



# Civil Resolution Tribunal

Date Issued: June 26, 2025

File: ST-2023-009947

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kaina v. The Owners, Strata Plan VR 2692*, 2025 BCCRT 870

B E T W E E N :

ABDERRAHIM KAINA

**APPLICANT**

A N D :

The Owners, Strata Plan VR 2692

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Peter Nyhuus

## INTRODUCTION

1. This dispute is about noise complaints and bylaw enforcement in a strata corporation.
2. The applicant, Abderrahim Kaina, is a former tenant of a unit in the respondent strata corporation, The Owners, Strata Plan VR 2692 (strata). Mr. Kaina says the

strata treated him significantly unfairly by failing to reasonably investigate his complaints about excessive noise coming from neighbouring units and by failing to enforce the strata's bylaws. Mr. Kaina says the unreasonable noise disturbances significantly affected his health and daily life, eventually forcing him to relocate. He claims \$15,000 in non-pecuniary damages and moving costs, and an order that the strata enforce its bylaws.

3. The strata says Mr. Kaina's claims should be dismissed. It argues that it met its duty to enforce its bylaws by investigating his complaints and either issuing a warning or determining the noises were not unreasonable.
4. Mr. Kaina represents himself. A strata council member represents the strata.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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. Further, 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 in the interests of justice and fairness.
7. 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.

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.

***Mr. Kaina's status as a former tenant***

9. Since filing this dispute, Mr. Kaina moved out of the strata. The CRT has previously found that a former tenant may pursue a CRT claim against a strata corporation.<sup>1</sup> While prior CRT decisions are not binding on me, I agree with this conclusion. As Mr. Kaina's claims are about the strata's conduct when he was a tenant, I find he is entitled to pursue his dispute despite no longer living in the strata.
10. However, I considered whether any of Mr. Kaina's claims are now moot. A claim is "moot" when there is no longer a live controversy between the parties. While the CRT will generally dismiss a moot claim, the CRT has discretion to decide the dispute if doing so will have a practical impact and potentially help avoid future disputes.<sup>2</sup>
11. Mr. Kaina requests a resolution that the strata "show responsibility and deliver on their bylaw rules and stop the noise nuisance from above." By this, I infer that he seeks an order that the strata enforce its bylaws against the neighbouring units he says are making unreasonable noise. Since Mr. Kaina no longer lives in the strata, I find there is no ongoing dispute between the parties about future enforcement of the strata's bylaws. I see no reason why ordering the strata to enforce its bylaws would help the parties in any way. I therefore dismiss this claim as moot.
12. However, Mr. Kaina's claim for damages is not moot, because it arises from his alleged loss while he lived in the unit. So, I will address this claim.

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<sup>1</sup> See *Gill v. The Owners, Strata Plan EPS 4403*, 2020 BCCRT 228 and *Wilkins v. The Owners, Strata Plan LMS1946*, 2022 BCCRT 336.

<sup>2</sup> See *Binnersley v. BCSPCA*, 2016 BCCA 259.

### ***Strata council hearing***

13. In the Dispute Response, the strata notes that Mr. Kaina did not request a council hearing prior to filing this dispute. Section 189.1(2)(a) of the *Strata Property Act* (SPA) requires a tenant to request a strata council hearing before applying to the CRT for dispute resolution. SPA section 189.1(2)(b) allows the CRT to waive this hearing requirement, if requested by a party.
14. The evidence shows that Mr. Kaina did attend a strata council hearing about noise complaints on October 10, 2023. I infer the strata took issue with the fact that Mr. Kaina did not request a hearing, but rather accepted the strata's offer of one. The strata does not maintain this position in its submissions. I infer that Mr. Kaina asks me to waive the hearing requirement. Since the parties held a hearing and the strata no longer argues this point, I find it appropriate to waive this requirement and do so.

### **ISSUES**

15. The issues in this dispute are:
  - a. Did the strata reasonably investigate Mr. Kaina's noise complaints and enforce its own bylaws?
  - b. What remedy, if any, is appropriate?

### **EVIDENCE AND ANALYSIS**

16. In a civil proceeding like this one, Mr. Kaina, as the applicant, must prove his claims on a balance of probabilities (meaning more likely than not). I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find necessary to explain my decision.

