



# Civil Resolution Tribunal

Date Issued: February 27, 2024

File: CS-2022-008854 and CS-2022-009323

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Kenning v. Residences at Spirit Ridge Owner Association*,  
2024 BCCRT 190

B E T W E E N :

BARBARA DIANE KENNING

**APPLICANT**

A N D :

RESIDENCES AT SPIRIT RIDGE OWNER ASSOCIATION

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. These 2 linked disputes are about the proper interpretation of bylaws and society documents. I have issued a single decision for the 2 disputes because they involve the same parties, facts, and similar issues.

2. The applicant in both disputes, Barbara Diane Kenning, is a member in the respondent society, the Residences at Spirit Ridge Owner Association (RSROA). In dispute number CS-2022-008854, Mrs. Kenning says that RSROA charged its members the incorrect amount for a resort access fee. She seeks reimbursement of an alleged overpayment of \$98.46. She also seeks an order for RSROA to revise the 2023 budget in accordance with her calculation of the resort access fee.
3. RSROA disagrees. It says it calculated and charged the correct amount.
4. In dispute number CS-2022-009233, Mrs. Kenning say that RSROA failed to file bylaw amendments approved at the November 2021 special general meeting (SGM) and March 2022 annual general meeting (AGM). She seeks an order for RSROA to submit those bylaw amendments to the registrar for registration and certification. She also says the minutes for the SGM refer to an incorrect version of the bylaws. She seeks an order to correct the minutes. Mrs. Kenning also says that the society breached section 73 of the *Societies Act* (SA) by failing to register an annual report by March 31, 2022. She seeks an order for RSROA to file a 2022 annual report.
5. RSROA says it filed the bylaw amendments from both the AGM and SGM. It admits the SGM minutes contain uncorrected typographical errors. It says these errors were inadvertently copied in the bylaws filed on May 16, 2022. It says it corrected the errors in the bylaws by filing a new version on March 28, 2023. I note that Mrs. Kenning does not allege that the recently filed bylaws contain errors. RSROA says that the errors in the minutes will be “corrected for clarity” at some point. Finally, RSROA says it filed a 2022 annual report, though admittedly after the alleged deadline of March 31, 2022.
6. Mrs. Kenning represents herself. A person that is both president and director represents RSROA.
7. For the reasons that follow, I find Mrs. Kenning is partially successful.

## **JURISDICTION AND PROCEDURE**

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain society claims under section 129 of the Civil Resolution Tribunal Act (CRTA). CRTA section 2 says 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.
9. 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. Further, 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 and fairness.
10. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court.
11. Under CRTA section 131, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
12. I note that in dispute number CS-2022-008854 the applicant is named Barbara Kenning and in dispute number CS-2022-009233 it is Barbara Diane Kenning. As both names refer to the same person, I have simply used the latter name in the style of cause.

### ***Allegations about Bylaw 23.1***

13. Some of Mrs. Kenning's submissions were about bylaw 23.1. In particular, she alleges that RSROA made decisions based on an uncertified version of bylaw 23.1.

She also says the November 2021 SGM and March 2022 AGM minutes refer to an inoperable or unregistered version of bylaw 23.1.

14. Mrs. Kenning did not request any particular remedies about bylaw 23.1 or the portion of the minutes that refer to bylaw 23.1. So, I have not made any findings about them in this dispute.

### ***Allegations about Misleading Statements***

15. Mrs. Kenning says that RSROA breached SA section 223. In general terms, SA section 223(1) says it is an offence if a person makes or assists in making a statement for the purposes of the SA that is false or misleading. The same applies to omissions of material facts.
16. Mrs. Kenning alleges that a board member signed a bylaw alteration application in an inappropriate manner. Mrs. Kenning did not ask for a specific remedy about this. So, I find it unnecessary to make any findings about false or misleading statements under SA section 223.

## **ISSUES**

17. The issues in this dispute are as follows:
  - a. Did RSROA charge members the correct resort access fee amount, and if not, are any remedies appropriate?
  - b. Must I order RSROA to correct the minutes for the November 2021 SGM or March 2022 AGM?
  - c. Must I order RSROA to file the bylaws approved at the November 2021 SGM or March 2022 AGM?
  - d. Must I order RSROA to file an annual report for 2022?

