Civil Resolution Tribunal

Date Issued: March 26, 2018

Files: ST-2017-00332 and ST-2017-003974

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Civil Resolution Tribunal

Indexed as: *Paterson v. The Owners, Strata Plan VIS 6371*, 2018 BCCRT 94

B E T W E E N :

Cheryl Paterson

APPLICANT

A N D :

The Owners, Strata Plan VIS 6371

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicant Cheryl Paterson (owner), also known as Kim Paterson, owns strata lot 84 (unit B301) in the respondent strata corporation, The Owners, Strata Plan

VIS 6371 (strata). Ms. Paterson filed 2 separate disputes against the strata and I have considered them together in this decision.

2. In dispute ST-2017-00332, the owner alleges: the strata is not following the *Strata Property Act* (SPA) requirements in terms of its financial allocations and in the election of council members, and that it is improperly maintaining strata lot interiors that are the responsibility of individual strata lot owners. For this dispute, the owner also claims reimbursement of $225 in tribunal fees.

3. In dispute ST-2017-003974, the owner alleges that the strata breached the SPA by not following the proper procedure for enforcing bylaws and rules, and not holding a hearing and delivering a written decision in accordance with the required timeframes set out in the SPA. This dispute relates to the strata's decision to remove some of the owner's items from common property. For this dispute, the owner also claims reimbursement of $125 in tribunal fees.

4. The strata disputes all of the allegations, saying that it has acted properly with the approval of the owners and that the requested remedies are unnecessary.

5. The owner is self-represented and the strata is represented by a council member.

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 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.

8. 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 that there are no significant issues of credibility or other reasons that might require an oral hearing. An oral hearing was not requested.

9. 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

10. The issues in these disputes are:

   a. Has the strata failed to properly allocate funds as required by the SPA? If so, what remedy is appropriate?

   b. Has the strata improperly maintained strata lot interiors at its expense, contrary to the bylaws? If so, what remedy is appropriate?

   c. Has the strata failed to comply with the SPA and its bylaws when electing council members? If so, what remedy is appropriate?

   d. Did the strata act in accordance with the SPA and its bylaws with respect to the removal of the owner's items from common property and in responding to the owner's hearing request? Did the strata treat the owner significantly unfairly? If so, what is the appropriate remedy?

BACKGROUND

11. I have only commented upon the evidence and submissions as necessary to give context to my reasons.

12. The 93-unit strata is a phased residential complex in Victoria, with 51 apartments in 2 buildings and 42 townhouses. The owner has co-owned SL84, an apartment style strata lot, since 2009. The strata's bylaws refer to "Townhouse type strata lots" and to "Apartment type strata lots" as discussed further below. Further, since at least 2012 the strata does not have separate sections within the meaning of the SPA.

13. The relevant portions of the strata's bylaws are summarized below, which were originally approved and filed in 2012 and re-filed on March 30, 2015:

    a. **Bylaw 2**: An owner must repair and maintain the owner's strata lot, except where the strata has the responsibility to do so under the bylaws.

    b. **Bylaw 3**: A resident must not use common property in a way that causes a nuisance or unreasonably interferes with the rights of others to use the property.

    c. **Bylaw 8**: The strata must repair and maintain common property. The strata must also repair and maintain a strata lot but this is restricted to the building's structure or exterior, chimneys, stairs or balconies, doors, windows and skylights on the building exterior, and fences and railings.

    d. **Bylaw 21**: The strata may spend money to repair or replace common property or assets if it is immediately required to ensure safety or prevent significant loss or damage. With reference to section 98(3) of the SPA, the strata may also spend money outside of its budget, out of the operating fund if the expenditure together with all other unapproved expenditures, is $4,000 or less in the same fiscal year and the owners are informed as soon as possible.

e. **Bylaw 23(8)**: The strata may do what is reasonably necessary to remedy a breach of a bylaw or rule, including removing objects from the common property.

f. **Bylaw 27**: At a general meeting, voting cards must be issued to eligible voters. The vote is decided on a show of voting cards, unless an eligible voter requests a precise count. Election of council or any other vote must be held by secret ballot, if secret ballot is requested by an eligible voter.

g. **Bylaw 31**: The strata is comprised of 2 "types of strata lots", namely the "Apartment/Condominium Type" and the "Townhouse Type", for the purpose of determining each strata lot's allocation of operating expenses. An operating expense that relates to and benefits only 1 of the 2 types of strata lots will be charged to only the owners of that type of strata lot, according to the formula set out in this bylaw:

$$\frac{\text{strata lot unit entitlement}}{\text{total unit entitlement of all strata lots of the type to which the contribution relates}} \times \text{contribution to the operating fund}$$

h. **Bylaw 36**: This bylaw lists certain prohibitions on an owner's use of a strata lot and common property, including the placement of anything on common property that might damage the landscaping or interfere with the grounds maintenance. An owner must not create an obstruction, restriction or hindrance on passageways.

