



Civil Resolution Tribunal

Date Issued: August 23, 2017

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Type: Strata

Civil Resolution Tribunal

Indexed as: *D. v. The Owners, Strata Plan VIS ----*, 2017 BCCRT 68

B E T W E E N :

D.

APPLICANT

A N D :

The Owners, Strata Plan VIS ----

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrew Pendray

Date of Hearing:

July 31, 2017

INTRODUCTION

1. The applicant owner (the owner), wants the respondent strata corporation, (the strata), to improve her access to the strata building by changing the way in which it has assigned parking stalls.

2. Specifically, the owner says that the strata should designate all of its parking stalls as common property, in order to ensure that those stalls can be assigned to meet the needs of disabled strata lot owners on an as needed basis. The parking stalls of the strata are currently designated as limited common property, with one stall assigned to each of the nine individual strata lots that make up the strata.
3. The strata says that it has accommodated the owner to the extent that it can, by constructing an access ramp to the rear entry of the strata building, and installing an automatic door at the front entry of the strata building.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (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.
5. This dispute was heard through a combination of written submissions and a telephone hearing, held on July 31, 2017. Both parties are self-represented (with the strata president appearing on behalf of the strata), and participated in that hearing, with the owner providing testimony and both the owner and the strata making further submissions.
6. 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.
7. This dispute raises an issue of discrimination and accommodation under the *Human Rights Code* (Code). Under section 3.8(2) of the Act, the tribunal has jurisdiction to apply the Code in a dispute.

8. Under tribunal rule 121, 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.
9. Section 48.1(2) of the Act is substantially similar to section 164 of the *Strata Property Act* (SPA) and addresses remedies for significant unfairness in strata property disputes. Section 48.1(2) provides that the tribunal has discretion to make an order directed at the strata, the council or a person who holds 50% or more of the votes, if the order is necessary to prevent or remedy a significantly unfair action, decision or exercise of voting rights.

ISSUES

10. At the hearing held via telephone on July 31, 2017 the issues were clarified to be the following:
 - a. Is the strata's parking bylaw significantly unfair?
 - b. Does the owner have a physical disability that requires accommodation by the strata?
 - c. If so, how should the strata accommodate the owner?
 - d. Is the owner entitled to reimbursement of fees paid to the tribunal?
11. Although there was some discussion in the submissions of the parties regarding a move in fee that the strata had previously charged, the strata rescinded that fee in 2016. In clarifying the issues at the hearing, the applicant did not indicate that she wished to pursue the issue of move in fees further. As a result, I have not considered that issue in this decision.

BACKGROUND AND EVIDENCE

The Strata and the Parking Stalls

12. There are only nine strata lots in the strata. There are also only nine parking stalls, all located at ground level. There are no visitor parking stalls, and no disabled parking stalls. Street parking is available in front of the strata building.
13. The parking stalls run parallel to the strata building. Parking stalls #1 through #7 are covered by building overhang. Stalls #8 and #9 are not covered.
14. Parking stall #1 is closest to the street, and closest to the front entrance of the strata building. The front entrance of the strata building is equipped with an automatic door opener. Photographs which form part of the record before me show that parking stall #1 is open to stall #2 to the west, and enclosed by a wall from the strata building to the east. The owner of the strata lot which is assigned stall #1 as limited common property does not currently use it for parking. In her testimony at the hearing of this dispute the applicant owner acknowledged that stall #1 is likely the smallest parking stall at the strata. The owner further acknowledged that parking in stall #1 was likely a difficult endeavour, and that it may not be conducive to using as a disabled parking stall.
15. Parking stall #9 is furthest from the street and furthest from the front entrance of the building. Parking stall #9 is open to stall #8 on the east, and to the recycling area of the strata on the west. Both stall #8 and stall #9, the uncovered stalls, are wider than the covered stalls.
16. The original bylaws of the strata set out that the parking stalls were to be allocated among strata lot owners at the developer's discretion, subject to section 76 of the *Strata Property Act* SBC 1998 c.43 (SPA). Section 76 sets out that the term of a grant of exclusive use of common property is limited to one year or less, and can be terminated by the strata corporation on reasonable notice.

