer furniture and accessories". So, I have also considered the interpretation of "summer furniture and accessories". I note the bylaw does not restrict

the length of time summer furniture and accessories can be used on the deck. In other words, if the item meets the definition, it can remain on the deck all year.

44. I have considered other CRT disputes involving the interpretation of similar bylaws. Several have used a definition of “furniture” found in the Merriam-Webster.com dictionary. That definition includes equipment that is necessary, useful, or desirable, such as movable articles used in readying an area, such as a balcony or patio, for occupancy or use. See for example, *Trent v. The Owners, Strata Plan EPS3454*, 2020 BCCRT 358.
45. In *Trent*, the tribunal member did a thorough review of court and CRT decisions involving an interpretation of the terms “furniture” and “patio furniture”. The tribunal member cited *Allwest International Equipment Sales Co. Ltd. v. The Owners, Strata Plan LMS4591*, 2017 BCSC 1646, where the court found all the permitted items under the applicable bylaw were readily moveable on a patio except the item in dispute (a heat pump). I agree with the reasoning in *Trent*, and subsequent CRT decisions that have found a key aspect in determining whether something is furniture is whether it is readily or reasonably moveable. See for example *Emmerton v. The Owners, Strata Plan BCS 3407*, 2022 BCCRT 872, affirmed on judicial review in 2023 BCSC 1571.
46. Here, I find there is no permanent quality to barbeques as they can be moved easily and quickly. Overall, I find the barbeques are a piece of furniture which owners can use and enjoy on their deck or patio.
47. What then about the bylaw’s use of the word “summer”? I find a plain reading of the bylaw permits furniture generally used in warmer summer months. I have already found the barbeques are furniture which can clearly be used in summer months. So, I find that barbeques meet the definition of summer furniture set out in the bylaws. As mentioned, there is no time restriction in the bylaw to limit placement of summer furniture to specific months. Therefore, I find that barbeques placed on decks and patios complied with bylaw 44.9 in force at the time of Ms. Heitner’s initial complaint.
48. The April 2021 bylaw amendments clearly permitted barbeques, so there were no issues with other owners using barbeques on their decks and patios after that date.

49. For these reasons, I dismiss Ms. Heitner's claim that barbeques were not permitted on balconies and patios.

Bylaws 4.1(a) and (c)

50. I turn now to Ms. Heitner's claim about barbeque smoke and heat. I find her allegations against the strata largely overlap with her allegations against her landlord. At times it is difficult to separate them, especially considering Ms. Heitner's earlier claims against her landlord through the RTB, which do not form part of this dispute. In any event, I find bylaws 4.1(a) and (c) both deal with nuisance. As earlier noted, *Triple P* establishes that nuisance is a substantial, non-trivial, and unreasonable interference with the use and enjoyment of property.

51. Some background detail is required. Ms. Heitner made her first formal complaint about barbeque use by the resident of 104 in March 2020 in an email to her landlord copied to the strata manager. The email complained of the barbeque being used "almost nightly" and located directly under her balcony. The evidence shows she also communicated her concerns to a strata council member at the same time and that she spoke to the 104 resident about the issue. A March 22, 2020 email from a strata council member to the strata manager states the 104 barbeque was moved away from the building, so it was no longer directly under the 404 balcony.

52. Ms. Heitner exchanged further emails with her landlord in April 2020. Most of these emails were not copied to the strata manager. Ms Heitner provided a video with one email that she says shows barbeque smoke rising up the side of the building from 104. I agree the video shows barbeque smoke, but it does show it enters 404. Ms. Heitner encouraged her landlord to address her concerns with the strata, which they did. Ms. Heitner's landlord kept her informed and advised her the strata manager said the strata was aware of the barbeque issue "but was not prepared to restrict the right of the #104 resident to use their barbeque".

53. In an April 26, 2020 email to her landlord, Ms. Heitner stated it was her landlord's responsibility to ensure the strata manager addresses her complaints. On June 5, 2020, Ms. Heitner identified the barbeque of 304 as the cause of the nuisance. Ms. Heitner's landlord requested a council hearing to discuss Ms. Heitner's concerns. The

hearing was held on June 9, 2020. At the hearing, the strata identified other unrelated issues it had with Ms. Heitner which the landlord relayed to her. The June 9, 2020 council meeting minutes include a reminder to owners about the use of barbeques, which the strata said was a first step in addressing Ms. Heitner's concerns.

