



# Civil Resolution Tribunal

Date Issued: June 10, 2019

File: SC-2018-009571

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Weller v. The Owners, Strata Plan KAS3638 et al*, 2019 BCCRT 706

B E T W E E N :

LUKE WELLER

**APPLICANT**

A N D :

The Owners, Strata Plan KAS3638 and ASSOCIATED PROPERTY  
MANAGEMENT (2001) LTD.

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. The applicant Luke Weller says that his employee was living in unit 1108 in the respondent the Owners, Strata Plan KAS3638 (strata). The strata is managed by the respondent Associated Property Management (2001) Ltd. (APM).

2. Mr. Weller says his employee stored Mr. Weller's 1999 Ford Ranger (truck) in the underground parking space assigned to unit 1108. The strata then had the truck towed claiming there was no proof of insurance. The truck was later crushed. Mr. Weller claims \$3,000 for the loss of his truck.
3. Strata lot 90 (Unit 1108) is owned by AD. The evidence does not prove whether AD is Mr. Weller's employee. Neither AD nor Mr. Weller's employee, if they are two different people, were named as parties in this dispute.
4. The strata says it followed its bylaws and denies any liability for the truck. It asks that the dispute be dismissed.
5. APM says the truck did not display proof of storage insurance at the time that it was towed. APM says no one provided storage insurance to it for the truck, despite requests for the document. APM says a tow notice was placed on the truck and on the front door of unit 1108, prior to towing. APM denies liability for the truck. APM asks that the dispute be dismissed.
6. Mr. Weller represents himself. Strata council member Leanne Nowell represents the strata. APM is represented by employee Samantha Gilchrist.

## **JURISDICTION AND PROCEDURE**

7. 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.
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. 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.
10. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

11. The issue in this dispute is whether either the strata, or APM, or both, are responsible for the loss of Mr. Weller's truck.

## **EVIDENCE AND ANALYSIS**

12. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only to the extent necessary to explain and give context for my decision.
13. The strata's bylaw 3(f) requires all vehicles stored on common property to have insurance. The bylaw specifies that copies of storage insurance must be provided to the strata council and/or placed in the vehicle to be visible and readable from the outside. As well, all vehicles, regardless of insurance type, must be roadworthy.
14. On Friday August 10, 2018, the truck was parked in unit 1108's stall, which was common property

15. The parties disagree about whether truck was displaying storage insurance at August 10, 2018 and thereafter.
16. The strata says the truck had no insurance or plates visible on it. A photograph of the truck filed in evidence shows no plates.
17. Mr. Weller takes the position that insurance was posted in the window of the truck by the time it was towed. However, he did not observe this first-hand. He relies upon his employees swearing “black and blue” that it was the case. There is no statement from any of Mr. Weller’s employees in evidence.
18. Strata council checked to see if storage insurance had been provided by email. It had not.
19. On August 10, 2018, strata manager RW wrote to AD with notice that Bylaw 3(f), which requires all vehicles on common property to be insured, had been contravened. The letter said that the vehicle in stall 38 had no license plate and did not display current insurance. The strata requested storage insurance or other valid insurance. A written response was required within 20 days. The August 10, 2018 letter specifies that the strata council may impose a fine or “other remedy”.
20. Ms. Nowell checked the truck several times from August 10, 2018 onward, and observed no insurance documents. For this reason, and because strata council did not have any insurance provided by email or otherwise, I prefer the strata’s evidence and find that the truck did not display any insurance. This finding is consistent with correspondence issued by the strata manager the same day, and Ms. Nowell’s first-hand observations, whereas Mr. Weller was only able to speculate about what occurred.
21. On August 10, 2018, at 11:00 a.m., strata council had a 24-hour tow notice on the dash of the car. Ms. Nowell also knocked on the door of unit 1108. No one answered. She left a copy of the tow notice on the front door.

