



# Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Gerlich v. The Owners, Strata Plan EPS7457*, 2025 BCCRT 3

B E T W E E N :

IWONA GERLICH

**APPLICANT**

A N D :

The Owners, Strata Plan EPS7457

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Micah Carmody

## INTRODUCTION

1. Iwona Gerlich owns strata lot 5 (unit 5) in the respondent strata corporation, The Owners, Strata Plan EPS7457 (strata). The strata was created in 2021. In dispute ST-2023-007482, Mrs. Gerlich says the strata failed to make an insurance claim

about alleged common property deficiencies or defects after the strata building was constructed. In the Dispute Notice created at the outset of this dispute, she asked for around \$8,000, but in submissions she clarifies that she only wants orders that the strata repair the alleged defects. The strata says I should dismiss the claim. It says it submitted an insurance claim, and the developer repaired the proven construction deficiencies.

2. In dispute ST-2023-007481, Mrs. Gerlich says the strata has failed to address her noise complaints about unit 14 above her. She wants the strata to enforce its noise bylaws. She also seeks \$1,000 in damages for time spent dealing with the noise, \$685 for a veterinary bill for a bird injury she says was caused by noise, and \$156 for the cost of relocating her office to a different room in unit 5. The strata says it has addressed the noise complaints directly with unit 14.
3. Mrs. Gerlich represents herself. The strata is represented by a council member.

## **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. CRTA section 39 says the CRT has discretion to decide the hearing's format, including by telephone or videoconference. Here, the key facts are largely undisputed, and credibility is not central to either dispute. I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary.
6. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court.

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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is the strata required to repair the parkade gate, Mrs. Gerlich's entrance door, or her patio?
  - b. Did the strata adequately investigate Mrs. Gerlich's noise complaints about barking dogs, and if not, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

9. As the applicant in this civil proceeding, Mrs. Gerlich 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.
10. The strata was created in 2021 and includes 17 strata lots in a low-rise building. Mrs. Gerlich has owned unit 5, which is on level 1, since July 2021. The strata plan shows a large limited common property "deck" attached to unit 5. I will refer to this space, like the parties do, as a patio.
11. In 2022, Mrs. Gerlich started a CRT claim about noise that the strata says the parties resolved by agreement. I have no evidence about that agreement's terms.

### ***Is the strata required to repair the parkade gate. Mrs. Gerlich's entrance door. or her patio?***

12. Ms. Gerlich requests three remedies. First, she says rainwater pools on her patio, so she wants the strata to fix the patio so that it does not risk flooding the parkade below. Second, she wants the strata to fix or replace her entrance door so that her

smart lock will work properly. Third, she wants the strata to service the parkade gate, which she says is noisy enough that she hears it in her strata lot.

13. In the Dispute Notice, Mrs. Gerlich alleged that the strata failed to file a warranty claim or filed it too late. I infer that the owner developer retained a warranty provider on the strata's behalf for the building's construction. In a September 27, 2022 email, Aviva Home Warranty Claims Services acknowledged receipt of the strata's claim for deficiencies. The strata's claim included a list and photos of various alleged deficiencies on common property and within strata lots. The deficiencies included water pooling on unit 5's patio, as well as six issues related to unit 5. I am satisfied that the strata submitted a warranty claim, and that Mrs. Gerlich had the opportunity to raise the deficiencies she had noticed. If Aviva decided that some repairs were not covered by the warranty, that is a potential contractual issue that is not before me in this dispute.
14. The strata argues that if Mrs. Gerlich wanted anything else fixed, she should have discussed the issue with the owner developer. However, section 72 of the *Strata Property Act* (SPA) requires the strata to repair and maintain common property. The standard a strata corporation must meet in performing its duty to repair and maintain common property under SPA section 72 is reasonableness.
15. The duty to repair is ongoing and has been interpreted to include an obligation to make good or sound that which may never have been good or sound (see *Guenther v Owners, Strata Plan KAS431*, 2011 BCSC 119). For example, in *Frank v The Owners Strata Plan LMS 355*, 2016 BCSC 1206, the strata corporation was required to upgrade railings to bring a roof deck into compliance with the strata plan and allow owners to safely use it. That said, there is nothing in the SPA that requires a strata to perform an owner developer's duties and obligations if the owner developer fails to perform or complete them. In *Ojani v. The Owners, Strata Plan EPS3505*, 2021 BCCRT 14, the strata corporation was not required to install a hose bib where the strata plan and drawings did not include a hose bib even though this meant the owner could not use the hot tub he purchased with his strata lot.

