



# Civil Resolution Tribunal

Date Issued: October 26, 2017

File: ST-2017-00170

Type: Strata

Civil Resolution Tribunal

Indexed as: *K.Y. v. The Owners, Strata Plan LMS XXXX*, 2017 BCCRT 102

B E T W E E N :

K.Y.

**APPLICANT**

A N D :

The Owners, Strata Plan LMS XXXX

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. The applicant owner K.Y. (the owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS XXXX (the strata). The owner wants a retraction and an apology from the strata for allegedly falsely claiming he did not

attend a strata council hearing and for denying him the council hearing, contrary to the requirements in the strata's bylaws and the *Strata Property Act* (SPA). The owner is represented by his sister and the strata is represented by the strata council president.

2. In the published version of this decision, I have anonymized the parties' names at the request of the owner's representative, due to the owner's impaired capacity. The strata did not dispute this request.

## **JURISDICTION AND PROCEDURE**

3. 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. It must also recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard this dispute through written submissions because I find there are no significant credibility issues or other reasons requiring an oral hearing.
6. Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do something;
  - b. order a party to refrain from doing something;

- c. order a party to pay money.

## **ISSUES**

- 7. The issues in this dispute are:
  - a. Did the strata fail to grant the owner a council hearing and/or falsely claim that he failed to attend a council hearing?
    - i. If yes, should the strata be ordered to apologize to the owner?
  - b. Should the strata be ordered to retract its statements that the owner was offered a council hearing and failed to attend, as stated in December 19, 2016, January 25, 2017, and May 24, 2017 council meeting minutes?
  - c. Is the owner entitled to reimbursement of the \$225 in tribunal fees and \$17.53 in expenses for a bus pass and a \$17.53 Land Title Registry search fee?

## **BACKGROUND AND EVIDENCE**

- 8. I have only set out the evidence and submissions below that relate to the issues arising in this decision. I note the parties' agreement that the strata will "rescind" its August 2, 2016 infraction letter that fined the owner. Therefore, this dispute solely turns on the issues identified above.
- 9. At all material times, the owner's representative acted on the owner's behalf, both in this dispute and in the underlying communications. The owner's representative in this dispute also represented the owner in all communications with the strata in the underlying dispute.
- 10. At the outset, a chronology will be helpful (my bold emphasis added):
  - a. *August 2, 2016*: Council's strata manager wrote to the owner on behalf of the council, with respect to disposal of renovation materials in the garbage room. The letter stated that under section 135 of the SPA, the owner was being given the opportunity to answer the complaint in writing, including the right to request

a hearing. If the owner failed to respond within 14 days, the letter stated council would make a decision it considered appropriate.

- b. *August 10, 2016:* The owner's representative wrote the strata denying that the owner had violated the strata's rules, and requested that the strata "rescind the letter and apologize". **The owner's representative further wrote that if council did not rescind the letter at the August meeting, the owner is requesting a hearing during the September meeting to discuss the issue.**
- c. *August 25, 2016:* Strata council meeting. The council minutes anonymously reference the owner's request that council rescind the August 2, 2016 letter and for an apology. The minutes then state that council directed the strata manager to advise the owner to disregard the letter and advise the disposal of the renovation materials was reported by the building manager.
- d. *September 22, 2016:* The owner's representative wrote the strata manager asking for a response to his August 10<sup>th</sup> letter, noting she had not heard what council decided at its August 25, 2016 meeting.
- e. *September 29, 2016:* Strata council meeting. The council minutes anonymously reference the owner's representative's letter that she had not received a response from the last meeting, and that the strata manager would respond. These minutes also note the strata had a new strata manager filling in, with a formal replacement to be in place for October.
- f. *October 29, 2016:* The strata manager wrote the owner's representative in response to her August 10<sup>th</sup> email and stated council considered the issue at its August 25 and September 29, 2016 council meetings. The strata manager apologized for not providing an earlier response, and said that council had duly noted her response. The strata manager concluded, "Council advises that you may disregard Council's letter to you dated August 2, 2016".
- g. *October 31, 2016:* The owner's representative wrote the strata manager noting the instruction to disregard the August 2, 2016 letter. The representative asked

whether in so doing, “does that mean Council is rescinding” the infraction letter as requested and “removing it from his record?”

- h. *November 3, 2016*: Strata council meeting. Council minutes do not reference any communications with the owner about this issue. It is not clear if the council had received the October 31, 2016 letter by the time of the hearing.
- i. *November 4, 2016*: The strata manager wrote the owner’s representative that they “may disregard” the infraction letter. He added that the letter would not “be deleted” from the strata’s records, but that the owner’s response and the council’s response would also be noted in the records.
- j. *November 18, 2016*: The owner’s representative wrote the strata manager stating that council did not rescind the August 2, 2016 letter as requested. The representative wrote that they were therefore **asking for a council hearing at the next council meeting under section 15 of the bylaws.**
- k. *November 23, 2016*: The new strata manager wrote the owner’s representative that the next meeting would be on December 19<sup>th</sup>, and that he **“can certainly advise Council that you wish to speak with them on this matter”**. The strata manager noted that the owner had been advised to disregard the August 2, 2016 letter, and so **asked the representative what she wished to discuss so that council could have the information prior to their meeting.**
- l. *December 12, 2016*: The owner’s representative wrote the strata manager stating that the owner was being accused of the infraction based on false claims without evidence, and yet council did not rescind the August 2, 2016 letter as requested. The representative wrote that the accusation has been documented and “will remain on his record”, and only rescinding the letter can reverse or revoke the accusation and clear the owner of any wrongdoing. The representative said the letter must be rescinded with an apology. **The**

**representative asked for a council hearing at the next council meeting** to discuss why council is not rescinding the August 2, 2016 letter.

