



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Sheard v. The Owners, Strata Plan NW 3033*, 2024 BCCRT 529

B E T W E E N :

LYNN SHEARD

APPLICANT

A N D :

The Owners, Strata Plan NW 3033, LUCI-ANNE ALEXANDER, and
STUART ALEXANDER

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This strata property dispute is about bylaw enforcement and noise.
2. The applicant, Lynn Sheard, owns strata lot 28 (SL28) in the respondent strata corporation, The Owners, Strata Plan NW 3033 (strata). The other individual respondents, Luci-Anne Alexander and Stuart Alexander, own strata lot 44 (SL44), which is directly above SL28.

3. Ms. Sheard says she regularly experiences unreasonable noise from SL44 and has done so for several years. She says the noises include stomping, running, jumping, heavy pounding and screaming, which she attributes to the 3 young children that reside there. Ms. Sheard has provided the strata with logs of the dates and times the noise disturbances have occurred, but she says the noises continue.
4. Ms. Sheard asks for an order that the Alexanders stop making unreasonable types and levels of noise and mitigate the noise by installing better subfloor and carpet in SL44. She places a value of \$5,000 on this requested resolution. Ms. Sheard also asks for an order that the strata enforce its noise bylaws against the Alexanders and have them install carpet which she says a previous owner removed from SL44 without authorization. Ms. Sheard represents herself.
5. The strata denies Ms. Sheard's allegations and disagrees with the relief she seeks. It says it properly enforced its bylaws, investigated the noise issue, and fined the Alexanders, who refused to cooperate. It also says Ms. Sheard's noise logs have been vague. The strata says the noise issue is between Ms. Sheard and the Alexanders. I infer the strata asks that Ms. Sheard's claims be dismissed. A strata council member represents the strata.
6. Mr. Alexander did not provide a response to the Dispute Notice. However, based on Mrs. Alexander's submissions, I find that she represents both herself and Mr. Alexander. She admits their children make noise but says they do not violate the strata's bylaws. She also disagrees that flooring was previously removed without authorization and says there is carpet in the living room. Finally, she says they have installed rugs with underlay and carpet runners to try and reduce the noise. I infer the Alexanders ask that Ms. Sheard's claims be dismissed.
7. As explained below, I order the strata to objectively investigate Ms. Sheard's noise complaints, report its findings to Ms. Sheard and the Alexanders, and take appropriate action. I refuse to resolve Ms. Sheard's claims against the Alexanders for lack of jurisdiction.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
9. CRTA section 10 says the CRT must refuse to resolve a claim that it considers to be outside the CRT's jurisdiction. A dispute that involves some issues that are outside the CRT's jurisdiction may be amended to remove those issues.
10. 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. I am satisfied an oral hearing is not required as I can fairly decide the dispute based on the written evidence and submissions provided.
11. 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.

ISSUES

12. The issues in this dispute are:
 - a. Does the CRT have jurisdiction over Ms. Sheard's claims against the Alexanders?
 - b. Did the strata sufficiently investigate Ms. Sheard's noise complaints?
 - c. If not, what is an appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil proceeding such as this, Ms. Sheard 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.
14. The strata was created in August 1990 and exists under the *Strata Property Act* (SPA). As noted, SL36, owned by Ms. Sheard, is directly below SL44, owned by the Alexanders.
15. The strata filed a complete new set of bylaws with the Land Title Office on March 3, 2023. I infer the Standard Bylaws have been repealed, so the March 2023 filed bylaws apply to this dispute. The relevant bylaws are:

Bylaw 3(1) which says, among other things, an owner, tenant, occupant or visitor must not use a strata lot in way that:

- a. Causes a nuisance to another person (3(1)(a)),
- b. Causes unreasonable noise (3(1)(b)), and
- c. Unreasonably interferes with the rights of other persons to use and enjoy another strata lot (3(1)(c)).

