



# Civil Resolution Tribunal

Date Issued: April 10, 2020

File: SC-2019-009729

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cordero v. The Owners, Strata Plan BCS 1816*, 2020 BCCRT 394

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

CHRISTIAN CORDERO

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 1816

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Butch Bagabuyo

## **INTRODUCTION**

1. This small claims dispute is about reimbursement of towing charges.

2. The applicant, Christian Cordero, says the respondent, The Owners, Strata Plan BCS 1816, unreasonably towed his car while he was visiting his aunt on November 7, 2019, at the respondent's strata property. The applicant seeks reimbursement for \$280.72 towing charges.
3. The respondent says it was authorized under its bylaws to tow vehicles parked on its premises without a valid parking pass. The respondent had the applicant's car towed because it did not have a visitor's pass.
4. The applicant is self-represented. The respondent is represented by its strata council president, SK.

## **JURISDICTION AND PROCEDURE**

5. 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* (CRTA). 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In this dispute, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the tribunal's mandate of proportional and speedy dispute resolution, I find that an oral hearing is not necessary, and I can fairly hear this dispute through written submissions.
7. 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.

8. Where permitted by section 118 of the CRTA, in resolving this dispute, the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether the respondent reasonably towed the applicant's vehicle that was parked in visitor's parking without a pass, and if so, what is the appropriate remedy.

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, the applicant must prove his claim, on a balance of probabilities. While I have read and considered all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The undisputed facts are as follows:
  - a. on November 7, 2019, the applicant parked his vehicle in one of the respondent's parking spaces that was marked "visitor."
  - b. the applicant's vehicle was towed from the visitor parking space.
  - c. a representative of the respondent's strata council authorized the towing.
  - d. the applicant incurred towing fees.
12. The applicant says he was visiting his aunt, who lives in the respondent's strata property. The applicant says the respondent's parking signage did not say he needed a visitor's parking pass. I find that the parking signage where the applicant parked says "visitors". In the past two years, he always parked in the same visitor

parking area without a visitor's pass whenever he visits. In that time, he had never received any warning or parking violation ticket from the respondent.

13. The applicant says other vehicles also parked without visitor parking passes. The applicant says he parked in a marked visitor's parking space because he was visiting his aunt. As such, he believes he was parked correctly, and the respondent unreasonably towed his car.
14. The respondent says it was authorized by its bylaws to tow parked vehicles without a displayed parking pass. I find that the respondent had the applicant's car towed because it did not display a visitor's parking pass. The respondent says it did not know who the vehicle belonged to or that the applicant was visiting. The respondent says it was only following its bylaws, which authorized it to tow the applicant's car.
15. I find the bylaws that the respondent relied on applied only to the strata's owners and tenants who were bound by them. I find that the respondent's authority to tow the applicant's vehicle was based on the law of trespass. In other words, unless the applicant had permission, he trespassed on the respondent's property when he parked his car. Unless prohibited by law, an owner of a private property is entitled to have an unauthorized vehicle towed from its property.
16. In general, parking law involves the law of bailment, the law of contract, and the law of trespass: *Webster v. Robbins Parking Service Ltd.*, 2016 BCSC 1863.
17. In this dispute, there was no contract or agreement between the parties directly, about visitor parking. Unlike paid parking situations where people pay to park, the applicant did not give or pay anything to the respondent to park on its property. The applicant was visiting his aunt, who lives there, and so he parked in a designated visitor parking area. I find that the applicant was neither an owner nor a tenant. I find that the applicant was only a visitor, so there was no agreement or contract between the parties.

18. I find that the law of bailment is not applicable in this dispute because the applicant's claim is not about damage to his car or lack of proper care of it. His claim is about the fact that the respondent towed his vehicle.
19. To establish negligence, the following must be proven: (a) the respondent owes a duty of care, (b) the respondent failed to meet a reasonable standard of care, (c) it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and (d) the failure caused the claimed damages.
20. I find that the respondent owed its residents and visitors a duty of care for their vehicles on its property. The fact that the respondent allowed visitor parking by the public is support for this conclusion. I also find that the applicant sustained the claimed damages, namely towing costs of \$280.72 and that this was foreseeable and caused by the respondent's decision to have the applicant's vehicle towed. I find that clear signage at the time the applicant parked his car would have avoided this dispute and the applicant's claimed damages.
21. I find the root cause of this dispute is the lack of clear signage requiring visitors to display a valid visitor's parking pass. I find that parking signage that just says "visitors" would reasonably lead the applicant to believe he had permission to park where he did. In fact, I find the applicant parked there precisely because the signage invited or directed him to park there as a visitor. The onus would have been on the applicant to make inquiries about parking passes had the signage alerted him of its need. But, given the signage, I find it was unreasonable to expect him to make further inquiries when he had no reason to do so.
22. The applicant also says that even if there was signage that a parking pass was required, there was nowhere to obtain a visitor's pass because there was no property concierge after 5 pm, which was when he parked there. The respondent says their pre-5 p.m. concierge was not allowed to hand out visitor parking passes, so it does not matter if they had a concierge after 5 pm. In other words, there was nowhere for visitors to get a valid visitor's parking pass. The respondent did not

