



# Civil Resolution Tribunal

Date Issued: October 25, 2017

File: ST-2016-00456

Type: Strata

Civil Resolution Tribunal

Indexed as: *Chafeeva v. The Owners, Strata Plan NW 3353*, 2017 BCCRT 101

**B E T W E E N :**

Olga Chafeeva

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 3353

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Bonnie Elster

## INTRODUCTION

1. Olga Chafeeva is a tenant (tenant) in the respondent strata corporation, The Owners, Strata Plan NW 3353 (strata). The building is a high rise located in Burnaby, BC.

2. The tenant claims that the strata seized her personal property without authority and when she requested a hearing with council, the council refused to hold a hearing. She claims that her request for information from the strata about alleged bylaw contraventions was ignored. She wants to retrieve her personal property and get reimbursement for bylaw fines. The strata claims that the tenant's use of the common property for storage was unauthorized. The strata claims its actions were appropriate.
3. The tenant is represented by Douglas Jay, an owner in the building. The strata is represented by Joe Jurilj (Mr. Jurilj), council president.

## **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. 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(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 strata seize the tenant's personal property without authority?
  - b. Did the strata council respond appropriately to the tenant's request for a hearing regarding the behaviour of the council president and the return of the tenant's personal property?
  - c. Was there a contravention of the strata's bylaws? Should the strata reimburse the fines paid for bylaw contraventions? Did the strata council respond appropriately to the tenant's request for information regarding her alleged bylaw violations?
  - d. The strata requests the tribunal order the tenant and Douglas Jay to take a polygraph test regarding her claims. The strata also wants an investigation of the tenant and Douglas Jay under section 92 of the Act.
  - e. Should the strata reimburse the tenant for her expenses to prepare documents for this dispute and tribunal fees? Should the strata reimburse the tenant for her personal belongings?

## **BACKGROUND AND EVIDENCE**

10. On a part-time basis, the tenant worked for the strata organizing a large volume of construction-related documents that the strata management company had

returned to the strata. The tenant was authorized to do her work in the strata's caretaker office, located on parking level 1, to which she was given a key. The tenant submits that she used some of her personal property, such as an adding machine and tape, 3-hole punch and highlighters, in the course of her work for the strata and kept those items in the caretaker's office. At some point, the tenant claims she got permission to store some of her personal belongings in a common property electrical room on the 7<sup>th</sup> floor (7<sup>th</sup> floor electrical room) of the building.

11. On April 8, 2016 the strata circulated a note to residents in the building saying that Douglas Jay, had resigned from council, as of March 30, 2016 and that Mr. Jurilj, vice president of council, would take over as president.
12. In April 2016, the tenant discovered that her key no longer opened the caretaker's office and later, her key did not open the 7<sup>th</sup> floor electrical room. On April 18, 2016, the tenant delivered a note to Mr. Jurilj requesting access to the caretaker's office so that she could retrieve her belongings. Her note included her contact information.
13. On April 22, 2016, the tenant ran into Mr. Jurilj in the parking garage. The tenant claims that Mr. Jurilj began yelling and swearing at her. She claims that she hurried back to her suite, very upset and made some handwritten notes about their encounter. On April 30, 2016, the tenant prepared a note to the building caretaker and slipped it under the door of the caretaker's office. She asked to arrange a time with the caretaker to retrieve her property from the caretaker's office and the 7<sup>th</sup> floor electrical room. The note included her contact information.
14. On May 14, 2016, the tenant encountered Mr. Jurilj in the building lobby. The tenant submits that while she waited for the elevator, Mr. Jurilj spoke to her loudly and made reference to her support for an owner in the building and he said to her "I will make sure to get you too". The tenant headed for the stairs and she claims that Mr. Jurilj called after her that she could run, but she could not hide. Back in her suite, the tenant says that she made a handwritten note of her encounter with Mr. Jurilj.