Bylaw 3(11) which says, among other things, an owner, tenant, or occupant must not:

- a. Use a strata lot for any purpose which involves undue noise between 10:30 pm and 7:00 am (3(11)(a)), and
- b. Make undue noise in or about a strata lot which will interfere unreasonably with any other owner, tenant, or occupant (3(11)(b)).

16. I note the strata's previous bylaws in effect on February 12, 2019, which were replaced by March 2023 bylaws, contained the same provisions about noise and nuisance.

Does the CRT have jurisdiction over Ms. Sheard's claims against the Alexanders?

17. CRTA section 121 gives the CRT jurisdiction over a claim “in respect of” the SPA and sets out the scope of the CRT’s strata property jurisdiction. The strata’s bylaws do not contain a provision that would entitle an owner to compensation from another owner for a breach of noise or nuisance bylaw. There is also no statutory provision in the SPA for one owner to claim damages from another owner for a bylaw breach. In *Alameer v. Zhang*, 2012 BCCRT 435, I determined a claim “in respect of” the SPA is one that could only proceed by relying on the SPA. I find Ms. Sheard’s claim against the Alexanders involves the use or enjoyment of a strata lot but is not a claim “in respect of” the SPA.
18. I also considered whether Ms. Sheard could address her claims against the Alexanders under the CRT’s small claims jurisdiction. However, even if Ms. Sheard sought to do so, the only relief she seeks is an injunctive order, which means an order for someone to do or stop doing something. Except for certain exceptions set out in CRTA section 118(1) that do not apply here, the CRT cannot make injunctive orders under its small claims jurisdiction. See also *Yoo v. The Owners, Strata Plan BCS 1293*, 2021 BCCRT 1332 for further analysis on the CRT’s jurisdiction.
19. On this basis, I refuse to resolve Ms. Sheard’s claims against the Alexanders under CRTA section 10.

Did the strata sufficiently investigate Ms. Sheard's noise complaints?

20. I turn now to Ms. Sheard’s claim against the strata. SPA section 26 requires the strata council to exercise the strata’s powers and perform its duties, which includes enforcing bylaws. When performing 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.

21. I have previously found that a strata corporation's duty to enforce its bylaws includes a duty to investigate alleged bylaw infractions, such as noise complaints. 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.
22. The SPA does not set out any procedures for assessing bylaw complaints. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the BC Supreme Court stated 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 (paragraph 52).
23. There is also nothing in the SPA that addresses nuisance, which is what the noise complaints are. The leading case on nuisance in a strata corporation context is *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502. In *Triple P*, the court found that nuisance 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.
24. In this dispute, Ms. Sheard submitted logs of the dates and times the alleged noises occurred. In April 2021, the strata wrote to her and asked that she continue to submit logs and to include the dates, times, and duration of the noises. I have reviewed the logs and note Ms. Sheard generally describes the noises as "running, jumping, banging" or "heavy running and stomping". Some logs describe pounding, knocking, and screaming. Most occur between 7:00 am and 10:30 pm as Mrs. Alexander states, but the frequency is alleged to be several times a day, which Mrs. Alexander denies. As for duration, there are some notes that say the noise lasted for "30 – 60" seconds and others that show a duration of a 2 – 5 minutes.
25. On May 14, 2021, the strata fined the Alexanders \$50 for noise violations. In their response to the strata's fine, the Alexanders said they were not provided with specifics of the alleged noise violations. They also said they had replaced the rug in their children's bedroom with "increased" underlay and spent about \$500 to try and

accommodate Ms. Sheard. They expressed willingness to seek a collaborative solution but requested further details on the alleged noise infractions.

