



Civil Resolution Tribunal

Date Issued: December 20, 2017

File: ST-2017-004697

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kervin v. The Owners, Strata Plan LMS 3011*, 2017 BCCRT 146

B E T W E E N :

Barbara Kervin

APPLICANT

A N D :

The Owners, Strata Plan LMS 3011

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal) on a jurisdictional matter that arose during this tribunal proceeding about a strata property dispute. Only the evidence and submissions relevant to this decision are referenced below. This is not the tribunal's final decision as to the substance or merits of the dispute.

2. At the time of her September 2017 application for dispute resolution, the applicant, Barbara Kervin owned strata lot 33 in the respondent strata corporation, The Owners, Strata Plan LMS 3011 (strata). This dispute involves the strata's enforcement of a vicious dog bylaw.
3. On December 13, 2017, the applicant sold her strata lot. This matter was first referred to me on December 1, 2017, when the applicant was still an owner in the strata. At that time, I concluded the matter was premature and did not want to speculate about what my order might be if and when the applicant's strata lot was sold. I referred the dispute back to the tribunal facilitation process.
4. The respondent says the applicant no longer has legal standing to continue this dispute as she is not a registered owner of a strata lot within the strata. The respondent strata requests the dispute be dismissed. The applicant disagrees and requests the dispute be heard.
5. The applicant is self-represented and the strata is represented by a strata council member.
6. For the reasons set out below, I dismiss the applicant's claims.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear

this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the jurisdiction of the tribunal.
10. Under section 11(c) of the Act, the tribunal may refuse to resolve a claim if it considers that the issues are impractical for the tribunal to case manage or resolve.
11. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
12. Under tribunal rule 119 (c), applicable at the time this dispute was commenced, the tribunal can determine all matters within its authority relating to the tribunal decision process.
13. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
14. On November 8, 2017, the respondent strata raised the jurisdiction issue with the tribunal facilitator who obtained submissions from the parties. As noted above, I declined to address the jurisdictional issue while the applicant was still an owner in the strata.
15. On December 18, 2017, after the applicant sold her strata lot, the respondent strata again raised the jurisdiction issue with the tribunal facilitator who obtained further submissions from the parties for my consideration.

ISSUE

16. The sole issue in this decision is whether the tribunal has jurisdiction to resolve this dispute given the applicant has sold her strata lot. If so, is it appropriate for the tribunal to continue to resolve this dispute?

BACKGROUND, EVIDENCE AND ANALYSIS

17. An owner, as defined under the *Strata Property Act* (SPA), may request the tribunal resolve a strata property dispute under the Act (see *Somers v. The Owners, Strata Plan VIS 1601*, 2017 BCCRT 12).
18. It is undisputed that the applicant was an owner at the time she asked the tribunal resolve her dispute. Land title documents obtained by the tribunal facilitator confirm the applicant sold her strata lot on December 13, 2017.
19. The Act, tribunal rules, and the SPA are silent as to the tribunal's jurisdiction should the status of an applicant change during a tribunal proceeding. There is nothing in the legislation that expressly states the tribunal does not have jurisdiction if an applicant ceases to be an owner during the tribunal process. On its face, the legislation does not preclude the tribunal from continuing its proceeding in relation to this dispute. For these reasons, I find the tribunal has jurisdiction to continue to resolve this dispute.
20. However, given the legislation is silent on the issue of a change in ownership during the tribunal process, I find the tribunal has discretion to resolve the dispute under section 61 of the Act and tribunal rule 119(c). I find the tribunal may dismiss, refuse to resolve, or continue to hear the dispute. The main difference between dismissing a dispute and refusing to resolve it is that a dismissal is a final decision of the tribunal which may not subsequently be brought back before the tribunal or another legally binding process. In refusing to resolve a dispute, the parties are not restricted from raising the dispute in another legally binding process or bringing the dispute back to the tribunal if circumstances change.

