



# Civil Resolution Tribunal

Date Issued: June 7, 2018

File: ST-2018-000936

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 178 v. Moses*, 2018 BCCRT 240

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

The Owners, Strata Plan NW 178

**APPLICANT**

**A N D :**

Bernadette Moses

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. This final decision of the Civil Resolution Tribunal (tribunal) has been made without the participation of the respondent Bernadette Moses (owner), due to her non-compliance with the tribunal's directions as required, discussed below.

2. The applicant The Owners, Strata Plan NW 178 (strata) says that the owner is in violation of the strata's occupancy and noise bylaws. The strata asks for the owner to be brought into compliance with the bylaws.
3. The owner is self-represented. The strata is represented by a council member.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the 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.
5. Section 36 of the Act applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager (facilitator) may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. hear the dispute in accordance with any applicable rules.
  - b. make an order dismissing a claim in the dispute made by the non-compliant party, or
  - c. refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
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.
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. Under section 48.1 of the Act, in resolving this dispute the tribunal may make order a party to do or stop doing something, or order a party to pay money.

## **ISSUES**

10. The issues in this dispute are:
  - a. whether I should proceed to hear the strata's dispute, without the owner's further participation, given her non-compliance and;
  - b. whether I should order the remedy sought by the strata.

## **ANALYSIS**

### **Non-Compliance**

11. My May 22, 2018 summary decision to hear the dispute without the owner's participation, given her non-compliance, was previously communicated to the parties by email, through the tribunal facilitator. The details supporting my decision are set out below.
12. Section 32 of the Act says that, at any time during the case management phase of a dispute, a facilitator may direct the parties to provide information regarding the issues, the positions of the parties and the resolution being sought. Section 25 of

the Act gives the facilitator the authority to require the parties to participate in facilitated settlement. Tribunal rule 6 requires all parties to make themselves available to participate in the dispute resolution process and to follow the directions of tribunal members and case managers/facilitators.

13. The respondent owner is the non-compliant party in this dispute and failed to participate in the case management phase, as required by sections 25 and 32 of the Act and tribunal rules 94 to 96, despite multiple attempts by the facilitator to contact her.
14. In particular, the Dispute Notice was issued on June 28, 2017. The respondent submitted her Response on July 24, 2017. The facilitator made the following attempts at contact, with no response:
  - a. *May 7, 2018*: The facilitator emailed the parties requesting that documents be provided by May 10, 2018. The respondent did not reply or submit the requested documents.
  - b. *May 10, 2018*: The facilitator emailed the owner and asked for the documents again, setting a deadline of May 14, 2018. The email included a warning that, if she did not respond, the dispute could proceed without her further participation.
  - c. *May 14, 2018*: The facilitator phoned the respondent asking for a call back or a response to the emails by May 17, 2018. The facilitator also sent a final warning by email on the same day. The email said that if the respondent did not follow the instructions, this dispute would be referred to a tribunal member for a final decision, without further participation of the respondent.
15. The May 17, 2018 deadline passed, without the respondent owner providing a reply or the requested documents. The facilitator then referred the respondent's non-compliance with the tribunal's rules to me for a decision as to whether I should hear the dispute in the absence of the respondent.

16. The owner's Dispute Response agrees with the applicant's claims. However, she provided no explanation about why she suddenly stopped communicating with the tribunal as required. I find the facilitator made a reasonable number of attempts to contact the owner. Parties are told at the beginning of a tribunal proceeding that they must actively participate in the dispute resolution process, and that includes submitting evidence by the deadline. I find it is more likely than not that the respondent was aware of the facilitator's contact attempts but chose not to respond.
17. The tribunal's rules are silent on how it should address non-compliance issues. I find that in exercising its discretion, the tribunal must consider the following factors:
  - a. whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
  - b. the stage in the facilitation process at which the non-compliance occurs;
  - c. the nature and extent of the non-compliance;
  - d. the relative prejudice to the parties of the tribunal's order addressing the non-compliance; and
  - e. the effect of the non-compliance on the tribunal's resources and mandate.
18. This dispute does not have widespread importance. It is significant to the parties, other current occupants and/or tenants in the owner's suite, and some other strata residents.
19. The non-compliance here occurred near the beginning of the facilitation process. The respondent effectively abandoned the process after providing a response. Given the facilitator's repeated attempts at contact and the respondent's failure to respond despite warnings of the consequences, I find the nature and extent of the non-compliance is significant.

