



Civil Resolution Tribunal

Date Issued: August 22, 2024

File: ST-2023-003404

Type: Strata

Civil Resolution Tribunal

Indexed as: *Duddy v. The Owners, Strata Plan BCS 1162*, 2024 BCCRT 807

BETWEEN:

HAZEL KATHLEEN DUDDY

APPLICANT

AND:

The Owners, Strata Plan BCS 1162

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about ongoing noise complaints in a strata corporation.
2. Hazel Kathleen Duddy is a tenant in unit 101 of the strata corporation, The Owners, Strata Plan BC 1162 (strata). Ms. Duddy says the strata has treated her significantly

unfairly by failing to properly respond to, investigate and resolve her complaints about excessive noise coming from unit 201 above her.

3. Ms. Duddy seeks orders that the strata:
 - a. Respond to her complaint letters within 1 calendar week,
 - b. Obtain medical documents from unit 201's tenant about the tenant's child's medical diagnosis,
 - c. Enter into unit 201 to assess if there is a rug in the child's room and whether the carpeting and underlay in unit 201 meet "current codes",
 - d. Hire an engineer to conduct noise transfer testing between unit 201 and unit 101, and
 - e. Pay \$5,000 in damages for handling her noise complaints in a significantly unfair manner.
4. The strata says that it dealt with Ms. Duddy's noise complaints properly and did not treat her significantly unfairly. It says that it had a duty to accommodate unit 201's tenant's child's diagnosed disability under the British Columbia *Human Rights Code* (Code) and enforced its bylaws against unit 201 to the extent it could under the circumstances.
5. Ms. Duddy represents herself. A strata council member represents the strata.

JURISDICTION AND PROCEDURE

6. 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.

7. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and that an oral hearing is not necessary.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court.
9. 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.

Preliminary Issues

10. First, Ms. Duddy submitted 4 video files that I was unable to open. From Ms. Duddy's description of these files, it is clear that these files were submitted to show examples of the noise that Ms. Duddy experiences and believes is unreasonable, in breach of the strata's bylaws. Ms. Duddy submitted other similar videos that I was able to open. Given that there are similar videos that I was able to view and since the strata does not specifically dispute that the noise from unit 201 is unreasonable, I find I can fairly decide this dispute without seeing the 4 videos I could not open. So, bearing in mind the CRT's mandate that includes proportionality, speed, and efficiency, I have proceeded to issue this decision without viewing the 4 unopenable video files.
11. Second, as noted above, one of the remedies Ms. Duddy seeks is for the strata to have a sound engineer assess the noise transfer between units 201 and 101. During the course of this dispute, the strata hired a sound engineer and obtained a report setting out the sound engineer's findings. Since the strata has already obtained the sound engineer's report, I do not address this requested remedy any further in my decision below.
12. Finally, as noted below, the strata owns unit 101 and is Ms. Duddy's landlord. As such, Ms. Duddy may have remedies available to her under the *Residential Tenancy*

Act (RTA). The CRT does not have jurisdiction over matters under the RTA. So, my decision addresses only the strata's obligations to Ms. Duddy under the *Strata Property Act* (SPA).

ISSUES

13. The issues in this dispute are:

- a. Did the strata fail to enforce its bylaws and did it address Ms. Duddy's noise complaints in a significantly unfair manner?
- b. If so, what remedies are appropriate?

EVIDENCE AND ANALYSIS

14. As the applicant in this civil proceeding, Ms. Duddy 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 the evidence and argument that I find necessary to explain my decision.

Background

15. The strata consists of 127 residential strata lots in multiple buildings. Unit 101 is located on the ground floor with unit 201 directly above it.

16. When the strata was created in 2005, the owner developer filed bylaws amending and adding to the Standard Bylaws in the SPA. The strata has since filed further bylaw amendments with the Land Title Office. I find the bylaw amendments filed to date, along with those portions of the Standard Bylaws that have not been replaced by later amendments, are the bylaws that apply to this dispute.

