



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Wu v. Hu and The Owners, Strata Plan BCS 3579*, 2017 BCCRT 81

B E T W E E N :

Yi Wen Wu

APPLICANT

A N D :

Xiao Ting Hu and The Owners, Strata Plan BCS 3579

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Jamie Bleay

INTRODUCTION

1. Yi Wen Wu (applicant) says Xiao Ting Hu (owner) installed fencing and landscaping on common property without approval of The Owners, Strata Plan BCS 3579 (strata). The applicant and the owner each own a strata lot in the strata which is a four unit complex located in Richmond, B.C.

2. The applicant asks the Civil Resolution Tribunal (tribunal) for orders that:
 - a. the owner remove the landscaping and the portion of the fencing installed on common property;
 - b. the owner restore the common property to its original state;
 - c. the owner pay compensation in the amount of \$1,000.00 for the applicant's time spent dealing with this matter and an apology from the owner's husband to the applicant and her husband; and
 - d. the applicant be reimbursed for tribunal fees paid in the amount of \$225.00.
3. The applicant is self-represented. The owner is self-represented. The strata is a named party in this proceeding but is not represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the 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. 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.
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. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
8. Under section 48.1 of the Act and the tribunal rules, 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.

ISSUES

9. The issues in this dispute are:
 - a. Did the owner erect a fence and install landscaping on common property without approval from the strata and if so what is the appropriate remedy?
 - b. Should the owner's husband be required to apologize to the applicant and her husband?
 - c. Should the applicant be entitled to compensation for the actions of the owner?
And
 - d. Should the owner be reimbursed for tribunal fees paid?

BACKGROUND AND EVIDENCE

10. Strata Plan BCS 3579 (strata plan) was deposited and registered in the land title office on September 17, 2009.

11. The strata plan shows the strata is comprised of two three storey buildings. Strata lots 1 and 2 are in building 1 and strata lots 3 and 4 are in building 2. The strata is also comprised of common property and limited common property.
12. A title search of strata lot 3 (lot 3) confirms the applicant purchased lot 3 in November, 2011.
13. The title search of strata lot 2 (lot 2) confirms the owner purchased lot 2 in January 2014.
14. The strata plan does not identify the location of any fences, plantings or lawns but a Richmond City hall landscape plan does indicate the proposed location of fences, plantings and lawns for the development.
15. A land title general index search for the strata confirms that the strata has not filed any bylaws in the land title office as of the date this proceeding was commenced.
16. As there are no bylaws for the strata filed in the land title office I find the standard bylaws in the *Strata Property Act* (SPA) apply to the strata.
17. The relevant strata bylaws are bylaw 3(1)(c), bylaw 5(1)(e) and bylaw 6. Bylaw 3(1)(c) requires owners, tenants, occupants and visitors not to use a strata lot, common property or common assets in a way that unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot.
18. Bylaw 5(1)(e) requires owners to obtain written permission of the strata before making an alteration to a strata lot that involves fences, railings or similar structures that enclose a patio, balcony or yard.

19. Bylaw 6 requires owners must obtain the written permission of the strata before making an alteration to common property, including limited common property or common assets.
20. The applicant wrote to the owner on August 30, 2016 stating the owner had built fencing on common property without asking for approval of other owners.
21. The letter also referred to bylaw 3(1)(c), indicated the fence had created a violation of the rights of everyone in the strata and requested that the fencing be removed within 14 days and the area be returned to its original condition.
22. The owner has admitted to constructing the fencing and upgrading a portion of the landscaping by removing weeds and dead plants and planting grass. The owner has indicated that at least one other strata lot owner has upgraded and extended a fence before the owner did so.
23. There is no evidence before me to indicate that the owner sought approval of the strata pursuant to bylaw 5(1)(e) or bylaw 6 to construct the fence or upgrade the landscaping before doing so. There is no evidence before me of any involvement of the strata prior to or after the applicant filed this dispute and the strata has not filed a response despite being named as a respondent.
24. The applicant says that the owner's husband has had a rude attitude against her and her husband and is entitled to be treated respectfully when spoken to. The applicant says that when her husband tried to communicate with the owner in three instances her husband was rejected with rude attitudes.
25. The evidence shows the strata was properly provided with a copy of an amended dispute notice and did not respond.

