



# Civil Resolution Tribunal

Date Issued: September 12, 2025

File: ST-2023-007612

Type: Strata

Civil Resolution Tribunal

Indexed as: *Neale v. The Owners, Strata Plan LMS 3766*, 2025 BCCRT 1266

**B E T W E E N :**

NOELLA ANGELINE NEALE

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS 3766

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Peter Nyhuus

## INTRODUCTION

1. The applicant, Noella Angeline Neale, owns a strata lot in the respondent strata, The Owners, Strata Plan LMS 3766. Ms. Neale says the strata has failed to respond to her requests to fix a noisy downspout outside her bedroom window. She says that when it rains, the downspout sounds like a bathtub constantly draining and that

this noise keeps her awake at night. She seeks \$250 and an order requiring the strata to inspect and fix the downspout at its cost. Ms. Neale represents herself.

2. The strata says the downspout is not defective, so it does not require repairs. It says it reasonably responded to Ms. Neale's complaint by holding a hearing and hiring contractors to inspect the downspout. It says the contractors found the downspout to be functioning normally. The strata also says that Ms. Neale denied its request to enter her unit to listen to the noise and that she has failed to provide a recording of the noise. The strata is represented by a council member.
3. For reasons I will explain, I dismiss Ms. Neale's claims.

## **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). 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.
5. 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.
6. 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.

## ***Without Prejudice***

7. I note that Ms. Neale's submissions say, "Please note this is without prejudice." I find this is likely an error. The phrase "without prejudice" is typically used to prevent statements from being used in a court or tribunal hearing. If I were to honour her request to treat her submissions as without prejudice, then I would have to disregard them. I find it likely that Ms. Neale wants me to read and consider her submissions. So, I have done so.

## **ISSUE**

8. The issue in this dispute is whether the strata acted unreasonably by not fixing the downspout to reduce the alleged noise.

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, Ms. Neale, as the applicant, must prove her claims on a balance of probabilities (meaning more likely than not). I note that the strata did not provide documentary evidence, although it had the opportunity to do so. 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.
10. The strata has at least 120 lots within about 33 buildings. Ms. Neale owns strata lot 114, which is a 3-story unit in a townhouse-style building containing 3 other similar units.
11. Ms. Neale complains about a loud gurgling noise coming from the downspout outside her bedroom window. She provided a 15 second video showing the downspout on a rainy day. I infer she took this video from her bedroom window. She says she attempted to capture the downspout's noise in this video, but she acknowledges that the sound is not apparent. I agree. In the video, I can hear a clock ticking, cars passing on the highway nearby, and ambient background noise, but I cannot hear a gurgling or draining sound.

12. Ms. Neale says that she first complained about the sound sometime before 2022. She says a previous strata manager hired a contractor, RP, to temporarily fix the noise issue. Ms. Neale has not said what RP did to temporarily fix the downspout, and the strata says it has no knowledge of her request or of RP addressing the issue. In any event, Ms. Neale says that the temporary fix failed in March 2022, at which point she informed the previous strata manager that the downspout was noisy again.
13. Ms. Neale says she did not raise the issue again until October 2022, when she wrote to the new strata manager to explain the issue and request a solution. In response, the strata manager asked for pictures and told Ms. Neale he would speak with the strata council and RP. Over the next couple months, Ms. Neale and the strata manager discussed possible solutions, including putting a chain into the downspout to reduce the sound.
14. Around this time, the strata manager asked RP to inspect the downspout. Ms. Neale provide RP's notes from its inspection, dated December 12, 2022. RP wrote that he found no plug or issues with the downspout and gutter. He found the gutters and downspout to be consistent with those used throughout the complex. He wrote, the "issue is water flowing down downpipe causing a noise." However, he found the system to be functioning, and he did not recommend any repairs or alterations.
15. In January 2023, the strata manager informed Ms. Neale that in the opinion of council, the gutter was functioning normally. In February 2023, Ms. Neale requested a hearing with the strata council. The strata granted her request. On March 1, Ms. Neale attended the virtual hearing, and her daughter explained the downspout issue to council.
16. The strata says that during the hearing with Ms. Neale, the strata council asked for permission to enter her unit to better understand the nature of the complaint and intensity of the noise. It says it alternatively asked for a recording of the noise. The strata says Ms. Neale denied these requests.

17. Ms. Neale disagrees that she denied the strata's request to enter her unit to listen to the downspout. She says the evening proposed by the strata was not suitable as it was not raining heavily, so the noise was not apparent. She says she suggested the strata visit during heavy rain, but that the strata never followed up with another proposed time.
18. After the hearing, the strata hired a window cleaning contractor to inspect the gutters on Ms. Neale's unit. In an email to the strata manager dated March 23, 2023, the contractor wrote that the downspout and gutter system was functioning properly, and that in their opinion, there should not be leaking concerns or any blockage or clogging issues. This report does not comment on the noise issues.
19. The strata council's minutes from council meeting held on March 30, 2023, show that the strata council reviewed correspondence from 2 contractors relating to Ms. Neale's concerns about the downspout and that both contractors advised there are no issues with the system. In April 2023, the strata manager emailed Ms. Neale to confirm that the strata council does not consider the downspout to require repairs.
20. On July 25, 2023, Ms. Neale filed her CRT application for dispute resolution.

