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Indexed as: Stephenson v. Strata Corporation VIS 1419, 2014 BCHRT 110

IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Bradford Stephenson

COMPLAINANT

A N D:

The Owners, Strata Corporation VIS 1419

RESPONDENT

REASONS FOR DECISION
APPLICATION TO DISMISS: Section 27(1)(c)

Tribunal Member:

Norman Trerise

Counsel for the Complainant:

Robyn Durling

Counsel for the Respondent:

Bill Garton

I INTRODUCTION

[1] Bradford Stephenson filed a complaint alleging that The Owners, Strata Corporation VIS 1419 discriminated against him on the basis of a disability (the “Complaint”).

[2] The Respondent denies that it discriminated against the Complainant and applies to dismiss Mr. Stephenson’s complaint pursuant to s. 27(1)(c) of the *Human Rights Code* of British Columbia.

[3] The Complaint is filed under s. 8 and alleges that the Respondent has failed to accommodate Mr. Stephenson’s hearing disability by declining to discuss how his inability to hear the fire alarm in the common area outside of his suite might be solved and by failing to alter the fire alarm in order that he can hear it.

II FACTS

[4] Mr. Stephenson is an owner-resident at Strata Corporation VIS 1419.

[5] Mr. Stephenson suffers from hearing loss which is more pronounced at certain frequencies/pitches.

[6] On April 15, 2013, Mr. Stephenson informed the Property Management Company for Strata Corporation VIS 1419 that he was unable to hear the fire alarm in the hallway outside his door and asked that this be relayed to the Strata Corporation so that a solution could be sought. He asserts in his communication to the Property Management Company that he cannot hear the alarm even while standing directly next to it. He requests that the Strata Manager investigate whether an alternative alarm device might be available to correct the situation. The basis of the problem, according to him, is not loudness but pitch, which is too high for his hearing disability.

[7] On April 16, 2013, Mr. Stephenson’s request was relayed to the Strata Council.

[8] Mr. Stephenson asserts that neither the Property Management Company nor any member of the Strata Council contacted him with respect to his request for accommodation.

[9] On April 16, 2013, Mr. Stephenson's letter was read at a meeting of the Strata Council, which Mr. Stephenson did not attend.

[10] Mr. Stephenson has indicated that the concern, as stated above, was with the fire alarm in the common area outside of his unit; however, his communication to the Strata Corporation does not make that clear. In fact, a plain reading of the communication of April 15, 2013 would suggest that the problem was with the fire alarm within his Unit No. 403.

[11] Neither the Property Management Company nor any member of the Strata Council responded to Mr. Stephenson.

[12] On May 12, 2013, Mr. Stephenson communicated with the Strata Council requesting that they convene a meeting in the week of May 13th to 18th to discuss the issue with him.

[13] A meeting was convened, however a quorum of the Strata Council did not attend.

[14] It appears that no subsequent meeting was scheduled and that no discussions have taken place between Mr. Stephenson and members of the Strata Council respecting the possibility of accommodation.

[15] No change was ever made to the alarm.

[16] Mr. Stephenson underwent a hearing test on March 3, 2013 and the audiogram was presented to the Tribunal. No material explaining the results of that audiogram have been filed by either party.

[17] It is possible that the audiogram reveals that Mr. Stephenson can hear sounds between 55 decibels and 95 decibels but I am unable to say that with any certainty.

[18] On August 20, 2013, Mr. Stephenson received a letter from an establishment called Connect Hearing, the establishment which carried out the audiogram which indicates that "Mr. Stephenson presents with a moderate to severe sensorineural hearing loss bilaterally. He requires amplification to assist him with the recognition of words in conversation and to hear environmental sounds. Without hearing aids or assisted devices, he will have extreme difficulty hearing conversation and alarm sounds."

[19] No information is filed by either party to indicate whether Mr. Stephenson wears hearing aids or to what degree they are effective.

[20] Material has been filed by the Respondent which establishes that, on August 20, 2013, fire detection devices were being tested and that Mr. Stephenson was certainly able to hear the fire detection device in Unit 403.

[21] The Respondent has filed a report from Campbell River Fire Safety SVC. Inc. which appears to establish that, on August 20, 2013, the fire alarm system was inspected, tested and maintained, and found to be fully functional without deficiencies.

[22] The previous testing of the alarm system took place in August 2012, some eight months prior to Mr. Stephenson's information to the Property Management Company that he was unable to hear the fire alarm.

III THE APPLICATION TO DISMISS

Position of the Respondent

[23] The Respondent says that Mr. Stephenson's medical information states that Mr. Stephenson has moderate to severe hearing loss and requires amplification to assist him with the recognition of words or environmental sounds. It further states that the audiogram states that he requires amplification which it equates to a hearing aid.

[24] It states that the alarm operates at 95 decibels at ten feet. They further state that that is above the most severe noted deficiency in the audiogram. No supporting information is presented to establish that decibel level. Essentially, it submits that Mr. Stephenson's complaint that he cannot hear the alarm conflicts with the documentary evidence.

Position of the Complainant

[25] Mr. Stephenson points out that the Respondent acknowledged the medical information establishes that he has moderate to severe hearing loss.

[26] He says that the Respondent says some of his hearing loss may be mitigated by a hearing aid but he is not wearing, nor is it recommended that he wear, a hearing aid while sleeping.

[27] Mr. Stephenson says that the fire detection equipment in suite 403, which he can hear, is only triggered if there is smoke in his suite.

[28] Mr. Stephenson submits that, whether or not the building is up to code with respect to building and fire codes, does not provide a defence to an allegation of discrimination based on the failure to accommodate.