## ***Background***

17. The strata is a mixed-use 19-floor concrete building built around 1991. Mr. Kaina lived on the 14th floor in unit 1402, which is strata lot 88.
18. The strata filed a complete set of bylaws in the Land Title Office on December 29, 1993, and most recently filed bylaw amendments on March 9, 2020. The relevant parts of the bylaw are as follows. Bylaw 3.1 says an owner, tenant, occupant or visitor must not use a strata lot in a way that:
  - a. causes a nuisance or hazard to another person,
  - b. causes unreasonable noise,
  - c. unreasonably interferes with the rights of other persons to use and enjoy their strata lot, and
  - d. involves undue traffic or noise in between the hours of 10:30 pm and 7:00 am.
19. When it comes to noise, I find these bylaws all amount to the same thing, which is that they prohibit unreasonable noise.
20. Bylaw 22.1(b) says the strata may fine an owner or tenant a maximum of \$200 for each contravention of a bylaw.
21. Before reviewing Mr. Kaina's complaints and assessing the strata's responses to them, I will set out the applicable law.

## ***The law of significant unfairness***

22. The CRT has authority to make orders remedying a significantly unfair act or decision by a strata corporation under CRTA section 123(2). This provision contains similar language to SPA section 164, which allows the BC Supreme Court to make orders remedying significantly unfair acts or decisions. The court confirmed that the legal test for significant unfairness is the same for CRT disputes and court actions.<sup>3</sup>

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<sup>3</sup> *Dolnik v. The Owners, Strata Plan LMS 1350*, 2023 BCSC 113.

23. Significantly unfair actions are those that are burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, unjust, or inequitable.<sup>4</sup> In applying this legal test, the tenant's reasonable expectations are a relevant factor, but are not determinative. The use of the word "significant" means that the strata's conduct must go beyond mere prejudice or trifling unfairness.
24. Several CRT decisions have concluded that it is significantly unfair for a strata corporation to fail to reasonably investigate and enforce its bylaws.<sup>5</sup> While previous CRT decisions are not binding on me, I agree that a 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.
25. The SPA does not set out any specific procedural requirements for addressing bylaw complaints. The court has found 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.<sup>6</sup> Strata corporations are not held to a standard of perfection when responding to bylaw complaints, but instead must take "reasonable action" and have "fair regard for the interests of all concerned."<sup>7</sup>
26. When a strata corporation has failed to reasonably enforce its bylaws and an owner or tenant has suffered a loss of use and enjoyment of their strata lot, the CRT may award damages to compensate for this loss.<sup>8</sup> With that in mind, I turn to Mr. Kaina's noise complaints to assess whether the strata reasonably enforced its noise bylaws.

### ***Mr. Kaina's noise complaints and the strata's response***

27. Mr. Kaina moved into unit 1402 in June 2022. He says that because of the COVID-19 pandemic, he often worked from home.

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<sup>4</sup> See *Kunzler v. The Owners, Strata Plan EPS 1433*, 2021 BCCA 173, paragraphs 75 to 97.

<sup>5</sup> See, for example, *Chan v. The Owners, Strata Plan LMS 1946*, 2021 BCCRT 456 (*Chan*).

<sup>6</sup> *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148

<sup>7</sup> *Leclerc v. The Owners, Strata Plan LMS 614*, 2012 BCSC 74

<sup>8</sup> See, for instance, *Chan and Metcalfe v. The Owners, Strata Plan EPS2687*, 2024 BCCRT 941 and *Duddy v. The Owners, Strata Plan BCS 1162*, 2024 BCCRT 807.

