



# Civil Resolution Tribunal

Date Issued: April 4, 2018

Files: ST-2016-00501 and ST-2017-002129

Type: Strata

Civil Resolution Tribunal

Indexed as: *N.K. v. The Owners, Strata Plan LMS YYYY, 2018 BCCRT 108*

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

N.K.

**APPLICANT**

**A N D :**

The Owners, Strata Plan LMS YYYY

**RESPONDENT**

**A N D :**

N.K.

**RESPONDENT BY COUNTERCLAIM**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. Since December 2008, the applicant N.K. (tenant) has been a tenant in a strata lot in the respondent strata corporation The Owners, Strata Plan LMS YYYY (strata). I will refer to the strata lot's owner, together with the owner's spouse, as the landlord.
2. In the published version of this decision, I have anonymized the parties to protect the tenant's identity given the sensitive nature of his mental health condition at issue in this decision.
3. These disputes are about whether the tenant should be able to keep his German Shepherd dog, given its weight exceeds the 25 pound limit in the strata's bylaws.
4. In particular, in dispute ST-2016-00501, the tenant alleges the strata has unreasonably refused him permission to keep his dog, because after he bought the dog the strata's property manager told the landlord there was no weight restriction. The tenant wants an order that he can keep his dog, in part because it helps with his depression. The tenant also claims reimbursement of \$125 in tribunal fees.
5. In dispute ST-2017-002129, the strata wants an order that the tenant's dog be removed from the strata lot, within 30 days. For this dispute, the strata also claims reimbursement of \$225 in tribunal fees.
6. The tenant is self-represented and the strata is represented by a lawyer, Silvano Todesco.

## **JURISDICTION AND PROCEDURE**

7. 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.

8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. The 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.
10. 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.
11. While not expressly argued as such, these disputes raise the issue of discrimination and accommodation under the *Human Rights Code (Code)*. Section 3.8(2) of the Act gives the tribunal jurisdiction to apply the Code in a dispute. I find that is what the tenant is asking me to do when he asks the tribunal to consider his depression so as to allow him to keep his dog.

## **ISSUES**

12. The issues in these disputes are:

- a. Should the tenant be permitted to keep his German Shepherd dog that weighs over the strata's 25 pound limit?
- b. If the tenant is not permitted to keep his dog in the strata lot, what is the appropriate remedy for its removal?

## **EVIDENCE AND ANALYSIS**

13. In a civil claim such as this, the applicant bears the burden of proof. While I have reviewed all of the materials submitted, I have limited my review of the evidence and submissions below to what is necessary for this decision.
14. At the outset, I note I have not addressed bylaw fines since neither dispute is about fines threatened or levied about the dog. There is also no dispute about the validity of the strata's pet bylaw. Rather, the issue in both disputes is whether the bylaw should be enforced against the tenant.
15. It is undisputed that the tenant bought his dog on May 15, 2016, and told his landlord about it on June 1, 2016. The tenant says he was not aware of any weight restrictions for dogs in the strata.
16. It is also undisputed that the owner's dog is a German Shepherd that after the age of 4 months exceeded 35 pounds. The material point is that there has been a bylaw weight restriction since 2012 that prohibited the tenant from keeping the dog in the strata.
17. The central issues in this dispute are a) whether the strata property manager's incorrect advice to the landlord that there were no weight restrictions, given after the tenant bought the dog, should have any bearing on whether the tenant should be permitted to keep the dog, and b) whether the tenant's depression condition is a disability that warrants accommodation under the Code so as to allow him to keep the dog.