17. At a special general meeting held on August 16, 2005, the then owners of the nine strata lots voted, unanimously, on a resolution designating each of the parking stalls as limited common property.
18. The results of that vote led to a 3/4 vote resolution (the parking stall resolution) being approved by the strata and registered with the Land Title Office on August 18, 2005. That resolution assigns one parking stall as limited common property for the exclusive use of the individual strata lots.
19. The stall assigned to the applicant owner's strata lot as limited common property is stall #9.
20. In order to access the rear entrance to the building from stall #9, one must go up a ramp, travel along a brief walk way, and then open the rear entrance door.
21. The rear door of the building swings outwards, towards a person attempting to enter the strata building. Once inside the rear entrance door, there is a hallway which requires an individual to turn to the right, and then to the left. At that point to the right are stairs which enable one to access the upper floors of the strata building, and another door which leads to the front lobby of the building. That second door also opens towards an individual attempting to enter the front lobby from the rear entrance. The elevator to the building, which on the evidence before me is what most of the residents use, is located in the lobby area.
22. Although the rear entrance door has a keyless entry, neither that door nor the second door into the lobby are equipped with automatic door openers.
23. In order to access the front entrance from stall #9, one must walk past the other eight parking stalls to a sidewalk, which leads to the front of the strata building.

The Owner

24. The owner is 72 years old. She suffers from a variety of physical mobility issues. She has described using either a cane or a walker when outside of her unit, and indicated that she has a disabled parking permit.
25. The owner testified that she had sustained a brain injury which affects her ability to balance when in open spaces. She has further explained that she suffers from hemiplegic migraines which cause her to experience varying degrees of stroke like symptoms down the left side of her body. Specifically, the owner described those symptoms as involving nerve pain in her left arm and leg. The owner indicated that her left foot drags, and that she experiences balance problems as a result.

The Parking Stall Dispute

26. The owner purchased her strata lot in early 2016. She informed the strata of her concerns regarding the lack of disabled parking and the difficulties she perceived with access to the building prior to moving in. At the time the owner purchased her strata lot and was moving into the building, there was no ramp to access the rear entrance, the front entrance did not have an automatic door opener, and the rear entrance did not have keyless entry.
27. In a January 5, 2016 letter the owner informed the strata that she was disabled. Specifically, she indicated that she had balance problems related to a brain injury as well as hemiplegic migraines which caused her to experience stroke like symptoms down the left side of her body. The owner noted that she used a cane, a walker, and at times a stroller for balance and stability when outside of her home.
28. The owner noted in her January 5, 2016 letter that there was no ramp up to the sidewalk at the rear entrance of the building, and requested that she be advised as to where a ramp was located. The owner further noted in that letter that it did not appear that the strata bylaws allowed for a disabled parking spot near the front entrance to the

strata building. She requested that she be assigned a parking spot closer to the front entrance of the building due to her disabilities.

29. The strata did not offer the owner a disabled parking spot, or a parking stall closer to the front entrance to the building. Rather, it provided the owner with information as to the manner in which the designation of the parking stalls as limited common property in 2005 had occurred.
30. The owner, through a community advocate, wrote to the strata again on March 28, 2016. In that letter the owner suggested that the strata was not taking the proper steps to ensure her safety in relation to her disability. The owner indicated again that she was seeking a parking space as close to the main entrance as possible, a ramp installed at all entries, and an automatic door for disabled access in the main and any side entrances.
31. At its next meeting, April 14, 2016, the strata council considered the owner's letter. The minutes of that April 14, 2016 meeting indicate that the strata obtained quotes for the installation of access ramps as well as remote access/automatic door openers for the front and rear entrances of the building.
32. The evidence before me indicates that the strata subsequently had an automatic door opener installed at the front entrance only. A keyless lock release was installed at the rear entrance, but not an automatic door. The reasons for this decision are not clear on the record before me.
33. The strata determined that at its August 2016 annual general meeting it would consider a 3/4 vote resolution on the issue of whether parking stalls ought to be limited common property or re-assigned as common property.
34. In advance of that annual general meeting the owner wrote to the strata to explain why she felt that the parking stalls ought to be common property. In her on July 29, 2016 letter the owner noted that the parking stall resolution did not allow for disabled parking, whereas the original bylaw had designated the entire parking area as common property, which would allow for such a designation. The owner suggested that the parking stall

resolution be rescinded and that the original designations be put back into effect. The owner submitted that this would allow all strata lots a chance to have a covered parking spot at some point in time and would allow for a disabled parking spot to be designated near the front door of the building. Finally, the owner submitted that that this would put the strata in a position to address the accessibility needs of individual owners.