15. On May 24 2016, the tenant left another note with her contact information for the building caretaker requesting access to the caretaker's office and the 7<sup>th</sup> floor electrical room. A short while later, the tenant received a note under her door addressed "to the resident of this unit". It said that several owners witnessed the tenant removing "strata documents regarding Douglas Jay". The note asked that she refrain from removing these "documents" and if it continued, the tenant would be reported to the property management company. The note was signed "Sincerely, Your neighbors".
16. On June 13, 2016, the strata posted a notice in the locked notice boards in the elevators advising all residents to remove their personal belongings, by June 20, 2016, from electrical rooms and other areas of the building not designated as storage or bicycle lockers. The notice said that items found in electrical rooms after that June 20 would be "subject to disposal". The notice said that anyone with questions was to contact the caretaker.
17. The tenant, again, left a note for the caretaker requesting access to the 7<sup>th</sup> floor electrical room and the caretaker's office to remove her belongings. On June 23, 2016, the tenant left a note for Mr. Jurilj and copied the caretaker. The tenant said that she saw the notices in the elevator and wanted to arrange access with the caretaker to retrieve her belongings. This time she demanded access "ASAP" and said "time was of the essence." The same day, the caretaker emailed the strata manager that she spoken to the tenant in the building lobby and the tenant wanted access to her things. The caretaker said that she also advised Mr. Jurilj about the request of the tenant.
18. On July 4, 2016, the tenant delivered a note to the door of each council member. She said that she had already requested the caretaker and Mr. Jurilj to allow her access to remove her belongings. She told council members that she did not know why she was being ignored and that she was now of the view that her property was under seizure.

19. The tenant submits she had difficulty putting her note to council members under Mr. Jurilj's door. She left and started walking towards the stairs. She claims that Mr. Jurilj opened his door, saw her and went after her. When she was on the stairs, Mr. Jurilj began yelling after her about tearing down notices. He swore at her and said that he was not going to comply with her notes. When the tenant returned to her suite, she claims that she made handwritten notes of their encounter in which she said she was frightened.
20. On July 12, 2016, Mr. Jurilj sent an email to the strata manager instructing him to notify the tenant's landlord that her tenant destroying posted notices and that there may be fines under the strata's bylaws. In the email, Mr. Jurilj said:
- “On July 4<sup>th</sup> at 10pm, I caught Olga trying to slide a letter under my door. She heard me coming so she ran around to the exit stairs on the opposite side of the elevators. I chased her down and confronted her. I did not receive a copy of whatever letter she was carrying. I did, however, receive a letter that she gave to Eileen, our caretaker. Olga claims that she has “her things” stored in the electrical closet on the 7<sup>th</sup> floor ... and that her key no longer works but she should not have to deal with Joe [me] or the council. Why does she have keys for mechanical rooms and why are her things stored there? Can we charge this unit for the costs of re-keying the building?”[My emphasis]
21. The tenant's landlord received a letter from the strata management company dated August 2, 2016. The letter said “a female resident from your unit has been removing/destroying notices posted in the building by the Strata Council.” The letter said (1) it was a violation of strata bylaws 4.1(a) and 8.1; (2) the bylaw breaches took place on April 13; (3) the landlord should speak to the resident and inform her that such activity is unacceptable and tell her not to remove or deface any posted items; (4) section 135 of the *Strata Property Act* (SPA) says the resident may respond in writing or request a hearing before council; (5) council requires a written response to the alleged breach by August 16, 2016 and/or a request for a hearing; (6) if there is no response by that date, council will make a

determination, based on the evidence available to them at that time; and (7) if council finds a bylaw breach, the landlord may be fined.

