



Civil Resolution Tribunal

Date Issued: July 24, 2018

File: ST-2017-006815

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VIS 4925 v. Stokhof et al*, 2018 BCCRT 367

B E T W E E N :

The Owners, Strata Plan VIS 4925

APPLICANT

A N D :

Lazlo Stokhof and Susan Gariepy

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Maureen E. Baird, QC

INTRODUCTION

1. The Owners, Strata Plan VIS 4925 (strata) asks the Civil Resolution Tribunal (tribunal) to order the respondent owners, Lazlo Stokhof and Susan Gariepy (owners), to install sprinklers in two closets in their strata lot (unit) or alternatively to grant the strata permission to install the sprinklers and charge the owners the

cost of installation. The strata also asks for reimbursement of \$225 for tribunal fees.

2. The owners deny that their unit is in contravention of either any fire or City of Victoria regulations or the strata bylaws.
3. The strata is represented by a strata council member. The owners are self-represented.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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

8. The issues in this dispute are:
 - a. Is there a legal requirement for sprinklers to be installed in closets in the owners' unit?
 - b. Are the owners in breach of Strata bylaw 12 (3)?
 - c. Should the tribunal make an order authorizing the strata to enter the owners' unit to do the work necessary to install sprinklers?
 - d. Who should pay for the cost of sprinkler installation?
 - e. Is the strata entitled to reimbursement of \$225 for tribunal fees?

BACKGROUND AND EVIDENCE

9. Though I have read all of the evidence provided, I refer only to evidence I find relevant to provide context for my decision.
10. The strata's relevant bylaws are those filed in the Land Title Office on October 5, 2017 which repeal and replace all previously filed bylaws with the exception of the pet bylaw.
11. Much of the facts and evidence in this case are not disputed. The strata building was built in 2000. Up until 2010 the strata proceeded on the basis that National Fire Protection Association Standard NFPA-13R applied to it. In about 2010, the strata council learned that NFPA-13R was not the appropriate standard for this building and that a higher standard, NFPA-13, should be used for all future fire safety inspections. In late 2015, the owners questioned whether standard NFPA-13 applied to the strata. As a result, the strata sought and obtained confirmation from the City of Victoria that the applicable standard is NFPA-13. In this dispute, the owners have agreed that NFPA-13 is the applicable standard.

12. From 2012 onward Cascade Fire Protection Ltd. performed regular fire safety inspections of the premises for the benefit of the strata. All of these inspections were done on the basis that NFPA-13 was appropriate to this strata building. The relevant change for the purpose of this decision relates to the requirement under NFPA-13 that all closets be sprinklered. NFPA-13R did not require sprinklers in closets. In each of these inspections, the owners' unit was listed as being non-compliant with NFPA-13 and set out a quote for the work necessary to bring the owners' unit into compliance.
13. Commencing in 2012, and every year afterward, the strata provided written notice to those owners whose units were listed in the Cascade Fire Protection Ltd. report as being non-compliant of the requirement that they take immediate steps, at their own cost, to repair the identified deficiency in their units.
14. The owners purchased their strata unit in June 2009. At the time of purchase there were closets in their unit that did not have sprinklers. The strata says that these closets were built in contravention of the previous strata bylaws which required council approval for alterations to a strata lot. The previous owners had not sought or obtained this approval from the council. For the reasons below, I find that I do not need to determine if the closets were built in contravention of the previous bylaws. The parties agree that there are closets in the owners' unit which do not have sprinklers which is sufficient for the purpose of this decision.
15. The owners did not take the remedial action required by the strata. In July 2016, the strata gave notice to the owners of an alleged bylaw infraction. The infraction was that the closets had been constructed in contravention of the strata bylaws because council approval had neither been sought nor obtained. The owners were told of the provisions of the *Strata Property Act* (SPA) that permitted entry by the strata to remedy the bylaw infraction and charge costs back to the owners. The owners were advised that Cascade Fire Protection Ltd. would attend on August 16, 2016 to complete the required work. The owners were reminded of section 7 of the standard bylaws which requires owners, on 48 hours' notice, to allow a person authorized by the strata to access their strata lot for certain purposes. It is not

contested that the owners did not provide access to their unit on August 16, 2016 for the installation work to be done.

16. A hearing was held by the strata council on August 10, 2016 to consider the alleged bylaw violation at which the owners attended and provided evidence. By letter dated August 14, 2016 the decision of the strata council was conveyed to the owners. The strata council confirmed its decision that the closets in the owners' unit were in breach of the bylaws. The council gave the owners the option of an inspection by Brian Husband, Chief Plumbing Inspector, Permits and Inspections, City of Victoria, the results of which would be binding on the owners. In other words if Brian Husband found the owners' unit to be non-compliant with the required code that the owners would remedy that deficiency. The option for this inspection was open until September 22, 2016. It is not disputed that the owners did not take advantage of this option.
17. It is agreed that the bylaws that were in place before October 5, 2017 did not contain a provision for addressing violations of the fire code or for fire code deficiencies identified in inspections. Current bylaw 12 (3) specifically addresses alterations to a strata lot that impact the requirement for sprinklers and make the owner responsible for installing the necessary sprinklers.
18. The owners continued to deny responsibility for making their suite compliant with the NFPA-13 standard. They contacted Brian Husband, Chief Plumbing Inspector, Permits and Inspections, City of Victoria, for clarification of their situation. On October 27, 2016, the Chief Plumbing Inspector wrote to Lazlo Stokhof advising that there was no requirement for the installation of fire sprinklers in closets in the owners' unit. This letter was in error and on December 14, 2016, the Chief Plumbing Inspector retracted the October 27, 2016 letter. In the December 14, 2016 letter the owners were advised that the Chief Plumbing Inspector had determined that the NFPA-13 standard applied to the owners' unit and that all closets in the strata building require the protection of fire sprinklers.

