



# Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Masse et al v. The Owners, Strata Plan VIS 6348 et al*, 2018 BCCRT 112

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

Paul Masse and Tomas Remington

**APPLICANTS**

**A N D :**

The Owners, Strata Plan VIS 6348 and T. M.

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Maureen Abraham

## **INTRODUCTION**

1. This matter relates to the use of a common property guest suite by an owner in a way that may have contravened strata bylaws.
2. Paul Masse and Tomas Remington (applicants) are each owners of strata lots in the respondent strata corporation. They are self-represented.

3. Mr. M. (respondent owner) was added as a party by order made November 1, 2017, and is self-represented. He owns four commercial strata lots and one residential strata lot in the strata building.
4. The Owners, Strata Plan VIS6348 (respondent strata) was represented through then-strata council member Mr. D.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. Under section 61 of the Act, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager (also known as a tribunal facilitator).
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

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

11. The issues in this dispute are:
  - a. did the strata or Mr. M contravene the bylaws or rules?
  - b. if rules or bylaws were contravened, what is the appropriate remedy?

## **BACKGROUND AND EVIDENCE**

12. The strata is a 22 unit mixed use (commercial and residential) complex known as Station Villa. The strata's common property includes a guest suite which can be booked by owners for their guests at a nominal cost of \$20 per week/booking. It is furnished in a similar way to a hotel room, with many furnishings donated by owners. The cost of maintaining the suite and its utilities are paid as a common expense of all the owners.
13. The strata's bylaws are mostly the standard bylaws provided in the *Strata Property Act* (SPA), as modified by some amended bylaws registered in 2011. The amended bylaws state that the nature of the strata is primarily residential and that no commercial activities can take place if it would cause unreasonable traffic or any other disturbance to owners (bylaw 31(1)). Bylaw 31(2) provides that no commercial activity is permitted between 9:00 pm and 7:00 am. Bylaw 38(1) states

that the use of the common room will be at the times and in the manner determined by the strata.

14. As of 2015, the strata had rules in place for use of the guest suite. The rules indicated that owners could have use of the guest suite for a maximum of 14 days. The rules are not clear as to whether the maximum is per month or year, and state that additional use may be possible only if the combined booking does not exceed a total of 14 days.
15. The applicants submitted an accounts receivable (A/R) statement prepared the property manager as at March 31, 2016, indicating that, between November 2015 and March 2016, the respondent owner had booked use and occupation of the guest suite for approximately 12 weeks. The A/R statement indicates that the suite was booked continuously for periods of up to three weeks, and that the respondent owner had failed to pay the applicable fees. The respondent strata has provided an invoice from the manager to the respondent owner indicating that he had use of the guest suite for 9 weeks during that period.
16. The applicants say that the respondent owner had continuous, or near continuous, exclusive use of the guest suite throughout 2016. It is unclear whether the A/R statement, invoice or booking records accurately reflect the amount of time he had actual use of the guest suite, as the applicants have provided a written statement detailing use of the suite by his guests at a time when the guest suite was shown as unoccupied on the strata's booking calendar. No evidence was provided by the respondent strata to establish that the respondent owner had reserved the suite for his own use during that time.
17. At that time, the strata council was made up of the applicants, the respondent owner and two other individuals. The strata council was assisted by a property management firm (manager).
18. The applicants say that the respondent owner was an original developer of the strata, and that other owners sitting on strata council were, from time to time, his business partners during the course of development.

19. The applicants say that by June 2016, they were concerned about his use of the guest suite and appearance of his guests occupying the suite. At that time, they did some investigation which indicated his guest was a sex worker who was actively using the guest suite to solicit and carry on her trade.
20. The applicants have submitted photographs, website listings, advertisements and written statements which, taken together, clearly establish that in May and June 2016, the occupant of the guest suite was carrying on business from the guest suite. There is also evidence in the form of a statement by Mr. Masse setting out that there was smoking contrary to strata bylaws and potential drug use about the guest suite.
21. Mr. Masse has provided a written statement and emails which evidence that he attempted to book the guest suite in May 2016, and that the suite was shown as unoccupied on the booking calendar. Upon entering he discovered it was occupied by guests of the respondent owner.
22. The applicants provided an email from the respondent owner to Mr. Masse which confirms that the owner had a guest in the suite at the time of the incident and refers to him renting the suite monthly.
23. The applicants have provided a written statement from the individual hired by the respondent owner's guest, who says he was told by her that "an old guy living in the complex had taken her in and had provided her with the guest room to conduct her business." He also describes her as saying that the man was providing her with money and other items.
24. Upon discovering advertisements showing the guest suite in June 2016, the applicants contacted the property manager and were advised to file a police report and contact the other council members. The property manager also suggested revising the rules for use of, and access to, the guest suite.
25. The applicants say that they filed police reports with respect to this issue, as well as with regard to break-ins to strata owner's storage lockers over the next few

