



Civil Resolution Tribunal

Date Issued: October 13, 2022

File: SC-2022-002729

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Halton v. Atrens*, 2022 BCCRT 1123

B E T W E E N :

PETER KARL HALTON

APPLICANT

A N D :

RONALD ATRENS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about towing fees. The parties are neighbours who live in the same strata corporation (strata). The applicant, Peter Karl Halton, says the respondent,

Ronald Atrens, had Mr. Halton's vehicle towed from strata property without the strata's authorization. Mr. Halton claims \$262.50 in damages as reimbursement for the towing fees.

2. Mr. Atrens admits he called to have the vehicle towed, because it had been parked in front of his home for 2 consecutive nights. Mr. Atrens says he did not know who owned the vehicle and that the police told him to have it towed. Mr. Atrens says there was nothing improper in his doing so, because he says the strata's rules are clear that parking on common property overnight is prohibited.
3. The parties are each self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. CRTA section 42 says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

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

ISSUE

8. The issue in this dispute is whether Mr. Atrens acted wrongfully in calling to have Mr. Halton's vehicle towed from strata property, and if so whether Mr. Atrens must reimburse Mr. Halton \$262.50 for towing fees.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, as the applicant Mr. Halton must prove his claim on a balance of probabilities (meaning "more likely than not"). I have read the parties' submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.
10. On December 22, 2021, Mr. Halton arrived home in his vehicle and found the driveway in front of his garage entrance blocked by a third party who was visiting Mr. Halton's family member. So, Mr. Halton parked along the side of the strata's common roadway opposite from Mr. Atrens' house that was 3 doors down from Mr. Halton's house. Mr. Halton later forgot that he had parked on the road instead of the garage. Mr. Atrens, a strata council member, had Mr. Halton's vehicle towed, as discussed further below. Mr. Halton says that on December 23, 2021 he realized his vehicle was missing. On December 24, 2021, Mr. Halton learned from the police that it had been towed and that the police had it in their lot. Mr. Halton retrieved the vehicle on December 27, 2021. None of this is disputed.
11. As noted, Mr. Atrens admits he called the towing company and asked that the vehicle be towed. He says he did so because he did not know the vehicle's owner and had called the police who said the vehicle was not stolen. Mr. Atrens says the vehicle was parked improperly given the strata's bylaw, so he called for the tow

which is what he says the police told him to do. The towing company's December 23, 2021 invoice for the claimed \$262.50 says the vehicle was "abandoned".

12. I acknowledge Mr. Halton says that Mr. Atrens must or should have known the vehicle was Mr. Halton's, as they live 3 doors apart. However, Mr. Atrens denies he knew the vehicle was Mr. Halton's. I find this amounts to a "he said, he said" scenario that results in an evidentiary tie. As Mr. Halton has the burden of proof, I find it unproven Mr. Atrens knew the vehicle was Mr. Halton's.
13. Next, Mr. Halton disputes Mr. Atrens' assertion that Mr. Halton had left his vehicle on the road for 2 consecutive nights. While Mr. Halton does not directly say so, I find he did leave his vehicle on the strata's common property road overnight at least 1 night. I find nothing turns on whether Mr. Halton left his vehicle overnight for 1 night, or 2 nights as Mr. Atrens and his neighbour SI says in a witness statement. I say this because Mr. Atrens says he called for the vehicle to be towed, not knowing its owner's identity, because overnight parking on the strata's common property roadway was undisputedly prohibited and Mr. Atrens did not know the vehicle's owner. In these circumstances, I find that it makes no difference whether it was after 1 or 2 nights.
14. Neither the towing company nor the strata are parties to this dispute.
15. I turn then to whether Mr. Halton's claim against Mr. Atrens can succeed based on Mr. Atrens being a neighbour within the strata. I address separately below Mr. Atrens' role as a strata council member.
16. Mr. Halton and Mr. Atrens had no contractual relationship. So, the law of contract does not apply. I also find the law of bailment (a person's obligation to safeguard another's belongings in their possession) does not apply, because Mr. Halton's vehicle was never in Mr. Atrens' possession or control as a neighbour. Since Mr. Atrens himself did not tow the vehicle or take possession of it, I find the law of trespass also does not apply.