explain where or how visitors could get a valid visitor's parking pass. Presumably, there was a method to obtain a visitor's pass. But, the lack of signage explaining where to get them only supports the applicant's belief that it was not required.

23. I find that for two years, whenever the applicant visited his aunt, he parked in the same visitor parking area without a parking pass. During that time, the applicant says the respondent did not give him any warning or parking ticket for parking without a visitor's pass. The respondent did not deny or explain this aspect of the applicant's submissions. As such, I find that for two years the applicant was never given any warning or parking ticket for parking without a parking pass. The applicant says that other vehicles also parked in the same visitor parking area without a visitor's pass. The respondent did not deny or explain this aspect of the applicant's evidence. The applicant says these other vehicles were not ticketed or towed either. The respondent also did not deny or explain this aspect of the applicant's submission. On the evidence, I find that other vehicles parked in the same visitor parking area without displaying a visitor's pass.
24. The respondent says there was no method for giving a formal "warning" because the vehicle's owner was unknown at the time. The respondent also says that its bylaws did not require any warning or signage before towing. As mentioned earlier, strata bylaws bind the owners and tenants of the strata. Unless the respondent clearly communicated its parking rules, I find that it was unreasonable to expect the visiting public like the applicant to adhere to the respondent's parking rules if they are not told about it. Even more so, when the parking signage directs them where to park and does not require them to do more.
25. The only remaining issue in this dispute is whether the respondent reasonably led the applicant to believe that he was entitled to park in the visitor's parking area without a visitor's pass. I find the answer to this question is yes. The sign markings around the visitor's parking area just says "Visitors." The applicant was visiting his aunt, so he was a visitor. The fact that the applicant was never warned or given a parking ticket in the two years that he parked without a visitor's pass only supports a

conclusion that he reasonably believed that a visitor's parking pass was not required. I say the same about the fact others parked without a parking pass. Given the signage at the time and the applicant's prior parking experiences for two years, I find that the applicant's belief that he had permission to park there without needing to do more is objectively reasonable. The fact that other visitors also parked without a parking pass only supports the reasonableness of his belief. As such, I find the respondent reasonably led the applicant to believe he was entitled to park where he did while he was visiting his aunt and that nothing more was needed of him.

26. Had the respondent clearly displayed signage like "Visitors Must Display A Valid Visitor's Pass," the applicant would have to prove he had the proper permission to park on the respondent's property.
27. The applicant was aware that other strata properties had signage that clearly says that visitors needed to display a parking pass. This supports his belief that he did not need a pass in this case, because the respondent's signage only said "visitors". Thus, I find that the respondent gave its implied consent to the applicant to park in the visitor parking area, and then unreasonably revoked that consent when it had the applicant's car towed. In doing so, I find the respondent breached the applicable standard of care.
28. In summary, I find that the applicant proved that the respondent was negligent in towing his car from its property. As such, I find that the respondent must pay the applicant's towing expenses of \$280.72.
29. Given my conclusions above, I find the respondent must reimburse the applicant \$280.72. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the applicant is entitled to pre-judgment interest under the COIA on the \$280.72 towing expenses calculated from November 7, 2019, to the date of this decision. This interest equals \$2.34.

30. Under the CRTA and the tribunal's rules, as the applicant was successful, I find he is entitled to reimbursement of the \$125 he paid in tribunal fees. The applicant did not claim any dispute-related expenses.
31. The respondent claims \$1,000 in dispute related expenses for time spent responding to this dispute as authorized by section 5(d) of its strata management contract. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. For that reason, and the fact the respondent was not successful, I do not order compensation for its time spent on the dispute.

## **ORDERS**

32. Within 10 days of the date of this order, I order the respondent to pay the applicant a total of \$408.06 broken down as follows:
  - a. \$280.72 in debt,
  - b. \$2.34 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125.00 for in tribunal fees.
33. The applicant is entitled to post-judgment interest, as applicable.
34. Under section 48 of the CRTA, the tribunal will not provide the parties with the order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired, and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to



ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

35. Under section 58.1 of the CRTA, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Butch Bagabuyo, Tribunal Member