17. Bylaw 3(1) says, in essence, that an owner or tenant must not use a strata lot in a way that causes a nuisance or hazard to another person, causes unreasonable noise, or unreasonably interferes with the rights of others to use and enjoy their strata lot.

18. Bylaw 3(2) says that all owners and tenants have a right to quiet and peace in their strata lot at all times, so excessive noise by any other owner, tenant, or guest is not permitted. Bylaw 3(3) says that the strata's quiet hours are between 11 pm and 8 am every day, during which time residents are expected to take special care and attention to not make noise.
19. With these bylaws in mind, I turn to the key background facts.
20. As mentioned above, Ms. Duddy lives in unit 101, which the strata owns. Unit 201's current tenants who are the subject of Ms. Duddy's noise complaints moved into unit 201 in July 2021.
21. On September 15, 2021, Ms. Duddy sent a letter to unit 201's tenant, complaining about intense noise consisting of thumping, banging, and running back and forth, especially in the evening hours. The following day, unit 201's tenant left a card for Ms. Duddy, apologizing for the noise caused by their then 4-year-old child.
22. According to Ms. Duddy, the noise continued, leading her to submit her first written complaint to the strata on October 13, 2021. In this letter, Ms. Duddy complained that the tenants in 201 continued to disturb her "down time" with thumping or stomping during tantrums, running across the unit, shouting and screaming, slamming cupboards, and jumping out of bed, waking her up in the morning. She said that the noises were not always made by the child, and sometimes lasted upwards of 2 hours.
23. In a December 21, 2021 letter, the strata told Ms. Duddy that it was "acutely aware of the excessive noise" Ms. Duddy had endured recently coming from unit 201. The strata said that based on the documentation Ms. Duddy had provided to date and comments from other residents, it had fined unit 201's tenants. The strata said that it was also attempting to contact unit 201's owner to attempt to evict the tenants. The strata asked for Ms. Duddy's continued patience and that she keep documenting all instances of excessive noise.

24. The evidence shows that the strata sent a bylaw contravention letter to unit 201's tenant on December 23, 2021, saying that it had received complaints about excessive noise.
25. After receiving the December 23, 2021 letter, unit 201's tenant requested a hearing with the strata council. During this hearing, the tenant advised that their child has a medical condition which contributes to the child making the noises Ms. Duddy complained of.
26. Ms. Duddy continued to send noise complaint letters to the strata about unit 201 in January and February 2022. On February 10, the strata emailed Ms. Duddy expressing concern about the ongoing noise from unit 201. The strata said that it was hopeful that the disturbance to Ms. Duddy would be resolved without undue delay and advised that it was consulting with legal counsel.
27. The strata received a legal opinion from its lawyer on March 1, 2022, advising that documents unit 201's tenant provided to the strata confirmed their child meets the criteria for Autism Spectrum Disorder, which the Human Rights Tribunal has confirmed is a mental disability captured by section 8 of the Code. The opinion stated that once a mental disability is established, the strata is required to accommodate. The strata's lawyer recommended that the strata work with both unit 101 and unit 201's tenants to identify creative solutions to reduce noise or change the frequency of the noise, and if these efforts failed, to take bylaw enforcement steps. The lawyer noted other options to consider included engaging an acoustical engineer to perform noise testing.
28. In a March 4 letter, the strata told Ms. Duddy that it had received a legal opinion confirming that it had a duty to accommodate unit 201's tenant's child's disability. The strata said that the legal advice placed significant limitations on the strata council moving forward and that dramatic improvements to the ongoing noise were unlikely unless unit 201's tenant decided to voluntarily move out.
29. On March 9, 2022, the strata received a proposal from BAP Acoustics (BAP) for options for sound transmission testing and noise monitoring. The strata undisputedly

did not proceed with any sound testing until February 2024, despite Ms. Duddy's continued noise complaints to the strata about unit 201. After conducting the testing in February 2024, BAP noted in its March 15, 2024 report that the partition separating units 101 and 201 were deemed fit for purpose by the City of Vancouver and the resulting sound separation was sufficient for "normal" use. BAP noted that if there were noise complaints, they were likely from impact noise resulting from hard floor finishes, low ambient noise levels, or behaviour that results in excessive noise. BAP further said that the impact insulation performance of the floor-ceiling assembly between units 101 and 201 could be "substantially improved" by installing cushioned rubber floor mats in the kitchen area and throw rugs or carpet in the solarium.