26. On May 25, 2021, Ms. Sheard emailed the strata to say the noises continued an average of 4 – 6 times per week and for an average duration of at least 20 minutes, although she said there were loud bangs, crashes, stomping and screaming for between 5 – 10 minutes. She said at times, the children were “running and jumping, screaming and pounding on the floor, quite often for a full hour” and routinely between 4:00 and 7:00 pm.
27. Ms. Sheard submits the noises did not cease and that she did not continually provide noise logs to the strata because she thought the strata was dealing with the issue. The next items of evidence are logs of further noises from February 11 to 23, 2022, which I understand she provided to the strata. The logs show the same noises were occurring with similar frequency and duration. The next logs Ms. Sheard provided were dated February through April 2023. They contained the same information.
28. On April 14, 2023, the strata asked the Alexanders to install carpet in SL44. There is no response in evidence, but the strata says the Alexanders refused. As the strata correctly notes, the strata does not have a hard flooring bylaw restriction.
29. Ms. Sheard was clearly affected by the noise coming from SL44 as evidenced by the number of times she wrote to the strata and the noise logs she prepared. But that does not mean the noises were unreasonable.
30. As noted, the strata has an obligation to reasonably investigate bylaw complaints. Here, the strata made no effort to investigate the noise complaints. While it requested the Alexanders take steps to mitigate the noise it did not pursue any objective interpretation of Ms. Sheard’s noise complaints. For example, it did not attend either strata lot to witness the noise issues firsthand. While the strata looked into engaging a professional sound engineer, it apparently found the expense unwarranted, so it did not proceed to retain the engineer. The strata also sought legal advice as to how to address the issue, but it did not communicate that advice to either Ms. Sheard or the Alexanders.

31. Instead, the strata simply asked the Alexanders to install carpet in SL44, and when they declined, it took the position that the issue was between the owners. On this basis, I find the strata's actions were unreasonable and contrary to its obligation to objectively investigate the bylaw complaints.

What is an appropriate remedy?

32. I decline to order Ms. Sheard's requested remedies as there is no proof the noises are unreasonable such that they violate the strata's bylaws. However, given my conclusion the strata's investigation of her noise complaints was unreasonable, I find it appropriate to order the strata to complete an investigation. The strata must take an objective approach to investigating Ms. Sheard's noise complaints. This could involve strata council members attending SL28 and SL44 to conduct noise tests or the strata could retain a professional engineer familiar with sound transmission to conduct a noise transmission test. I will allow the strata 90 days to complete its investigation to give it adequate time to seek approval of its owners for any necessary expense.
33. The strata must give as much advance written notice of the test as possible to Ms. Sheard, to include details of how the investigation will be completed. The strata must immediately provide Ms. Sheard and the Alexanders with written results of its investigation, including a copy of the engineer's sound test report if one is obtained. Finally, the strata must take appropriate action within a reasonable time based on the results of its investigation.

CRT FEES AND EXPENSES

34. 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. Ms. Sheard was partially successful and paid \$225.00 in CRT fees. The strata did not pay CRT fees. I find it appropriate to order the strata to pay Ms. Sheard ½ of her CRT fees, or \$112.50.

35. Ms. Sheard also claimed \$22.72 in dispute-related expenses for registered mail used to serve the Dispute Notice. The strata did not claim dispute related expenses. I order the strata to pay Ms. Sheard ½ of her expenses, or \$11.36.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Sheard.

DECISION AND ORDERS

37. I refuse to resolve Ms. Sheard's claims against the Alexanders under CRTA section 10.
38. I order that the strata must:
- a. Within 30 days of this decision, reimburse Ms. Sheard a total of \$123.86 broken down as follows:
 - i. \$112.50 for CRT fees, and
 - ii. \$11.36 for dispute related expenses.
 - b. Within 90 days of the date of this decision, investigate Ms. Sheard's noise complaints, on an objective basis, to determine if the noises from SL44 comply with bylaws 3(1) and 3(11), and enforce the bylaws if it finds the noises do not comply with the bylaws. The strata must immediately convey the findings of its investigation to Ms. Sheard and the Alexanders in writing, and include a copy of the engineer's report, if one is obtained.
39. Ms. Sheard is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.

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

J. Garth Cambrey, Vice Chair