## BACKGROUND, EVIDENCE AND ANALYSIS

18. In a civil proceeding like this one, Mrs. Kenning as the applicant must prove her claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.
19. Documents show RSROA became incorporated on March 14, 2013. Its constitution, filed January 24, 2018, shows it is a member-funded society. Its purposes include operating specific lands under a lease and subleases as if RSROA was a strata corporation under the *Strata Property Act* (SPA), and that a strata plan had been registered for those lands.
20. The society bylaws also strongly resemble those for a strata corporation. For example, the bylaws refer to owners. In general terms, all versions of 1.1 define an owner to be a sublessee. Similarly, the bylaws refer to common property. Its definition is similar to that used in the SPA, though without reference to a strata plan. I will refer to terms such as owner as those terms are used in the bylaws, but also to reflect the lived reality of the parties.
21. The undisputed background follows. RSROA manages 44 residential duplex homes that are part of Phase 3 of a development. Mrs. Kenning co-purchased the sublease of unit 6 in 2014 and is an owner under the RSROA bylaws.
22. At the time of development, the Phase 3 homes did not yet have access to their own community pool and gym facilities. This is because they were under construction. However, under an October 5, 2016 agreement, the Spirit Ridge Owner Association (SROA) granted RSROA access and use of nearby amenities located at the Spirit Ridge (Hyatt) Resort.
23. SROA did not provide this access for free. Under the easement agreement, RSROA had to pay SROA a fee (SROA resort fee). Section 3.1 defines the SROA resort fee as an annual amount "per Sold Residence per year or portion thereof". So, I find a key point is that the SROA resort fee is based on a per residence basis multiplied by

the number of residences sold by the developer. It is not calculated on a proportionate share based on habitable area of a residence, or anything similar to unit entitlement under the SPA. I will return to this later.

24. The other evidence is consistent with the terms of the easement agreement. For example, an October 2020 invoice shows SROA invoiced RSROA \$7,000 for 40 sold units, or residences. This is consistent with a yearly rate of \$700 per unit, as specified in the easement agreement, multiplied by 40 units, and divided by 4 to represent the cost for a quarter of the year.
25. The bylaws are relevant. They changed during the parties' dispute so I will first discuss them as they were before May 16, 2022.
26. Bylaw 18.3 said, in general terms, that each owner must pay all RSROA fees. Bylaw 18.3 defines RSROA fees to include operating costs. From my review, I find RSROA fees resemble monthly strata fees charged by a strata corporation.
27. Bylaw 18.1 defined operating costs. They included expenses to operate, manage, improve and repair the common property and any other property for which RSROA was responsible.
28. Bylaw 18.6 said that each owner must pay a proportionate share of RSROA fees on the basis of the habitable area in square feet of that owner's residence.
29. Bylaw 18.7 said that owners had to pay operating costs in equal instalments on the first day of each month during each calendar year as determined by the budget.
30. Bylaw 19.1 defined personal charges. They included expenses resulting from the action or omission of an owner or guest to, among other things, repair damage to common property.
31. I find from the above that the bylaws at the time did not address the SROA resort fee, nor did the bylaws explicitly include them as an operating cost or personal charge. So, I find this version of the bylaws did not directly address how RSROA would collect

funds to pay the SROA resort fee. As noted below, RSROA took steps to deal with this issue.