54. The next piece of evidence is a July 7, 2020 email from Ms. Heitner to her landlord. In it, she requested her landlord follow up with the strata because the nuisance is ongoing. She provided a log of 8 dates and times she "had to deal with smoke" in 404 between June 22 and July 7, 2020. The log identified 104 and 304 as the alleged sources of the barbeque smoke and heat. She requested her landlord resolve the matter by July 24, 2020. In a July 11, 2020, email the landlord reviewed what had transpired and asked Ms. Heitner to mitigate the impact of the smoke suggesting she close her windows during the dinner hour. The landlord also suggested Ms. Heitner could end her month-to-month lease.
55. On July 28, 2020, Ms. Heitner advised her landlord that smoke from the 304 barbeque was again affecting her and requested they take immediate action. In a separate email, she also responded to her landlord's July 11, 2020 email, mostly reiterating her request that the landlord address her concerns with the strata and stating their mitigation suggestions were unreasonable. She also added additional entries to her earlier log from July 14 to July 26, 2020. This was also the first time she mentioned she had suffered a concussion in 2015, but she said she was "adapting". She did not say she had a disability.
56. On August 22, 2020, Ms. Heitner emailed a strata council member asking how to request a council hearing. There is no response in evidence. On September 9, 2020, Ms. Heitner sent another email to her landlord, which identified ongoing issues with barbeque smoke "almost daily", from 104, 204, 304, and 102. The landlord suggested the only way he could assist further would be to stand for the strata council at the November 2020 annual general meeting (AGM).
57. Ms. Heitner provided several photographs of a digital device that showed temperature and humidity. She claims the photographs were taken in August 2020 and represent the temperature inside 404. I accept this is true as the strata did not object to it.

However, I do not find the photographs prove Ms. Heitner's assertion that barbecues used by other residents caused the temperature to rise inside 404. Ms. Heitner also provided 9 videos in evidence. They were allegedly dated between June and August 2020. The videos were all recordings of Ms. Heitner stating she was unable to occupy her strata lot because of barbecue smoke. However, I find the videos do not prove the barbecue smoke required her to leave 404 on the alleged dates. As a result, I place no weight on the photographs and videos.

58. Ms. Heitner also provided witness statements from a person who visited 404 and the person who lived in 403. Both statements are dated in August 2020. As for the visitor, they reported that on 3 occasions, July 28, August 13, and either August 4 or 11, 2020, they experienced smoke and heat in 404 while visiting Ms. Heitner. They found it very uncomfortable even though Ms. Heitner closed windows and "turned fans around". They described the smoke as being "very difficult on the throat" and the heat as simply uncomfortable.
59. The statement from the 403 resident describes barbecue fumes entering their strata lot "with regular frequency... from a source down below". They say the effect of the smoke is only irritating for a short while if the windows are closed immediately, but if not, the fumes are trapped in the strata lot and irritate their eyes and throat. They also say they have noticed the fumes between 10:30 pm and midnight.
60. While I find the statements are consistent with and support Ms. Heitner's complaints, I am not persuaded they assist in confirming a nuisance occurred. Specifically, I find the statements provided fall short of proving the barbecue smoke entering 404 occurred frequently and for a duration to be a substantial and severe interference.
61. On September 30, 2020, Ms. Heitner wrote directly to the strata manager and a strata council member. She reiterated her nuisance issues and bylaw complaints about barbecue smoke and heat and requested they be dealt with in 10 days. This was the first time that Ms. Heitner had complained directly to the strata since March 2020. Previously, her complaints were to her landlord, which she occasionally copied to the strata manager or a strata council member.

62. Ms. Heitner insisted that her landlord deal with the strata about her complaints, which they did. I find the strata's actions when dealing with her landlord were reasonable. The strata manager said that they had canvassed other residents and found no other concerns about barbeques. That Ms. Heitner's neighbour in 403 states they were not contacted does not mean the strata acted unreasonably, as I find it was reasonable for the strata to contact some, but not all, building residents. Ms. Heitner's complaints did not include any specific ways about how the barbeque smoke and heat affected her differently than other residents and there was no explanation about why her 2015 concussion might have required additional accommodation.
63. On October 19, 2020, Ms. Heitner requested a council hearing to discuss her concerns directly with the strata. Based on another owner's concerns, the October 20, 2020 council meeting minutes again reminded owners of bylaw 4.1(a) and (c) as the June 2020 council meeting minutes did. The minutes also provided safety information when using a barbeque, including to use them away from the building.
64. Ms. Heitner's hearing was held on November 18, 2020. She attended with an advocate and provided documents that included a doctor's note dated August 13, 2020. Other than the doctor's note, which essentially says Ms. Heitner is adversely affected by barbeque smoke and heat, the documents Ms. Heitner provided are not before me. The strata council meeting minutes report the strata council did not make a decision at the hearing and that it would request further information and clarification about the doctor's note. The strata council also reported that it would investigate Ms. Heitner's complaints. It requested she notify the strata manager when she experienced further issues. Finally, the strata council reported that it would review the current barbeque bylaws and discuss potential bylaw amendments at the upcoming November 30, 2020 AGM.
65. The strata manger wrote to Ms. Heitner on November 25, 2020, in response to her hearing. The letter conveyed essentially the same information set out in the hearing minutes and requested she contact the strata manager by telephone or email when she experienced the smoke and heat concerns so they could be investigated. The letter also asked Ms. Heitner to obtain answers to 4 specific questions from Ms. Heitner's doctor. The strata said that the strata council would provide a final response

once it completed its investigation and had received her doctor's response.