14. The owner seeks a variety of declarations that the strata has acted improperly. She also seeks orders that the strata be required to re-allocate certain monies, adopt new bylaws, and charge-back certain interior repairs to a particular strata lot. The owner also wants a declaration that the strata breached section 31(b) of the SPA because it allegedly discriminated against her when the strata removed certain of her items from common property.

EVIDENCE & ANALYSIS

15. In a civil claim such as this, the applicant bears the burden of proof.

16. A strata corporation functions through its strata council. Section 31 of the SPA states that in exercising the powers and performing the duties of the strata, each council member must act honestly and in good faith with a view to the best interests of the strata, and, exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. While I have below found the strata has in certain respects erred, to the extent the owner alleges the strata has breached section 31, I find this is not proven.

17. Given the tribunal's mandate includes recognition of the ongoing relationship between parties, the following comments are warranted at the outset of my analysis. Strata councils are made up of volunteers, and mistakes will be made. Within reason, some latitude is justified when scrutinizing its conduct (see *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753). That said, this strata has the benefit of the assistance of a management company, which suggests that less latitude is necessary. At the same time, I note the strata obtained legal advice, which it followed in some instances and apparently did not follow in others due to concerns about being unable to practically achieve the recommended goal.

Strata's compliance with the SPA – financial allocations

18. At a special general meeting (SGM) held in January 2012, the owners approved the cancellation of sections and approved a "types" bylaw, bylaw 31, to allocate certain operating costs to a particular type of strata lot. Again, the strata has not had sections under the SPA at all times material to this dispute.

19. The owner says the strata has not been complying with the SPA in terms of financial allocations. In particular, she says the strata should properly allocate operating costs by type of strata lot.

20. On this issue, the owner wants the strata to do the following:

    a. convene an SGM to approve a new budget,

    b. return the 2015 surplus for the apartment style and townhouse style strata lots, “and apply the respective surplus to the type of strata lot from where the surplus arose”. The amount in question is $9,827.84,

    c. adopt a bylaw reconciling year-end surplus and deficits by type of strata lot, and to allocate hydro expenses as a common expense, and

    d. return the 2015 common operating surplus, in the amount of $24,700, that the strata transferred to the contingency reserve fund (CRF) and let the owners decide at the next annual general meeting (AGM) what they want to do with it.

Hydro and similar expenses – allocation by strata lot type?

21. Section 1 of the SPA defines common expenses as those related to the strata’s common property and common assets or is required to meet any other purpose or obligation of the strata.

22. Section 91 of the SPA states the strata is responsible for the strata’s common expenses. Section 92 defines “operating fund” and the CRF as follows:

    a. Operating fund: common expenses that usually occur either once a year or more often, or are necessary to obtain a section 94 depreciation report, and

    b. CRF: common expenses that usually occur less often than once a year or that do not usually occur.

23. SPA Regulation 6.4 and the strata’s bylaw 31 similarly indicate that an ”item of operating expense” that relates to only 1 of the 2 types of strata lots will be charged only to the owners of that type. I agree with the owner that this quoted phrase means the same thing as saying “exclusive to”. Nothing turns on the fact

that the word ‘exclusive’ is not contained in the Regulation, as perhaps suggested by the strata. My conclusion is supported by the BC Court of Appeal’s decision in *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259*, 2004 BCCA 597, as cited by the owner.

24. Hydro is a common operating expense that should be paid from the operating fund, as it occurs more often than once a year. A hydro expense is not exclusive to only 1 strata lot type. Rather, it relates to both the apartment and the townhouse strata lot types. This fact is supported in the evidence about how the various hydro meters supply electricity to areas common to both strata lot types. Therefore, hydro is an operating expense that must be assessed to all strata lots based on unit entitlement, as submitted by the owner. I order the strata to do so, in accordance with the SPA and the strata’s bylaws.