### **The strata's pet bylaw**

18. The residential strata complex has 138 strata lots, and it is comprised of apartment strata lots and townhouse strata lots. The strata's bylaw 43, its pet bylaw, has been in existence since 2004, at which time there was no weight restriction. In November 2012, the strata filed in the Land Title Office (LTO) an amendment to bylaw 43, bylaw 43.10(d), which prohibited dogs or cats exceeding a 30 pound weight restriction.
19. At the strata's October 21, 2013 annual general meeting (AGM), an amendment to bylaw 43.10 was approved to lower the weight restriction to 25 pounds for any individual dog or cat. This approved amendment was filed with the LTO on November 22, 2013.
20. In January 2014, bylaw 43.10 was filed again with the LTO, indicating the pet weight restriction was 35 pounds. This filing also says the bylaw amendment was approved at the October 21, 2013 AGM. There is no explanation before me as to the inconsistency between the January 2014 filing and the November 22, 2013 filing. It is clear from the October 21, 2013 AGM minutes that the owners considered a 35 pound weight restriction but ultimately approved a resolution that bylaw 43.10 reflect a 25 pound weight restriction. Given the circumstances, I find the approved pet weight restriction was 25 pounds, which is undisputed.

### **The strata property manager's error in giving incorrect advice about the pet bylaw**

21. I find that at all material times the strata's property manager acted as the strata's agent, in that the manager was authorized and tasked with the job of providing copies of bylaws on request.
22. However, subject to the bylaws, a property manager cannot bind the strata with respect to bylaw enforcement, as that is beyond their legal authority (see sections 4, 26 and 27 of the *Strata Property Act* (SPA), and *Dimitrov v. Summit Square Strata Corp.*, 2005 BCSC 1469). The strata's bylaws do not permit the property

manager to make bylaw enforcement decisions, as per bylaw 21.4. As noted, these disputes are about the strata's decision to enforce its pet bylaw that has a 25 pound weight restriction. Thus, the question is whether the manager's error must ultimately bind the strata. For reasons that follow, I find the answer is no.

23. Under section 26 of the SPA and the strata's bylaws, the strata council must enforce its own bylaws (see *Strachan v. The Owners Strata Corporation VR 574*, 1992 Canlii 2233 (BCSC) and a tribunal decision that is not binding but which I find persuasive, *Fox v. The Owners, Strata Plan KAS 1911*, 2017 BCCRT 137). As noted above, the strata does not permit the property manager to enforce bylaws. Here, at least 44 owners or tenants in the strata have signed a 'Petition' expressing concern about the tenant's dog that exceeded the weight restriction. As discussed further below, I find the strata has acted reasonably and in good faith in taking steps to enforce the pet bylaw against the tenant.
24. It is clear on the evidence that in June 2016, the landlord asked the strata property manager for the pet bylaws and in particular followed up about whether there was a 25 pound weight restriction having been passed. The strata's property manager erred and provided an out-of-date version of the bylaws that did not reference the 25 pound weight restriction that had been approved at the October 21, 2013 AGM and which amendment was filed in November 2013. The manager also erred in saying there were no other bylaws. In these circumstances, I find nothing turns on what the landlord did, as submitted by the strata.
25. So, should the tenant be permitted to keep his dog, on the basis that after he bought the dog the property manager incorrectly told the landlord that there were no weight restrictions in the bylaws?
26. First, I find the tenant did not rely upon the manager's errors regarding the bylaws, because he had already bought the dog when the manager made those errors.
27. Second, the tenant and landlord signed a Form K, "Notice of Tenants Responsibilities", on September 15, 2018 with respect to the tenant's tenancy that began on December 1, 2008. In it, they agreed that the tenant must comply with all

bylaws in force from time to time, and if bylaws change the tenant must comply with the changed bylaws.