weeks. The applicants suggest that the respondent owner's guest was provided access to the key to the storage area and that she broke into the lockers on multiple occasions in Summer 2016, including after she was no longer staying in the guest suite. In support of this, they say that her cell phone was found in a locker which had been broken into, and that break-ins continued until the lock to the storage area was changed.

26. The applicants provided an agenda prepared by the respondent owner for the strata council's June 29, 2016 council meeting. In the agenda, the respondent owner states:

Problems with owners involving themselves in other owners business that doesn't affect them and causing dissent in the complex. Discuss the intent of ownership in station villas as a private ownership transition from prior homeownership and respecting privacy. Discussion. The common room. It was decided by majority of councilors [sic] by email not to change usage rules.

27. The June 29, 2016 strata council meeting minutes are not detailed, but state that potential revision to the guest suite rules was discussed and the property manager asked to prepare draft rules for council discussion. The minutes do not indicate that the respondent owner disclosed any personal interest he may have in the current scheme for use of the guest suite, nor that he recused himself from any discussion.
28. The applicants say that Mr. Masse and another council member both had previously attempted to discuss with the respondent owner the issues surrounding his use of the guest suite and its occupants at various times. The applicants have provided an email from the then-council member A (who they say also had a personal friendship or business relationship with the respondent owner, as did the other council member). In it, A expresses frustration and confirms she had spoken to the respondent owner about his continuous use of the guest suite and who he was allowing to occupy it, people who she refers to as "undesirables". The

applicants also say that A stated to them that she would not take any punitive measures against him while on council because of their personal involvement.

29. Mr. Masse's statement further describes that he attempted to access the guest suite in September 2016 and discovered that its locks had been changed. He says that the applicants again tried to discuss action against the respondent owner with A and the other council member at that time, and they refused to take any action against him. The applicants say that the strata council specifically avoided mentioning sensitive matters in their minutes and would deal with them outside of formal meetings.
30. On October 11, 2016, A and the other individual council member resigned from council immediately prior to a scheduled council meeting where the draft rules prepared by the manager were presented. The remaining council members were the applicants and Mr. M, with the applicants voting as majority at that meeting to adopt the new rules for the guest suite immediately, pending their ratification at the strata's upcoming annual general meeting.
31. The new guest suite rules increased the fee payable, minimum and maximum stays, revised the booking procedures and deadlines, control over access to guest suite keys, and required that an owner pay a deposit to secure their booking.
32. The annual general meeting was held November 23, 2016. 8 owners attended personally and 12 were represented by proxy.
33. An email from the property manager to the applicants of November 23, 2016, was provided. In it, the manager states that she has had a "heated conversation" with the respondent owner and that he told her it was "his building" and that he intended to sway the vote held at the strata's annual general meeting.
34. The respondent owner attended the annual general meeting and chaired it as council president. He voted on behalf of five strata lots owned by him (either directly or through his corporation), and held six proxies, and so controlled 55% of

the meeting votes. Four of the proxies were on behalf of A and the other council member (who appears to be a relative of A).

35. The motion to ratify the guest suite rule revision was defeated 12 votes to 8. Of those 12 votes, 11 were cast by the respondent owner. He was re-elected to strata council at that annual general meeting, as were the other two owners who voted against ratifying the new rules. No other owners were elected to the council.
36. The applicants provided emails from A in which she states she had instructed Mr. M to vote in favour of the rule revision, and that he acted against her instructions at the annual general meeting. She indicates that Mr. M has betrayed her trust by using her proxies to vote against ratifying the new rules for the guest suite.
37. In June 2017, the strata council implemented new rules to govern use of the guest suite. At the strata's 2017 annual general meeting, the rules were ratified by the owners.
38. Over the past year, the strata has corrected its governance structure. Although it is a sectioned strata, it had previously been run as one entity with a one budget and one council. It now has three budgets, a residential section executive and a commercial section executive.
39. The respondent owner still sits as a member on the commercial section executive. He was not elected to the residential section executive.