32. It is undisputed that historically, RSROA paid the SROA resort fee by including it as an item in the operating cost in the budget. Accordingly, its cost was divided and based on habitable area for owners. In March and April 2021, RSROA's lawyer, CP, emailed RSROA and suggested that it change the bylaws. CP suggested that RSROA should pass along the cost of the SROA resort fees to members, or owners, on a per residence basis instead.
33. In an April 8, 2021 email to the board and CP, Mrs. Kenning drafted a preamble to the proposed bylaws changes. She was on the board at the time. She noted that the bylaw changes would ensure that the SROA resort fee would be "transferred as an equal per Unit cost to all Owners".
34. On June 26, 2021, RSROA held its AGM. Members only considered the issues of passing the 2021 budget for that calendar year and electing new board members. The budget shows RSROA included the SROA resort fee as an operating expense.
35. On October 25, 2021, RSROA sent notice to the owners of an SGM scheduled for November 25, 2021. Item G outlined the changes to bylaws 18.1 to 19.3. In the preamble, RSROA said the bylaws at the time did not address the SROA resort fee. RSROA said it intended to change the bylaws so that 1) the SROA resort fee would be defined as a personal charge under bylaw 19.1, and 2) RSROA fees paid monthly by owners under bylaw 18.3 would now explicitly include personal charges, in addition to operating costs.
36. The preamble also said that the "past practice has been maintained whereby the Personal Charge is determined by distributing the total amount of the annual [SROA resort fee] to each owner on a proportionate share based on habitable area of the unit". This was a change from Mrs. Kenning's April 2021 draft preamble, which I discussed earlier.

37. I note that the parties put significant weight on the wording of the preamble. I do not find it determinative on the interpretation of the bylaws, nor do I place significant weight on it. However, it is one of circumstances I have considered.
38. On November 25, 2021, RSROA held its SGM to consider the bylaw amendments and other matters. The minutes show that the proposed amendments passed unanimously. The owners repealed and replaced bylaws 18.1 through 19.3 with the wording shown in the minutes.
39. RSROA subsequently filed bylaws on May 16, 2022. As stated under amended bylaw 19.1(a), personal charges now included fees charged to an owner by RSROA to cover the SROA resort fee.
40. It is undisputed the May 2022 bylaws contained some typographical errors. In particular, bylaw 18.6 and 18.7 both referred to "Owner Association Fees Operating Costs" instead of "operating costs". The RSORA later corrected this. I find nothing significant turns on this, but I will return to it below.
41. RSROA held its next AGM on March 28, 2022. The owners unanimously approved a budget for the 2023 calendar year. The budget included the expected SROA resort fee for 2023, which was \$24,010. As explained in the minutes, this was slightly less than previous years because RSROA's own facilities were now operational.
42. The budget also added the SROA resort fee to the total expenses and calculated the monthly RSROA fee based on each residence's habitable square footage, much like how strata fees are often calculated on the basis of unit entitlement. Because of the above, I agree with Mrs. Kenning that RSROA essentially treated the SROA resort fee as an operating expense.
43. RSROA filed another set of bylaws on March 28, 2023. It amended bylaw 18.6 and 18.7 to the correct wording. It said that each owner must pay its proportionate share of the operating costs based on habitable area.



***Issue #1. Did RSROA charge members the correct resort access fee amount, and if not, are any remedies appropriate?***

44. Mrs. Kenning says RSROA charged members, or owners, the incorrect resort fee amount in the 2023 budget. She says that it should have divided the budgeted SROA resort fee evenly across the number of sold units, instead of by habitable area for her residence.
45. For example, she says that for the 2023 budget, the \$24,010 cost should have been split evenly across 44 units, for a total of \$545.68 per year, or \$45.47 per month. Instead, she says RSROA used the unit entitlement of her residence for a total of \$584.67 per year, or \$48.72 per month. She says this resulted in a \$39 overpayment over the course of 12 months for 2023. She also provided a calculation of overpayment of \$58.60 for the period of January to December 2022, and \$26.96 for the period of May to December 2021.
46. RSROA disagrees. It says it calculated the fee properly. It says it clearly explained the intent of the bylaws in the preamble and also collected and spent money as outlined in the budget and fee schedule for the owners.
47. I turn to the most current version of the bylaws.
48. Bylaw 18.3 says that each owner must pay all RSROA fees and defines these to include both operating costs and personal charges.
49. Bylaw 19.1(a) now says that personal charges includes fees charged by RSROA to owners to cover the SROA resort fee.
50. Bylaw 18.6 says that each owner must pay its proportionate share of operating costs on the basis of habitable area. Bylaw 18.1 still defines operating costs. These still do not include personal charges or the SROA fees.
51. Bylaw 19.1 defines personal charges. They include expenses resulting from the action or omission of an owner or guest to, among other things, repair damage to common property.