28. I agree with the respondent's counsel that the purpose of filing amendments with the LTO is so that anyone can access the bylaws. I find the tenant ought to have checked the bylaws himself before he bought the dog. The bylaws are available for inspection at the LTO, either in person or online. I do not accept the tenant's submission and the evidence of his witness Mr. L. that the LTO copy of bylaw 43.10 did not contain the relevant weight restriction. I say this because the tribunal obtained a copy of bylaw 43.10 from the LTO and the weight restriction was referenced.
29. Further, the bylaws filed in November 2013 were communicated to the owners and tenants in the October 21, 2013 AGM minutes. Section 146 of the SPA requires the landlord to provide a current set of bylaws to the tenant, and section 146(3) specifically states that even if a landlord fails to do so, the tenant is still bound by the bylaws.
30. So, does it make any difference here that the strata's property manager incorrectly told the landlord there was no weight restriction, assuming that same information would have likely been given to the tenant had he asked the manager before he bought the dog? I find the answer is no, for the following reasons.
31. There is no automatic exemption for the tenant's dog under section 123 of the SPA. Section 123(1) addresses retroactivity with respect to pets, but only for pets that lived with an owner or tenant *before* the relevant bylaw was passed. Here, the bylaw was passed in 2012, four years before the tenant bought his dog. Section 123 sets out another exemption from a pet bylaw, but that does not apply here because it is undisputed that the tenant's dog does not qualify as a guide or service dog within the meaning of the *Guide Dog and Service Dog Act*.
32. The strata's pet bylaw 43.10 is mandatory and says a resident "must not" keep a dog or cat over 25 pounds. After bylaw 43.10 was passed, there is no allowance or exemption in the SPA or the strata's bylaws for oversized pets that were brought to

live in the strata afterwards. In other words, there is no availability for “grandfathering” for pets that were brought into the strata *after* the relevant bylaw was passed.

33. Apart from any necessary accommodation for a disability that I will discuss below, I find the tenant is bound by the SPA and the bylaws in force at any given time. In particular, section 126 of the SPA expressly states that the strata may change the bylaws. The Form K binds the tenant in this way. While the strata property manager’s error was unfortunate, I find that error does not lead to the conclusion the strata cannot enforce its bylaws against the tenant.
34. I find that the SPA and bylaw 43.10 do not permit the tenant to keep his oversized dog in the strata. My discussion about the implications of the Code follows.

**The tenant’s depression condition – must the strata permit the dog?**

35. The tenant suffers from depression, and he says having a dog helps with this condition. Given the medical evidence before me, I accept that the tenant has a diagnosed depression condition, which for the purposes of this decision I find qualifies as a disability under the Code. The issue is whether the strata must accommodate the tenant’s disability so as to permit him to keep the oversized dog.
36. The tenant submitted a February 8, 2017 letter from his physician, Dr. S., who wrote that the tenant’s “family dog” is not only a family pet but also an important component of the tenant’s “pet therapy” treatment. Dr. S. described how the dog has a positive impact on the tenant’s emotional state, and that since the tenant has had the dog, the tenant has shown significant improvement and stability.
37. The tenant submitted a similar letter of support from a mental health case manager, who noted the tenant got the dog at his adult son’s urging, who was also very attached to the dog.
38. As set out in my earlier decision in *Thompson v. The Owners, Strata Plan BCS 1455 et al*, 2017 BCCRT 27, the Code applies to the strata. The strata must not, without a “bona fide and reasonable justification” discriminate against a person



requiring accommodation due to their disability. Section 121 of the SPA states that a bylaw is not enforceable to the extent that doing so contravenes the SPA or the Code. Once a request for accommodation has been made, the strata must assess whether accommodation is required under the Code.

39. There are 2 issues here. First, whether living in the strata with his dog is a necessary accommodation for the tenant's depression disability. Second, whether the strata is reasonably justified in refusing that accommodation.
40. I accept the tenant has formed a bond with his German Shepherd and that the relationship has been beneficial for his mental health. However, there is no evidence before me as to why the tenant did not inform himself of the effective bylaws as the SPA and the Form K required him to do.
41. Further, and more significantly, there is no evidence before me as to why the tenant must keep this particular oversized dog in the strata lot or why he could not form a similar bond with another pet that complied with the strata's bylaws. In other words, I have no evidence before me that the tenant could not obtain beneficial pet therapy by having a pet in the strata that complies with the strata's bylaws. I find that keeping a dog that exceeds 25 pounds in the strata is not necessary to accommodate the tenant's disability.
42. I acknowledge the tenant's letters of support from health care providers state the dog is not a problem, which I find was information provided by the tenant. However the strata has provided a May 18 2017 "petition for eviction of problem tenants and his dog" with respect to the tenant and his family. This petition sets out a number of concerns about the tenant's dog, and that it is "huge and looks vicious" and that the dog is not well trained. The petition has 44 signatures on it.
43. While I acknowledge the tenant disputes the facts alleged in that petition, as noted above the tribunal has flexibility in accepting evidence. I find the petition represents the residents' concerns and I accept that it was signed by strata residents as indicated. I find that the strata has reasonably listened to that large number of owners who have expressed concern about the tenant keeping a dog