28. Mr. Kaina says he was bothered by unreasonable noises immediately after moving in, including the sounds of construction, furniture dragging, falling objects, stomping, thumping, pounding, and continuous vibrations. He says these noises occurred regularly at all times of the day, all year long, and that noise woke him up 75% of nights.
29. The strata says that it has contracts with a third-party property management service (strata manager) and a security company (security). It says security patrols the building's common property from Friday night to Monday morning. The strata also employs a building caretaker, who addresses residents' complaints made during working hours.
30. Mr. Kaina directed his first 4 complaints to security. The security guards recorded their notes from these complaints in reports the strata provided, which I summarize:
- a. At 2 am on Saturday, December 31, 2022, Mr. Kaina complained to security about loud music coming from unit 1502, the unit directly above his own. Security investigated and discovered the residents of 1502 were playing loud music. Security asked them to keep it quiet, and they said they would. Mr. Kaina did not complain again that night, so I infer his upstairs neighbours did turn down the music.
  - b. At 3 am on Monday, January 23, 2023, Mr. Kaina called security about a noise of something being dropped on the floor. The security guard checked the 15<sup>th</sup> floor and could not hear significant noise coming from the units. The guard eventually spoke with the tenant of unit 1501 who confirmed they made the noise. The occupant told the guard they would not make any further noises. I infer they did not, as Mr. Kaina did not complain again.
  - c. At 11:30 pm on Saturday, January 28, Mr. Kaina called security about noises of chairs moving and thumping. The security guard went to the 15<sup>th</sup> floor to listen but could not hear any sounds coming from unit 1502. The security guard asked Mr. Kaina to notify them if he hears the noises again. There is no record of Mr. Kaina notifying security again that night.

- d. Around 10 pm on Saturday, February 4, both Mr. Kaina and the resident of the unit next door, 1401, complained to security about excessive noise coming from the floor above. The security guard listened with Mr. Kaina in his unit from 11:20 to midnight and heard banging sounds from the unit upstairs. The guard went to unit 1502, confirmed the residents were partying, and asked them to keep it down. Mr. Kaina did not complain again that evening.
31. In this last report, the security guard noted that the tenants of units 1401 and 1402 told him the noises were a persistent problem, often waking them up at night.
32. The strata says that Mr. Kaina's February 4, 2023 complaint is the last record it has of Mr. Kaina complaining to security.
33. In March 2023, Mr. Kaina made further noise complaints, this time to the strata manager and caretaker. On March 18 at 8 pm, Mr. Kaina emailed the caretaker to complain of noises coming from upstairs "24/7". He sent the caretaker 4 videos and offered to send more, if that would help his investigation. I note that Mr. Kaina did not provide these videos in evidence.
34. On March 20 at 10:23 pm, Mr. Kaina emailed the caretaker to complain again. He also wrote, "Since I know people can get away with this ... I'm taking all my construction tools out and retaliate back! If I can't sleep .. no one will."
35. On March 21, the caretaker responded to say that he did not think it was unit 1502 making the noise. The caretaker explained that the strata was having issues with the tenant of unit 1501, who was performing motorcycle maintenance in his unit. The caretaker also explained that Mr. Kaina scared the resident of unit 1502 by knocking on her door and yelling. The caretaker requested that Mr. Kaina email management about his noise complaints rather than confront the other residents.
36. Mr. Kaina responded to reiterate that he was going to retaliate against his neighbours with "big noisy tools".
37. Two months later, on May 22, Mr. Kaina complained to the caretaker again, threatening legal action against the tenant of unit 1502 and the strata. The caretaker



responded to inform Mr. Kaina that the tenant of unit 1501 had been evicted in April. The caretaker said the resident of 1502 denied making noise, but that he would speak with her again to try to solve the issue.

38. On May 23, the strata manager called Mr. Kaina to discuss the issue and said she would investigate his noise allegations about the tenant of 1502. Later that day, the strata manager emailed Mr. Kaina the tenant of 1502's response to his allegations. The tenant denied making noise and said that Mr. Kaina was constantly banging on the ceiling and walls. She said that Mr. Kaina complained during a time when her apartment was vacant. She also said that she can hear renovations above her, leading her to believe that Mr. Kaina mistakenly assumed the noises are coming from her unit.
39. On May 26, Mr. Kaina responded, rejecting the tenant of 1502's denial. He sent the strata manager video attachments and said he has been keeping a "track sheet" to build his case should he decide to take legal action. The strata manager later responded to say that she could not open the videos, and that she would need a detailed description of the noise complaint with the date, time, and description of the type of noise.
40. On May 26 and June 1, the caretaker attended Mr. Kaina's unit in response to further complaints. The caretaker says he did not hear anything on May 26, after 20 minutes of listening. On June 1, he says he heard what Mr. Kaina heard after putting his ear against Mr. Kaina's bedroom wall. The caretaker investigated and confirmed with Mr. Kaina that the sound was caused by a cupboard cabinet slamming shut in the unit next door, unit 1401. The caretaker spoke with unit 1401's resident, who agreed to put some extra rubber pads on the cupboard to minimize the sound.
41. Later that day, Mr. Kaina emailed the caretaker and strata manager to thank them for solving "part of the issue." He said, however, that this did not resolve the noises from upstairs and that he would call them when he next heard it.