22. That evening, Ms. Nowell observed that the tow notice on the car and the one on the door of unit 1108 had been removed.
23. On August 11, 2018, at around 11:30, Ms. Nowell checked on the truck. There was now a sign on the front windshield asking if the owner could have 4 hours to wait until their roommate arrived home.
24. At around 4:30, Ms. Nowell knocked on the door at unit 1108 and AD answered. I accept Ms. Nowell's evidence that she had a conversation with AD that day.
25. When asked about the truck's insurance, AD said he was still waiting for his roommate to arrive home with the paperwork. Ms. Nowell explained the bylaw and asked AD to move the truck into street parking until the proper paperwork was sorted out. AD agreed and said he would go to get the keys to move it.
26. On August 12, 2018 the truck was still in the parking stall. The strata council contacted Mario's Towing to tow the truck. At noon, a 24-hour tow notice from Mario's was placed on the truck. The truck was again checked for insurance and none was present.
27. On August 13, 2018 Ms. Nowell went and checked the truck again. No insurance details were present. The truck was still parked in the parking stall.
28. At this point, Ms. Nowell called Mario's and asked for the truck to be towed.
29. On August 14, 2018 at around 1:30 p.m., the truck was towed by Mario's Towing, at the request of strata council.
30. On October 4, 2018, AD knocked on Ms. Nowell's door asking where his truck was. AD told Ms. Nowell he had storage insurance posted in the truck's window and that a copy had been sent to the strata manager. However, as no statement from AD was filed in evidence, I prefer Ms. Nowell's evidence and find that neither of these assertions are proven on the evidence before me.

31. On October 9, 2018, Mr. Weller emailed the strata manager saying that the towing company was charging over \$1,800 for storage fees, which he was unwilling to pay because the truck “was towed for no apparent reason.”
32. The strata parkade has a permanent sign saying that vehicles parked without authorization will be towed away by Mario’s Towing. The sign provides a phone number for Mario’s.
33. Mr. Weller provided an Insurance Corporation of British Columbia storage insurance policy effective from July 19, 2018 to December 18, 2018. The policy appears to be for the truck. The policy shows a declared value of \$0 for the truck.
34. I find that the truck was insured for storage at the time that it was towed.
35. The strata has bylaws which govern the use of parking spaces. I find that the truck was parking in unit 1108’s parking space in contravention of bylaw 3(f). I have found that the strata lot owner, AD, was made aware of the contravention, both through written communications left on the truck and by an in-person discussion with Ms. Nowell. At the time, AD said he would move the truck until the insurance paperwork could be provided. When he failed to do so, the strata council had a further tow notice placed on the truck, and then had it towed.
36. One remaining issue is that the strata’s August 10, 2018 correspondence indicated that the AD had 20 days to respond in writing. The truck was then towed inside this 20-day period. However, I find that Ms. Nowell spoke with AD after the August 10, 2018 correspondence was delivered, and that he agreed to move the truck that evening but then failed to do so.
37. I find that the strata acted reasonably in having the car towed because it provided both written and in-person notice to AD that it intended to tow the truck, and he did not either move the truck or provide the insurance policy.
38. I find that Mr. Weller’s claim must fail. I have found that his truck was not displaying a valid insurance policy, nor was one provided to the strata council prior to the truck

being towed. I find that Mr. Weller's truck was towed for valid reasons and after notice was given to the strata lot owner.

39. Even if I had found the truck was improperly towed, Mr. Weller has not proved the claimed damages. Mr. Weller did not pay for his truck to be returned from Mario's Towing, but he could have. Had he done so, presumably the truck would not have been crushed. As well, Mr. Weller did not prove the value of the truck at \$3,000. The insurance documents show a declared value of \$0.
40. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As Mr. Weller did not succeed in this dispute, I dismiss his claims for tribunal fees and dispute-related expenses.

## **ORDER**

41. Mr. Weller's claims and his dispute are dismissed.

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Julie K. Gibson, Tribunal Member