



# Civil Resolution Tribunal

Date Issued: September 23, 2024

File: ST-2023-002842

Type: Strata

Civil Resolution Tribunal

Indexed as: *Metcalfe v. The Owners, Strata Plan EPS2687*, 2024 BCCRT 941

BETWEEN:

DANA KAREN METCALFE

**APPLICANT**

AND:

The Owners, Strata Plan EPS2687

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Maria Montgomery

## INTRODUCTION

1. This dispute is about gym use noise complaints in a strata corporation.
2. The applicant, Dana Karen Metcalfe, owns strata lot 313 in the respondent strata corporation, The Owners, Strata Plan EPS 2687.

3. Ms. Metcalfe says that since late 2021, noise from a gym in a common property area two floors above her has caused her emotional distress and a loss of enjoyment in her home. She says the strata has not properly investigated her noise complaints or taken effective action to mitigate the noise. Ms. Metcalfe asks for \$4,175.44 to compensate her for nuisance and an order that the strata install soundproof flooring to mitigate the noise.
4. The strata says that it reasonably investigated the complaints and made objective determinations based on the investigation. It asks that I dismiss Ms. Metcalfe's claims.
5. Ms. Metcalfe is self-represented in this dispute. The strata is represented by Matthew Both, a lawyer.

## **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. 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). Here, I find that I am properly able to assess and

weigh the documentary evidence and submissions before me and I find that an oral hearing is not necessary in the interests of justice and fairness.

8. 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.
9. Ms. Metcalfe did not provide reply submissions, though she was given the opportunity to do so.

## **ISSUES**

10. The issues in this dispute are:
  - a. Was the noise from the common property gym unreasonable?
  - b. Did the strata act significantly unfairly by failing to reasonably investigate Ms. Metcalfe's noise complaints?
  - c. What remedy, if any, is appropriate?

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Ms. Metcalfe, as applicant, must prove her claims on a balance of probabilities, meaning more likely than not. While I have read all the parties' evidence and submissions, I refer only to what is necessary to explain my decision.
12. The strata was created in 2015 and consists of a 48-storey tower with 319 strata lots. Ms. Metcalfe occupies a strata lot two floors below a common property gym.
13. The strata filed a revised set of bylaws in 2023. Bylaw 3 says in part that owners, tenants, and occupants must not use the common property, which includes the gym, 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 Ms. Metcalfe's noise complaints, I find

the bylaw means that the strata cannot allow use of the gym in a way that makes noise in a strata lot that an ordinary person would consider intolerable.

14. Both parties provide rules ratified by the strata on May 29, 2023. Regarding gym use, the rules say: “please be respectful of neighbors and mindful of noise transfer through floors by lowering weights gently. Do not drop weights.” The rules also say that anyone witnessing someone breaking the rules should notify the strata manager. The gym hours are listed as 5am to 11pm. The strata submits that the gym hours are now 6am to 11pm.
15. 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.
16. Ms. Metcalfe says that once pandemic restrictions were lifted, disturbances from the gym became noticeable. Ms. Metcalfe first complained about gym related noise on October 6, 2021. In February 2022, Ms. Metcalfe forwarded a petition to the strata signed by residents of all 4 occupied strata lots on her floor. The petition included:
  - a. A request that the strata do more to prevent noise from dropping of free weights in the gym, such as add soundproofing or further restricting hours to 8am-9pm.
  - b. A note that the elevator allowed access to the gym at all hours.
  - c. Allegations that residents were affected while they were sleeping.
17. Ms. Metcalfe communicated with the strata many times throughout 2022 to report noise from dropped weights, including after the posted gym hours of 6am to 11pm. The strata told her it would discuss noise mitigation options with its fitness equipment supplier. It is not clear if that discussion occurred or what the outcome was. In October 2022, the strata added signs to the gym area asking gym users to be careful of noise and to not drop weights.

18. Ms. Metcalfe continued to report noise emanating from the gym. She says the strata provided Ms. Metcalfe inconsistent information on how to report complaints. So, sometimes she reported noise complaints to the building concierge and sometimes to the strata manager. When the concierge received a complaint, they would attend the gym area and request users to refrain from dropping weights. Sometimes the concierge replied, “units identified” and that the strata manager was notified. In one reply the concierge said: “I am on the 47<sup>th</sup> (floor directly below the gym) and can hear it.”
19. At her request, Ms. Metcalfe attended a strata council meeting to discuss her complaints on November 17, 2022. At this meeting, the strata decided to remove the free weights for two weeks to determine if they were causing the noise. Ms. Metcalfe did not report further noise until December 26, 2022, by which time the free weights had been reinstated.
20. At the strata council meeting on January 10, 2023, the strata reviewed Ms. Metcalfe’s most recent complaint and decided to get quotes on mats to mitigate the noise. Also at this meeting, the strata received a request from an owner to return gym hours to the pre-pandemic schedule of 5am to midnight. The strata approved that request. As of May 29, 2023, gym hours had been amended again to 5am to 11pm. The strata submits that the gym hours are now 6am to 10pm.
21. The strata later decided not to proceed with installing high impact tile at the cost of \$5,600 because it was not within that year’s budget. A signed statement from strata council member AB says other reasons included that the gym already has rubberized flooring, the additional rubber tile was not guaranteed to mitigate noise further and the strata corporation had not determined there was any undue noise.
22. Other signed statements from strata council members consistently state that they have not observed undue noise from dropped weights while in the gym or using common property areas on the floor below.