22. On August 10, 2016, the tenant sent a letter to the strata manager requesting a hearing with council, pursuant to section 34.1 of the SPA. It is unclear whether, at this point in time, if the tenant knew about the bylaw contravention letter sent to the owner. The tenant told the strata manager she wanted to discuss the “undue and gender inappropriate harassment” that she experienced from Mr. Jurilj, including verbal threats when she asked for the return of her personal property. She said his threats related to “strata notices.” The tenant said that since Mr. Jurilj is the subject of the meeting with council, Mr. Jurilj should not attend as it contravenes the SPA. She suggested August 22 as a hearing date as “it is within the required 4 weeks in which the meeting must be held.”
23. On August 15, 2016, the tenant emailed the strata manager regarding the bylaw contravention letter of August 2, 2016 sent to the landlord. She requested details about the allegation. She asked for a copy of the written complaint that brought the matter to council’s attention. She said if council was relying on a video, she wanted to know. She said that she suspected that the bylaw complaint was an attempt to intimidate her because of her disagreement with council. She said the date of the incident in the letter was April 2016 and the bylaw contravention notification was August 2, 2016. She also said that the bylaw contravention letter “comes on the heels of my efforts to have my personal property returned to me and my writing letters to every member of council seeking to have my personal property returned to me.” The tenant requested all background documentation regarding the bylaw violation be sent to her by email. [My emphasis]
24. The strata manager emailed the tenant on September 2, 2016. He said that the SPA does not require bylaw complaints to be in writing and the complaint arose “due to the strata council reviewing the security camera and observing your actions. This video evidence is sufficient for a bylaw complaint letter to be issued. The rest of your comments are irrelevant to the issue of you removing notices

posted by the strata corporation.” There is no evidence that the tenant was sent any further information about the bylaw violation, including the video.

25. On September 13, 2016, the strata manager emailed the tenant to advise that the council meeting was rescheduled to September 22, 2016. He asked if the tenant would be attending. The email said that in order for council to deal with the tenant’s request about the electrical closet, council needs a detailed list of the items the tenant had stored in order to verify ownership.
26. On September 15, the strata manager emailed the tenant to advise the council meeting was rescheduled to September 29 and asked the tenant to confirm her attendance. On September 27, 2016, the tenant emailed the strata manager to ask if the meeting was about the alleged bylaw violation or getting her property back. The strata manager said that council would deal with both matters at the same meeting.
27. On September 29, 2016, the tenant emailed the strata manager to advise that she was still waiting for a response from her letter of August 10, regarding the improper conduct and harassment of her by Mr. Jurilj and her request for a hearing on that matter. The tenant wanted to know if Mr. Jurilj would be at the meeting being held that day. She said that, in her view, council was proceeding with the bylaw complaint to “intimidate” and “bully” her further. She said that she would not be able to attend the meeting on September 29 to deal with the alleged bylaw breaches because she needed time to prepare and to prepare she required “all pertinent and relevant materials, written reports, statements, etc.”, so that she could prepare a proper and full response. She said she wanted to know which council member reviewed the video and the date of the video. She asked for a copy of the written complaint made by the council member alleging the breach of the bylaw. She asked for a copy of the video. She said that she needed this information to prepare her defence and that she would be preparing a list of the personal property “taken from me by the caretaker and the strata corporation”.



28. The agenda for the September 29, 2016 council meeting shows the first item of business was the tenant, the bylaw complaint and the issue of items stored in the 7<sup>th</sup> floor electrical room. On September 29, 2016, the strata manager responded that the council meeting was a hearing. He said that a hearing does not have to be a special and separate meeting just with you. "Clearly you do not understand what a hearing is for you to make this demand. Furthermore, it is unreasonable for you to demand that Joe [Mr. Jurilj] cannot attend the hearing. There is no foundation for this demand."
29. On October 5, 2016, the tenant wrote to the strata manager regarding her August 10 request for a council hearing. She said Mr. Jurilj should not be at the hearing because he is the subject of her complaint and section 32 of the SPA supports her position. She said that council was in breach of section 34.1 of the SPA.
30. On October 7, 2016, the strata manager wrote to the tenant to advise that hearings are held at council meetings in accordance with the SPA. He said that council reviewed the video of the tenant removing notices. The letter said that even though the tenant did not attend the hearing, council levied a \$100.00 fine. He said that the strata may collect the fine from the landlord. He said that with regard to the tenant's claim for alleged contents of an electrical closet, the council says the deadline for residents to claim items in electrical closets had passed by the time the tenant made her claim. The strata manager said that since the tenant did not attend the hearing, council has determined that the tenant failed to prove that she had personal items stored in an electrical closet. The letter said that the matter was now closed and the contents of all electrical closets will be discarded. The strata manager also said: "Council cannot get involved in your personal issues regarding individual Owners. If you have personal safety concerns you should contact the R.C.M.P. The Strata Council does not govern Owner conduct regarding matters which should be handled by the police."
31. On October 25, 2016, the tenant wrote the strata manager to advise that she initiated a dispute at the tribunal and was advising council not to dispose of any personal property. On November 29, 2016, the tenant wrote to the strata manager