that clearly violates a mandatory bylaw that pets must not exceed 25 pounds. Based on the evidence before me, I find it would cause the strata undue hardship if it were required to permit the tenant to keep his oversized dog.

44. Therefore, even if I am incorrect in my assessment about the importance of this particular dog to the tenant's depression, I find the strata is reasonably justified in refusing to accommodate the tenant's disability by permitting the oversized dog to be kept in the strata.

#### **Other large pets and the council hearing – significantly unfair?**

45. The tenant says he has been treated unfairly as compared to other residents with pets that exceed the weight restriction. He says the strata took a longer period of time to address another resident's infraction of the pet bylaw. I am not prepared to draw any conclusions in this respect, bearing in mind other residents are not parties to these disputes. I say this also because there can be a variety of factors that might explain the time it takes a strata to address a bylaw infraction, such as when a complaint is received. I have also considered the November 29, 2016 and January 24, 2017 council minutes that show the strata took action when other overweight dogs were brought to its attention. On balance, I find that the applicant was not treated significantly unfairly as compared to other residents in the strata.
46. Finally, the tenant also submits that the strata council acted unfairly during its October 25, 2017 council hearing, including that it never disclosed its vote to the tenant about his pet, and, that it unfairly limited his time to 10 minutes.
47. The strata's property manager's October 28, 2016 letter to the tenant set out bylaw 43.10 and referenced the tenant's attendance at the October 25, 2016 council meeting. The letter states that if the dog is not removed within 14 days from the date of the letter, the tenant would be issued a fine of \$50 every 7 days. The October 25, 2016 council meeting minutes summarized the tenant's council hearing about his dog. The minutes note that while the property manager had provided 'old' bylaws in June 2016 that did not include the weight restriction, the council noted the tenant bought the dog in May 2016 and therefore was not misled

by those bylaws when he bought the overweight dog. Council wrote that the strata lot's owner was notified of the bylaw amendment and that it was the owner's and tenant's responsibility to verify if the dog was restricted under the bylaws. Based on the evidence before me, I find the tenant has not established that the council acting unfairly during the council hearing.

### **Conclusion, tribunal fees, and dispute-related expenses**

48. The applicant tenant's dispute is dismissed.
49. I find the strata is entitled to an order that the tenant remove the oversized dog from the strata lot. I find that 45 days is a reasonable amount of time for the tenant to do so. Nothing in this decision precludes the tenant from obtaining a pet, so long as the tenant complies with the strata's bylaws and the SPA.
50. 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.
51. The applicant tenant was unsuccessful in dispute ST-2016-00501, and therefore I dismiss his claim for reimbursement of \$125 in tribunal fees.
52. The applicant strata was successful in its dispute ST-2017-002129 and I therefore find it is entitled to reimbursement of \$225 in tribunal fees.

### **ORDERS**

53. I order that the tenant's dispute ST-2016-00501 is dismissed.
54. With respect to the strata's dispute ST-2017-002129, I order the tenant to do the following within 45 days of the date of this decision:
  - a. Remove the tenant's oversized German Shepherd dog from the strata property and in future comply with the SPA and the strata's bylaws, and
  - b. Pay the strata \$225 as reimbursement for tribunal fees.

55. I order that the published version of this decision have the parties' names anonymized to protect the tenant's identity, given the sensitive nature of his mental health condition at issue in this decision.
56. 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.
57. 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.

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Shelley Lopez, Vice Chair