Failure to enforce bylaws and significant unfairness

30. Ms. Duddy says the strata failed to enforce its noise bylaws against unit 201, which was significantly unfair to her. The strata disagrees, and says it responded reasonably to Ms. Duddy's complaints, especially given its duty to accommodate the child in unit 201 under section 8 of the Code.
31. Under SPA section 26, the strata council has a duty to exercise the powers and perform the duties of the strata corporation. This includes a duty to enforce bylaws, such as noise bylaws. When carrying out these duties, the strata council must act reasonably (see *The Owners, Strata Plan LMS 3259 v. Sze Hang Holdings Inc.*, 2016 BCSC 32 at paragraph 237). The duty to reasonably enforce bylaws includes a duty to investigate alleged bylaw contraventions, such as noise complaints.
32. Previous CRT decisions have concluded that it is significantly unfair for a strata corporation to fail to reasonably investigate and enforce its bylaws (see, for example, *Chan v. The Owners, Strata Plan BCS2583*, 2021 BCCRT 456 and *Dhanani v. The Owners, Strata Plan NW 2265*, 2021 BCCRT 282). While previous CRT decisions are not binding on me, I agree that failure to investigate and enforce bylaws may be significantly unfair. I say this, in part, because SPA section 26 requires the strata to enforce its bylaws, and so it is reasonable for owners and tenants to expect the strata to do so.

33. Here, as noted above, the strata does not dispute that the noise from unit 201 that Ms. Duddy complains about is unreasonable, in contravention of bylaw 3(1). Some of Ms. Duddy's complaints are also about unreasonable noise during the strata's designated quiet time hours. So, since it is undisputed that unit 201's tenants were making unreasonable noise, I find the strata had a duty under SPA section 26 to enforce its bylaws, so long as doing so did not contravene the Code (see SPA section 121).
34. It is undisputed that after the strata received Ms. Duddy's initial complaints, it fined unit 201's tenants for excessive noise sometime in late November or early December. It is also undisputed that the strata started a CRT dispute against unit 201's tenant sometime in 2022 but later withdrew it. Documents relating to that CRT dispute are not before me, and it is not entirely clear what the basis of the strata's claim was or why it was withdrawn.
35. The evidence shows that after the initial fine and the December 23, 2021 bylaw contravention letter, the strata sent unit 201's tenants further letters on February 3, 2022, March 23, 2022, and June 17, 2022, saying that it had received complaints of excessive noise, in breach of bylaw 3(1). However, it appears the strata did not issue any further fines to unit 201's tenants for these later noise violations.
36. Although the strata says it sent regular warning letters to unit 201, the evidence does not show that it sent any warning or bylaw contravention letters after the June 17, 2022 letter, despite Ms. Duddy's repeated and continuing complaints to the strata about the noise. From the evidence, it appears that the strata did relatively little to respond to or address Ms. Duddy's noise complaints after it started the CRT dispute against unit 201's tenant.
37. For example, the strata says that it was engaged in ongoing discussions with unit 201's tenants and taking steps to mitigate the noise. However, I find the evidence does not show any such attempts between July 2022 and January 2024, when the strata held separate hearings for Ms. Duddy and unit 201's tenant to discuss the ongoing noise complaints against each of them.