***Did the strata act unreasonably by refusing to fix the downspout to reduce the alleged noise?***

21. The strata's obligations with respect to repair and maintenance are set out in the *Strata Property Act* (SPA) and the strata's bylaws. SPA section 3 says the strata is responsible for managing and maintaining the common property for the benefit of the owners. SPA section 72(1) requires the strata to repair and maintain common property. The strata's bylaw 11 requires the strata to repair and maintain common property. It also requires the strata to repair and maintain the exterior of buildings and things attached to the exterior of buildings, even if they are limited common property or part of a strata lot.
22. The parties did not provide submissions on whether the downspout in question was common property, limited common property, or part of Ms. Neale's strata lot.

However, I find that bylaw 11 makes clear that the repair and maintenance of the downspout is the strata's obligation, as it is attached to the exterior of a building.

23. In *Tran v. The Owners, Strata Plan NW468*, 2022 BCCRT 575, a CRT member found that the strata must fulfill its repair and maintenance obligations in a manner that does not cause a nuisance. While not binding on me, I agree with the CRT member's reasoning and apply it here. I find that if Ms. Neale can prove that the downspout's noise causes a nuisance, the strata must repair the downspout to address the nuisance.
24. In the strata context, a nuisance is a substantial and unreasonable interference with an owner's use and enjoyment of their property (see *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502). The test for nuisance depends on several factors, such as its nature, severity, duration, and frequency (see *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64). The test is objective and is measured with reference to a reasonable person occupying the premises (see *Sauve v. McKeage et al.*, 2006 BCSC 781). The objective requirement guards against those with abnormal sensitivity or unreasonable expectations (see *Sutherland v. Canada (Attorney General)*, 2001 BCSC 1024).
25. The difficulty for Ms. Neale is that she did not provide objective evidence that the downspout's noise was a substantial and unreasonable interference with her use or enjoyment of her property. For instance, she did not provide an audio recording of the noise, a statement by a third party describing the noise or its severity, decibel readings showing the noise was objectively too loud, or a noise log showing the noise's frequency. As I explained above, I cannot hear the noise in the only video she provided of the downspout.
26. Ms. Neale provided a quote from a contractor for the supply and installation of a porous foam insert. The quote says the insert is designed to keep tree debris out of the gutter and "can be used to potentially slow down the speed of water traveling through down pipe, which is currently resulting in noise." The contractor did not comment on the noise's severity or specify whether they personally observed the

noise. I find the quote does not prove that the noise is a nuisance. While it shows that there may be a possible solution to quiet the noise, to trigger the strata's duty to repair, Ms. Neale must still prove that the downspout needs to be quieted.

27. So, I am left with only Ms. Neale's subjective assertion that the noise is loud and distressing. Without objective evidence, I find she has not proven that the noise is unreasonable to an ordinary person.
28. Bearing in mind that Ms. Neale has not proven the downspout's noise is a nuisance, I now consider the strata's response to Ms. Neale's complaints and its decisions to stop investigating the noise issue and to not alter the downspout.
29. It is well established that the strata is held to a reasonableness standard in exercising its duty to repair. Specifically, the strata must make repair and maintenance decisions that reasonably balance competing interests between owners. See *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784. Further, the duty to repair and maintain includes a duty to investigate. The question of whether the duty to investigate is triggered depends on the likelihood of the need of repair, the cost of the investigation, and the gravity of the harm to be avoided or mitigated. See *Guenther v. Owners, Strata Plan KAS431*, 2011 BCSC 119 at para. 40.
30. In response to Ms. Neale's complaints, the strata hired 2 contractors to investigate the downspout. Both contractors found the downspout to properly perform its purpose of draining water. I note that neither contractor's report mentions whether the downspout causes unreasonable noise. I infer the contractors did not observe the downspout during the weather conditions that cause the noise.
31. The strata council has offered to investigate further by attending Ms. Neale's unit to listen to the noise. The parties have failed to make this happen. Ms. Neale appears to expect the strata to organize this visit. However, given that Ms. Neale lives in the unit that is affected by the noise and knows the weather conditions that cause the noise, I find she is in the best position to invite the strata council to her unit at an appropriate time.

32. I find the strata has met its duty to investigate the downspout, given the limited and subjective information that Ms. Neale has provided so far. To trigger the strata's legal obligation to investigate further, Ms. Neale must provide further objective information about the downspout's noise and the gravity of the harm it causes. This objective information could include audio recordings, third party witness statements, decibel reading, and noise logs.
33. For similar reasons, I find the strata has met the reasonableness standard in exercising its duty to repair. When deciding whether to repair or alter the downspout, the only objective evidence indicated that the downspout was functioning properly. In the absence of objective evidence of a nuisance, I find the strata reasonably decided against altering the functional downspout to address the alleged noise. So, I dismiss Ms. Neale's claims.
34. For clarity, I note that despite this finding, the strata still has an ongoing duty to maintain and repair the downspout. So, if Ms. Neale provides the strata with new information showing the downspout makes unreasonable noise, the strata must reconsider whether it must reasonably investigate the noise and repair the downspout.

## **CRT FEES AND EXPENSES**

35. 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. Ms. Neale was unsuccessful, so I dismiss her claim for CRT fees. The strata did not pay CRT fees. Neither party claims dispute-related expenses, so I order none.
36. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Ms. Neale.



## **ORDERS**

37. I dismiss Ms. Neale's claims.

---

Peter Nyhuus, Tribunal Member