and included what she described as a partial list of personal property that she had in the caretaker's office and the 7<sup>th</sup> floor electrical room.

32. As part of its evidence, the strata submitted photographs of a number of boxes and other containers it submits were in the 7<sup>th</sup> floor electrical room. The caption on the photographs says that the strata disposed of all items stored in other electrical rooms except the 7<sup>th</sup> floor electrical room because there were items belonging to the strata and Douglas Jay.

## **POSITION OF THE PARTIES**

33. The tenant claims that the strata seized her personal property. The strata says it will return the personal property to the tenant on certain pre-conditions.
34. The tenant claims that council refused to hold a hearing to discuss the behaviour towards her by the council president, Mr. Jurilj, and the return of her personal property seized by the strata. The council claims that it was not aware of her complaints about Mr. Jurilj until the tenant began this dispute.
35. The tenant claims that council refused to provide documentation of her alleged bylaw infraction and the strata should reimburse the fine paid. The strata argues council acted appropriately.
36. The tenant wants the strata to reimburse her for the costs of preparing for this dispute and tribunal fees of \$125.00. The strata makes no claims on the issue of reimbursement. The tenant seeks compensation for her personal belongings if they have been discarded. The strata claims that the personal belongings have not been discarded.
37. The strata requests the tribunal order the tenant and Douglas Jay to take a polygraph test regarding her claims. The strata also wants an investigation of the tenant and Douglas Jay under section 92 of the Act.

## ANALYSIS

### **Did the strata seize the tenant's personal property without authority?**

38. I find the strata had no legal authority or justification to deny the tenant access to common property to retrieve her personal belongings. My reasons follow.
39. The tenant discovered that the strata changed the locks to the caretaker's office and the 7<sup>th</sup> floor electrical closet when her key would not work. This was done without notice or explanation to the tenant, who worked part time in the caretaker's office. The tenant had personal items in the caretaker's office that she used in the course of her work. The tenant submits that she had permission to store personal belongings in the 7<sup>th</sup> floor electrical closet and the strata has provided no evidence to the contrary.
40. The strata has no bylaw that prohibits storage of personal property in areas designated as common property, except where the items are hazardous materials. There is no evidence that the tenant's personal belongings were hazardous materials.
41. The evidence shows that the tenant requested access to the caretaker's office in April 2016 to remove personal belongings immediately after realizing that the locks were changed. Her request came at least two months before council requested all personal items be removed from all areas of common property that were not storage or bicycle lockers. She asked Mr. Jurilj, the council president, the caretaker and all council members for access. The caretaker brought the tenant's request for access to Mr. Jurilj and the strata manager. In August 2016, council offered to address the access issue at a hearing that was originally called for alleged bylaw contraventions by the tenant. The tenant requested a hearing on the issue of personal belongings that was ignored, but the bylaw contravention meeting was rescheduled for dates in September 2016. She requested the strata to give her documentation supporting the alleged bylaw contraventions and a copy of the video, but the strata declined her request. The strata told her that the issue

of personal belongings and the alleged bylaw contravention would be heard at the same meeting. When she was told that Mr. Jurilj was going to participate at that meeting, the tenant decided not to attend.

