



Civil Resolution Tribunal

Date Issued: August 12, 2024

Files: ST-2023-006875
and ST-2023-011616

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Civil Resolution Tribunal

Indexed as: *Madani v. The Owners, Strata Plan EPS6725*, 2024 BCCRT 764

B E T W E E N :

FLOR MADANI

APPLICANT

A N D :

The Owners, Strata Plan EPS6725

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Flor Madani, owns strata lot 2 (SL2) in the respondent strata corporation, The Owners, Strata Plan EPS6725 (strata). SL2 has two levels. Its lower level is directly above the common property garbage room. Dispute ST-2023-006875

is about garbage compactor noise. SL2's upper level is on the same level as the common property gym. Dispute ST-2023-011616 is about gym use noise. As the two disputes involve the same parties and similar issues, I have issued one decision.

2. In the Dispute Notices, Mrs. Madani indicated that each of her two claims had a value of \$5,000. However, she does not seek compensatory damages. Instead, Mrs. Madani wants the strata to turn off the garbage compactor, which she says was not designed for use inside a residential building. As for the gym, Mrs. Madani wants the strata to remove the free weights. Alternatively, she wants the strata to improve signage, enforce its bylaws and rules, and hire an acoustic engineer to assess the noise and make recommendations. Mrs. Madani is represented by a non-lawyer friend, EM.
3. The strata opposes most of the remedies. It says owners are entitled to use the garbage compactor and free weights. It says it will continue to investigate the noise complaints, but so far Mrs. Madani has not cooperated with its investigation. A council member represents the strata.

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). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. The CRT must act fairly and follow the law. It must also recognize any relationships between parties that will likely continue after the CRT process has ended.
5. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.
6. The CRT conducts most hearings by written submissions, but it has discretion to decide the format of the hearing, including by telephone or videoconference. Here, both parties allege that the other has provided misleading or unsupported evidence. While credibility issues can in some cases be resolved by an oral hearing, the

advantages of an oral hearing must be balanced against the CRT's mandate to resolve disputes in an accessible, speedy, economical, informal and flexible manner. This includes a consideration of what questions turn on credibility, the importance of those questions, and the extent to which cross-examination may assist in answering those questions (see *Downing v. Strata Plan VR2356*, 2023 BCCA 100, at paragraph 47). I find the parties' general allegations about truthfulness mostly relate to matters that are not central to this dispute given the requested remedies. For example, the extent to which either party was responsible for delays in investigating Mrs. Madani's noise complaints is not central because Mrs. Madani does not ask for compensation related to the delay or the duration of noise she has endured. For these reasons, given the CRT's mandate, I decided that the benefit of an oral hearing does not outweigh the efficiency of a hearing by written submissions.

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. In both claims, Mrs. Madani says I should impose a fine against the strata. I cannot impose fines because the SPA and the CRTA do not give the CRT the authority to impose fines against strata corporations.
8. Mrs. Madani's evidence includes a document titled "costs for claim against strata". That document lists CRT fees paid, interest costs for an unidentified loan, and what appears to be the wage cost of various working shifts Mrs. Madani missed. Mrs. Madani does not explain the document. She did not clearly articulate any claim for compensation for lost wages or loan interest in the Dispute Notice or in her submissions. I find it would be procedurally unfair to consider these potential claims or remedies, so I have not addressed them here.

ISSUES

9. The issues in this dispute are:
 - a. Is there unreasonable noise in SL2 from either the garbage compactor or the gym?

b. What remedies, if any, are appropriate?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Mrs. Madani must prove her 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.
11. The strata was created in 2021 and includes 329 strata lots. Mrs. Madani bought SL2 in January 2022. The strata filed a complete set of bylaws in December 2021. Subsequent amendments are not relevant to this dispute.
12. The strata's bylaw 1.3(1) says in part that residents and visitors must not use common property, which includes the gym and garbage room, in a way that causes a nuisance or disturbance to another person, causes unreasonable noise, or unreasonably interferes with another person's use and enjoyment of their strata lot. In the context of Mrs. Madani's noise complaints, I find the bylaw means that the strata cannot allow use of the gym or garbage compactor in a way that makes noise in SL2 that an ordinary person would consider intolerable. This does not mean Mrs. Madani can expect silence in her strata lot at all times. She acknowledges this in her submissions.
13. Section 26 of the *Strata Property Act* (SPA) requires the strata council to exercise the powers and perform the duties of the strata, which include enforcing bylaws. The strata council is required to act reasonably when carrying out these duties, and this includes a duty to investigate alleged bylaw contraventions, such as noise complaints.

