



Civil Resolution Tribunal

Date Issued: April 12, 2019

File: SC-2018-004496

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Compton v. Nanaimo Yacht Club*, 2019 BCCRT 450

B E T W E E N :

Douglas Compton

APPLICANT

A N D :

Nanaimo Yacht Club

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about parking. The applicant, Douglas Compton is a member in good standing of the respondent Nanaimo Yacht Club. The applicant's car was towed from the respondent's parking lot on February 9, 2018, and the applicant wants the respondent to reimburse him \$191.20 for towing charges. The applicant also wants the respondent to honour the 2 parking motions the membership passed

at the respondent's March 8, 2018 general meeting. The applicant also wants the respondent to reimburse 2 other members \$382.40 for towing charges they incurred on February 9, 2018. Those other members are not parties to this dispute.

2. The applicant is self-represented and the respondent is represented by an employee or principal.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal 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.
4. 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.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
7. The tribunal does not have jurisdiction to grant remedies under the *Societies Act*, but as explained below, I find it appropriate to consider its provisions in deciding whether the applicant is entitled to reimbursement of his towing fees.

ISSUES

8. The issues in this dispute are:
 - a. Is the respondent required to reimburse the applicant's \$191.20 towing charge and the \$382.40 towing charges of 2 other members?
 - b. Is the respondent required to honour the 2 parking motions passed at the March 8, 2018 general meeting?

EVIDENCE AND ANALYSIS

9. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
11. For years the respondent has had various issues with its parking lot which has resulted in significant disagreements amongst its membership.
12. Early on the morning of February 9, 2018 the applicant's vehicle was towed from the respondent's parking lot, along with the vehicles of 2 other members. The respondent says they towed these vehicles in accordance with their Clubhouse general rules and regulations 1 D. (d) and (l) which state, "The use of the Club parking lot is prohibited for parking while commuting directly to and from a member's permanent place of residence, unless special approval is granted by the Executive Committee," and "Any vehicles found in contravention of these regulations are subject to removal at their owner's expense without further notice."
13. The respondent held its next general meeting on March 8, 2018. The minutes from that meeting show that 2 late agenda items were added by members during the meeting, both about parking. For the first item, the membership voted on a motion "that the parking policy be reviewed by a committee representing a cross-section of

the membership for 12 months. During this time NYC will suspend enforcement of Regulation Clubhouse 1. (d)..." The minutes show the motion was carried with 35 for and 27 against.

14. For the second late addition to the agenda, the membership voted on the motion "that all members subject to towing expenses incurred at NYC parking lot in the month of February, be reimbursed for these expenses." The minutes show the motion was carried.
15. The respondent's executive met on April 26, 2018. The minutes from that meeting indicate the executive had received legal advice about its parking policies and the procedures followed at the March 8, 2018 general meeting with respect to the 2 parking motions. The executive voted and passed a motion that the 2 motions passed at the March 8, 2018 general meeting about non-enforcement of parking regulations and reimbursement of towing fees were out of order because of concerns about procedural fairness. The executive's concern was that parking issues are contentious amongst the membership, and members did not have notice of the parking resolutions before the March 8, 2018 general meeting. The executive says some members who did not attend the meeting may have attended if they had received proper notice of the parking resolutions.
16. The minutes from the May 10, 2018 general meeting state that the executive deemed the 2 parking motions passed at the March 8, 2018 general meeting to be out of order.
17. The applicant disagreed with this decision and exchanged multiple emails with the respondent's executive. On May 21, 2018 the applicant wrote an email to the respondent's executive citing section 102 (1) (a) and (b) of the *Societies Act*, which states that a member of a society may apply to "the court" for an order on the grounds that the activities or internal affairs of the society are being conducted, or the powers of the executive were exercised, in a manner oppressive or prejudicial to a member. The email states that the executive's attempt to negate the motions of

the members at the March 8, 2018 general meeting was oppressive and prejudicial to one or more members.