42. On June 5, the strata manager emailed Mr. Kaina to say that noise during daytime hours is part of normal day-to-day living and that he cannot expect residents to be absolutely quiet all the time. The strata manager wrote, "All the strata can do is send a letter to the alleged unit who is allegedly causing a disturbance to their neighbour between the hours of 11 p.m. to 6 a.m."
43. The strata manager also reiterated that the tenant of 1502 denied causing a disturbance and that she complained about Mr. Kaina banging on the walls and ceilings and harassing her.
44. In response, Mr. Kaina wrote, "an eye for an eye...This issue seems like it won't be solved I guess the neighbours have to tolerate me as well since you deem that their actions is tolerable. Let's see how they are gonna tolerate mine. I exhausted my resources. I appreciate your efforts."
45. The strata says that, given the "aggressive tone and style" of Mr. Kaina's messages, it instructed the strata manager and caretaker to stop responding to Mr. Kaina directly. On June 9, the strata manager followed the strata's instructions and responded to Mr. Kaina, telling him to direct his complaints to his landlord. The strata manager said that she and the caretaker would no longer communicate with Mr. Kaina and that she would have the strata's legal counsel deal with the matter if he continued banging on the ceiling or disturbing his neighbours.
46. Mr. Kaina responded later that evening with a draft CRT claim which he said he intended to file. The strata manager wrote in response, "I am sorry you have decided to go this route."
47. Mr. Kaina and the strata did not communicate again until September 25, 2023, when Mr. Kaina emailed the manager of his rental unit and the strata manager to say that the noise issues have not stopped over the last few months and that he would provide the strata 48 hours to resolve the issue before filing his CRT dispute. On September 28, he filed his dispute.

48. The strata responded by inviting Mr. Kaina to attend a hearing with the council and the tenants of unit 1502 on October 10 to try to resolve the noise complaints. The strata provided minutes of a November 7, 2023 council meeting which includes a cursory summary of the October 10 meeting. It says, “each party had an opportunity to speak” and that, following a question-and-answer period, Mr. Kaina ended his involvement in the hearing. Mr. Kaina says the meeting was “unproductive”.
49. Also in late September, the strata says that unit 1403, which is next door to Mr. Kaina’s, underwent unauthorized renovations. The strata says that several residents (although not Mr. Kaina) complained to the caretaker who investigated and determined the noise’s cause. The strata told the owners of 1403 to stop work until they obtained permission through the “appropriate channels”. The strata says the unit’s owners then obtained permission and the renovation resumed for a reasonable amount of time.
50. Mr. Kaina provided several videos of himself in his unit listening to construction sounds. He labeled these videos with the dates September 29, September 30, and October 2. Given this timeline, I find these sounds likely came from unit 1403’s unauthorized construction.
51. Mr. Kaina moved out of the unit and strata building on or around November 12, 2023.

***Did the strata reasonably investigate Mr. Kaina’s noise complaints and enforce its bylaws?***

52. As I mentioned, under SPA section 26, the strata has a duty to investigate complaints about bylaw contraventions and, if proven, enforce the bylaws. The strata has limited discretion to decide not to enforce a proven breach, such as if the breach is insignificant or the impact on other owners is trivial.<sup>9</sup> The strata has broad discretion in how it reacts to complaints, as long as its approach complies with principles of procedural fairness and is not significantly unfair to an owner or

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<sup>9</sup> *Abdoh v. The Owners, Strata Plan KAS2003*, 2014 BCCA 270, at paragraph 237.

tenant.<sup>10</sup> Specifically, SPA section 129(2) gives the strata discretion to give a person a warning or time to comply before enforcing a bylaw. Mr. Kaina argues that the strata failed to reasonably investigate and enforce its noise bylaws against his neighbours.