### ***Was the noise from the common property gym unreasonable?***

23. In previous decisions, the CRT has applied the common law of nuisance to noise complaints in strata buildings (*Chan v. The Owners, Strata Plan BCS2583*, 2021 BCCRT 456). I will adopt that approach here.
24. In the strata context, a nuisance is an unreasonable interference with an owner's use and enjoyment of their property (*The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502). Whether noise is unreasonable depends on several factors, such as its nature, severity, duration and frequency. The interference must also be substantial, meaning it is intolerable to an ordinary person when viewed objectively (see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64). This generally means that a resident's subjective noise complaints will not be enough to prove that noise is unreasonable. Here, I find that Ms. Metcalfe must provide objective evidence that the noise is unreasonable to an ordinary person. This could include observations from neutral parties, decibel readings, or professional reports.
25. Ms. Metcalfe explains that the severity, duration and frequency of the disturbances caused by the pounding noise of weights being dropped are intolerable to an ordinary person and significantly affect her ability to study, work, live and sleep in her home. In support she provides witness statements and describes the noise frequency in daily detail over a 6-week period. However, she did not provide any decibel readings or professional reports.
26. Ms. Metcalfe provides two witness statements from other residents of her strata lot. Both statements describe significant disruption to sleep and other daily activities from the sudden, jolting noise of dropped weights. While these statements describe the disruptive nature of the noise, the statements are not from neutral parties as they are from family members living with Ms. Metcalfe.
27. Ms. Metcalfe provides one statement from another resident on her floor, JKJ, who describes the noise from dropped weights as a consistent nuisance. I note that this statement goes to the noise on Ms. Metcalfe's floor generally but does not provide

observations from within her strata lot. The strata says this statement should be given little weight because it was not written by JKJ whose proficiency with the English language does not equal the level shown in the statement. I disagree that this is a reason to give the statement little weight, as, even if someone drafted the statement for JKJ, that would not mean the statement is not reflective of JKJ's sentiments. The strata also says JKJ denied having an issue with the gym noise. It is unnecessary for me to determine JKJ's true sentiments as one neutral statement observing noise from outside Ms. Metcalfe's strata lot does not go far enough in establishing objective evidence of the noise.

28. The petition Ms. Metcalfe submitted to the strata council on February 6, 2022, includes signatures attributed to two other strata lots on the floor. I find this petition does not identify the individual signatories by name and so does not have the weight of a signed statement.
29. I find these statements are not enough to prove that the noise was intolerable to an ordinary person. So, I find that Ms. Metcalfe has not proven that the noise was unreasonable. I turn now to consider the strata's response to the complaints.

***Did the strata reasonably investigate Ms. Metcalfe's noise complaints?***

30. Ms. Metcalfe says the strata treated her significantly unfairly by failing to investigate and resolve her complaints. She says the noise disturbances caused by the weights are contrary to the strata bylaws and rules as well as the City of Coquitlam's noise regulation bylaw.
31. The strata says that it met its obligations in responding to Ms. Metcalfe's noise complaints by investigating the complaints and taking the following actions:
  - a. Inviting Ms. Metcalfe to discuss her complaint at a strata council meeting.
  - b. Amending rules to include a prohibition against dropping weights, encourage residents to report incidents, and reduce gym hours.
  - c. Posting signs advertising gym rules.

- d. Considering changing gym equipment and installing mats.
  - e. Discussing possible solutions with its gym maintenance contractor.
  - f. Removing equipment for a short period of time.
  - g. Interviewing witnesses.
  - h. Monitoring for gym noise while using the common property space below the gym.
  - i. Having the concierge attend the gym in response to specific complaints.
32. The strata says Ms. Metcalfe has not done any sound testing and questions how she knows the noise is from free weights. The strata also says Ms. Metcalfe has not identified who is causing the noise. The strata says that it interviewed witnesses but beyond speaking with JKJ, it did not say who it interviewed. It is not clear if the strata spoke to the concierge who reported via text to Ms. Metcalfe hearing gym noise from the floor below.
33. As noted above, the strata must act reasonably in response to complaints about bylaw infractions, and I find that this includes a duty to reasonably investigate noise complaints, whether the noise is emitted from a strata lot or from common property.
34. The courts have held that a strata corporation may investigate bylaw contravention complaints as its council sees fit, so long as it complies with the principles of procedural fairness and is not significantly unfair to any person appearing before the council (see *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148). Ms. Metcalfe claims that the strata acted significantly unfairly by failing to reasonably investigate her bylaw complaints. The CRT can make an order to remedy significantly unfair actions or decisions by a strata under section 123(2) of the CRTA.
35. The court has found that significantly unfair actions are those that are burdensome, harsh, wrongful, lacking probity or fair dealing, done in bad faith, unjust or equitable. (*Reid v. Strata Plan LMS 2503*, 2003 BCCA 126). Also, an owner's reasonable expectations may be relevant to the determination of significant unfairness (*King*