21. For the reasons that follow, I find this dispute should be dismissed.
22. In exercising its discretion where an owner sells their strata lot during the tribunal process, the tribunal must balance the applicant's interest in deciding whether and how to pursue a dispute with any prejudice to the respondent.
23. The tribunal's rules do not provide guidance on how the tribunal should strike this balance. Though not binding on me, I have considered the factors used by the tribunal when considering a party's failure to comply with the tribunal's directions and find that similar factors apply here.
24. In exercising its discretion whether to continue the proceeding, I find the tribunal must consider the following factors:
 - a. Whether all of the parties to the claim or dispute agree that the claim or dispute should be resolved by the tribunal;
 - b. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - c. The stage in the tribunal proceeding at which the applicant ceases to be an owner;
 - d. The relative prejudice to the parties of the tribunal's potential order; and
 - e. The effect of continuing the proceeding on the tribunal's resources and mandate.
25. The applicant submits other owners within the strata complex remain at risk if strata fails to enforce its vicious dog bylaw as she alleges it has done. She submits that the claim must be allowed to continue and the bylaw enforced in order to prevent further attacks on other pets or children in the complex. She further submits that she sold her strata lot to avoid further attacks on her dogs because the strata did not enforce its vicious dog bylaw.

26. The respondent submits the applicant appears to be advancing a claim on behalf of other owners within the strata. I do not agree with the strata in this respect and note that owner is the sole applicant in this dispute. I find the applicant's submission that other owners' pets and children remain at risk simply reflects the level of importance the applicant places on the dispute, rather than a submission that her claim is on behalf of other owners.
27. The strata is responsible for managing and maintaining the common property and common assets of the strata for the benefit of the owners and that the strata council must exercise the powers and perform the duties of the strata, including the enforcement of bylaws and rules (SPA sections 34 and 26).
28. I turn now to the factors I described earlier.
29. I find that the issue raised by this claim does not affect persons other than the parties involved in this dispute. While it is arguable that other owners or residents within the strata may benefit from the tribunal resolving this dispute, there is only one applicant in this dispute and no evidence to suggest other owners or residents support her position. Nothing prevents other owners or tenants from advancing a tribunal claim of their own.
30. The applicant ceased to be an owner at the outset of the facilitation process and no substantial discussions between the parties had occurred. I recognize the applicant may not have had the opportunity to garner support from other owners and residents given the early stage in the tribunal proceeding at which she ceased to become an owner. I find that this supports my conclusion that the dispute should be dismissed.
31. I see no prejudice to the applicant if I decide to dismiss or refuse to resolve this dispute as, by her own admission, she has sold her strata lot in order to resolve the allegation that the strata was not enforcing its bylaws.
32. There is no prejudice to the respondent as it has requested the dispute be dismissed. I find the respondent would be prejudiced should I decide the tribunal

should refuse to resolve this dispute as it would not be a final decision of the tribunal as noted earlier.

33. In further support of this conclusion is the tribunal's mandate. Specifically, section 2(2)(b) of the Act which says the tribunal's mandate is to provide dispute resolution services in relation to matters that are within its authority, in a manner that applies principles of law and fairness, and recognizes any relationships between the parties that that will likely continue after the tribunal proceeding is concluded. As noted earlier, the sale of the applicant's strata lot has ended the parties' relationship.
34. The tribunal's resources are valuable and I find it would be wasteful for the tribunal to continue applying its resources on a dispute where the applicant is no longer affected by its outcome.
35. In weighing all of the factors, I find the applicant's dispute should be dismissed. In reaching this conclusion, I put weight on the following factors:
 - a. The parties do not agree the tribunal should resolve the dispute;
 - b. Persons other than the parties are not affected by my conclusion;
 - c. Dispute resolution services of the tribunal were early in facilitation at the time the applicant sold her strata lot;
 - d. The applicant is not prejudiced if the dispute is dismissed;
 - e. The respondent is prejudiced if I refuse to resolve the dispute;
 - f. The tribunal's resources should be conserved.

DECISION AND ORDERS

36. I order that the applicant's dispute is dismissed.

37. No claims for dispute related expenses were made. Given the applicant was unsuccessful in respect of her claims and the respondent paid no tribunal fees, I make no order with respect to tribunal fees paid and dispute-related expenses.
38. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

J. Garth Cambrey, Vice Chair