16. With that legal framework set out, I consider Mrs. Gerlich's three repair requests.

Patio

17. Mrs. Gerlich says her limited common property patio is "uneven", which causes water to pool when it rains.

18. The strata's bylaw 2.1 says that an owner generally must repair and maintain their strata lot and limited common property that they use, except for repair and maintenance that is the strata's responsibility under the bylaws. Bylaw 8.1(c) says the strata must repair and maintain limited common generally if the repair or maintenance ordinarily occurs less than once a year. I find that addressing a fundamental issue like slope or drainage is a repair that happens less than once a year, so if it must be done, the strata must oversee it and pay for it. There is no evidence before me about how the patio was designed to drain water.

19. An undated photo shows significant water pooling over the majority of the patio. I find this would make the patio unusable. However, I have no evidence about how much it had rained when the photo was taken, or what amount of rain causes water pooling on the patio. Mrs. Gerlich does not say how many days in the last year, for example, if any, that she could not use her patio because of water pooling.

20. The strata does not explicitly deny that water pools on Ms. Gerlich's patio. It only says that the builder found no issues with the patio.

21. I considered ordering the strata to investigate whether Mrs. Gerlich's patio was draining properly, because the strata's duty to repair and maintain property includes a duty to investigate the need for repairs. However, on balance, I find Mrs. Gerlich has not shown that her patio needs repairs. This does not mean the strata will never have to address drainage on Mrs. Gerlich's patio. Should she provide the strata with more evidence of water pooling, the strata's duty to investigate the need to repair the patio may be triggered. What is reasonable in the circumstances depends on the likelihood of the need to repair, the cost of further investigation, and the gravity

of the harm sought to be avoided or mitigated by investigating and remedying any discovered problems (see *Guenther* at paragraph 40).

### Entrance Door

22. Mrs. Gerlich says her entrance door is warped such that her smart lock does not work properly. The strata does not say anything about the entrance door. I accept that it is the strata's responsibility to repair and maintain under the SPA and the bylaws.
23. There are no photos of the door to demonstrate warping or a problem. The only evidence is an email Mrs. Gerlich sent to the strata saying that she had three "Telus techs" attend and they all said there was an issue with the door, not the smart lock. However, there are no statements from any technicians to this effect, so I put little weight on this evidence.
24. There is no evidence about whether other strata lots have smart locks. The strata plan does not indicate smart locks. Mrs. Gerlich does not say she cannot lock her door. Given the limited evidence before me, I find Mrs. Gerlich has not established a breach of the strata's duty to repair and maintain her entrance door, and I dismiss this aspect of her claim.

### Parkade gate

25. Mrs. Gerlich says the parkade gate is loud and getting louder. She says she can hear it in her strata lot, and it makes her patio furniture tremble. She wants the strata to have the gate serviced.
26. The parkade gate is either common property or a common asset. Either way, the strata must repair and maintain it. The strata included the parkade gate noise among its list of deficiencies it sent to Aviva, but I find that it does not mean the strata agreed the parkade gate was not operating correctly. Rather, it appears the strata simply copied Mrs. Gerlich's complaint about the gate. Aviva said there was no defect demonstrated, and the gate was operating as intended.