38. Further, between July 2022 and January 2024, the evidence shows the strata provided essentially no response to Ms. Duddy's complaint letters other than sending letters on April 6, 2023, and August 17, 2023. The latter simply acknowledged receipt of Ms. Duddy's August 7 complaint letter and said the strata council would discuss how best to proceed at its next meeting. No follow-up response from the strata to Ms. Duddy is in evidence.
39. In the April 6, 2023 letter, the strata told Ms. Duddy that it had reviewed her complaint letters from February and March 2023 and expressed its ongoing concern for Ms. Duddy's circumstances. The strata then went on to list various reasons why it decided to take no further action and said that it was its firm belief that it had explored and exhausted its options. However, at this time, the strata still had not proceeded with the sound testing proposed by BAP, despite Ms. Duddy's repeated complaints and the strata's lawyer's suggestion to undertake the testing.
40. The strata says that part of the reason why it did not proceed with the sound testing until February 2024 was due to BAP's availability. While I accept that BAP's schedule may have been busy, this does not explain the 2-year delay. The strata's argument is also inconsistent with its April 6, 2023 letter that it had exhausted all options. Given that Ms. Duddy continued to complain about the noise from unit 201, I find the strata delaying the recommended sound testing was unreasonable.
41. I accept that the strata relied on its lawyer's advice that it had a duty to accommodate unit 201's tenant's child's medical disability. As noted by the strata, those who reside in a strata corporation are entitled to quiet enjoyment of their homes, but this right must be balanced against a disabled person's right to live in a strata corporation and be accommodated to the extent possible (see *M and another v. Strata Plan LMS2768 and others*, 2010 BCHRT 198 at paragraph 44). Here, however, I find the strata failed to balance these opposing rights by failing to take any steps to attempt to mitigate the noise coming from unit 201 and enforce its bylaws between July 2022 and January 2024. The strata's lawyer said in the March 1 letter that the strata would have to identify creative solutions to reduce the noise and should these efforts fail, the strata should take bylaw enforcement steps. Based on this advice, I find the strata knew it

had an obligation to take steps to mitigate the noise, failing which it would need to take enforcement steps, and it did not to do so between July 2022 and January 2024.

42. I find that Ms. Duddy had a reasonable expectation that since the strata agreed the noise from unit 201 was unreasonable, it would take steps to address the noise and enforce its bylaws if necessary. I am not satisfied on the evidence before me that there were no options available to the strata that would allow it to enforce its bylaws against unit 201 without contravening the Code. I find the strata's lack of action between July 2022 and January 2024 was burdensome to Ms. Duddy, given the regularity with which the reported unreasonable noise occurred. I find it was also wrongful, given the strata's enforcement obligations under the SPA. So, I find the strata treated Ms. Duddy significantly unfairly by failing to enforce its bylaws between July 2022 and January 2024.

43. I turn below to the appropriate remedies.

Remedies

44. When a strata corporation fails to reasonably enforce its bylaws and an owner suffers a loss of use and enjoyment of their strata lot, the CRT may award damages to compensate for this loss. I agree that damages may be an appropriate way to remedy a significantly unfair action.

45. In previous CRT decisions, tribunal members have awarded damages where strata corporations have failed to enforce noise bylaws in the face of ordinary living noise, including walking, running, yelling, stomping, banging, and moving heavy objects on the floor (see, for example, *Ahn v. The Owners, Strata Plan LMS 4634*, 2023 BCCRT 258, *Rahman v. The Owners, Strata Plan NW183*, 2021 BCCRT 1226, *Tran v. The Owners, Strata Plan VIS 6828*, 2021 BCCRT 28, *Moojelsky v. The Owners, Strata Plan K 323 et al*, 2019 BCCRT 698, and *Torok v. Amstutz et al*, 2019 BCCRT 386). I find these decisions provide a useful starting point from which to assess the amount of damages. The damages awarded in those decisions ranged from \$1,000 for thudding and running noise over 5 months in *Rahman*, to \$4,000 for loud floor creaking noise over 20 months in *Torok*.