Garbage compactor noise

14. The strata plan shows that the garbage room is on level P1, below SL2's lower floor. I accept the strata's undisputed evidence that the developer installed the garbage compactor in the garbage room before the strata council was established. It is undisputed that the garbage room's ceiling is insulated with spray-foam fireproofing that is not specifically designed to reduce sound transmission.

15. Mrs. Madani's emails indicate that she noticed garbage compactor noise in early 2023 as more people moved into the strata. The compactor's cycle takes about a minute to complete after a user pushes the start button. Mrs. Madani says the compactor is used through the day, and "almost constantly" after 6 pm.
16. Mrs. Madani first complained to the strata about compactor noise in April 2023. In response, the strata decided to turn the compactor off between 10 pm and 8 am. Mrs. Madani says this has helped, but on at least one holiday when there was no concierge working, the compactor was left on and used at night. Also, Mrs. Madani is a shift worker and sometimes must sleep during the day. Mrs. Madani says the compactor noise disrupts her sleep and causes stress-related issues, including headaches and fatigue that have caused her to miss work.
17. On June 12, 2023, Mrs. Madani requested a council hearing. Following the June 26 hearing, council told Mrs. Madani that it would take two actions. One was to contact the compactor supplier and servicer, Metro Compactor Service Inc., to inquire about improvements or alternative motors, insulated housing, or other modifications to reduce noise. There is no evidence that the strata did this. The strata says it needs to confirm the noise is unreasonable before proceeding with modifications. The second commitment was that several council members would attend SL2 to hear the compactor noise. This informal noise testing happened, but not until November, so I return to it below.
18. Also in June 2023, the strata obtained a proposal from BAP Acoustics to assess the compactor noise. BAP proposed to attend SL2 to measure background noise and noise when the compactor was operating. BAP would then compare the noise to published guidance. In February 2024, the parties discussed scheduling the BAP assessment, but stalled arguing over the assessment's parameters and timing. As of submissions, no noise assessment had been scheduled.
19. Mrs. Madani points out that the strata has a duty under SPA section 72 and bylaw 2.1 to repair and maintain common property and common assets, which includes the garbage compactor. This means keeping the compactor in a state of good repair.

However, the evidence does not support Mrs. Madani's assertion that the strata has refused to repair the compactor. Periodically in 2023, Mrs. Madani complained to the strata that the compactor noise and vibration had worsened. The strata had Metro attend multiple times to repair the compactor. There is no evidence that the compactor noise is the result of being poorly maintained or repaired.

20. Next, Mrs. Madani argues that the compactor is an industrial or commercial model that does not belong in a residential strata building. She relies on a screen capture of Metro's website, which lists only two compactors under the heading "Residential and Highrise Products". I accept that the compactor at issue here is not one of those two compactors. However, that does not mean the compactor is not suitable for residential use. Similarly, Mrs. Madani argues that because the garbage room does not have insulation designed to reduce sound transmission, it contravenes the BC Building Code. I find both of these assertions are technical in nature and require expert evidence to prove, which Mrs. Madani has not provided. In any event, the central question to be answered is not whether the compactor is designed for a residential setting or whether the garbage room complies with the Building Code, but whether the compactor noise in SL2 is intolerable to an ordinary person.
21. On November 14, 2023, three council members attended SL2 to carry out an informal noise survey. They prepared a detailed report of their observations. The strata used an iPad and a sound level meter app that is supposed to be accurate to +/- 2 decibels (dB). I find the measurements are not definitive given the equipment used and given that strata council are not acoustic experts. That said, the observations provide useful context.
22. The strata measured sound in the kitchen, powder room and the upper-floor primary bedroom. The testing took place in the afternoon, so background noise was relatively high (e.g., 57.5 dBA in the bedroom). In general, there was a relatively small increase in average noise levels when the compactor was operating (0.5 dBA in the kitchen, 2.9 dBA in the powder room, and 1.1 dBA in the bedroom). The peak noise levels did not show a consistent pattern.

23. Subjectively, council member TP said they had to “listen hard” to distinguish the compactor from other sounds, such as traffic noise. Council member AC said the compactor noise was low, like a hummingbird flying by, and said that they had to stay silent and not breathe to hear the noise. AC could not hear the compactor noise at all in bedroom or powder room. EO said they did not find the noise distressing. They said it was more like white noise, and the street noise was more significant.
24. The strata says that as a result of its November 14 assessment, council's view was that the compactor was not creating unreasonable noise in SL2, but that the appropriate next step in its investigation was to have acoustic engineer conduct an objective assessment.
25. On the evidence, Mrs. Madani has not shown that the compactor noise in SL2 is something an ordinary person would not tolerate. She has not provided any expert evidence about the noise, or any of her own noise measurements or recordings of the noise. That said, the strata still has a duty to reasonably investigate her noise complaints. This informs the remedy I order below.