27. Mrs. Gerlich does not provide any noise measurements or audio recordings to show the noise level in unit 5. She does not provide evidence about what noise a parkade gate should make when properly maintained. She does not provide evidence about how often parkade gates should be serviced. The parkade gate has been in place only three years, which does not seem an obviously long time to go without service. I find Mrs. Gerlich has not established that the strata is breaching its duty to repair and maintain the gate.

28. Without objective evidence of unreasonable noise or a maintenance issue, I must dismiss Mrs. Gerlich's claim for an order that the strata service the parkade gate. The strata's duty to maintain the gate is ongoing, and if the strata is provided with objective evidence of unreasonable noise from the gate, it may need to retain a professional to assess or service the gate.

***Is the noise from unit 14 objectively unreasonable?***

29. Mrs. Gerlich says there is nuisance noise coming from unit 14, above unit 5, primarily in the form of footsteps and dog barking. She says the strata is not doing anything about it. I find this raises two related issues. The first is whether the noise likely contravened the strata's bylaws, and the second is whether the strata failed to reasonably enforce its noise bylaws.

30. The relevant part of strata bylaw 3.1(1) prohibits using a strata lot in a way that causes a nuisance, creates unreasonable noise, or unreasonably interferes with the rights of another person to use and enjoy their strata lot. Consistent with previous CRT decisions interpreting similar bylaws, I find these bylaws effectively prohibit unreasonable noise (see, for example, *Palmer v. The Owners, Strata Plan VR2265*, 2023 BCCRT 792). In the strata context, unreasonable noise is noise that represents a substantial, non-trivial interference with the use and enjoyment of property (see *The Owners, Strata Plan 1162 v. Triple P Enterprises*, 2018 BCSC 1502). To meet this standard, the noise must be intolerable to an ordinary person (see *St. Lawrence Cement v. Barrette*, 2008 SCC 64). This will depend on factors such as its nature, intensity, frequency, duration, and timing. In the context of a

typical strata development, there must be a “certain amount of give and take” between neighbours (see *Sauve v. McKeage et al.*, 2006 BCSC 781).

31. At the November 14, 2023 annual general meeting, the owners approved a resolution adding a bylaw setting quiet hours from 10 pm to 7 am Monday through Friday and 10 pm to 8 am Saturdays, Sundays and holidays. They also added a bylaw that said pet owners are “fully responsible” for “the behaviour of their pets.” However, there is no evidence before me that these bylaws were filed in the Land Title Office, which is a requirement before bylaws can take effect (see SPA section 120). So, I have considered bylaw 3.1(1) as the only noise bylaw in effect at the time of Mrs. Gerlich’s complaints. That said, the unanimous approval of the quiet hours bylaw suggests the strata community expects relative quiet in those hours.
32. Mrs. Gerlich pasted her emails to the strata into a word document as evidence. Some of her emails are clearly replying to strata emails but she did not include the strata’s emails, making it difficult to follow and to evaluate the strata’s response.
33. Mrs. Gerlich’s emailed complaints demonstrate that she subjectively perceived dog barking from unit 14 as annoying, sometimes waking her up after midnight or as early as 5 am. Her complaints began in early 2022 but were not frequent. The most recent complaint in evidence is dated July 17, 2024, about dogs barking “all day”.
34. It is well-established that subjective complaints alone are insufficient to prove a nuisance. Rather, people complaining about noise must prove with objective evidence that noise is intolerable to an ordinary person. This guards against the risk that a particular person may be unusually sensitive to noise. So, I must consider the objective evidence about the noise.
35. The objective evidence includes witness statement from AG, a friend of Mrs. Gerlich who stayed in unit 5 from September 12 to 26, 2023. AG said they were awoken by heavy steps or loud conversation several times. AG’s statement is very brief. Notably, it does not mention dog barking, which is the primary noise Mrs. Gerlich complained about.