19. The strata says that all units in the building are now compliant with sprinkler requirements, with the exception of the owners' unit.
20. There was no evidence at the hearing of any fines having been assessed against the owners by the strata or paid by them.

POSITION OF THE PARTIES

21. The strata's position is that the owners' unit is not compliant with the applicable fire standard and that it is the responsibility of the owners to remedy the non-compliance in accordance with bylaw 12(3).
22. The owners say that the NFPA-13 standard does not apply to all closets. They also deny responsibility for the fire code deficiency or for performing any remedial work because the addition of the closets to their strata lot was not done by them but were in place when they purchased in 2009. They had no knowledge of any deficiency at the time of purchase.
23. The strata asks for an order that the owners be required to install sprinklers in two closets to conform to NFPA-13, or alternatively to remove the closets. In the alternative, the strata asks that I grant it permission to install any necessary sprinklers and charge the cost back to the owners. The strata asks that it be reimbursed for tribunal fees in the amount of \$225.
24. The owners request that I dismiss the strata's claim.

ANALYSIS

Is there a legal requirement for sprinklers to be installed in closets in the owners' strata lot?

25. I find that there is a legal requirement for the installation of sprinklers in the closets in the owners' unit. This is set out clearly in the letter of the Chief Plumbing Inspector, Permits and Inspections, City of Victoria dated December 14, 2016. Not

only does that letter confirm the requirement, it also expressly states that the only exception to the requirement for sprinklers in closets relates to hotels and motels, which is an answer to one of the owners' defenses. This is a full answer to the exception claimed by the owners. There is nothing in the evidence that rebuts the content of this letter, which I accept as accurate and governing the present situation.

26. Further, I find that the December 14, 2018 letter from the City of Victoria which was delivered both to the owner and to the strata, is a notice from a public or local authority for the purpose of section 84 of the SPA.
27. Therefore, I find that there is a requirement for sprinklers to be installed in the owners' closets.

Are the owners in breach of strata bylaw 12 (3)?

28. I am not prepared to make any finding that the owners' unit is not compliant with the strata bylaws. I was not provided with the bylaws that were in place before the current bylaws, and I note from the BC Land Title & Survey Index Search Results that there have been a number of bylaw amendments in the past few years. Without this information, I am not in a position to determine if the closets in the owners' unit were not authorized.
29. I am not prepared to find that the owners are in breach of the October 5, 2017 bylaws. These bylaws repealed and replaced all previous bylaws except the pet bylaw and added a bylaw relating to alterations to strata lots which impact the requirement for sprinklers because that would require that bylaw 12 (3) be applied retroactively. The issue of retroactivity was considered in tribunal decision, *Allard v. The Owners, Strata Plan VIS 962*, 2017 BCCRT 111 (CanLII). That case considered and applied two cases from the Supreme Court of British Columbia, *The Owners, Strata Plan NW243 v. Hansen*, [1996] B.C.J. No. 2201, and *Strata Plan No. 51 v. Davies*, [1988] B.C.J. No. 1314 both of which did not permit bylaws to apply with retroactive effect.

30. In the Allard decision the tribunal member found that a bylaw amendment which was aimed directly at the owner making the owner responsible for the repair and maintenance of an alteration could not be applied with retroactive effect. I do not have evidence that in 2017 this bylaw was aimed directly at the owners in this case and I make no finding on that issue. However, based on the similarities of this case with the Allard decision I find that strata bylaw 12 (3) cannot apply to require the owners to be responsible for the installation of sprinklers.

Should the tribunal make an order authorizing the strata to enter the owners' unit to do the work necessary to install sprinklers?

31. Section 85 of the SPA provides that if an owner fails to do the work required by the notice from the public or local authority that the strata may do the required work. For this reason, and in light of the owners' previous refusal to allow the strata access to their unit, I am prepared to make an order in the circumstances of this case, that if the sprinklers are not installed by the owners in a reasonable time, that the strata can do the installation.

Who should pay for the cost of sprinkler installation?

32. The authority for a strata to charge work to an owner must come from the enactment giving the authority for the work to be done. Section 85 of the SPA does not state that the strata can charge the owners for the work. Therefore, if the strata does the sprinkler installation work, I find that it cannot charge the cost of the work to the owners.

33. The question arises as to whether the owners must pay for the work if they have the required sprinklers installed. The answer to this question is determined by whether the sprinklers are common property. If they are common property, then the strata is required to pay the cost of installation. In my view, the sprinklers are common property. While they are located in the owners' strata lot, they are an extension of the fire protection infrastructure for the entire building. For this

reason, I find that the cost of installing and maintaining the sprinklers is a cost of the strata no matter who initiates the installation.

DECISION AND ORDERS

34. I order that the owners of strata lot 19, 205 – 455 Sitkum Road, Victoria, B.C., V9A 7N9, Laszlo Stokhof and Susan Gariepy, are required to install sprinklers in the closets in their strata lot as identified by Cascade Fire Protection Ltd. The installation cost is to be paid by the strata.
35. The owners will have the required sprinklers installed within 1 month of the date of this order.
36. If the owners do not have the required sprinklers installed within 1 month of the date of this order, the strata or persons authorized by it to perform the work of installation of the required sprinklers, will have access to the owners' strata lot for the purpose of installation of the sprinklers and the costs of this installation will be paid by the strata.
37. 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. In this case there has been divided success. As a result, I make no order for reimbursement by the owners of tribunal fees paid by the strata.
38. 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.

39. 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.

Maureen E. Baird, QC, Tribunal Member