



Civil Resolution Tribunal

Date Issued: October 19, 2017

File: ST-2017-00107

Type: Strata

Civil Resolution Tribunal

Indexed as: *Kuo v. The Owners, Strata Plan LMS 4350*, 2017 BCCRT 98

B E T W E E N :

William Huai-Sheng Kuo

APPLICANT

A N D :

The Owners, Strata Plan LMS 4350

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, William Huai-Sheng Kuo (owner) owns strata lot 63 in the respondent strata corporation, The Owners, Strata Plan LMS 4350 (strata). The owner claims he does not have exclusive access to his 2 designated parking stalls

because the strata has mistakenly used one of his parking stalls for storage and refuses to remove the stored items. The strata agreed to remove the stored items from the owner's parking stall but the issue of access was not resolved.

2. The owner requests an order that the strata give him 24 hours' notice to access his parking stalls and that he should be reimbursed for tribunal fees paid.
3. The strata did not provide submissions.
4. The owner is self-represented. The respondent is represented by the strata's property manager, Allan Landa.
5. For the reasons that follow, I find the strata must provide a minimum 24 hours' advance notice to the owner and reimburse the owner for tribunal fees paid.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.
8. 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.

9. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
10. Under section 48.1 of the Act and the tribunal rules, 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.

ISSUES

11. The parties reached agreement on certain issues prior to this adjudication, and these issues are not before me in this decision.
12. The issues in this dispute are:
 - Should I issue an order that the strata provide the owner with 24 hours' advance notice of the strata's need for access to the owner's parking stalls?
 - Should the strata be ordered to reimburse the owner \$225.00 for tribunal fees paid?

BACKGROUND AND EVIDENCE

13. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision.
14. The strata was created February 5, 2001 and comprises a single, 5 storey building of 67 residential strata lots located in Vancouver, B.C. There are 2 levels of underground parking with a mixture of common property and limited common property (LCP) parking stalls (shown as parking bays on the strata plan).
15. On April 15, 2002, prior to the first annual general meeting of the strata, the owner-developer amended the strata plan under section 258 of the SPA to designate additional level 2 parking stalls as LCP. Parking stalls #102 and #103 were designated as LCP for strata lot 63 at that time and are side by side.

16. The Owner purchased strata lot 63 on June 10, 2014.
17. On one occasion, the owner was awakened by “violent” knocking on his suite door.
18. On other occasions, the owner could not access their LCP parking stalls because of the strata’s items located in or next to the stalls. In one instance the owner was forced to park his vehicle on the street where it sustained significant damage.
19. The strata has not disputed any of the owner’s evidence or submissions and I accept the owner’s submissions for that reason.

POSITION OF THE PARTIES

20. The owner argues that, on several occasions, the strata has required access to stored items on or next to his LCP parking stalls and does not provide advance notice to the owner to remove his vehicle so as the stored items can be removed.
21. The owner requests that I order:
 - The strata to provide 24 hour advance notice to him if the strata requires the owner to temporary relocate his vehicle to permit access to the strata’s items.
 - The strata be ordered to reimburse him \$225.00 for tribunal fees paid.
22. The strata did not provide submissions with respect to the owner’s claim for advance notice and reimbursement of tribunal fees paid.

ANALYSIS

Should I issue an order that the strata provide the owner with 24 hours’ advance notice of the strata’s need for access to the owner’s parking stalls?

23. While it is not clear why the strata may still require access to the owner’s LCP parking stalls, I am inclined to give the order requested by the owner as it is most certainly reasonable.

24. I order the strata to provide the owner with a minimum of 24 hours' advance notice should it require access to the owner's LCP parking stalls in future. In giving notice, the strata must comply with section 61 of the SPA.

Should the strata be ordered to reimburse the owner \$225.00 for tribunal fees paid?

25. Under section 49 of the Act and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable expenses related to the dispute resolution process. I see no need to stray from this general rule. The owner has been successful party and has paid \$225.00 in tribunal fees.
26. Accordingly, I order the strata to reimburse the owner \$225.00 for tribunal fees paid, within 30 days of the date of this decision.

DECISION AND ORDERS

27. I order that the strata:
- Provide the owner a minimum 24 hours' notice to access the owner's LCP parking stalls in compliance with section 61 of the SPA.
 - Within 15 days of the date of this order, reimburse the owner \$225.00 for tribunal fees paid.
28. Under section 167 of the SPA, an owner who brings a tribunal claim against the strata is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to this claim are allocated to the owner.
29. 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.

30. 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.

J. Garth Cambrey, Vice Chair