18. On September 16, 2018, the applicant wrote an email to the membership of the respondent yacht club. In the email the applicant refers to section 102 of the *Societies Act* and says, “I want all Directors to ask themselves whether the actions over the last two years could be considered oppressive or prejudicial to a member or members...A court action under section 102 is estimated to cost in the neighborhood of \$15,000...”
19. Despite the correspondence described above, the applicant has not specifically claimed a remedy under section 102 of the *Societies Act* in this dispute, or specifically claimed that the actions of the executive were oppressive or unfairly prejudicial to him.
20. At the start of the dispute resolution process, a case manager raised the issue of jurisdiction and the parties made submissions about this issue. The applicant says it is within the tribunal’s mandate and role to resolve this dispute, as set out in sections 2 and 3 of the Act. The respondent noted that a claim under section 102 of the *Societies Act* must be brought to the Supreme Court. In a preliminary decision a tribunal member found the tribunal has jurisdiction to resolve this dispute. In that decision the tribunal member acknowledged the tribunal did not have jurisdiction to order a remedy under section 102 of the *Societies Act* but found that the order the applicant sought was a straightforward debt claim for the reimbursement of towing charges. The tribunal member found that the applicant’s request that the parking reimbursement resolution be enforced is not a variance or setting aside of a resolution as contemplated by section 102 of the *Societies Act*. I note that preliminary decision is not binding on me, and the tribunal member who made that decision did not have the parties’ evidence or full submissions before them.

Is the respondent required to reimburse the applicant's \$191.20 towing charge and the \$382.40 towing charges of 2 other members?

21. The evidence is clear that the respondent's directors passed a resolution on April 26, 2018 that the 2 parking motions passed at the March 8, 2018 general meeting were out of order. This means the membership's motion to reimburse the applicant's towing expenses is not in force. The tribunal does not have jurisdiction to vary or set aside a resolution, as that is a remedy set out in the *Societies Act*.
22. The applicant already had the opportunity to raise the relevant sections of the *Societies Act* before the tribunal member who made the preliminary decision about the tribunal's jurisdiction. That tribunal member clearly stated in their preliminary decision that the tribunal has no jurisdiction to order remedies set out in the *Societies Act*, but said it appeared that the applicant's claim was a straightforward debt claim about towing charges. The applicant therefore had notice that *Societies Act* remedies are outside the tribunal's jurisdiction, and he has not raised the *Societies Act* in his submissions.
23. As I have no jurisdiction to vary or set aside the directors' resolution of April 26, 2018, I find that resolution stands. Therefore, I must determine if there is any other basis on which the respondent must reimburse the applicant's towing charges. I find there is not.
24. The respondent says the applicant is a commuter to Protection Island and that he was in violation of regulation 1 D (d) at the time his vehicle was towed. The respondent's rules and regulations clearly state that anyone in violation of the parking regulations will be towed at their own expense. The respondent says the applicant knows the parking rules, which have been in place for approximately 20 years, and the respondent provides him with a copy of the rules in the yearbook every year.
25. The applicant does not deny that he was in violation of regulation 1 D (d) at the time his vehicle was towed, but says his vehicle was displaying a membership pass at

the time. However, regulation 1 D (d) does not refer to membership passes, and there is no indication that displaying a membership pass excuses a member from breaking that rule. The applicant says he was not notified either before or after his vehicle was towed, however the parking regulations do not require the respondent to provide notice before enforcing them.

26. On the evidence before me I find there is no basis to reimburse the applicant's towing expense, and I dismiss this claim.

27. The applicant submitted towing invoices for 2 other members and wishes to have the respondent reimburse these members. However, neither of these members are parties to this dispute, and the applicant has not shown he has authorization to bring a claim on their behalf. Therefore, I also dismiss this claim.

Is the respondent required to honour the 2 parking motions passed at the March 8, 2018 general meeting?

28. As explained above, I find the respondent's executive's April 26, 2018 resolution stands, because the tribunal does not have jurisdiction to vary or set aside that resolution. That resolution clearly states that the 2 parking motions passed at the March 8, 2018 general meeting were out of order. Therefore, I find the respondent is not required to honour the 2 parking motions passed at that meeting, and I dismiss this claim.

29. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful he is not entitled to reimbursement of his tribunal fees, and he has not claimed any dispute-related expenses.

ORDER

30. I dismiss the applicant's claims and this dispute.

Sarah Orr, Tribunal Member