20. I see no prejudice to the applicant in hearing the dispute without the respondent's participation. The prejudice to the respondent of proceeding to hear the dispute is outweighed by the circumstances of its non-compliance. If I refused to proceed to hear the dispute, the applicant would be left without a remedy. That would be unfair.
21. Finally, the tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it would be wasteful for the tribunal to continue applying its resources on this dispute, such as by making further attempts to seek the respondent's participation.
22. In weighing all of the factors, I find the strata's claims should be heard. In deciding to hear the dispute I have put significant weight on the following factors:
  - a. the extent of the non-compliance is significant;
  - b. the applicant is not prejudiced if such an order is made; and
  - c. the need to conserve the tribunal's resources.

### **Occupancy Bylaw Violation**

23. Bylaw 4.6 sets a limit of 4 people for a 2-bedroom suite. Under this bylaw, a person includes a child.
24. The strata says that the respondent is violating bylaw 4.6 by having 2 adults and 4 children in a two-bedroom unit.
25. In her Dispute Response, the owner agrees with the strata's claim that she is in violation of the occupancy bylaw.
26. I therefore find that the owner is in violation of the strata's occupancy bylaw.

27. The strata indicated that it was prepared to extend the owner's occupancy to July 31, 2018, after which date it intends to levy a recurring fine of \$200 per month until the violation is resolved.

### **Noise Bylaw Violation**

28. Bylaw 4.1 (b) prohibits a resident or visitor from using a strata lot in a way that causes unreasonable noise.
29. The respondent owner also agrees, in her Dispute Response, that she has been in violation of the strata's noise bylaw. I therefore find that she violated the noise bylaw.

### **Remedy**

30. The strata had difficulty fully explaining the remedy it seeks. It indicated that the terms of its letter dated August 10, 2017, extending the owner's occupancy to July 31, 2018 only, should stand as its position on remedy.
31. I am therefore going to consider the following remedy issues:
  - a. whether the owner can be required to sell and vacate her unit no later than July 31, 2018; and
  - b. whether an order can be made that the owner is in violation of the occupancy and noise bylaws.
32. In considering whether I can require the owner to sell or vacate her strata lot, I accept the tribunal's reasoning in *The Owners, Strata Plan LMS XXX v. D.B.*, 2017 BCCRT 117 even though it is not binding on me.
33. Section 3.6(1) of the Act defines the strata property claims jurisdiction of this tribunal. It does not include the ability to order an owner to sell or vacate their own strata lot.

34. Section 3.6(2)(f) of the Act says the tribunal does not have jurisdiction over the forced sale of a strata lot to collect money owing as described in section 117 of the *Strata Property Act* (SPA). Taken together, these sections demonstrate that a forced sale is outside the tribunal's jurisdiction.
35. Further, the BC Court of Appeal has interpreted section 173(c) of SPA as providing the BC Supreme Court with jurisdiction to order forced sale of a strata lot, in extreme cases, such as where an owner has "...repudiated the cooperative foundation of strata living". (See *The Owners Strata Plan LMS 2768 v. Jordison*, 2013 BCCA 484 at paragraph 27).
36. I therefore find that the tribunal does not have the authority to require that the owner sell her strata lot as a remedy for the bylaw violations. Consideration of whether a forced sale remedy is appropriate rests with the BC Supreme Court. I decline to make such an order.
37. The owner must comply with bylaw 4.6 regarding the maximum occupancy limit of 4 people in her unit, unless the strata provides written permission otherwise in accordance with its bylaws.
38. I order that the owner keep no more than 4 people in her unit. Because this order may impact living arrangements for children, I make it effective July 31, 2018 rather than immediately.
39. I order that the owner immediately comply with the noise bylaw.
40. The strata did not seek orders regarding any fines or monetary remedies. The strata would have to comply with s. 135 of the SPA in order to impose fines for these bylaw violations.



## DECISION AND ORDERS

41. I order that:

- a. effective July 31, 2018, the owner have no more than 4 people, including children, occupy her strata lot, unless the strata provides written permission otherwise in accordance with its bylaws; and
- b. the owner immediately comply with the strata's noise bylaw.

42. The strata has been successful in this dispute. 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 and reasonable dispute-related expenses. I order the respondent to pay \$225 which was the fee paid by the applicant strata. I make no award of dispute-related expenses as none were claimed.

43. 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.

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Julie K. Gibson, Tribunal Member