



Civil Resolution Tribunal

Date Issued: May 31, 2018

File: ST-2017-006992

Type: Strata

Civil Resolution Tribunal

Indexed as: *Anderson v. The Owners, Strata Plan BCS 3659*, 2018 BCCRT 223

B E T W E E N :

Harlunn Anderson

APPLICANT

A N D :

The Owners, Strata Plan BCS 3659

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicant, Harlunn Anderson is a tenant who lives in a rented strata lot in the respondent strata corporation, The Owners, Strata Plan BCS 3659 (strata).

2. The applicant says the strata wrongly caused his motorcycle to be towed. He seeks an order reimbursing him for the cost of towing his motorcycle, plus \$100 for his inconvenience and other costs.
3. The strata says the applicant has a history of parking in incorrect spaces, about which he had been warned. They say his motorcycle was towed consistent with strata bylaws.
4. The applicant is self-represented. The strata is represented by a strata council member.
5. For the reasons set out below, I find that the strata did not have authority to have the applicant's motorcycle towed on August 22, 2017. The applicant is entitled to be reimbursed \$96.82 for towing costs.

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 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.
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 order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues in this dispute are:
 - a. Did the strata have authority to have the applicant's motorcycle towed?
 - b. If not, what is the appropriate remedy?

POSITIONS OF THE PARTIES

12. I have read all of the evidence and submissions provided, but refer only to that which I find relevant to provide context for my decision.
13. The applicant provided evidence and submissions related to a "campaign of harassment" he says the strata has taken against him. As the applicant has not asked for a remedy for this alleged harassment other than the motorcycle issue, I have not addressed it in this decision.
14. The parties agree that the applicant's motorcycle was towed from parking stall 31 on August 22, 2017.
15. The applicant says the strata had his motorcycled towed without a complaint having been filed, and without giving him notice, particulars, or an opportunity to explain or remedy the situation. The applicant says he had permission from ND,¹ the renter of stall 31, to park his motorcycle there.

¹ ND's name has been replaced with initials to preserve the confidentiality of a non-party.

16. The applicant says his motorcycle was not parked in breach of any bylaws, and he had not been warned of any breach or impending action prior to August 22, 2017, so the strata did not have proper authority to have his motorcycle towed.
17. The strata says that all parking violation notices, including those issued to the applicant, are always posted on the vehicle in question. They say that if the vehicle can be traced to a specific strata lot, a final notice is sent to that strata lot after a period of time.
18. The strata says that the applicant's motorcycle was parked in stall 31 from August 14, 2017 onwards, and the owner of that stall said on August 19, 2017 that the applicant did not have permission to park his motorcycle there.
19. The strata says they acted according to the information they had when the motorcycle was towed on August 22, 2017. The strata admits that on August 23, 2017 the owner of stall 31 provided new information them that the applicant had been allowed to park in that stall.

EVIDENCE, FINDINGS & ANALYSIS

20. A January 11, 2018 email from the strata's caretaker states that the owner of stall 31 told her on August 19, 2017 that the applicant did not have permission to park there, but on August 23, 2017 the stall 31 owner texted to say she should have double-checked and the motorcycle was allowed to be parked there. The caretaker wrote in her email that the stall 31 owner was renting out the stall to someone else, and it was probably that person who told the applicant he could park there.
21. The August 19, 2018 text message provided in evidence confirms that the applicant had permission from ND, the person designated use of parking stall 31, to park in stall 31.
22. Based on this evidence from the caretaker and ND, I find that the applicant had permission to park his motorcycle in stall 31.

23. The strata has not asserted that the owner or renter of stall 31 did not have authority to rent the stall to the applicant. I note that bylaw 37(k) says that no parking space assigned to a strata lot shall be rented to a non-resident, but this does not apply to the applicant because he is a resident.
24. Given this evidence, I find that the applicant did not violate any parking bylaw. Accordingly, the strata did not have proper authority to have his motorcycle towed, and the applicant is not responsible to pay for the towing costs under sections 133 or 135 of the *Strata Property Act* (SPA).
25. I also note that the August 22, 2017 letter from the property manager to the owners of the strata lot in which the applicant resides says that the letter is final notice that the strata may authorize a vehicle to be towed at the owner's expense if the resident continues to contravene the parking bylaw.
26. Section 135 of the SPA says that a strata corporation must not require a person to pay the costs of remedying a contravention unless the strata corporation has given the owner or tenant the particulars of the complaint in writing and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant. Since the motorcycle was towed on the same day the final notice was provided, the applicant and the owners were not given a reasonable opportunity to answer the complaint or request a hearing.
27. For all of these reasons, I find that strata must reimburse the applicant for the \$96.82 towing bill. I make no finding about whether the strata may pursue that amount from the owner of the stall 31 who may have provided incorrect information, as that person is not a party to this dispute.
28. The applicant has also claimed additional compensation for lost wages and inconvenience. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. I therefore do not order these claimed amounts.

DECISION AND ORDERS

29. I order that within 30 days of this decision, the strata reimburse the applicant \$96.82 for towing.
30. The *Court Order Interest Act* (COIA) applies to the tribunal and prejudgment interest must be awarded. Prejudgment interest is calculated on the debt owing as of the date the cause of action arose up to the date of this order. The cause of action arose on August 22, 2017. I calculate prejudgment interest payable by the strata to be \$0.72.
31. The applicant is also entitled to post-judgment interest.
32. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. As the applicant was substantially successful in this dispute, I see no reason to depart from this general rule. I therefore order the strata to reimburse the applicant \$225 for tribunal fees.
33. 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.
34. 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.

Kate Campbell, Tribunal Member