There is no indication the strata responded to the owner's representative before the December 19, 2016 council meeting. The strata acknowledges it did not extend a formal invitation to the owner to attend the December 19, 2016 council meeting, but submits that the owner was not refused or denied a hearing.

- m. ***December 19, 2016:*** Strata council meeting. Council minutes anonymously reference, under the heading 'Guest Business' the owner's request for a hearing with respect to the letter that the strata had earlier advised should be disregarded. The minutes then state, **"It was noted that the owner did not attend the hearing, nor informed the Strata that they would not be attending", and that council considered the matter closed.** Under the correspondence section, the minutes note council had received the owner's email about the infraction letter, and that the owner was previously advised to disregard the letter.
- n. ***January 15, 2017:*** The owner's representative wrote the strata manager in follow-up to her December 12, 2016 email, **noting she had not received a response about her request for a council hearing, which she requested again.**
- o. ***January 17, 2017:*** The strata manager wrote the owner's representative and referred to her November 23, 2016 email and that the matter was placed on the December 19, 2016 council meeting agenda "and noted", with no punctuation after "noted", and so it is unclear if the sentence was inadvertently not completed. The strata manager concluded noting again that the council had indicated the August 2, 2016 letter should be disregarded and **that council considered the issue closed.**

- p. *January 25, 2017*: Strata council meeting. Council minutes state council received another email from the owner's representative about the infraction letter that she had been previously told to disregard. The minutes further state, **"The owner was also approved to attend a hearing, but did not attend the Council meeting. Council considers this matter closed."**
- q. *May 24, 2017*: Strata council meeting. Council minutes note the owner's application to the tribunal about the denial of a council hearing in 2016. The minutes state council intends to maintain their position that a hearing was granted to the owner, even though the initial request was made by the owner's representative.
- r. *July 19, 2017*: Strata council meeting. Council minutes reiterate that council will maintain its position that a hearing was granted to the owner.
11. On September 8, 2017, the strata's new strata manager wrote the owner's representative an apology letter, stating that the strata was "very sorry for and apologies profusely for the previous mistakes and oversights in handling your concerns" and for the "anguish" caused to the owner and his family. The letter states there were unintentional mistakes, both issuing the August 2, 2016 letter in the first place and the strata's failure to respond to the owner's concerns in a timely fashion. The strata explained that during the relevant time period there was some upheaval in that both the strata's strata manager and its long-time resident manager departed. The strata manager wrote that "under normal circumstances" the August 2, 2016 infraction letter would never have been initiated and that the owner could disregard the letter as previously noted.
12. In an undated statement provided to the tribunal by the strata, the strata manager stated the following:
- The Building Manager that reported the garbage disposal incident is no longer employed by the strata, and this may be why council decided the owner should disregard the infraction letter.

- The strata manager wrote that his November 23, 2016 response to the owner, which referenced the December 19, 2016 council meeting, was based on the SPA section 34.1 requirements that a meeting must be held. The manager stated, **“the hearing request was not denied”**.
- **The strata manager wrote the owner did not attend on December 19, 2016**, and council noted the matter was considered closed “considering the owner’s absence from the meeting” and that the infraction letter was already disregarded.

## ANALYSIS

13. The owner’s representative says the owner was told to “disregard the infraction letter”, but complains that the strata council would not “rescind it” and would not grant a council hearing. The representative complains that in the August 25, 2016 meeting minutes, the council stated the owner was to be advised to disregard the letter, but again, did not mention the infraction letter was “rescinded” or that the owner was asking for a hearing. The representative further complains that the owner was not directly told to disregard the infraction letter until October 29, 2017 and only after the representative followed up. The representative says the strata falsely stated in council meeting minutes that a council hearing had been offered to the owner and that he had failed to attend.
14. The strata says its strata manager’s November 23, 2016 correspondence effectively offered the hearing at the December 19, 2016 council meeting, although it acknowledges that a formal invitation was not provided. The strata also says that its bylaws allow for observers at council meetings.
15. The owner relies upon section 34.1 of the SPA and sections 15.1, 15.2, and 15.3 of the strata’s bylaws.
16. The strata’s bylaw 15 states: If a council hearing is requested under bylaw 15(1), council must hold a meeting “within two months of the request” (2) and provide a

written decision “within one month of the hearing” (3). The strata’s bylaws also state that an owner may attend a council meeting as an observer.