## **POSITION OF THE PARTIES**

40. The applicants say that the respondent owner continues to misuse the common property in breach of the strata bylaws and say that:
  - The evidence establishes that his use of the guest suite was for personal gain and unethical and he should be punished;
  - His use of the guest suite contravened strata bylaw 3(1)(c) and (e);



- His actions as an owner, proxy holder and council member make this is an appropriate situation for the tribunal to grant relief under s.133 of the SPA.

41. The applicants request that I order:

- The respondent owner lose his right to use of the guest suite for one full calendar year;
- That the respondent owner should not be allowed to hold any council position for five full calendar years; and,
- Reimbursement of tribunal fees paid in the amount of \$225.

42. The respondent strata's submissions were defensive of the respondent owner's actions and confirm that he participated in preparing the respondent strata's submissions. The respondent strata says that the applicants have acted inappropriately in making their claim to the tribunal.

43. The respondent strata argues that:

- The evidence is insufficient to prove that the applicants' concerns were formally brought to council, or that the respondent owner breached any bylaw;
- The respondent owner would have had a claim against the strata for malicious prosecution, abuse of process and slander should the council have attempted to sanction him;
- The evidence submitted by the applicants relies on hearsay and speculation and so is inadmissible;
- The respondent owner has cooperated and provided financial support for security changes;
- The strata council members hold the keys to the suite and this is sufficient to ensure access and security.

44. The respondent strata requests that I dismiss the applicants' claim and suggests that a financial penalty against the applicants is appropriate to discourage them from making these kinds of accusations going forward.
45. The respondent owner provided submissions which state that he was not aware of his guest's commercial activities and was unaware of any complaints, and that he is being treated unfairly by the applicants. He points to the fact that he owns multiple units as a reason why he is entitled to use the guest suite for extended periods of time.

## **ANALYSIS**

### **Issue One:**

#### **Did the strata or Mr. M contravene the bylaws/rules?**

##### Admissibility of the applicants' evidence

46. The rules of evidence that apply in this matter are as set out in the Act. Although the applicants have provided written statements which contain hearsay, I find that the hearsay statements are reliable and admissible. The hearsay evidence is corroborated by and consistent with the balance of the evidence submitted by the applicants. With the exception of Mr. Masse's statement, the applicants' witness statements and emails are authored by individuals who either have no interest in this matter or who were adverse in interest to the applicants.
47. The applicants' suggestion that the respondent owner's guests were responsible for the break-ins to the storage area is speculative. I find that the break-ins to the storage area are not relevant to this claim.
48. The rules for booking the guest suite require notification to the strata, and so the respondent owner and strata had (or should have had) correspondence, accounting and other records to establish the respondent owner's use of the suite but have failed to produce them to support the assertion that he was not occupying the suite on a continuous or near-continuous basis. The reasonable inference is

that the records would not support the respondents' assertions, and so they have not been produced.

49. In fact, the respondents have provided almost no evidence to contradict any of the evidence submitted by the applicants, or to support the assertions set out in the respondent's submissions. Accordingly, where the evidence of the applicant contradicts the respondent's assertions of fact, I accept the applicants' version of events as more credible and reliable.

#### Rules, bylaws and the SPA

50. The owners and strata council members must comply with the strata's rules and bylaws. The strata, through its council, is obligated to comply with the SPA.
51. Section 26 of the SPA obligates the strata council to perform the duties of the strata corporation, including reasonable enforcement of its bylaws and rules. Rules and bylaws can be enforced by imposing fines, denying access to a recreational facility, remedying the breach directly (s.129). The overriding duty of the strata council members is to act honestly and in good faith with a view to the best interests of the strata corporation and to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
52. Under s. 130 of the SPA, an owner is responsible for the actions of anyone they allow onto the strata premises and can be fined if their visitor breaches the strata rules or bylaws. If a complaint is made that a council member is breaching a bylaw or rule, the council member must not participate in council's decision-making about formal enforcement measures.
53. Strata ownership requires owners to live cooperatively and respectfully with their neighbours: this is done by complying with the rules and bylaws. This dispute has arisen because the strata, through council, refused to enforce its bylaws and rules, or to undertake preventative measures with a view to avoiding misuse of the common property. Some of the fault is attributable to the strata, with some

attributable to the respondent owner who held more than 50% of the votes at the annual general meeting.