42. On October 7, 2016, the strata manager wrote to the tenant with council's decision about access to personal belongings in the 7<sup>th</sup> floor electrical room. He said council determined that there was no proof that she had personal items stored there, the matter is closed and the contents of the 7<sup>th</sup> floor electrical room would be discarded.
43. There is no evidence why the tenant was denied access to her personal belongings. There is no evidence that anyone else laid claim to these items. The strata notified residents that items stored on common property not in storage lockers or bicycle lockers had to be removed by a specified date. There is no evidence that anyone else was denied access to their items stored in other areas of the common property. The council knew that the tenant needed a key to access the 7<sup>th</sup> floor electrical room to remove her belongings. When the deadline passed, council told her she was too late and refused to allow the tenant access. Council told her that these things would be discarded.
44. There is no evidence that other residents using electrical rooms as storage removed their belongings. The strata claims that the tenant must provide evidence that the items belong to her. There is no evidence that any other resident had to provide proof of ownership to remove their belongings from common property. There is no evidence that the strata was concerned that another person would come forward and claim the items in the 7<sup>th</sup> floor electrical room, if the tenant removed them.
45. In my view, even if the items did belong another person and the tenant is the custodian of these items, there is no evidence to justify or authorize council's decision to deny the tenant access to these items to remove them.
46. All members of council signed a letter addressed to the tribunal, dated July 24, 2017. In the letter, six council members, including Mr. Jurilj, declared that Mr. Jurilj

did not act independently and without the knowledge of council in any matters at issue in this dispute. Given the tenant made Mr. Jurilj aware of her personal belongings being stored in the 7<sup>th</sup> floor electrical room before the required deadline, I find the strata council knew or ought to have known about the tenant's personal belongings being stored in the electrical room and the caretaker's office.

47. I find the strata had no legal authority to deny the tenant access to retrieve the items in the 7<sup>th</sup> floor electrical room and the caretaker's office. The tenant claims that if the items are damaged or destroyed, she is seeking \$5,000 as compensation.

**Did council respond appropriately to the tenant's request for a hearing regarding the behaviour of the council president and the return of the tenant's personal property?**

48. A tenant may request a hearing at a council meeting. The application for a hearing must be in writing and state the reason for the request. If a hearing is requested, council must hold a council meeting to hear the applicant within 4 weeks after the request. If the purpose of the hearing is to seek a decision of council, council must give its written decision within one week after the hearing. (SPA section 34.1) Section 4.01 of the SPA regulations states that a hearing under section 34.1 of the SPA means an opportunity to be heard in person at a council meeting. [My emphasis]
49. If a council member has a direct or indirect interest in a matter that is or will be considered by council and that matter could materially conflict with that council member's duty or interest as a council member, the council member (1) must fully and promptly disclose to council the nature and extent of the interest; (2) must abstain from voting on the matter; and (3) must leave the meeting while the matter is discussed. (SPA s. 32) [My emphasis]
50. The tenant requested a council hearing on August 10, 2016. She referred to section 34.1 of the SPA and said the reason for the hearing was to discuss Mr. Juilj's behaviour towards her. She described his alleged actions and said that he

made verbal threats when she asked for the return of her personal property. She asked that Mr. Jurilj not be present at the council hearing.

51. On September 27, 2016, the tenant emailed the strata manager to ask if the meeting on September 29, 2016 was about the alleged bylaw violation or getting her property back. The strata manager said that council would deal with both matters at the same meeting. On the day of the bylaw contravention hearing, the tenant reminded the strata manager that she was still waiting for a date for a council hearing regarding her allegations about Mr. Jurilj. She asked if Mr. Jurilj would be at the hearing to be held that day. The strata manager told the tenant that it was unreasonable to demand that Mr. Jurilj should not attend the hearing and there was no basis for her demand. The tenant wrote again on October 5, 2016 and asked for a council hearing and restated that Mr. Jurilj should not be at the hearing. Council never held the hearing requested by the tenant under s. 34.1 of the SPA.
52. The strata's submissions, prepared by Mr. Jurilj, state that the tenant never made any complaint to council, the strata manager or the RCMP. The strata submits that the tenant insisted that a hearing be held and Mr. Jurilj not be allowed to attend. "We only became aware of these specific complaints through the CRT. The claims of harassment on April 22, May 14 and May 28 of 2016 have been totally fabricated. Josip Jurilj has taken a Polygraph (commonly known as a "lie detector") test regarding these specific events."
53. The strata submits it was unaware of the tenant's complaints about Mr. Jurilj until after this dispute was filed in November 2016. The evidence shows that the tenant wrote the strata manager about her allegations in August 2016 and she requested a hearing about those allegations pursuant to section 34.1. The strata submits that the tenant fabricated the harassment. As evidence, the strata submits a polygraph test taken by Mr. Jurilj. I find the polygraph test report does not support the strata's claim that the tenant fabricated the harassment. I give no weight to the evidence of the polygraph results.