Remedy for garbage compactor noise

26. In the Dispute Notice, Mrs. Madani sought an order that the strata turn off the garbage compactor entirely. She says the compactor is non-essential and can be replaced by bins without any impact on residents. Mrs. Madani likens the compactor to a hot tub that the CRT ordered a strata corporation to turn off until a professional determined that the hot tub noise in the owner's strata lot was reasonable (see *Chen v. The Owners, Strata Plan NW 2265*, 2017 BCCRT 113). However, I find the compactor is more essential than a hot tub. Council member EO's statement indicates that when the compactor has been briefly shut down in the past, garbage accumulates quickly, eventually piling on the floor of the garbage room. This is supported by emails and photos. Further, there is no evidence before me that replacing the compactor with bins as Mrs. Madani suggests is feasible.
27. In submissions, Mrs. Madani says the compactor should be turned off until after the strata obtains an objective assessment of the noise, similar to the order in *Chen*. The

strata submits that any remedies other than shutting off the compactor are not properly before me because they were not articulated in the Dispute Notice. I disagree. The Dispute Notice mentioned that Mrs. Madani requested a professional assessment at a council hearing, so the strata cannot say it is caught by surprise. The strata has been contemplating a professional noise assessment since June 2023. Further, CRTA section 123(2) says I may make any order necessary to prevent or remedy a significantly unfair action. I find Mrs. Madani has an objectively reasonable expectation that the strata will obtain this professional noise assessment because it has been saying it will do so since at least February 2024, even after the council members reported that the noise was not significant. I find it would be significantly unfair for the strata to now refuse to follow through. So, to assist the parties, I will order the strata to complete the independent noise assessment.

28. Mrs. Madani says BAP's noise assessment proposal is not "for a proper acoustic assessment" for various reasons. For example, Mrs. Madani wants sound transmission ratings assessed and mitigation solutions provided, among other things. However, it is reasonable for the strata to first want an objective assessment of the noise in SL2. Owners are not entitled to dictate the strata's investigation process (see, e.g., *Konrad v. The Owners, Strata Plan EPS 4098*, 2024 BCCRT 661, at paragraph 43). Further, the strata is not held to a standard of perfection when investigating noise complaints.

29. In general, the strata has discretion about the scope, parameters and timing its investigation, in consultation with its chosen professional. In that respect, the strata's submission that it has no control or influence over the professional's scope of work is confusing. The only specific parameter about which I find an order is warranted here is the timing of the assessment of background noise. The timing was a significant point of contention between the parties, but I accept Mrs. Madani's undisputed evidence that the background noise in SL2 is lower in the evening. I find an assessment in that includes background noise in the evening is important so that strata can consider the relative loudness of the compactor in SL2 in the evening. This will help the strata determine whether the noise contravenes its bylaws. So, I have

included the requirement to include evening background noise assessment in my order at the end of this decision.

Gym noise

30. The strata's common property gym is on the second floor, which corresponds to the upper floor of SL2 and Mrs. Madani's primary bedroom. The gym does not share any walls with SL2. They are separated by a common property corridor. The gym opens at 6:30 am and closes at 10 pm. The gym equipment includes dumbbells up to 50 lbs, barbells, and plates up to 45 lbs that can be loaded onto the barbells. Mrs. Madani says that when residents drop the weights or place them heavily on the gym's floor, she hears a loud thump and vibration in her bedroom.
31. Mrs. Madani says she began hearing thumping noises in March 2023. By August 15, 2023, she determined that the gym was the source, and she began filing noise complaints. On September 25, the strata put up signs reminding people not to drop weights.
32. On October 12, 2023, the strata conducted informal noise tests that involved having Mrs. Madani, council members and staff in SL2 while another council member dropped weights on the gym floor with and without 40 mm "drop pads". The drop pads were undisputedly effective in reducing sound transmission.
33. At some point after that, the strata installed 8 mm rubber floor tiles over parts of the gym floor. On October 17, 2023, the strata manager sent a notice to all owners asking gym users to use the "designated mats" when they must drop weights, to minimize sound transmission to nearby strata lots. I note this instruction appears to conflict with the strata's rule 3.10, which prohibits gym users from dropping weights.
34. Mrs. Madani did not find the changes effective. On October 23, 2023, council held a hearing with Mrs. Madani about the mats. She wanted thicker rubber mats with more extensive floor coverage and a sign that weights can only be used on the mats.
35. In January 2024, the strata expanded the area covered by 8 mm rubber floor tiles. However, photos show that there are still areas of exposed floor near the weights.