25. I find the owner is also correct in her submission that other line items set out in the annual budget are operating expenses to be shared by all strata lots by unit entitlement, which include: window cleaning, gutter cleaning, electrical, and plumbing. In summary, without limitation, I order the strata to allocate an operating expense to a type of strata lot only if that budget line item expense is exclusive to that type.

Operating Fund expenses vs CRF expenses

26. The owner submits that expenses that are clearly not annual operating expenses are being put into the annual budget instead of being expensed from the CRF. She says this ensures that only 1 type of strata lot pays for that expense. I note above the SPA, Regulation 6.4 and the strata’s bylaw 31 only speaks to allocating operating expenses to types of strata lots. In other words, CRF expenditures may only be allocated to all strata lots regardless of their type.

27. For instance, the owner notes that in 2017, the “condo only” budget included an expense to stain the wood at the entrances of the 2 condominium buildings. She points to a similar expenditure and allocation for the replacement of elevator carpets, cleaning garage drains, and replacing ceiling light fixtures in hallways, all

of which were allocated to the apartment style strata lots only. However, it may be that there are other expenses that do exclusively benefit only 1 strata lot type. Based on the evidence before me, I am unable to give a definitive list.

28. I agree with the owner's submission that some expenses have been paid from the operating fund that should have been paid from the CRF, as the items in the above paragraph I find occur less often than once a year. As one example, the strata submits because while it is true a clean-out of garage drain lines is not done annually, such clean-out could be done annually and then it would automatically be an operating expense. I find this argument is not helpful, in part because anything could be done more often. The strata gives another example where in 2015 the strata allocated new vinyl flooring to the "condo operating budget" instead of the CRF, because in past years the strata was unable to pass a ¾ vote resolution to get a carpet replacement expenditure paid from the CRF. While it may be true the vote failed to pass, the strata still did not comply with the SPA in handling the less-than-yearly expenditure.

29. The material point is that the SPA considers what is usually done. The strata acknowledges in the drain line clean-out that it is not usually done annually. Similarly, the strata acknowledges a variety of other maintenance matters are done only every 2-3 years, and yet has chosen to charge those items as operating expenses, allocated to each strata lot type. I find this is inappropriate, given the SPA provisions defining the CRF and the operating fund and how expenditures are to be made.

30. I order the strata to comply with the SPA and seek appropriate approval of its owners prior to paying expenditures from the CRF that occur less often than once a year, without allocation as to type of strata lot.

Prior years' surplus

31. The owner says the strata erred when at a November 2016 council meeting it transferred an operating surplus to the CRF. However, I find that SPA section 105 expressly permits the strata, through its council, to deal with an operating surplus

in such a manner. That is one option for the strata, but apart from that, 1 of 4 other options is that the strata may also transfer the surplus to the CRF, as set out in section 105(1)(a). Another option is that the strata can carry forward the sum as part of the operating fund, as a surplus (section 105(1)(b). The third option is to reduce strata fees (section 105(1)(c). The final option is by way of a ¾ vote (section 105(1).

32. As for strata fees, section 99 of the SPA sets out a default formula in which strata fees are calculated based on unit entitlement. Section 100 of the SPA allows the strata to adopt a different formula in a bylaw, which requires a unanimous vote, and the strata has not done so. The strata's strata fees are calculated based on unit entitlement.

33. As noted earlier, SPA Regulation 6.4 allows for the allocation of certain common expenses based on strata lot type. However, the Regulation does not speak to allocation of an operating fund surplus or deficit. That is addressed in section 105 of SPA as set out above.. This is relevant to my conclusion below that the strata is not entitled to allocate a surplus based on strata lot type.

34. I turn then to my findings.

35. The owner submits the strata did not have the authority to use the prior years' surplus to pay for a "Cantec" invoice. To the extent the February 2016 Cantec invoice for $2,094.90 was an operating expense, I find the strata's payment of it from the surplus was appropriate under section 105(1)(b) of the SPA. Further, given the above, the strata also appropriately elected to transfer the surplus to the CRF. However, the owner is generally correct in her submission that an operating fund surplus cannot be used as a 'slush fund' for unexpected operating expenses throughout the year.

36. I do not agree with the owner's argument about the impact of the owners' defeat of her motion at the 2016 AGM. The owner had moved that the surplus be used to reduce the upcoming strata fees. I do not agree with the owner's argument that because her motion was defeated, the owners had voted to leave the surplus in

the operating fund, rather than transferring to the CRF. Defeat of a motion does not necessarily mean a positive vote to do something else. The strata was still entitled to transfer the surplus to the CRF, under section 105 of the SPA.