35. At the August 4, 2016 annual general meeting the strata considered a resolution to repeal the parking stall resolution and restore the parking stalls to common property where the strata would assign stalls and designate one stall as disabled parking.
36. That August 4, 2016 resolution was defeated.

POSITION OF THE PARTIES

37. The owner requests that I order the strata to rescind the existing parking stall resolution and issue a new bylaw designating the parking stalls as common property for designation as provided for in the original bylaws of the strata.
38. The owner further requests that I order the strata to assign parking stalls according to the needs of the disabled owners on a yearly basis or sooner, as provided for in the original bylaw. The owner also requests that the strata be ordered to grant her a covered parking stall.
39. Finally, the owner requests that I order the respondent to pay her fees.
40. The owner makes two distinct arguments in support of her position.
41. The first argument centers on what she says is the unfairness of the current parking stall resolution in the context of providing some units but not others with covered parking. The owner says that the assignment of stalls was not based on unit entitlement, removed the rights of two strata lots to covered parking, and has a negative impact on resale value for those two strata lots which do not have covered parking.
42. The owner's second argument relates to the impact the current parking stall resolution has on access to the building for persons with disability, such as herself. Specifically,

that the current designation of parking stalls as limited common property does not allow for disabled parking near the front door of the strata building, which is the only automatic door. More particularly, that the current designation of parking stalls as limited common property infringer's on the owner's human rights to have access to disabled parking.

43. The strata requests that I dismiss the applicant's claim. In doing so, the strata argues that the outcome requested by the applicant is not viable. The strata notes that it has scrutinized its bylaws to see if they fit with human rights and the duty to accommodate, and submits that it has engaged in reasonable attempts to improve access to the building.
44. From the strata's point of view, it has done all it can to accommodate the owner, and the owner is simply trying to place her needs above those of other strata owners.

ANALYSIS

Is the strata's parking stall resolution significantly unfair?

45. The owner has indicated that she is of the view that the parking stall resolution was improperly or unfairly enacted. I do not agree.
46. The evidence and information before me is that prior to August 16, 2005, the parking stalls of the strata were common property. Section 74 of the SPA provides that common property may be designated as limited common property by a resolution passed by a 3/4 vote at a special general meeting.
47. That is what happened here. The 3/4 vote resolution passed unanimously and was filed in the land title office with a sketch plan as required by section 74(2). In sum, I do not consider the evidence before me to show that the parking stall resolution was improperly passed by the strata in 2005, or that it was improperly registered with the land title office.

48. There remains the question of whether the strata has acted significantly unfairly in its handling of the owner's parking stall resolution concerns.
49. Section 75 of the SPA provides the mechanism for removing the designation of limited common property that was made by resolution passed under section 74. The removal of the designation of limited common property may only be completed by a 3/4 vote at an annual or special general meeting.
50. The strata considered the removal of the limited common property designation at its August 2016 annual general meeting, however, the resolution to remove the limited common property designation was defeated. The minutes of the annual general meeting suggest that the limited common property designation of parking stalls was an important consideration for a number of the owners in the purchase of their unit.
51. As noted above, section 48.1(2) of the Act mirrors the "significantly unfair" language set out in section 164 of the SPA. In *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259*, 2004 BCCA 597, the court indicated that it must be accepted that some actions of a strata corporation will be unfair to one or more strata lot owners, and that in order to get relief under section 164 of the SPA, an owner was required to establish significant unfairness.
52. In *Chow v. Strata Plan LMS 1277*, 2006 BCSC 335, the court reviewed case law which indicates that "significantly unfair" would at the very least encompass oppressive conduct and unfairly prejudicial conduct. Oppressive conduct is "burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith". Conduct that is "unfairly prejudicial" is unjust and inequitable conduct. For reasons discussed further below, I cannot conclude that the strata's conduct falls within any of those descriptions.
53. Here, the parking stall resolution was passed as required by section 74 of the SPA. Although the owner has speculated that the first owners of the strata had simply assigned themselves the best (covered) parking stalls, the reality is that the vote on the parking stall resolution at the special general meeting in August 2005 was unanimous. The minutes from the August 2005 special general meeting do not provide any

indication of a nefarious purpose for the assignment of parking stalls as limited common property that would amount to oppressive or unfairly prejudicial conduct as described above. In fact, given that the vote was unanimous, the evidence suggests that there was no controversy surrounding that vote at all.