[29] Mr. Stephenson responds to the Respondent's submission that he should obtain a suitable hearing aid by saying that amounts to blaming the victim; that he is entitled to accommodation to remedy his inability to hear the fire alarm, and the Strata is refusing to engage in the process of accommodation or to accommodate.

[30] Mr. Stephenson says that the communications filed by the Respondent which establish that he could hear the fire alarm in suite 403 is not the issue. It is the hallway fire alarm that he cannot hear.

Response of The Owners, Strata Corporation VIS 1419

[31] The Respondent states that Mr. Stephenson's hearing loss has not been substantiated.

[32] It says that Mr. Stephenson's credibility is challenged by his suggestion that he cannot hear the communal fire alarm even when his head is right under the alarm because the alarm was never activated after August 2012, right up to the time when he voiced his concern on April 15, 2013.

[33] The Respondent states that it is not truthful for Mr. Stephenson to say that the Strata did not respond to his concerns and point out that it discussed the matter in his absence on April 16th, and that it convened a meeting of May 12th, which unfortunately had to be cancelled because of lack of a quorum.

[34] It reasserts that the common property fire alarm is more than adequate according to the results of Mr. Stephenson's hearing test and that the only possible action is from Mr. Stephenson himself by obtaining an adequate hearing aid.

[35] It further submits that accommodating Mr. Stephenson the way he wished would put the other seven owners with severe hearing problems at risk but do not stipulate how that might be.

[36] It repeats that the alarm decibel level is 95 decibels and says that, given the results of hearing testing depicted on the audiogram, the alarm decibel is within his hearing range. It says that the audiogram shows that it is at higher decibels that his hearing is worse but the common alarm is a “steel bell type which rings in the mid-range”. Once again, no information is provided to support that.

[37] The Respondent says that hearing aids have been modernized and that there are models that are constructed to be worn at night.

IV ANALYSIS AND DECISION

[38] The application in this case is under s. 27(1)(c) which reads

- (1) A member or panel may, at any time after a complaint is filed and with or without a hearing, dismiss all or part of the complaint if that member or panel determines that any of the following apply:

...

- (c) there is no reasonable prospect that the complaint will succeed;

[39] The approach which the Tribunal applies on applications to dismiss under s. 27(1)(c) is well established. The Tribunal assesses whether there is a reasonable prospect the complaint will succeed based on the information available to it: *Wickham and Wickham v. Mesa Contemporary Folk Art and others*, 2004 BCHRT 134, paras. 11-12.

[40] On such an application, the burden is not on the complainant but on the respondent to establish that there is no reasonable prospect that the complaint will succeed: *Stonehouse v. Elk Valley Co. (No. 2)*, 2007 BCHRT 305.

[41] The threshold for a complainant to defeat an application under s. 27(1)(c) is low. The complainant is only required to show that the evidence takes the case out of the realm of conjecture: *Workers Compensation Appeals Tribunal v. Hill*, 2011 BCCA 49, para. 27.

[42] The Tribunal does not conduct investigations and it is incumbent upon the parties to put forward all evidence that they consider necessary to assist their position on an application to dismiss: *Bell v. Dr. Sherk and others*, 2003 BCHRT 63, para. 25. Both parties have fallen well short on this application. It is not helpful to receive an audiogram

into evidence which reveals a series of circles connected by a line as well as a series of Xs without explanation by a competent interpreter of what the significance of those notations is. Neither is it helpful for that audiogram to provide information in decibels under a heading SRT or word recognition, MCL and UCL. I do not know what those acronyms are intended to convey. All that can be taken from the audiogram is that it is clear that Mr. Stephenson has a disability, bilateral sensorineural hearing loss, moderate to severe, and that amplification is required.

[43] Neither is it important whether the alarm system has been tested and is operating effectively when the issue is one of accommodation.

[44] By the same token, Mr. Stephenson provides no information with respect to whether he does or does not utilize a hearing aid (it appears that he does) and there is absolutely no information as to the capacity of any hearing aid or whether other hearing aids would resolve this problem. He does say that he does not wear, and neither is it recommended that he wear, a hearing aid while sleeping.

[45] It is certainly true that the Strata has an obligation to look into what it can do to help accommodate Mr. Stephenson's problem but, equally, Mr. Stephenson has an obligation to cooperate in any accommodation efforts and to do what he can to solve the problem. It may be that the problem could be solved only by a change in the pitch of the communal fire alarms. It may be that such a change would cause problems for other residents who may have different pitch sensitivities than Mr. Stephenson. The Tribunal has no way of knowing because none of the information which might assist in this analysis has been presented by either party.

[46] While Mr. Stephenson says that the argument that he should change his hearing aid amounts to blaming the victim, it is not clear to me that, if the issue is easily resolved by a complainant, this would not be the appropriate resolution to the issue. The duty to accommodate only arises if there is an adverse treatment. If Mr. Stephenson is capable of easily solving the problem for himself, then there may be no adverse treatment.

[47] I am unable to conclude that Mr. Stephenson has no reasonable prospect of success with his claim because the Respondent has not met the basic requirements of

presenting a case which establishes that. Accordingly, I deny the application and decline to dismiss Mr. Stephenson's Complaint pursuant to s. 27(1)(c).

[48] It is clear from the materials that no discussion has actually taken place between the parties respecting the merits of this case and the possibility of accommodation. I suggest that the parties avail themselves of the mediation services of the Tribunal prior to taking this matter to a hearing.

Norman Trerise, Tribunal Member