36. Is the gym noise unreasonable in SL2? Mrs. Madani submitted a noise log, but the entries only provide the dates she heard gym noise. They do not describe the noise, or how long it lasted or how many times it repeated. There are texts with another owner who also complained about gym noise in November 2023, showing that the noise has disturbed at least one other person on at least one occasion. Mrs. Madani has not submitted any noise measurements. The only measurements in the evidence were taken with weights dropped on the bare floor, before the 8 mm mats were in place. In all, I find Mrs. Madani has not proven unreasonable noise from the gym. That said, the strata still has a duty to reasonably investigate her complaints, which informs the remedy I order below.
37. In February 2024, council began attempting to schedule a noise assessment with BAP Acoustics and Mrs. Madani. As of submissions, there had been no noise assessment. Like with the compactor noise assessment, each party blames the other for the delay. However, for the gym noise assessment, the parties appear to agree on the assessment's methods and scope.

Remedy for gym noise

38. Mrs. Madani requests three remedies related to gym noise. The first is for the strata to remove the free weights from the gym. I will not make that order for two reasons. The first is that Mrs. Madani has not proven that the gym noise is something an ordinary person would not tolerate. The second is that it would unfairly impact other residents who use the free weights without dropping them.
39. The second remedy Mrs. Madani wants is for the strata to improve signage in the gym and enforce the strata's bylaws and rules. I find from photos that the signage is adequate. Mrs. Madani does not say what further signage she wants or how it would help. So, I decline to make any orders about signage.
40. I find that ordering the strata to enforce its noise bylaws and gym rules would serve no purpose because the strata is already required to do those things. This includes bylaw 1(3)(1) prohibiting unreasonable noise. It also includes rule 3.10, which says "Do not drop weights". This means that any exercise where a weight is intentionally

dropped to the ground at the end of a repetition or set contravenes the rules. I raise this only for the strata to consider whether this rule precludes certain exercises and whether the gym should have drop pads at all.

41. Mrs. Madani's third requested remedy is for an acoustic engineer to conduct acoustic assessment of the gym noise. The strata appears to agree, as it has attempted to schedule this assessment with BAP.
42. Mrs. Madani also wants me to order the strata to complete all recommendations in that report. I find that such an order would be premature. It is not known what recommendations, if any, the professional will make, and there may be a range of options with different costs and different expected improvements. It is up to the strata to decide which recommendations, if any, to implement. The strata is required to act reasonably when doing so.
43. Mrs. Madani is concerned that BAP's assessment will not be objective, so she asks that EM be allowed to observe the testing with her. The strata objects, largely because of previous scheduling difficulty with EM. I find Mrs. Madani's concerns about unfairness in the assessment are speculative and not supported by the evidence. Further, given the scheduling difficulty that has arisen because EM does not live in the same city as Mrs. Madani, I decline to order the strata to accommodate EM's attendance.

CRT FEES AND EXPENSES

44. As Mrs. Madani was partially successful in this dispute, in accordance with the CRTA and the CRT's rules, I find she is entitled to reimbursement of \$187.50 for half her paid \$375 in CRT fees. The strata did not pay CRT fees or claim dispute-related expenses.
45. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mrs. Madani.

ORDERS

46. If it has not already done so, then the strata must:

- a. Arrange for a qualified acoustic professional, such as BAP, to attend SL2 and assess garbage compactor noise at the strata's expense and within 60 days of the date of this order. The strata must ask the professional to prepare a written report to help the strata determine whether the noise is objectively reasonable. The report must assess background noise in SL2 in the evening (sometime between 6 pm and 10 pm), and
- b. Arrange for a qualified acoustic professional, such as BAP, to attend SL2 and assess gym weight-dropping noise at the strata's expense and within 60 days of the date of this order. The strata must ask the professional to prepare a written report to help the strata determine whether the noise is objectively reasonable.

47. The strata must give Mrs. Madani a copy of each report within 14 days of receipt.

48. Within 21 days, I order the strata to pay Mrs. Madani \$187.50 in CRT fees.

49. Mrs. Madani is entitled to post-judgment interest, as applicable.

50. This is a validated decision and order. Under CRTA section 57, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Once filed, a CRT order has the same force and effect as a court order.

Micah Carmody, Tribunal Member