54. Under s.125 of the SPA, the strata can make rules for the use, safety and condition of the common property. Rules may be made by a strata council during their term, but those rules will expire at each annual general meeting unless the rule is ratified by the owners. Rules requiring a user fee to be paid must be ratified before a user fee can be imposed (Strata Property Regulation 6.9).
55. Strata bylaw 3 provides that an owner must not use the common property in a way that causes a nuisance or unreasonably interferes with the right of others to use and enjoy the common property.
56. The strata's bylaws provide that the nature of the strata is residential, despite having some commercial strata lots. The bylaws state that an owner is not permitted to do commercial activities in a strata lot if the activities could disturb other owners.
57. The rules in place for the common property guest suite provide time limits on the use of the suite by any owner. Although the rules are somewhat vague, they are clear that there is a 14-day maximum stay and that continuous occupation of the suite is not permitted.
58. Based on the documents submitted by both parties, I find that the respondent owner was the primary user of the guest suite, and that he unilaterally changed the locks to the suite. The accounting documents indicate that he was using the suite without paying user fees, that he was not complying with the booking procedures set out in the rules and was exceeding the 14-day maximum stays. Correspondence from the respondent owner to the applicants confirms that he intended to continue occupying the guest on a monthly basis contrary to the rules. As a result, the common property was unavailable to the other owners when they sought to use it, despite contributing to its maintenance and the expenses associating with its occupancy, and this was significantly unfair to them.

59. Based on the applicant's evidence, I find that a guest was operating a business out of the guest suite contrary to the bylaws. The respondent owner is responsible for the actions of his visitor.
60. The correspondence and witness statements establish that, by June 2016, the respondent owner had been warned by council members informally with respect to the owners' concerns about his use of the guest suite. I do not agree with the respondent owner's assertion that he was not aware about complaints regarding his visitors and use of the guest suite.
61. The evidence of the property manager and the respondent owner's submissions indicate that respondent owner strongly opposed any attempt to control his use of the common property guest suite, and that he was prepared to interfere in efforts to do so. His statements in the agenda document submitted by the strata indicates he knew there were concerns about his use of the common property, and his willingness to involve himself in strata council discussion for the purposes of avoiding enforcement of the rules or bylaws.
62. I find that it is more likely than not that the respondent owner interfered with the council's attempts to revise the common property rules in order to address owner concerns about his use of the suite.
63. It is unclear whether the respondent owner was renting out the room in return for personal gain.
64. The strata bylaws and rules expressly provide that the strata is primarily a residential environment and that the guest suite is intended for short-term use by all owners. Whether the respondent owner received a personal benefit is irrelevant, as is the nature of the commercial activity being undertaken in the suite. It is sufficient to find that he was permitting his visitors to occupy the common property for commercial purposes, in contravention of the rules and bylaws, without consideration as to the effect that their actions might have on the other owners and immediate neighbours. This was unfair both to his visitors and to the other owners.

65. The actions of the respondent strata were likewise unfair to the owners insofar as the council decided not to take any enforcement measures once the contraventions became known and the subject of owner complaints. Curtailing improper use of the suite or putting rules in place to prevent misuse was clearly in the best interests of the owners.
66. Mr. Masse's statement and A's emails establish that she as a council member was simply not prepared to take any enforcement measures against the respondent owner for personal reasons, despite her obligation to consider the best interests of the strata. I find that a reasonably prudent council member in comparable circumstances would not have refused to enforce the bylaws for personal reasons.
67. Once A and her co-part resigned from council, revised rules aimed at curtailing misuse of the common property were adopted. In order to remain in effect, they had to be ratified by the owners. The majority of the individual owners wished to adopt the rules, and they were unable to do so when Mr. M used proxies to vote down the new common property rules, against his instructions. Rules were later adopted and ratified by the majority of the strata owners, which remedied the respondent owner's actions at the 2016 annual general meeting (AGM).
68. I find that the strata failed to comply with its obligation to enforce the strata rules and bylaws, and that the strata, through council, failed to act with a view to the best interest of the owners of the strata corporation. This caused the owners to lose the use of the common property they own and were incurring expense to maintain.
69. I also find that the respondent owner breached the strata rules and bylaws in occupying the guest suite for a commercial purpose and in excess of the time periods permitted by the rules.