36. Mrs. Gerlich submitted three noise recordings. In one 30-second recording some faint barking can be heard. In another recording, with the television on for reference, two bangs are heard, greatly exceeding the volume of the television. In the third recording, the thumping of footsteps can be heard periodically.
37. Mrs. Gerlich did not submit any other noise recordings, or a noise log, so the frequency and timing of the noise disturbances is not established. She also did not attempt to measure the sound objectively, so the intensity is not established. In *Williams v. The Owners, Strata Plan BCS 184*, 2023 BCCRT 684, the CRT found that a reasonable and objective person in a multi-family living situation expects and tolerates a certain amount of intrusive noise. I find that the noise of footsteps and dogs barking from unit 14 is at times be annoying, but overall is not objectively unreasonable on the evidence here.

***Did the strata adequately investigate Mrs. Gerlich's noise complaints about barking dogs, and if not, what remedy is appropriate?***

38. Mrs. Gerlich says the strata has ignored her multiple noise complaints over two years. The strata says it takes all bylaw complaints seriously and it responded to Ms. Gerlich's complaints quickly. The strata also says the owner developer warned purchasers that the thin wooden walls would make "regular noise travel easier."
39. I find Mrs. Gerlich's claim is that the strata, by failing to investigate her complaints and enforce its noise bylaw, treated her significantly unfairly.
40. The CRT has authority to make orders remedying a strata corporation's significantly unfair act or decision under CRTA section 123(2). The court has the same authority under section 164 of the SPA, and the same legal test applies (see *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113).
41. In *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, the court confirmed that significantly unfair actions or decisions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable. In applying this test, the owner's objectively reasonable expectations are a relevant factor, but are not determinative. The use of the word

“significant” means that the impugned conduct must go beyond mere prejudice or trifling unfairness.

42. I find Mrs. Gerlich expected that the strata would adequately investigate her noise bylaw complaints. I find that her expectation was objectively reasonable because SPA section 26 requires the strata to enforce its bylaws. The CRT has consistently held that owners have an objectively reasonable expectation that a strata corporation will investigate complaints and enforce bylaws. However, the SPA does not set out any procedural requirements for addressing bylaw complaints. In *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, the court said that the SPA gives strata corporations discretion about how to respond to bylaw complaints, as long as they comply with principles of procedural fairness and do not act in a significantly unfair way.
43. Here, the evidence shows that the strata generally responded to Ms. Gerlich’s noise complaint emails. The strata addressed the noise complaints directly with the owner of unit 14. For example, when Ms. Gerlich complained about dogs barking late at night, the strata asked unit 14’s owner about it and accepted their response. The evidence shows that the strata visited unit 14 and confirmed that that was at least one rug in place to reduce footstep noise, and the dogs’ nails were trimmed short. As for the loud banging noise, unit 14’s owner said they heard it too and they believed it was coming from unit 15. I find that the banging noise likely stopped because there are no recent complaints about it and Mrs. Gerlich does not say it has continued.
44. Ms. Gerlich says the strata has not provided any proof that it issued warning letters or fines to unit 14’s owner in response to her nose complaints. However, a strata corporation is not required to impose fines if other approaches are effective or if the strata reasonably believes there is no bylaw contravention occurring. On the evidence Ms. Gerlich provided to the strata and here in this dispute, I cannot find the strata’s decision not to impose a fine was unreasonable. Finally, Mrs. Gerlich says that unit 14’s owner is on strata council and is receiving preferential treatment. I find there is no evidence of preferential treatment.

45. I therefore find that Mrs. Gerlich has not proved her noise bylaw claims, and I dismiss them. It is therefore unnecessary to address the parties' arguments about the appropriate remedies.

## **CRT FEES AND EXPENSES**

46. Based on the CRTA and the CRT's rules, as Ms. Gerlich was unsuccessful, I find she is not entitled to reimbursement of CRT fees. The strata did not pay CRT fees. Neither party claims dispute-related expenses.

47. The strata must comply with SPA section 189.4, which includes not charging dispute-related expenses against Mrs. Gerlich.

## **ORDER**

48. I dismiss Mrs. Gerlich's claims.

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Micah Carmody, Tribunal Member