53. The strata says that its responses to Mr. Kaina's complaints were not significantly unfair. It says that it investigated each of Mr. Kaina's complaints and either issued a warning, fixed the situation, or determined the noise was not unreasonable.
54. The strata says that addressing Mr. Kaina's complaints was complicated by the fact that its investigations revealed noise to be coming from different sources. It says that Mr. Kaina was not always correct about the noise's source. I agree with the strata on this point, as Mr. Kaina had at least once incorrectly identified a sound coming from unit 1402 (the sounds of the cupboard closing) as coming from unit 1502. The strata says that before it could enforce its bylaws, it had to first determine the noise's cause and the potential offender of its noise bylaws. I agree with the strata that it could not enforce its noise bylaws until it determined the alleged bylaw offender's identity. I will begin by addressing the strata's enforcement actions against known noisemakers on a unit-by-unit basis. Then, I will address whether the strata's investigations were significantly unfair.

#### Enforcement against unit 1501

55. I find Mr. Kaina's complaint from January 23, 2023, was related to the activities of unit 1501's tenant. The strata admits that in the first quarter of 2023, there was a "problem tenant" residing in unit 1501. This tenant used their unit to repair a motorcycle, which involved grinding metal with power tools and causing metal parts to fall to the floor. The strata admits this noise happened "day and night".
56. The strata says that it did not impose fines or take other enforcement actions because the unit's owner took steps to evict the tenant, successfully evicting them by April 2023. I find it was reasonable for the strata to decide to forego fines in

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<sup>10</sup> *Chorney v. Strata Plan VIS 770*, 2016 BCSC 148, at paragraph 52.

favour of fostering the owner's cooperation in evicting the tenant. I say this because evicting a tenant is a more severe and permanent response to a noise complaint than imposing a fine.

57. So, while I find that unit 1501 made unreasonable noise, I find that the strata did not treat Mr. Kaina significantly unfairly by failing to fine the tenant. I find it reasonably enforced its bylaws by cooperating with the owner to evict the tenant.

#### Enforcement against unit 1401

58. Mr. Kaina did not directly complain about unit 1401. However, the strata responded to his noise complaint about unit 1502 and during its investigation discovered that the noise was coming from a cupboard door in unit 1401. Rather than imposing a fine, the strata asked the residents of 1401 to place additional padding on the door. Mr. Kaina did not complain of this issue again, so I find the strata resolved the problem. I find the strata's enforcement against unit 1401 was reasonable.

#### Enforcement against unit 1403

59. Mr. Kaina did not complain to the strata about unit 1403's construction in late September 2023. However, as I mentioned, he provided videos of himself listening to the construction sounds. I watched the videos and agree that they consist of the sounds of construction. In the videos, Mr. Kaina walks from one side of his apartment to the other to show that the sounds are inescapable. I agree with Mr. Kaina that these sounds are unpleasant and unrelenting. However, I note that the videos were all shot in the daytime and that it is a fact of apartment-style living that owners will occasionally renovate their units.
60. I find the strata responded to unit 1403's unauthorized construction reasonably by requiring the owners to stop their renovations until they obtained the proper authorizations from the strata. The strata says that the renovations did not last for an unreasonably long time after the owners became compliant with the strata's bylaws governing alterations. This is corroborated by Mr. Kaina's roommate's emails, which I discuss further below.