54. The tenant requested a hearing in writing. She stated the reason for the hearing. She stated that Mr. Jurilj had a direct interest in the matter and she described the nature of her allegations. She said that Mr. Jurilj should not be at the meeting. The council did not hold the hearing within 4 weeks of her request. Council dismissed the reason for requesting the hearing. Council said that the matter would be heard at the bylaw contravention hearing and that Mr. Jurilj would be there. Section 32 of the SPA required Mr. Jurilj to leave the meeting (hearing) while the matter was discussed.
55. I find that council breached sections 34.1 and 32 of the SPA.
56. The tenant requests an apology from council for mishandling her request for a hearing. I am not convinced that a forced apology from council is going to serve any purpose. The tenant requests an order that Mr. Jurilj be ordered to complete sensitivity training. I am not able to make such an order as Mr. Jurilj is not a party to this dispute.

**Was there a contravention of the strata's bylaws? Should the strata reimburse the fines paid for bylaw contraventions? Did the strata council respond appropriately to the tenant's request for information regarding her alleged bylaw violations?**

57. When a strata corporation receives a complaint about a bylaw contravention, the strata corporation must give an owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing, if requested. If a strata corporation alleges that a tenant contravened a bylaw, the strata corporation must give notice of the complaint to the tenant. (SPA section 135(e) and (f)) A hearing means an opportunity to be heard in person at a council meeting. (SPA regulation 7.2)
58. The bylaw contravention letter stated that the tenant was in breach of strata bylaws for removing/destroying notices posted in the building by the strata. The letter referred to bylaws 4.1(a) and 8.1. These strata bylaws were filed in the land title office in January 2002 under registration no. BT0025. Bylaw 4.1(a) states: A resident or visitor must not use a strata lot, the common property or common

assets in a way that (a) causes a nuisance or hazard to another person. Bylaw 8.1 states: An owner must obtain the written approval of the strata corporation before making or authorizing an alteration to common property.

59. The strata alleges that the tenant caused a nuisance when the tenant allegedly removed paper notices posted by the strata in the hallways outside the elevators. In law, nuisance occurs when a person directly or indirectly causes physical injury to land or substantially interferes with the use or enjoyment of land and the interference, is unreasonable. (*Royal Anne Hotel Co. v. Ashcroft*, 1979 (CanLII) 2776 (BCCA))
60. I cannot find that removing notices posted on a wall meets the legal definition of nuisance. There is no physical injury to land. There is no interference with the use or enjoyment of land that is substantial and unreasonable.
61. The strata claims that the removal of notices is a breach of bylaw 8.1. Bylaw 8.1 requires an owner to obtain approval of the strata before making an alteration to common property. Bylaw 8.1 applies to an owner. The tenant is not an owner. Secondly, the removal of paper notices is not an alteration to common property. An alteration to common property, as it is used in the strata's bylaws, applies where there is a change to the structure of common property. (*The Owners, Strata Plan NWS 254*, 2016 BCSC 2363 (CanLII))
62. On August 16, 2016, the tenant sent an email to the strata manager, apologizing for removing strata notices. However, I have found that removing notices from the walls outside the elevators does not meet the legal definition of nuisance and is not an alteration to common property. Therefore, removing notices is not a breach of bylaw 4.1(a) or bylaw 8.1. The strata is not entitled to levy a fine.
63. I have found that removing notices is not a breach of the strata's bylaws, therefore, I do not have to address whether or not the strata acted appropriately when the tenant requested information from the strata regarding the bylaw complaint. The strata should not have acted on the complaint because the actions complained of did not amount to a breach of the strata's bylaws.