52. Bylaw 19.3 discusses payment of personal charges. It says they shall be paid on the first day of next month following the date on which the costs or expenses are determined with the payment of the owner's monthly RSROA fees.
53. Based on the above, I find that fees charged by RSROA to cover the SROA resort fees are personal charges and not operating costs. I find this is clearly stated in bylaw 19.1(a). I find the most reasonable interpretation is that the fees used to cover the SROA resort fees are meant to be charged by RSROA to each owner by residence. It is unclear why the situation would be otherwise, given that those fees are not operational costs.
54. In submissions, RSROA acknowledges that operating costs do not include fees used to cover the SROA resort fees. It says it did not wish to "create a separate method of collection for these costs". RSROA notes that its property manager might increase its fees if it had to do so.
55. RSROA says that having these fees defined as personal charges instead of operating costs would likely increase the overhead and effort needed to collect those funds. There is no evidence before me of what the exact cost would be, so I find it unproven that this would lead to a harsh or unreasonable outcome.
56. The question that remains is what remedy is appropriate.
57. I order RSROA to immediately comply with bylaws 18.1 through 19.3 by treating the fees charged by RSROA to cover the SROA resort fee as personal charges and not operating costs.
58. I note that, as RSROA's own facilities are becoming operational, this may have little effect in the future. However, the parties did not say that the SRAO would not charge any fees for 2024 or beyond.
59. I next consider Mrs. Kenning's monetary claim for \$98.46. As she applied for dispute resolution on April 30, 2023. I have considered the *Limitation Act*.

60. Section 6 of the *Limitation Act* says that the basic limitation period is 2 years, and that a claim may not be started more than 2 years after the day on which it is “discovered”. Under section 8, a claim is discovered when the applicant knew or reasonably ought to have known they had a claim against the respondent and a court or tribunal proceeding was an appropriate means to seek a remedy. CRTA section 13.1 says the basic limitation period under the *Limitation Act* does not run after the applicant requests dispute resolution with the CRT.
61. I find that Mrs. Kenning could have reasonably discovered in 2014, given that she would have had access to minutes and the budget as an owner. I find that under the *Limitation Act*, Mrs. Kenning herself acknowledges that her claim might be limited to the 2 years prior to April 30, 2023. I find this to be the case. She provided a calculation sheet for this period and the total equals \$98.46. RSROA did not dispute the calculation. So, I order RSROA to pay this amount to her. I note that Mrs. Kenning did not ask for RSROA to recalculate or disburse funds from all owners or members of RSROA. So, I make no order about that.
62. Mrs. Kenning also says that RSROA should revise the 2023 budget. I decline to do so. I say this because, as stated above, Mrs. Kenning did not explicitly state whether RSROA should recalculate the amounts owing or refunded to all owners. I will leave this to RSROA, as any budget changes might depend on how it wishes to proceed. I dismiss this claim.

***Issue #2. Must I order RSROA to correct the minutes for the November 2021 SGM or March 2022 AGM?***

63. Mrs. Kenning says that the November 2021 SGM minutes contain errors. In particular, she says they have the incorrect text for bylaws 18.6 and bylaw 18.7. She says the correct text is in the notice for the November 2021 SGM. She says RSROA should correct these errors.
64. RSROA agrees that the November 2021 SGM notice contains the correct version of bylaws 18.6 and 18.7. It admits there were some typographical errors in the November 2021 minutes. It says these same errors appeared in the bylaws registered

on May 16, 2022. RSROA says it later filed a new set of bylaws on March 28, 2023, that included corrections to bylaws 18.6 and 18.7, as well as other changes from the March 2022 AGM. RSROA says that it will also correct the minutes. There is no evidence it has done so.