46. The majority of Ms. Duddy's noise complaints were about sounds of running, yelling, jumping, stomping, banging and dragging objects across the floor. The complaints noted were mostly in the mornings and evenings, as this is when Ms. Duddy was typically home. Though there were some complaints of excessive noise in the middle of the night, these appear to have been limited. Ms. Duddy complained that she was often woken up by jumping and stomping sounds before her alarm clock went off in the mornings, which I accept interrupted her sleep. Considering the type of noise, the timing of the noise, and range of damages awarded in other CRT decisions including those noted above, I find \$2,000 in damages appropriate here for the noise Ms. Duddy experienced during the time the strata failed to reasonably enforce its bylaws and treated Ms. Duddy significantly unfairly (specifically, between July 2022 and January 2024).
47. Ms. Duddy is entitled to pre-judgment interest on the \$2,000 under the *Court Order Interest Act*. I find it appropriate to calculate interest from July 1, 2022, the approximate date from which I find the strata failed to take reasonable enforcement steps, to the date of this decision. This equals \$177.41.
48. I turn now to Ms. Duddy's other requested remedies.
49. First, Ms. Duddy seeks an order that the strata enter unit 201 to assess if there is an area rug in the child's room and to obtain proof that the carpeting and underlay meet "current codes". The strata says that it has limited rights of entry onto private property. I note the strata's bylaws do not give it a right to enter a strata lot to enforce bylaws.
50. The strata also says and that it has already requested that unit 201's tenants install rubber mats as recommended by BAP. However, it is unclear whether unit 201's tenants have installed the recommended rubber mats and area rugs. Under the circumstances, I find it appropriate to order the strata to take steps to confirm that unit 201 has placed rubber mats and area rugs in accordance with BAP's recommendations. If unit 201's tenant confirms that they have not implemented BAP's recommendations, I leave it to the strata to decide what action to take next. The

evidence does not suggest that the carpeting and underlay in unit 201 are otherwise problematic, so I decline to make any further orders about it.

51. Next, I find it unnecessary to order the strata to respond to Ms. Duddy's complaint letters in a timely manner. The CRT does not typically make prospective orders. Further, there are no time requirements set out in the SPA within which the strata must respond to bylaw contravention complaints, nor does the SPA require the strata to respond to each individual complaint it receives.
52. Finally, I also decline to order the strata to obtain medical documents from unit 201's tenant to support the assertion that the child in 201 has autism. The strata has already satisfied itself that it has a duty to accommodate the child. The strata is entitled to some deference in its decision making. Here, the evidence shows the strata's lawyer reviewed the Provincial Autism Resource Centre's March 2021 assessment of unit 201's tenant's child and concluded that the assessment confirmed that the child has autism, triggering the strata's duty to accommodate. I find the strata's reliance on this advice reasonable. So, I find the strata reasonably decided that it has a duty to accommodate, and I decline to order the strata to obtain medical documents from unit 201's tenant as Ms. Duddy seeks.

CRT FEES AND EXPENSES

53. 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. Though I did not grant all of her requested remedies, Ms. Duddy successfully proved that the strata failed to enforce its bylaws and treated her significantly unfairly. So, I find she is entitled to \$225 for her paid CRT fees. Neither party claims any dispute-related expenses, so I award none.
54. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Ms. Duddy.

ORDERS

55. I order that:

- a. Within 14 days of this decision, the strata pay Ms. Duddy a total of \$2,402.41 for \$2,000 in damages, \$177.41 in pre-judgment interest under the *Court Order Interest Act*, and \$225 in CRT fees, and
- b. Within 30 days of this decision, the strata take steps to confirm with unit 201's tenants that they have installed rubber mats and area rugs or carpets as recommended by BAP in its March 15, 2024 report.

56. Ms. Duddy is also entitled to post-judgment interest under the *Court Order Interest Act*.

57. I dismiss Ms. Duddy's remaining claims.

58. 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.

Nav Shukla, Tribunal Member