37. The January 27, 2016 strata council meeting minutes show that the prior years' operating surplus was $24,700.10 and that council agreed that this amount would be shared based on unit entitlement between the townhouse and condominium types.

38. What about the issue of strata lot types? As discussed below, where an operating surplus is transferred to the CRF, it must be without allocation by strata lot type. The SPA and the strata's bylaws are silent on the issue. However, I do not agree that the strata has discretion as to how to apply surplus funds under section 105(1)(c) of the SPA. I say this because in a strata without sections there is only one "operating fund". Allocation by type is an additional allocation that I find the SPA would expressly mention if it were permitted. Regulation 6.4 does not address expenses, and instead address contributions to the operating fund. If the strata wanted to have 2 separate operating funds, it could do so through again creating separate sections in the strata.

39. Therefore, I find the strata has incorrectly handled operating surpluses. As noted above, section 99 of the SPA applies here which states that owners must contribute to strata fees, based on unit entitlement, for the budgeted operating fund and CRF. In this decision, I am not going to go through each of the surplus and deficit figures for the past few years. As discussed further below, I find the owners must revisit the 2017 and 2018 budgets in an SGM vote.

40. Subject to my comments above, I dismiss the owner's request that the strata allocate any surplus based on strata lot type. I also dismiss the owner's request that the strata return the prior years' surplus of $24,700 to the common operating fund. I further dismiss the owner's request that the strata adopt a bylaw reconciling year-end surplus and deficits by type of strata lot. Again, this is because surpluses cannot be allocated by strata lot type.

New 2017 and 2018 Budgets

41. I turn then to the owner's request for an order that an SGM be convened to approve a new budget for 2017, so that expenses are allocated correctly. Given the above circumstances and my conclusions, I consider this appropriate and I so order. Given the timing of this decision, I find the strata must also do so for the 2018 budget. My further reasons follow.

42. Section 96 of the SPA provides that the strata can only spend money from the CRF if a) it is an expense that usually occurs less often than once a year, b) is approved or authorized by a vote, or is an unapproved expenditure permitted by the SPA and a bylaw. As noted above, the strata's bylaws allow for a total of $4,000 in annual unapproved expenditures, which can be taken from the CRF if an immediate expenditure is necessary.

43. Section 97 of the SPA says the strata must not spend money from the operating fund unless it is an expense that usually occurs once a year or more often and is in the approved budget, approved by a ¾ vote resolution at a general meeting, or is immediately necessary for safety or to prevent significant loss or damage. The strata can also spend out of the operating fund if a budget is not approved at an AGM, until a new budget is approved, but only on expenses that qualify as operating fund expenses and up to the maximum set out in the previous budget for that expense.

44. That at the February 2017 AGM the strata may have obtained the owners' agreement to its approach is not determinative. The strata must comply with the SPA and its own bylaws. If the strata owners want to vote for a different SPA-compliant method of allocating certain expenses and adopt SPA-compliant bylaws accordingly, the strata can pursue such a resolution at a general meeting.

Conclusion

45. Without limitation, I have found hydro, gutter cleaning, window cleaning, electrical, and plumbing expenses are common expenses to be shared by all owners by unit

entitlement, rather than by strata lot type. I have also found above that the strata improperly characterized CRF expenses as operating fund expenses with allocations to a particular strata lot type.

46. Given these conclusions, I order the strata to follow the SPA in terms of its financial allocations and to convene an SGM so as to ask the owners to approve new 2017 and 2018 budgets, which must comply with the SPA and this decision. In order to assist it in preparing SPA-compliant budgets, I order the strata to retain a professional accountant familiar with the SPA requirements. In preparing the revised budgets, the strata does not need to address past improper allocations that pre-date April 1, 2015, as the limitation period has expired for any such older claims. However, as noted the strata in future must comply with the SPA, and in particular the required handling of operating fund and CRF expenditures and the handling of surpluses and deficits.

Strata's compliance with the SPA – council elections

47. The owner submits that the strata did not follow the SPA and its bylaws when electing council members at the February 22, 2017 AGM. She wants the strata to acknowledge this flaw and detail this acknowledgement in the next available strata council meeting minutes. The owner says she wants this remedy so that the owners are all informed of the errors that occurred and that in future they are informed about how to conduct an election.