66. Ms. Heitner submitted an undated log of barbeque smoke and heat complaints for the period June 22 to November 9, 2020. It includes the same entries as the earlier logs she provided to her landlord with some additional entries. I infer Ms. Heitner gave the list to the strata council after her hearing because the strata council had requested more specific details of her concerns. Further, she emailed the strata manager about barbeque smoke at 7:25 pm on December 9, 2020, and stated that having someone attend 404 without a mask during COVID-19 was not acceptable. At 10:03 pm on December 21, 2020, she sent another email about barbeque smoke. The strata admits the strata manager did not attend 404 at the time of the complaints, but it is undisputed the strata manager contacted Ms. Heitner the following mornings.
67. Ms. Heitner responded to the strata manager's November 25, 2020 letter by email on January 3, 2021. She stated that the strata had not taken any reasonable steps to investigate her complaints or enforce its nuisance bylaws. She seemed to appreciate that the strata had asked she notify the strata manager when she experienced the nuisance but felt the response time to attend 404 would be too long. There is no evidence Ms. Heitner notified the strata manager, by telephone or email, of further occurrences after December 2020.
68. As for the strata's request that specific questions be answered by her doctor, Ms. Heitner said the strata's questions about her disability were inappropriate and that all the strata needed to know was that she was home more often than she would otherwise be, so the quiet enjoyment of her strata lot was of great importance. Ms. Heitner provided another note from her doctor dated November 24, 2020, that again provided no specifics about any disability and only stated she was negatively impacted by the barbeque smoke. Based on this response, I find Ms. Heitner did not prove she had a disability that required accommodation.
69. The strata's lawyer responded to Ms. Heitner's January 3, 2021 letter on January 19, 2021. They set out the common law giving the strata discretion to enforce its bylaws and stated that access to her strata lot was necessary to properly investigate her complaints. The lawyer also said it was investigating whether Ms Heitner required

accommodation under the *BC Human Rights Code* (Code) stating that she needed to prove her disability and include information about the severity of her condition. It asked her to obtain answers to the specific questions about her disability from her doctor.

70. According to a February 3, 2021 purchase and sale agreement, Ms. Heitner's landlord sold 404 on that date. One of the conditions of sale was that the 404 owner give Ms. Heitner notice to vacate under RTA section 29 (Landlord's notice: landlord's use of property), if requested by the purchaser. As noted earlier, the sale of 404 led to Ms. Heitner receiving notice to vacate, which she did by May 22, 2021.
71. So, did the strata act reasonably in its investigation of Ms. Heitner's bylaw complaints to the strata after October 2020? I find that it did.
72. The strata responded to Ms. Heitner's request for a hearing and took steps to investigate her complaints by asking her to contact the strata manager when barbecue smoke and heat was a concern. The strata's November 25, 2020 letter asked that Ms. Heitner contact the strata by email or telephone. The evidence is that Ms. Heitner sent only 2 emails to the strata manager, and both were in the evening hours. I find it was reasonable for the strata manager to respond to her email the following day given the times the emails were sent. Ms. Heitner could have telephoned the strata manager if she wanted a more immediate response, but she chose not to do so.
73. In addition, the strata took steps to investigate Ms. Heitner's claimed disability, but she did not provide further details from her doctor until November 2021, after she moved out of 404. Even so, I agree with the strata that the doctor's letter did not prove any disability and was essentially advocating for Ms. Heitner.
74. Overall, I accept Ms. Heitner was affected by barbecue smoke, and possibly heat. However, I find there is no objective evidence that supports Ms. Heitner's assertions that the strata's nuisance bylaws were violated or that the strata unreasonably investigated her complaints. I dismiss Ms. Heitner's claim.

Did the strata treat Ms. Heitner significantly unfairly?

75. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). 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.
76. The basis of a significant unfairness claim is that a strata corporation must have acted in a way that was “burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust or inequitable.” See *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126, *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44, *King Day Holdings Ltd. v The Owners, Strata Plan LMS3851*, 2020 BCCA 342, and *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173.
77. There is simply no evidence the strata treated Ms. Heitner significantly unfairly. She has not proved that she was treated any differently than residents of other strata lots because she was a tenant. I agree the strata manager and other council members may have made inappropriate comments about her being a tenant during the time her landlord was communicating with the strata, but I do not find the strata or strata manager treated her any differently than other residents.
78. At first, Ms. Heitner insisted that her landlord address her concerns with the strata. While the landlord has obligations under the RTA, those obligations do not form part of this dispute. There is nothing in the SPA or bylaws that requires a landlord to advocate for their tenant. Rather, the SPA permits a tenant, such as Ms. Heitner, to address matters of concern directly with the strata. She eventually took that approach and I have found the strata did not act unreasonably when addressing her concerns.
79. I also find that the strata did not treat Ms. Heitner differently because of her claimed disability. While Ms. Heitner may have claimed she had a disability later in the proceedings or in submissions, the evidence is that she did not raise her alleged disability during the relevant period of this dispute. She also did not prove she had a disability that required accommodation.
80. Ms. Heitner also implies she was treated unfairly as she was not permitted to attend

an April 17, 2021 special general meeting, held to consider bylaw amendments. However, bylaw 31 states that while tenants may attend general meetings, they must leave the meeting if required to do so if a majority resolution is passed. This is what occurred at the meeting.

81. Overall, I find Ms. Heitner has not provided any objective evidence to support her claims of significant unfairness.
82. Based on this, I find the strata did not treat Ms. Heitner significantly unfairly and I dismiss this her claim.

Did the strata's actions cause Ms. Heitner's landlord to evict her?

83. I find the answer to the question is “no”.
84. Emails in evidence between Ms. Heitner and her landlord show a strained relationship existed before she started this dispute. Of note are emails the landlord sent to her detailing what had been discussed between them. I find the emails document their discussions and planned actions, likely in an effort to establish supporting evidence required for legal proceedings. As noted, Ms. Heitner's landlord advised her as early as July 2020 that she could end her tenancy in 404, which is well before she started this CRT dispute.
85. There is also evidence that Ms. Heitner's landlord had listed 404 for sale in December 2020. According to Ms. Heitner's Facebook posts, her landlord was selling 404 “because he doesn't want to deal with his responsibilities as a landlord”. There was no mention of the strata.
86. I also find that Ms. Heitner's own actions involving her RTB claims, and subsequent BCSC judicial review application caused her relationship with her landlord to deteriorate.
87. Finally, Ms Heitner relies on her claim of significant unfairness to support her claim here. However, given my conclusion about the significant unfairness claim, I find it does not assist Ms. Heitner in this claim. There is simply no evidence to support that the strata had any influence over the decision of Ms. Heitner's landlord to evict her.

That the RTB later found the eviction notice was wrongful has no bearing on strata.

88. For these reasons, I find the strata did not cause Ms. Heitner's eviction and I dismiss her claim.

Remedy

89. I have dismissed all of Ms. Heitner's claims. It follows that Ms. Heitner is not entitled to any of her requested remedies.

CRT FEES AND EXPENSES

90. 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. I find the strata was the successful party. It did not pay CRT fees, so I do not order reimbursement.

91. As noted, Ms. Heitner claims dispute-related expenses totaling \$4,410.99 for legal fees (\$4,060.99), a doctor's note (\$50.00), and an expert opinion (\$350.00). She was not successful, so I dismiss her claims for her doctor's note and expert opinion.

92. Both parties claim legal fees. The CRT will not order one party to pay to another party any fees charged by a lawyer unless there are extraordinary reasons to do so. In determining whether, and to what degree, to order fees charged by a lawyer be paid by one party to another party, the CRT may consider the factors set out in CRT Rule 9.5(3), which include the complexity of the dispute, involvement of a representative, and other factors the CRT considers appropriate. Here, I find the dispute has several aspects, but it is not overly complex. Also, neither party was represented.

93. Ms. Heitner says her disability was a serious impediment to her participation in this dispute such that she required legal assistance to organize her evidence and arguments. She also says the strata caused significant delay by arguing her CRT claims were an abuse of process and that the strata's lawyer was essentially its representative. I disagree with Ms Heitner's arguments.

94. First, she has not proved she has a disability and downplayed any potential disability

during the relevant times of this dispute. Second, I do find the strata's argument about her alleged abuse of process caused any greater delay than did her BCSC petition for judicial review of the RTB decisions. She had the ability to move the abuse of process allegations forward by taking steps move her petition forward, but she chose not to do so. Finally, I have already addressed the strata's ability to use a helper rather than a representative. The strata was not represented. For these reasons, I dismiss Ms. Heitner's claim for legal fees.

95. The strata also claims \$21,846.00 for legal fees. It relies on all of its submissions but did not provide any evidence supporting the amount it claims, such as an invoice, or why the CRT should order Ms. Heitner to pay the fees. In the absence of direct submissions and evidence, I dismiss the strata's claim for legal fees.

DECISIONS

96. I dismiss Ms. Heitner's claims and this dispute.

97. I dismiss the strata's claim for legal fees.

J. Garth Cambrey, Vice Chair