*Day Holdings Ltd. v. The Owners, Strata Plan LMS3851*, 2020 BCCA 342; *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44). I find Ms. Metcalfe's reasonable expectations was that the strata will enforce its bylaws.

36. Here, the strata had an obligation to investigate Ms. Metcalfe's noise complaints and determine if the noise was unreasonable and who or what was causing it. To reasonably investigate Ms. Metcalfe's noise complaints, the strata could have conducted sound testing that included replicating gym activities while strata council members or other neutral third parties observe the resulting noise in Ms. Metcalfe's strata lot. The strata could have also had the concierge attend to conduct a sound test as soon as Ms. Metcalfe reported hearing the noise. Sound testing could include hiring a qualified acoustic professional to complete testing and prepare a report. While the strata was not necessarily required to perform these specific steps, I find the strata failed to adequately investigate Ms. Metcalfe's noise complaints.
37. The strata says that Ms. Metcalfe did not observe the gym activity causing the noise or identify the gym users dropping weights. However, in a building with over 300 strata lots, I find it unreasonable for the strata to expect Ms. Metcalfe to identify in which strata lot the gym users live. I also find it unreasonable for the strata to refuse to enforce a noise bylaw because it cannot identify the offenders. I note this assertion contradicts the concierge's multiple responses to complaints that strata lots had been identified.
38. If the strata determines upon further investigation that the gym noise is unreasonable, the strata could take a number of actions to enforce the bylaw even if the offenders are unknown. Depending on the results of further investigation, the strata could limit the hours that the elevator provides access to the gym, lock up the free weights during certain hours or install soundproofing.
39. For the above reasons, I find that the strata's response to the complaints was not reasonable and was significantly unfair to Ms. Metcalfe. I address the remedy below.

### ***What remedy is appropriate?***

40. Ms. Metcalfe requests \$4,175.44 in compensation for loss of enjoyment of her home. Ms. Metcalfe says this amount is equal to one year of strata fees. She also asks for the strata to install soundproof padding.
41. Without an objective assessment of the noise, an order relating to soundproofing would be pre-mature. Ms. Metcalfe has not established that the noise is a nuisance or that soundproofing would be effective to mitigate it. Instead, I find it appropriate to order that the strata objectively investigate Ms. Metcalfe's noise complaints. I leave it to the strata to determine how to do so, but it must be within 60 days of this decision.
42. Typically, the CRT awards damages when a strata corporation has failed to enforce its bylaws if there is a proven nuisance. Here, Ms. Metcalfe did not prove that the noise is a nuisance. However, the CRT has awarded modest damages as a remedy for significantly unfair actions even where a nuisance has not been proven. This is because leaving complaints unaddressed exacerbates the resident's frustration with their living situation and prevents the possibility of closure (See *Rajabali v. Spectrum Housing Co-operative*, 2024 BCCRT 865, *Wilkins v. The Owners, Strata Plan LMS1946*, 2022 BCCRT 336, and *Ahn v. The Owners, Strata Plan LMS 4634*, 2023 BCCRT 258). I find Ms. Metcalfe is entitled to damages to compensate her for this significantly unfair failure to reasonably investigate her complaints. Given that her complaints spanned a period of over a year, I find \$1,000 is appropriate.

### **CRT FEES AND INTEREST**

43. Under section 49 of the CRTA, 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 see no reason in this case not to follow that general rule. As Ms. Metcalfe was partially successful, I find she is entitled to half of her \$250 CRT fees, which is \$125. Neither party claimed dispute-related expenses.

44. The *Court Order Interest Act* applies to the CRT. Ms. Metcalfe is entitled to pre-judgement interest on the \$1,000 from June 1, 2022, a date I find reasonable in the circumstances, to the date of this decision. This equals \$71.72.
45. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Metcalfe.

## **ORDERS**

46. Within 30 days of this decision, I order the strata to pay Ms. Metcalfe a total of \$1,196.72, broken down as follows:
  - a. \$1,000 in damages,
  - b. \$71.72 in prejudgment interest, and
  - c. \$125 in CRT fees.
47. I order that the strata reasonably and objectively investigate Ms. Metcalfe's noise complaints within 60 days of this decision.
48. Ms. Metcalfe is also entitled to post judgement interest as applicable.
49. I dismiss Ms. Metcalfe's remaining claims.
50. 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.

---

Maria Montgomery, Tribunal Member