48. In particular, the owner says:

    a. the strata breached bylaw 27 when it took the voting cards away from the owners,

    b. the strata breached section 50 of the SPA when it denied the owners a right to vote on a matter leading up to the council's election, and

    c. the strata did not follow proper procedure.

49. Section 50 of the SPA says that at a general meeting, matters are decided by majority vote unless a different voting threshold is required or permitted by the SPA or Regulations.

50. The owner says the strata proceeded to hand out ballots and collected voting cards, even though no one had asked for voting by secret ballot. The owner described how there was inconsistency in the strata's provision of voting cards and ballots. The owner's primary concern appears to be that the strata council chairman on his own initiative declared that the voting would proceed on the basis of secret ballot, after an owner noted the voting cards had been taken away. The owner says having taken the voting cards away, the owners were denied the opportunity to vote on any issues during the council's election. Here, the owner refers to the possibility of the owners voting on the 6 council nominees, of which she was one. It appears the owner's assertion is that the owners may likely have accepted the nominees put forward had they voted at that moment with voting cards. The owner says the secret ballot vote that followed was flawed. The owner also appears to speculate that because the owners did not have voting cards they could not have voted on something had an issue arisen.

51. I find there is insufficient evidence before me that the owners felt they could not vote at all due to having their voting cards removed. I say this because when someone raised the question "how can we vote when we don't have voting cards?" the strata advised it would proceed by secret ballot. The owners still voted on who they wanted to elect to council, but they did so by secret ballot. I do not agree with the owner that the owners were denied the opportunity to vote for the 6 nominees. Whether the secret ballot was conducted appropriately is a separate issue, as discussed below.

52. Under bylaw 27, the chairman was an eligible voter and in that capacity he could request a secret ballot. Nothing in the SPA or the strata's bylaws require a scrutineer to count the ballots, as suggested by the owner.

53. However, I agree with the owner that once the vote was decided to be done by secret ballot, the strata should have provided a set-up so that the owners could actually vote in secret. This conclusion is consistent with the decision in *Imbeau v. Owners Strata Plan NW971*, 2011 BCSC 801.

54. The strata submits the owner's requested remedies are not necessary. At the time the strata provided its submissions in this proceeding, the strata said the February 2018 AGM was planned so that voting cards marked with the strata lot number would be issued at the registration table, with secret ballots for council election voting issued at the same time, together with a voting booth.

55. On balance, I agree with the strata that in the circumstances the requested remedies are unnecessary. This decision is public and available to all owners in the strata. On this issue, the only fault I have found with the 2017 AGM is that the strata did not properly provide for a secret ballot once the secret ballot was called. In other words, the strata intended to exchange voting cards for ballots. I am not satisfied it is proven that the exchange was done inadequately. In any event, I find the strata has adequately addressed this concern in its plans for the February 2018 AGM, which by the time of this decision has already occurred.

Strata's repairs of interior strata lots

56. The owner says that where no insurance claim has been filed, the strata has improperly repaired the interior of strata lots.

57. Generally speaking, the parties agree that an individual owner is responsible for repairs to their own strata lot under bylaw 2, even if the strata's common property is the cause of that damage. The undisputed exception is where the strata has been negligent in the repair and maintenance of the common property at issue. This conclusion is set out in numerous prior tribunal decisions (see for example *Kantypowicz v. The Owners, Strata Plan VIS 6261*, 2017 BCCRT 29).

58. I turn then to the owner's particular concerns. The owner is correct that in the absence of a bylaw, the strata has no authority to carry out repairs and

maintenance of a strata lot and charge back the cost to an owner. I find that bylaws 23(8)(a) and 23 (9) do not assist the strata, as inspection and replacement of smoke alarms do not necessarily involve a contravention by an owner. I have no evidence before me that a strata lot owner has refused to allow inspection or replacement of their smoke alarm such that it could be said they were in contravention of a City or strata bylaw.

59. To be clear, the strata is responsible for repairing and maintaining chimneys, which would include cleaning. That said, the fireplace box is not a chimney. I find the strata is not entitled under the bylaws to clean or inspect fireplaces at its expense. I say the same about smoke alarms which are similarly located entirely within a strata lot. The strata does not have a charge-back bylaw authorizing it to incur expenses and charge it back to an owner, save for bylaw 33 which is triggered when the strata makes an insurance claim.