## **Issue Two: what is the appropriate remedy?**

### Eligibility for Council

70. The votes at the 2016 AGM reflect that the majority of individual owners wanted the common property rules revised and found the draft proposed by council acceptable. The owners were able to ratify rules governing the common property at their 2017 annual general meeting, which served to remedy the unfairness caused by a previous misuse of proxies.
71. Although I find some merit in the applicants' concerns about the potential implications of the respondent owner's future participation on council, I do not think it is appropriate to prevent him from being eligible to sit on council should the owners wish to vote him in. The majority of the strata owners did not vote the respondent owner onto the residential executive at the 2017 AGM, which indicates that an order is not necessary.

### Access to Common Property

72. Under s.134 of the SPA, a strata corporation may deny (for a reasonable length of time) an owner, tenant, occupant or visitor the use of a recreational facility that is common property if the owner or their guests have contravened a bylaw or rule relating to the recreational facility. If the guest suite is not a recreational facility to which access can be denied under s.134 of the SPA, s. 48.1 of the Act authorizes the tribunal to order the respondent owner to refraining from using the guest suite.
73. The SPA does not define a "recreational facility". The ordinary meaning of "recreational" is something for leisure, rather than work. Examples of strata recreational facilities would include things such as swimming pools, tennis courts or clubhouses. Those recreational facilities are amenities located on common property for the common enjoyment of the strata owners, but are not necessary facilities that ensure a strata owner will continue to have access and use of their own property. In my view, the guest suite is an amenity that is in the nature of a recreational facility available for the strata owners' use.

74. As the respondent strata failed to enforce its bylaws and rules with respect to the respondent owner, the respondent owner was not fined or sanctioned for his breach of the strata rules and bylaws with respect to the guest suite. The submissions of both the applicants and respondent owner refer to disagreement between them with respect to the respondent owner's ongoing use of the guest suite to date. I find that the failure of the respondent strata's past council members to act can be remedied by making an order against the respondent owner. He has had knowledge of the complaints against him and a reasonable opportunity to respond, and so I find it is not unfair to make an order against him at this time.
75. I find that an appropriate remedy for the respondents' failures to enforce and comply with the rules and bylaws pertaining to the guest suite is that the respondent owner should lose the use of the guest suite for a reasonable period of time. The applicants have asked that the respondent owner lose access for one year. The respondent owner has not argued that this is an unreasonable length of time. Given that the strata owners' respective entitlement to use the guest suite is based on annual maximum use, restricting his use for less than one year may only serve to interfere with the timing of his use, which is not the intended result. I find that it is reasonable for the respondent owner to lose use of the guest suite for one year.
76. Given the past difficulties of the respondent strata in complying with its obligations to enforce its rules and bylaws, it is appropriate to make an order directing the strata to cease contravening s.3 of the SPA and specifically directing it to enforce its bylaws and rules respecting ongoing use and enjoyment of the guest suite. Given the evidence indicating that the respondent owner did not pay for his rental of the guest suite, it is appropriate to order that the respondent owner pay the strata any outstanding rental fees which arose out of his use of the guest suite from November 2015 to present.



## DECISION AND ORDERS

77. I order:

- the respondent strata to enforce its rules and bylaws with respect to the occupation and use of the guest suite and otherwise comply with section 3 of the Strata Property Act;
- the respondent owner shall lose the use of the common property guest suite for a period of one calendar year from the date of this order; and,
- the respondent owner shall pay the strata any outstanding rental fees arising out of his use of the guest suite from November 2015 to present, within 30 days of the date of this order.

78. 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 Owners, Strata Plan VIS 6348 and Mr. M to reimburse the applicants Tomas Remington and Paul Masse for tribunal fees incurred by them in the total amount of \$225. The strata and Mr. M shall each be responsible for one-half of the total tribunal fees. I order the respondent strata to reimburse the applicants \$112.50 of tribunal fees paid by them, and the respondent owner to reimburse the applicants \$112.50 of tribunal fees paid by them, within 30 days of the date of this order.

79. Under section 189.4 (b) of the SPA, an owner who brings a tribunal claim against the strata corporation is not required to contribute to the expenses of bringing that claim. I order the strata to ensure that no part of the strata's expenses with respect to this claim are allocated to the applicants.

80. 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.

81. 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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Maureen Abraham, Tribunal Member