65. I find this issue is outside my jurisdiction for the reasons that follow.

66. SA section 108(2) says, in part, that a member may apply to the BC Supreme Court for an order that a basic record be corrected. SA section 108(1)(b) says basic records include minutes like the ones at issue.

67. CRTA section 130(1)(c) says the CRT lacks jurisdiction to a claim that may be dealt with by the BC Supreme Court under part 8 of the SA. Section 108 falls under part 8. So, I find I have no jurisdiction to order the correction sought.

68. I note that I did not find it necessary to seek additional submissions about this issue as they would not change my jurisdiction.

69. CRTA section 10(1) says that the CRT must refuse to resolve a claim that is outside its jurisdiction. Given the above, I refuse to resolve this claim under CRTA section 10(1).

***Issue #3. Must I order RSROA to file the bylaws approved at the November 2021 SGM or March 2022 AGM?***

70. Mrs. Kenning says RSROA should file the bylaws approved at the November 2021 SGM and March 2022 AGM.

71. The RSRAO says that this issue is moot as it filed the bylaws on March 28, 2023.

72. An issue is moot if 1) the live issue disappeared, leaving any remaining issues theoretical or academic, and 2) the CRT declines to exercise its discretion to hear the issue anyway. See *Bimmersley v. BCSPCA*, 2016 BCCA 259.

73. A copy of the bylaws shows RSRAO filed them at the BC Registry on March 28, 2023. There is no allegation that it contains any errors or omits the bylaw changes approved at the November 2021 SGM or March 2022 AGM.
74. Given that RSROA filed the bylaws at issue, I find this issue is moot. I see no reason to hear the issue anyway, so I dismiss it.

***Issue #4. Must I order RSROA to file an annual report for 2022?***

75. SA section 73 says that a society like RSROA must file an annual report with the registrar within 30 days after holding an AGM.
76. Mrs. Kenning says that RSROA failed to file an annual report within 30 days of the March 31, 2022 AGM.
77. RSROA admits it filed its annual report outside this window. RSROA says that it relied on its lawyer's advice to confirm that it had filed the report earlier.
78. A copy of RSROA's filed 2022 annual report is in evidence. It shows that RSROA filed the report on December 1, 2022. As this is not within 30 days of the March 2022 AGM, I find RSROA breached SA section 73. I acknowledge that on June 20, 2022, RSROA's lawyer wrote an email confirming that the annual report had been filed. I find this was erroneous, given the information stated on the actual annual report.
79. That said, given that RSROA filed its 2022 annual report, I find this issue is essentially moot as well. I see no reason to hear the issue anyway. I dismiss this claim.

**INTEREST, CRT FEES, AND EXPENSES**

80. The *Court Order Interest Act* applies to the CRT. Mrs. Kenning is entitled to pre-judgment interest on the sum of \$98.46 from April 30, 2023, the date she applied for dispute resolution, to the date of this decision. This equals \$4.01.
81. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.

82. I find Mrs. Kenning was largely successful in dispute number CS-2022-008854 and unsuccessful in dispute number CS-2022-009323. Given this, I order RSROA to reimburse her \$225 in CRT fees.
83. Mrs. Kenning also claims \$2.11 for a dispute-related expense. However, as there is no evidence or explanation for the amount, I dismiss it. RSROA did not claim any dispute-related expenses.

## **ORDERS**

84. I order RSROA to immediately comply with bylaws 18.1 through 19.3 by treating the fees charged by RSROA to cover the SROA resort fee as personal charges and not operating costs.
85. Within 30 days of the date of this order, I order RSROA to pay Mrs. Kenning a total of \$327.47, broken down as follows:
- a. \$98.46 as reimbursement for resort access fees,
  - b. \$4.01 in prejudgment interest under the *Court Order Interest Act*, and
  - c. \$225 for reimbursement of CRT fees.
86. Under CRTA section 10(1), I refuse to resolve Mrs. Kenning's claim about correcting minutes.
87. Mrs. Kenning is entitled to post-judgment interest, as applicable.
88. I dismiss the balance of Mrs. Kenning's claims.
89. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order

for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

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David Jiang, Tribunal Member