60. The strata says the inspections of the smoke alarms and fireplaces are built into the strata fees. While this may seem reasonable, given safety concerns, there is no bylaw to permit the strata to do this. If the strata wants to continue to do the smoke alarm inspections at its expense, it must pass a ¾ vote resolution at a general meeting to adopt an appropriate bylaw.

61. Next, the owner wants the strata to charge back the $525 cost of repairs to the interior of strata lot #107A. Here, in May 2016 there was a leak reported by the strata lot owner that "wind driven rain" had entered the corner of a window, running down the wall, and damaging the frame around the window". Based on an invoice before me, the damage was to the wood window frame affixed to the interior strata lot drywall. As such, under the strata's bylaws the individual strata lot owner should be responsible for payment of the frame repairs, unless the strata had been negligent in repairing the common property window assembly.

62. The strata submits that it has treated each report of damage in a prudent manner "but on occasion an exception has been made". As for the unit 107A damage, the strata submits that it chose to make an exception because of delay in repairing the

unit while the leak's cause was being determined and the time and trouble it would take to have a separate tribunal dispute proceed about it.

63. I am unable to conclude on the evidence before me whether the strata had negligently caused further damage to the unit 107A window frame, as a result of its delaying the window assembly repairs. In these circumstances, I am unable to conclude the strata improperly paid for the $525 repair charge at issue. In any event, I would not order the strata to charge back the $525 to the unit 107A strata lot owner, as doing so at this point would be unfair, particularly given that owner is not a party to this dispute.

64. That said, the strata appears to have the incorrect impression it is free to spend money based on its assessment of whether an exception is warranted. The strata must follow its bylaws and act accordingly. There is nothing in the strata's bylaws that would permit the strata to incur expenses as "an exception" because it might be expedient. This decision will serve as notification to the strata's owners of their individual obligations to repair and maintain their own strata lots, unless the strata's maintenance of common property was negligent or unless the bylaws provide otherwise.

65. To be clear, in the absence of a charge-back bylaw, the strata cannot incur an expense and charge it back to a particular strata lot owner. Further, as noted above, if the expense is one that is exclusively born by a one type of strata lot, then that expense can be allocated to only that type.

Strata's removal of items from common property

66. The owner says the strata failed to exercise the care, diligence, and skill of a reasonably prudent person, as required by section 31(b) of the SPA. In doing so, the owner says the strata discriminated against her when it removed some gardening tools and driftwood she had left on common property. The owner also says the strata council breached sections 34.1, 135, and 61(3) of the SPA in handling this issue.

67. Another owner made a complaint to the council about the items left on common property. Here, the strata did not fine the owner, nor did it ask her to pay any costs associated with the removal of item. It did not deny her use of a recreational facility. Rather, after asking the owner to remove the items and giving her a reasonable amount of time to do so, the strata removed them from common property, as the strata is entitled to do given bylaws 3, 8, 23(8) and 36.

68. In these circumstances, the procedural requirements under section 135 of the SPA are not engaged as suggested by the owner. It is also irrelevant that the strata's council meeting minutes did not identify the bylaws that permitted its removal of the items, as there was no requirement for the strata to do so.

69. The owner says she was treated unfairly in comparison to another owner who was the subject of a parking complaint. I do not agree. The factors relevant to a parking violation are likely very different than those involved with the strata's removal of plant pots and driftwood from common property. Further, the circumstances unique to that other owner are not before me. The owner has not proven that the strata acted unreasonably in disposing of the old gardening items in the stairwell or in asking her to remove those items and the driftwood.

70. I see no basis for the owner's allegations that the strata's conduct was inappropriate or punitive. In the circumstances, the strata was not required to wait before removing the items from common property, which I note were of relatively little value. For instance, at least some of the gardening plastic pots were items the owner was waiting to rinse off and recycle. Other items in the stairwell included plastic buckets from Home Depot. I find the owner has not proven that the strata discriminated or acted significantly unfairly towards her.

71. As for the driftwood the owner says she had earlier received approval to store on common property, as noted above the strata gave the owner the opportunity to remove it. The strata was entitled to refuse the owner's request to leave the driftwood on common property.

72. On May 7, 2017, the owner requested a strata council hearing about this issue, and the next day the strata responded that it would let the owner know of a date and time for the hearing. The owner complains that the strata failed to reasonably hold her hearing at the next scheduled council meeting on May 31, 2017 and that on June 1, 2017 the strata unfairly gave her only one day's notice of a June 2, 2017 hearing.