17. I find that bylaw 15 must be read down to comply with section 34.1 of the SPA. Once read down, it is entirely duplicative of section 34.1. Put another way, bylaw 15 as written is unenforceable under section 121(a) of the SPA, to the extent that it contradicts section 34.1 of the SPA.
18. Section 34.1 of the SPA states that by applying in writing with the reason for the request, an owner may request a hearing at a council meeting. If so requested, the **“council must hold a council meeting to hear the applicant”** within 4 weeks (1 month) after the request (my bold emphasis added). If the purpose of the hearing is to seek a council decision, the council must give a written decision within 1 week of the hearing.
19. The allegations the strata failed to grant the owner a council hearing and falsely claimed the owner had failed to attend one are related. On November 23, 2016, the strata manager responded to the owner’s request to address the matter “at the next council meeting”. In his November 23<sup>rd</sup> email, the strata manager said the next meeting was on December 19, 2016 and that he “can certainly advise council the owner wished to speak to them on this matter”. The strata manager concluded the email by asking the owner’s representative to advise what she wanted to discuss so that council could have the information in advance of the meeting.
20. There is no dispute that the owner did not attend that December 19, 2016 council meeting. Ultimately, this dispute entirely turns on the fact that the strata did not expressly extend an invitation to attend it.
21. The misunderstanding between the parties is unfortunate. Arguably, the strata believed that the owner was advised that the hearing opportunity was at the December 19, 2016 council meeting, given the minutes from that meeting to that effect.

22. However, I find the strata manager ought to have clearly stated that the council hearing requested would be held on December 19, 2016 at the scheduled council meeting. The fact that the owner's representative wrote again on December 12, 2016 suggests she was waiting for a formal invitation, which may have stemmed from the manager's phrasing "can certainly advise", as though council would still determine whether the owner could in fact attend.
23. Ultimately, the owner's representative had made 2 requests for a hearing and did not receive a clear invitation in response from the strata. On balance, I find the strata failed to reasonably inform the owner's representative of the council hearing, namely the December 19, 2016 council meeting. That being the case, I also find the strata failed to hold a council meeting to hear the applicant, as required by section 34.1 of the SPA. I say this because I find the owner's representative could not reasonably have been expected to attend the December 19, 2016 council meeting based on her communications with the strata to that point.
24. I turn now to the requested remedies.
25. I find it would be inappropriate and unnecessary to order the strata to apologize to the owner. First, the strata has already apologized, as noted above. Second, an ordered apology is likely to be unproductive. Third, I find the strata's beliefs at the time its council meeting minutes were written were held in good faith. I accept the strata's submission about the May 2017 council meeting minutes having been written by a new strata council that was not yet entirely familiar with the facts of this particular dispute, although nothing particularly turns on them.
26. That all said, clearly at the end of the day the owner did in fact not fail to attend a council hearing, in that he never understood that he had been invited to attend one. While I somewhat question the necessity of the order, bearing in mind the tribunal's mandate that includes recognition of ongoing relationships between parties, I order the strata to state in its next council meeting minutes that the previous references to the owner's failure to attend a council meeting were inaccurate as the owner had not been clearly invited to attend and thus had not

understood he should attend on December 19, 2016. As before, the strata should not identify the owner in these minutes.

27. Bearing in mind the tribunal's mandate again, I make the following further comments. It is unclear why the owner believes that there is something meaningful in the word "rescind" in the context of a strata issuing a bylaw infraction notice, as compared to "disregard". Certainly, under section 34.1 of the SPA the owner was entitled to request a hearing and the strata was required to provide it. That said, I find that the strata's instruction to disregard the infraction notice adequately resolved the substance of the matter, and nothing further would have been gained by saying then that the strata rescinds the letter. [I recognize that the strata has in this dispute agreed to rescind the letter.] The strata quite properly advised the owner's representative that it would keep the correspondence in its file, as required under the SPA, but that the objection and the strata's response to disregard was noted. In other words, the strata's record accurately reflected the situation with respect to the garbage disposal incident.
28. Under the Act and the tribunal's rules, I may order the unsuccessful party to pay some or all of the successful party's tribunal fees and dispute-related expenses. Here, I find the owner was substantially successful and thus I find the strata must reimburse the owner his claimed \$225 in tribunal fees. As for expenses, I do not consider the bus pass an appropriate dispute-related expense and I decline to order its reimbursement. The Land Title Registry search was appropriate, and the owner is entitled to an order the strata reimburse him \$17.53.

## **DECISION AND ORDER**

29. The owner's claim for an apology is dismissed.
30. I order the strata to issue a statement in its next council meeting minutes that prior references to the owner's failure to attend the December 19, 2016 council meeting hearing were inaccurate, as it was not made clear to the owner that he was invited to attend it. The strata should not identify the owner in the council minutes.

31. I order the strata to reimburse the owner \$242.54, for \$225 in tribunal fees and the claimed \$17.53 Land Title Registry search expense. I dismiss the owner's claim for reimbursement of a bus pass expense.
32. The owner is entitled to post-judgment interest under the *Court Order Interest Act*.
33. I further order that the public version of this decision anonymize all parties, to protect the privacy and identity of the owner.

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Shelley Lopez, Vice Chair