### Enforcement against unit 1502

61. Mr. Kaina attributes most of his noise complaints to the tenant of unit 1502, directly above his own. However, I find he has proven only two instances of unreasonable noise coming from that unit: loud music at 2 am on December 31, 2022, and the sounds of partying late on February 4, 2023.
62. The strata's security responded to each of these complaints by issuing a verbal warning to the residents. In each case, the residents quieted down afterwards, and Mr. Kaina did not complain further. I find the strata's response was reasonable and effective. I note also that Mr. Kaina did not complain again of this type of noise coming from unit 1502 during the remainder of his tenancy.
63. Otherwise, I find that Mr. Kaina has not proven that the tenant of unit 1502 made unreasonable noise. In the strata context, unreasonable noise is noise that represents a substantial, non-trivial interference with the use and enjoyment of property.<sup>11</sup> To meet this standard, the noise must be intolerable to an ordinary person.<sup>12</sup> Whether noise constitutes a nuisance depends on factors such as its nature, intensity, frequency, duration, and timing. In the context of a strata development, there must be a "certain amount of give and take" between neighbours.<sup>13</sup>
64. Mr. Kaina says he captured audio and video evidence of noise disturbances from unit 1502. However, each of the videos he provided as evidence show only the sounds of construction. I find he has not provided evidence that unit 1502 made any of these sounds. Further, while Mr. Kaina says he made a tracking sheet of the noises, he has not provided this sheet. He also says he invested in a noise-detection camera system and sound measuring equipment to gather evidence and understand the noise issues better. However, he has not provided any information or data collected from these devices, such as decibel readings.

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<sup>11</sup> See *The Owners, Strata Plan 1162 v. Triple P Enterprises*, 2018 BCSC 1502.

<sup>12</sup> See *St. Lawrence Cement v. Barrette*, 2008 SCC 64.

<sup>13</sup> See *Sauve v. McKeage et al.*, 2006 BCSC 781.

65. Further, Mr. Kaina had a roommate, NW, between February and October 2023. In October 2023, NW informed the strata manager that she was leaving the unit because she felt unsafe living with Mr. Kaina. The strata manager asked NW if she was aware of any excessive noise disturbances from the unit above or any other noise disturbances. NW responded, "I haven't heard much and I was home pretty much all the time. Kaina was also present almost constantly and he mentioned the noise from the above suite on a number of occasions however I didn't find it to be excessive. He seems to get focused on something that irritates him and then it becomes magnified." NW noted that she did find the renovations from the suite next door, 1401, to be disturbing, but that the renovations did not last long.
66. NW also wrote to the owner of unit 1402 (Mr. Kaina's landlord), that Mr. Kaina spends all day everyday in his room, "so any noise that people cause from the suite above or beside us will disturb him."
67. In summary, apart from the partying and loud music, which the strata reasonably responded to, I find that Mr. Kaina has not provided any evidence of unreasonable noise coming from unit 1502. While Mr. Kaina clearly found the noises from unit 1502 to be intolerable, I find he has not proven that they were intolerable to an ordinary person living in a strata development. So, I find Mr. Kaina has not proven that the strata treated him significantly unfairly by not fining or taking further enforcement action against unit 1502's tenant.

#### *The strata's investigation*

68. While I have found that the strata reasonably investigated Mr. Kaina's noise complaints and enforced its bylaws against the individual units in a reasonable manner, I find this does not end the matter. For two reasons, I find the strata treated Mr. Kaina significantly unfairly beginning on June 9, 2023, when it told him to direct his complaints through his own landlord rather than directly to its strata manager and caretaker.
69. First, I find there was no legal basis for the strata manager to treat a tenant differently than an owner in the context of investigating and enforcing noise

complaints. I find the noise bylaws are in place for the benefit of all residents of the strata's building, regardless of whether they are an owner. If Mr. Kaina had owned the unit, the strata could not have taken this course of action. I find it was inequitable, and therefore significantly unfair, for the strata to use Mr. Kaina's status as a tenant as a reason to not interact with him.