73. The strata's proposed date of June 2, 2017 complied with section 34.1. There is nothing in section 34.1 that requires the strata to give a certain amount of notice for the hearing requested. Based on the evidence before me, which includes the possibility that other observers were going to be present at the May 31, 2017 council meeting, I am not prepared to accept that the strata was unreasonable in suggesting the June 2, 2017 date.

74. Section 34.1 of the SPA says that when an owner requests a hearing, the strata must hold one within 4 weeks after the request. The owner insisted that a hearing be held by June 8, 2017 so as to comply with the SPA, but the strata could not achieve quorum before June 28, 2017.

75. Given the owner's objection to June 2, 2017, the strata reasonably looked to re-schedule the hearing to its next available date. At this point, I find June 1, 2017 is the most appropriate date to use as the date of the owner's request. Therefore, I find that the June 28, 2017 hearing complied with section 34.1 of the SPA.

76. I do not agree with the owner that the strata failed to give her timely notice of its written decision following her June 28, 2017 council hearing. The owner acknowledges she received an emailed decision on July 5, 2017, which was 1 week after the hearing. Section 34.1 requires only that the decision be given within 1 week. Contrary to the owner's submission, section 61(3) of the SPA does not apply here, as it addressed when a document is deemed to have been delivered. In this case, the email was in fact delivered on July 5, 2017 and there is no need to consider the deeming provision in section 61(3).

77. In summary, I find the strata complied with section 34.1 of the SPA in holding the owner's requested hearing and in providing the required written decision. I find the strata acted reasonably in dealing with the removal of the owner's items from common property. I dismiss the owner's claims and requested remedies under this heading.

Tribunal fees and dispute-related expenses

78. Under section 49 of the Act, and tribunal rules 129 and 132, 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.

79. As for ST-2017-00332, the owner was partially successful in her claims. I therefore order the strata to reimburse her half of her $225 tribunal fees, for a total of $112.50. I also order the strata to reimburse the owner half of her dispute-related expenses related to registered mail delivery, for a total of $19.55.

80. The owner paid $125 in dispute ST-2017-003974, which related to the strata's removal of the owner's items from common property and in holding the requested hearing. I dismissed that dispute above, and therefore find the owner is not entitled to reimbursement of any tribunal fees for that dispute.

DECISION AND ORDERS

81. I order that:

    a. The strata must comply with the SPA in terms of its financial allocations, its handling of operating fund and CRF expenditures, and its handling of surpluses. In particular:

        i. Hydro, window cleaning, gutter cleaning, electrical, and plumbing are all common operating expenses that must under the strata's current bylaws be shared by all strata lots according to unit entitlement,

ii. The strata may allocate contributions to operating expenses to a type of strata lot only if that expense is exclusive to that type,

iii. Expenses that usually occur less often than once a year must be paid out of the CRF, without allocation by strata lot type,

iv. Under its current bylaws and the SPA, the strata must not allocate a surplus or deficit by strata lot type, as there is only one operating fund, and

v. The strata must as soon as practicable call an SGM to revise the 2017 and 2018 budgets, which must comply with the SPA and the above directions. In doing so, the strata does not need to address past improper allocations that pre-date April 1, 2015, given the expiry of the relevant limitation period.

vi. The strata must retain a professional accountant familiar with SPA requirements to assist it in preparing the revised 2017 and 2018 budgets.

b. The strata must comply with its bylaw that owners must repair and maintain their own strata lots at their own expense, unless the strata has been negligent in its maintenance of common property that has caused damage to the strata lot.

i. Apart from chimneys, the strata must not at its expense inspect, clean, or replace smoke alarms or fireplaces inside strata lots, unless and until a bylaw is adopted otherwise.

ii. Unless and until the strata adopts a charge-back bylaw, the strata must not incur an expense and charge it back to individual strata lot owners.

iii. Nothing in this decision prevents the parties from pursuing an owners' vote about the amending the bylaws to address fireplace and alarm inspections or having a charge-back bylaw.

c. Within 30 days of the date of this decision, the strata must reimburse the owner $112.50 for tribunal fees and $19.55 for dispute-related expenses, for a total of $132.05.

82. The owner's remaining claims are dismissed. As provided by section 189.4(b) of the SPA, I order the strata to ensure that no part of the strata's expenses with respect to defending these disputes are allocated to the owner.

83. 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.

84. 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.

Shelley Lopez, Vice Chair