54. I acknowledge that from the owner's perspective there is an element of unfairness in being one of only two units in the strata that does not have a covered parking stall. While I accept that one can easily see how there is an element of unfairness in the fact that two strata lots in the strata do not have covered parking while all of the other strata lots do, I do not consider that element of unfairness to mean that the parking stall resolution is somehow improper or that it is significantly unfair for the strata to have voted to maintain the parking stalls as limited common property.
55. In my view, the unfairness that results from the assignment of the parking stalls as limited common property is nothing more than the result of the fact that this strata has two parking spaces that are uncovered.
56. It is worth noting that the owner indicated in her submissions that she considered the fact that the strata lot she was seeking to purchase had an assigned limited common property parking stall that was not covered in determining the price she was prepared to pay for her strata lot, deducting from her offer price in recognition of that fact. It strikes me as somewhat surprising that subsequent to deriving what could be considered a benefit from the limited common property designation associated with her strata lot, in the form of a reduced purchase price, the owner now seeks to argue that the fact of that limited common property designation is significantly unfair. I find that it is not.

The Code

57. As noted in *The Owners, Strata Plan LMS 2900 v. Hardy*, 2016 CRTBC 1, a number of Human Rights Tribunal decisions have found that strata corporations provide management services to the public when they enforce bylaws for the control, management, maintenance, use and enjoyment of the strata lots, common property and

common assets of the strata corporation. (See for example *Konieczna v. Strata Plan NW 2489*, 2003 BCHRT 38 and *Williams v. Strata Plan LMS 768*, 2003 BCHRT 165).

58. Section 8 of the Code includes the prohibition that a person must not, without a “bona fide and reasonable justification” discriminate against a person regarding any accommodation, service or facility customarily available to the public, because of a person’s physical disability. Further, a person must not deny another person these things. Section 121 of the SPA states that a bylaw is not enforceable to the extent that it contravenes the SPA or the Code.
59. I agree with the reasoning set out in *Hardy*, and find that section 8 of the Code applies to the strata in this case.
60. The evidence before me makes clear that the owner has asked the strata for an accommodation. As the tribunal determined in *Thompson v. The Owners, Strata Plan BCS 1455 et al*, 2017 BCCRT 27, once a request for accommodation is made, the strata must assess whether accommodation is required under the Code.
61. The issue to be determined for the purposes of this dispute therefore is to what extent the owner has a disability that causes her to be adversely affected by the parking stall resolution such that she requires accommodation, and then what the strata must do to accommodate her. The accommodation needs to be adequate, but is not necessarily only what the disabled person has requested (*Shannon v. Strata Plan KAS 1613 (No. 2)*, 2009 BCHRT 438).

Does the owner have a physical disability that requires accommodation by the strata?

62. I accept that the owner has a physical disability. Specifically, based on the owner’s evidence I accept that she has difficulties with mobility and balance related to a traumatic brain injury and hemiplegic migraines, and that she experiences pain and loss of function on the left side, including in the left foot. I accept that as a she requires the use of mobility aids to minimize risk of falling due to her balance issues. That the owner

has been provided with disabled parking permit suggests further that she suffers from a disability in the form of mobility issues.

63. I note in particular that I accept the owner's evidence that she struggles more particularly with her balance issues when walking in what she described as "open spaces". The owner indicated that where there was a nearby wall or other item to give her perspective, her balance was somewhat improved.
64. I note that I did not particularly take the strata to be disputing the fact that the owner has a disability in the form of mobility issues. Rather, I took the strata's position to be that it had already made sufficient attempts to accommodate the owner, including installing the ramp to the rear entrance, keyless entry to the rear entrance, and an automatic door at the front entrance.
65. The question that remains for me to decide whether the owner's disability is one that requires accommodation in the form of providing her with access to a parking stall that is closer to the front entrance of the building.
66. In my view, the answer to that question is "no".
67. In reaching that conclusion I note that I agree with the owner's position that the closest entrance to her assigned parking stall, that being the rear entrance, is not reasonably accessible to her due to her disability.
68. Simply put, after reviewing the photographs of the rear entrance and hallway area, it appears to me that the act of opening the rear entrance door for any individual using a walker as a mobility aid would require that individual to engage in a series of extremely difficult maneuvers to avoid not having the walker fall off the sidewalk ledge. While the strata's construction of the ramp to improve access to the rear entrance for those using mobility aids such as walkers is a creditable first step in making the rear entrance of the building more accessible, in my view the ramp solves only one part of the accessibility problem. Getting through the rear entrance door would, in my view, continue to be a daunting task for individuals with the mobility issues such as those the owner has.