POSITION OF THE PARTIES

26. The applicant submits that the owner installed fencing and landscaping on common property without approval. The applicant asks the tribunal to order the

fencing and landscaping be removed and the common property restored to its original state.

27. The applicant also seeks an apology for her and her husband from the owner's husband.
28. The applicant argues that she is entitled to compensation in the amount of \$1,000.00 from the owner for unnecessary time spent in dealing with this matter and for reimbursement of tribunal fees paid in the amount of \$225.00.
29. The owner submits that the applicant has no right or reason to ask for the fencing and landscaping to be removed.
30. The owner also submits that there is no basis to compensate the applicant or reason why her husband should apologize to the applicant and the applicant's husband.

ANALYSIS

Did the owner alter the common property in contravention of the bylaws of the strata?

31. Based on my review of the strata plan and photographs provided I find that the fencing and the landscaping were installed and placed on common property of the strata.
32. The owner has admitted to installing the fencing and upgrading the landscaping. It is undisputed that the owner did not request approval of the strata before installing the fencing and upgrading the landscaping.
33. I find that this admission is fatal to the owner despite his assertion that at least one other strata lot owner has upgraded and extended a fence. I have not been asked to determine whether or not any other strata lot owner in the strata has breached the bylaws and make no findings in that regard.

34. I find that the changes made by the owner were governed by either or both of bylaw 5(1)(e) or bylaw 6 and that the owner did not request and obtain approval the strata before making these changes.
35. I find the owner contravened one or both of these bylaws by constructing the fence and upgrading the landscaping without first obtaining approval of the strata. By doing so the owner has effectively expropriated a portion of the common property bordered by the new fencing for the owner's own use.
36. In the circumstances I order the owner to apply in writing to the strata for retroactive approval of the alterations and for the strata to consider the application within 30 days of receipt of the application.
37. If the application is not approved by the strata the owner is ordered to remove, at the owner's cost, the fencing installed on the common property, remove the landscaping and to return the common property to its original state.
38. I also order the strata to enforce its bylaws.

The applicant also seeks an apology to her and her husband from the owner's husband

39. The applicant claims the owner's husband spoke rudely to the applicant and her husband.
40. The only evidence of this is the owner's assertion that each time the applicant's husband spoke to the owner's husband he was rejected with rude attitudes.
41. I am unable to conclude on the evidence that anything said by the owner's husband to the applicant's husband was rude. Moreover, the applicant's husband is not a party to this dispute and has not been afforded the opportunity to provide submissions.

42. Accordingly I decline to order the apology sought by the applicant.

The applicant argues that she is entitled to compensation in the amount of \$1,000.00 from the owner for unnecessary time spent in dealing with this matter

43. Section 48.1 of the Act gives the tribunal the authority in resolving a strata property claim to make an order or orders on terms or conditions I consider appropriate, in accordance with the tribunal rules, including requiring a party to pay money.

44. Section 49(1)(b) of the Act gives the tribunal the authority to order "... other reasonable expenses and charges the tribunal considers directly relate to the conduct of the hearing".

45. The applicant has identified that she has spent a total of 22.5 hours dealing with this dispute, including time consulting with legal counsel, communicating with Richmond City Hall, doing research and presenting her complaint to the tribunal.

46. The applicant has not produced any invoices or indicated how she arrives at the amount of \$1,000.00 that she seeks as compensation. The applicant has indicated that she paid \$10.71 for the cost of a registered letter to the owner.

47. While the applicant was the more successful party in this dispute I do not find that the compensation sought by the applicant, other than the cost of the registered letter constitute expenses and charges contemplated by section 49(1) of the Act.

48. I order the owner to compensate the applicant in the amount of \$10.71.

DECISION AND ORDERS

49. I therefore order:

- a. The owner to apply in writing to the strata for retroactive approval of the alterations within 14 days from the date of this decision and for the strata to consider and respond to the application within 30 days of receipt of the application.
- b. That if the strata does not approve the owner's application the owner must, within 30 days from the date of the strata's decision not to approve the owner's application, remove the fencing and landscaping and return the common property landscaping to its original state at the owner's expense;
- c. The owner must pay the applicant the sum of \$10.71 for the cost of the registered letter;
- d. The owner must reimburse the applicant the \$225.00 paid in tribunal fees

50. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

51. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other

things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Jamie Bleay, Tribunal Member