64. The tenant lives in the building with her mother. The evidence shows that the tenant's mother paid the \$100 fine levied by the strata for alleged breach of these bylaws. Given the strata was not entitled to levy the fine, I find the strata must credit the tenant's strata lot the amount of the fine and to the extent there is any payment between the tenant and the landlord/owner, that is up to them considering the landlord/owner and the mother are not parties to this dispute.

**Should the tribunal order the tenant and Douglas Jay to take a polygraph test regarding her claims? Should the tribunal investigate the tenant and Douglas Jay under section 92 of the Act?**

65. The strata requests that the tribunal order the tenant and Douglas Jay take a polygraph test regarding her claims. I have found on the evidence that the strata had no legal authority to deny the tenant access to retrieve the items from the 7<sup>th</sup> floor electrical room and the caretaker's office. This is my finding whether these items are hers or she is the custodian of these items. I have found that the strata breached the SPA when the tenant was not given an opportunity to be heard under sections 34.1 and 32 of the SPA. I have found that removing notices is not a breach of those particular strata bylaws. I find that there are no credibility issues on any of these claims. Given my findings and the fact that the strata has not filed a counterclaim, I find it is not necessary to order the tenant to take a polygraph test. In the case of Douglas Jay, I find that I do not have the authority to make the requested order, as he is not a party to this dispute.
66. The strata wants an investigation of the tenant and Douglas Jay under section 92 of the Act. An investigation under section 92 of the Act is not within the jurisdiction of the tribunal. It is a matter for the BC Provincial Court.

**Should the strata reimburse the tenant for her expenses to prepare documents for this dispute? Should the strata reimburse the tenant for her personal belongings?**

67. I have found that the strata acted without legal justification when it denied the tenant access to the 7<sup>th</sup> floor electrical room to retrieve personal belongings. I have found that the council breached sections 34.1 and 32 of the SPA when it failed to hold a hearing within the time period required and refused the tenant's request that Mr. Jurilj, the council president, not attend the hearing. I have found the removing strata notices is not a breach of bylaws 4.1(a) and 8.1 and therefore, the strata was not entitled to levy a fine.
68. The tenant was successful on all claims. I find the strata must reimburse the tenant for her expenses to prepare for this dispute.
69. The tenant submits that if her personal belongings stored in the 7<sup>th</sup> floor electrical room have been discarded, she wants compensation in the amount of \$5,000.00. The strata submits that the items have not been discarded. I make no order regarding compensation to the tenant if her belongings have been discarded. However, nothing in this decision restricts the tenant from making a fresh claim for compensation as a small claims application under the Act if the strata does not return her personal property.

**DECISION AND ORDERS**

70. I order that within 15 days of the date of this order the respondent:
- a. return to the applicant all personal property belonging to the applicant it has in its possession. Such personal property to be returned to the applicant at her strata lot on such date and at such reasonable time specified in writing by the applicant; and
  - b. credit the applicant's strata lot \$100.00 being the amount of the fine levied for the alleged breaches of bylaws the respondent was not entitled to levy.

71. Under section 49 of the Act, and tribunal rules 14 and 15, 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 reason in this case to deviate from the general rule. I therefore order the respondent to reimburse the applicant for tribunal fees of \$125.00. The tenant incurred expenses for couriers, photocopying and document scanning totalling \$82.16. I find these are dispute-related expenses and further order reimbursement by the respondent to the applicant for expenses totalling \$82.16.
72. In addition, the applicant is entitled to interest on the total amount of the applicant's expenses of \$82.16, under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended, at the rate of 0.7% per annum on the total amount of expenses from November 7, 2016 or \$0.58.
73. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act* commencing on the 15<sup>th</sup> day after the date of this order at the rate of 0.7% per annum if the expenses have not been paid as of such date.
74. 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.
75. 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.

---

Bonnie Elster, Tribunal Member