69. The rear entrance, however, is not the only entrance to the strata building.
70. As I have already indicated, the strata has, in an effort to accommodate those with mobility issues, installed an automatic door opener to the front entrance of the strata building. Given that installation, my understanding of the owner's evidence is that the only remaining issue with respect to accessing the front entrance of the strata building is the fact that it is some distance from her uncovered parking stall. The owner's position is essentially that she should be accommodated by being provided with a parking stall that is closer to the front entrance.
71. After hearing the owner's testimony, I am of the view that the distance from parking stall #9 to the front entrance of the strata building is not such that the nature of the owner's disability requires accommodation in the form of a parking space closer to the front entrance of the building.
72. I note first that based on the owner's evidence, it appears that the distance from the owner's assigned parking stall to stall #1 is approximately 23 metres. In my view, this distance is a relevant consideration in determining whether the strata should be accommodating the owner by providing her with a parking stall closer to the building entrance.
73. The owner acknowledged, in cross examination, that she generally goes for a number of walks every day, often using her cat stroller as a mobility aid. The owner stated that she is able to walk around the block, to a local park, and that on rare occasions she will walk to the downtown area of her municipality. The owner further indicated in her testimony that she had on occasion brought small pieces of furniture into the strata building from her car, using her walker to assist her in transporting those objects. The owner also acknowledged that she was physically able to engage in activities such as refinishing furniture and painting the walls of her strata lot.
74. I find that the owner is physically able to walk distances much further than the distance required by her current parking stall, and that the reduction of walking distance that

would occur as a result of moving her to a parking stall closer to the front entrance would not assist or improve her mobility or accessibility issues.

75. In listening to the owner's testimony it struck me that the distances she described walking as part of her regular routine appeared to be far in excess of the 23 metres from stall #9 to stall #1. I was also struck by the fact that she described being able to walk "around the block", or to a park, and that she did not describe any particular balance issue in undertaking those activities.
76. In sum, while I accept that the owner has limited mobility, it is readily apparent that she is not only able to navigate distances that are much more significant than the distance from parking stall #9 to the front entrance of the strata building (let alone the distance from parking stall #9 to parking stall #1) without suffering any ill effect, she in fact chooses to do so on a regular basis. Relying on that evidence, I find that the owner's physical disability is not such that she requires accommodation in the form of being given a stall closer to the front entrance of the strata building.
77. In reaching this conclusion, I acknowledge that the owner has testified that there have been times when she has had to walk through the parking lot to attend her vehicle where there has been snow and ice on the parking lot. She did not explain how such a situation would be avoided by moving to a parking spot closer to the front entrance. From my review of the photographs, walking to any of the parking stalls from the front entrance requires one to walk outside. If there were snow and ice on the ground, one would have to walk through it, regardless of the location of one's parking stall.
78. In general terms, after hearing the owner's evidence I was left with the impression that the owner simply would prefer a covered parking spot for convenience. Not because her disability required it. Those conveniences appeared to me to be related to being able to avoid things such as inclement weather (having to clear snow off her car), and being able to store her walker in a storage area in the covered parking area. I note that the strata's representative indicated at the hearing of this dispute that the owner was welcome to store her walker in the storage room adjacent to the covered parking area. While I accept that it may be more convenient generally for the owner to have a covered

parking space, my view is that her disability was not of the type to require her to be moved to a parking space closer to the front entrance of the building.

79. As a result, I find that the strata's parking stall resolution does not have an adverse discriminatory effect on the owner.
80. The owner's claims are therefore dismissed.

General Comment

81. The evidence before me in this dispute made clear that the majority of the owners in the strata suffer from some type of disability, and in fact had disabled parking permits.
82. With the limited parking area this strata has, and the disability issues that are present within the strata ownership population, it is not difficult to imagine further claims of similar nature to this one being brought forward. The result, depending on the nature of the applicant's disability, could well be different in a future case.
83. While my comments here are not binding on the strata in any way, it strikes me that the applicant owner's initial suggestion to the strata, which was that parking spaces be common property that are able to be assigned as needed, would go some way to assist the strata in avoiding further cases of this nature being brought.

DECISION AND ORDERS

84. I order that the applicant's claims be dismissed.
85. As the owner was not successful in this dispute, I find that she is not entitled to reimbursement of the amount she paid in tribunal fees.

Andrew Pendray, Tribunal Member