70. While the strata said it directed Mr. Kaina in this manner because of his "aggressive tone and style", I find that is not a valid reason to stop listening to him. While I agree that Mr. Kaina's tone and actions were aggressive, I do not find they were abusive towards the strata manager or caretaker. Although I recognize that there may be behaviours that could justify the strata restricting or placing conditions on a resident's communications, I find that Mr. Kaina's behaviour in this instance did not warrant this kind of restriction. Generally, I find the strata must remain above the fray and treat all its residents reasonably, even if a resident is arguably acting unreasonably.
71. Second, I find Mr. Kaina has proven that his noise complaints were not always trivial. The strata's own investigations showed that there were incidences of late-night partying, motorcycle repairs, and slamming cupboards. While the strata manager and caretaker seemed annoyed by Mr. Kaina's constant complaints about unit 1502, I find they had no reasonable justification to assume that Mr. Kaina was inventing or lying about hearing noise. I find it likely that Mr. Kaina was experiencing unwanted noise and that the strata decided to stop investigating because of Mr. Kaina's behaviour rather than the noise itself.
72. In summary, I find the strata treated Mr. Kaina harshly and unfairly by refusing to hear from him directly for the 4 months in between June and late September, when it offered Mr. Kaina a council hearing.

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

73. Mr. Kaina seeks \$15,000 to compensate for the mental and emotional toll of enduring constant, unreasonable noise, as well as the financial burden associated with his forced relocation. He says the noise significantly affected his physical and



mental health and that he experienced sleep deprivation, stress and anxiety, and loss of enjoyment of his unit. I note that he has not provided any evidence to support his deteriorating health or the costs he incurred moving.

74. I also note that I do not find Mr. Kaina is entitled to damages arising from the unreasonable noise he says he experienced. This is because I have found that Mr. Kaina has not proven that he faced constant unreasonable noise.
75. However, the CRT has previously awarded damages in disputes where the applicant has proven the strata acted significantly unfairly without having proven a nuisance or a bylaw breach. For example, in *Wilkins v. The Owners, Strata Plan LMS1946*, 2022 BCCRT 336, the applicants did not prove that the noise was objectively unreasonable but were awarded \$1,500 because the strata's investigation was significantly unfair. The CRT found that the strata's failure to adequately investigate noise complaints exacerbated the applicants' frustration with their living situation and deprived them of the possibility of closure. Similarly, in *Ahn v. The Owners, Strata Plan LMS 4634*, 2023 BCCRT 258, the CRT awarded \$1,000 in damages for the strata's failure to adequately investigate the applicant's noise complaints.<sup>14</sup> While previous CRT decisions are not binding on me, I find the reasoning persuasive and I choose to follow them.
76. I find that Mr. Kaina is entitled to some damages for the strata's significantly unfair act of instructing Mr. Kaina not to contact it directly about noise complaints. However, I find the strata's unfair treatment of Mr. Kaina did not rise to the level of the treatment of the applicants in *Wilkins* and *Ahn*. In *Wilkins*, the strata corporation ignored the applicants for at least a year and ignored a hearing request. In *Ahn*, the applicant had complained for over a year and the tribunal member found that the strata never reasonably investigated their complaints. Here, I note that the strata's actions did not prevent Mr. Kaina from complaining, as it said it would consider complaints made through his landlord. While I find this action was wrongful, it did

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<sup>14</sup> See also *Luthra v. The Owners, Strata Plan EPS6288*, 2024 BCCRT 1037, *Metcalf v. The Owners, Strata Plan EPS2687*, 2024 BCCRT 941, and *Bhullar v. The Owners, Strata Plan EPS6340*, 2024 BCCRT 1201.

not leave Mr. Kaina without any options to address his noise issues. Further, when Mr. Kaina eventually complained again, in late September, the strata responded to his complaint by offering a hearing.

77. In the circumstances, I find \$750 in damages appropriate and order the strata to pay this amount.

## **CRT FEES, EXPENSES AND INTEREST**

78. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Kaina is entitled to prejudgment interest on \$750 from June 9, 2023, the date the strata told him to stop contacting it, to the date of this decision. This equals \$71.44.
79. 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. Mr. Kaina received far less damages than he asked for, but I find that he was successful on the main issue. I therefore order the strata to reimburse Mr. Kaina for CRT fees of \$225. Mr. Kaina did not prove any dispute-related expenses, so I order none.

## **ORDERS**

80. I order that within 30 days of the date of this decision, the strata pay Mr. Kaina \$1,046.44, broken down as follows:
- a. \$750 in damages,
  - b. \$71.44 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$225 in CRT fees.
81. Mr. Kaina is entitled to post-judgment interest, as applicable.
82. 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.

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Peter Nyhuus, Tribunal Member