17. I have considered whether Mr. Halton's claim can succeed under the law of negligence. To establish negligence, Mr. Halton must prove: a) Mr. Atrens owed Mr. Halton a duty of care, b) Mr. Atrens breached the applicable standard of care, c) Mr. Halton sustained reasonably foreseeable damage, and d) Mr. Atrens' breach caused the damage (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
18. For the purpose of this dispute, I accept Mr. Atrens owed his neighbour Mr. Halton a duty of care with respect to his property. I accept Mr. Halton sustained the claimed \$262.50 in towing charges as a result of his vehicle being towed at Mr. Atrens' request.
19. Mr. Atrens submitted an excerpt from the strata's bylaws, and in particular bylaw 1.10 titled "Parking". The bylaw expressly prohibits overnight parking by residents or visitors on the main common roadway. I find Mr. Halton parked his vehicle on the main common roadway contrary to the strata's bylaws. Mr. Halton does not dispute this but argues that his forgetting about his car is not what the bylaws were intended to address and says it is only for the strata council to authorize towing and here they did not. Again, I address Mr. Atrens' role as a strata council member below.
20. I find the difficulty for Mr. Halton is the standard of care. I cannot conclude Mr. Atrens fell below the applicable standard of care. I say this because I find it was not unreasonable for Mr. Atrens, as a neighbour, to ask that an unknown vehicle be towed if it was parked on the road contrary to the strata's bylaw. Mr. Halton submitted no evidence that the strata's owners had been told only the strata council could call for vehicles to be towed.
21. So, given the above, I find Mr. Atrens' tow request was not below the standard of care. This means I find negligence is not proven.
22. Next, to the extent Mr. Halton argues Mr. Atrens misused his position as a strata council member, I dismiss his claim for the reasons set out below.
23. As noted above, Mr. Atrens was a strata council member when he called to ask for the vehicle to be towed. Mr. Halton submitted an email from the strata's property

manager that said the manager had reviewed the matter with the strata council. The manager wrote that while the strata council understood Mr. Halton had parked on the road contrary to the strata's bylaws, the strata council "had no part in your vehicle being towed" and that Mr. Atrens had acted "on his own".

24. Mr. Halton argues that Mr. Atrens told the tow truck driver he was a council member and that the tow was authorized when the strata council did not in fact authorize the tow. Mr. Halton also argues many residents and visitors park on the common roadway without being towed.
25. Based on Mr. Halton's submission, I find he essentially argues that Mr. Atrens acted contrary to section 31 of the *Strata Property Act* (SPA). Section 31 sets the standard expected of strata council members, which is to act honestly and in good faith with a view to the strata's best interests. In *The Owners Strata Plan LMS 3259 v. Sze Hand Holding Inc.*, 2016 BCSC 32, the court concluded that a strata council member owes these duties to the strata, not to individual owners.
26. I have no jurisdiction in this small claims dispute to consider claims that are in respect of the SPA (see CRTA section 1(2)). However, even if this were a claim within the CRT's strata property jurisdiction, given the above I find Mr. Atrens has no standing to sue another strata owner for violations of SPA section 31 (see also *Rochette v. Bradburn*, 2021 BCSC 1752 at paragraph 82). So, I make no findings about whether Mr. Atrens acted improperly in his role as a strata council member.
27. In summary, given my conclusions above, I dismiss Mr. Halton's claim.
28. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Since Mr. Halton was unsuccessful, I dismiss his claim for reimbursement of paid CRT fees. Mr. Atrens did not pay CRT fees and neither party claims dispute-related expenses.

ORDER

29. I dismiss Mr. Halton's claims and this dispute.

Shelley Lopez, Vice Chair