



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: Kelly v. The Owners, Strata Plan K 218, 2018 BCCRT 412

B E T W E E N :

George Kelly

APPLICANT

A N D :

The Owners, Strata Plan K 218

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

John Chesko

INTRODUCTION

1. This dispute is about whether the strata is liable for alleged damage to a former tenant's car. The dispute also raises issues about strata governance and jurisdiction and procedure of the Civil Resolution Tribunal (tribunal).
2. The applicant, George Kelly (tenant), is a former tenant in the respondent strata corporation, The Owners, Strata Plan K 218 (strata).

3. The tenant claims his car was damaged by a contractor hired by the strata. The tenant says the strata is liable in failing to give prior notice about the contractor so the tenant could move his car. The tenant also claims the strata does not follow the *Strata Property Act* (SPA) and other laws such as privacy law and fire codes and requests orders requiring the strata to pay for damage to his car and to follow the SPA and other laws.
4. The strata says the correct procedures were followed and the tenant's dispute should be dismissed.
5. The tenant is self-represented. The strata is represented by an authorized member of the strata council.
6. For reasons set out below, I find the dispute should be dismissed.

JURISDICTION AND PROCEDURE

7. 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.
8. 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.
9. 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). Tribunal documents incorrectly

show the name of the respondent as The Owners, Strata Plan KAS 218, whereas, based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan K 218. Given the parties operated on the basis that the correct name of the strata was as used in their documents and submissions, I have exercised my discretion under section 61 to direct the use of the strata's correct legal name in these proceedings. Accordingly, I have amended the style of cause above.

10. The tribunal may accept 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.
11. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may 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.

PROCEDURAL ISSUE ABOUT EVIDENCE

12. The materials submitted by the tenant included documents on many issues, some of which are not directly on point to the issues in this dispute. The tenant submitted hundreds of electronic documents in 159 numbered files that included sound recordings, images and movie clips. The parties also submitted additional evidence on May 18 and 30, 2018.
13. The strata objects to the admissibility of some of the evidence submitted by the tenant such as recordings and telephone screen shots. The strata says much of this evidence was made without consent and should not be considered by the tribunal. The tenant objects to some of the strata evidence as hearsay.
14. As part of the mandate to be "accessible, speedy, economical, informal and flexible" the CRT is not bound by the same strict rules of evidence or procedure as a court (See *Act* sections 2 and 42). I find the evidence is admissible. I find there is no prejudice to the parties in considering the evidence and I will determine what, if any, weight I give to the evidence.

ISSUES

15. The issues in this dispute are:
- a. Does the tribunal have jurisdiction over a dispute of a former tenant?
 - b. Should the tribunal hear all the claims in this dispute?
 - c. Is the strata responsible for damage to the tenant's car?
 - d. Has the strata followed the SPA and other laws in dealing with the tenant?
 - e. Is the tenant entitled to reimbursement of expenses and \$225 for tribunal fees?

BACKGROUND, EVIDENCE AND POSITION OF PARTIES

16. While I have reviewed all the submissions and materials submitted, I will refer only to the facts needed to make my decision.
17. The applicant is a former tenant that used to live in an apartment in the strata. The tenant moved out in early February 2018 and no longer lives in the strata. It is undisputed the tenant lived in the strata during the events in this dispute and filed the Dispute Notice on September 13, 2017 while he was still a tenant in the strata.

DAMAGE TO CAR

18. The tenant submits his car was damaged on April 4, 2017 by the contractor hired by the strata to clean the parking lot. The tenant says the strata is liable for the damage to his car because the strata was negligent and did not give advance notice about the contractor so the tenant could move his car. The tenant submitted he had to replace his car windows in June 2017 because sand and dirt from the April 4, 2017 parking lot cleaning damaged his car windows. The tenant submitted an invoice dated June 2017 for replacement of windows totalling \$1,218.52. The tenant also submitted a further claim for damages totalling \$320.00 in his submission. The tenant says these additional costs are for repair and cleaning of the window motor gears related to the parking lot cleaning on April 4, 2017. In

total, the tenant says the strata is liable for \$1,538.52 for damage to the tenant's car.

19. The strata says it gave proper advance notice about the contractor. The strata submitted records including notices about the April 4, 2017 contractor visit, copies of emails with attached notices and file records of notices sent for the strata including the notice about the April 4, 2017 contractor. The strata says it sent email notices to all the email addresses of record including the address provided for the tenant's strata lot. The strata also provided written statements from witnesses stating the tenant was also notified about the work on the day of the work, April 4, and did not move his car. The strata says the tenant has provided no evidence, other than the tenant's assertion, to show any connection or cause between the alleged damage to the tenant's windows and the parking lot cleaning. The strata says the tenant did not report any damage to his car at the time the work was done and only raised it months later in June. The strata says it has not been negligent and the tenant's claim for damages should be dismissed.

OTHER ISSUES RAISED ABOUT STRATA GOVERNANCE

20. The tenant also raises a number of issues about what the tenant says are improper procedures by the strata council, the strata manager and the building caretaker. The tenant submits the strata has not followed SPA and other laws. The tenant submits the following alleged problems with the strata which I will refer to as strata governance issues:

- The tenant says the strata is not following the strata contract as required by law for services.
- The strata is not in compliance with the *Personal Information and Privacy Act* (PIPA).
- The strata does not have a complaint structure.
- The strata does not have records of strata council minutes for owners. and does not have records of voted approvals.

- The strata does not conduct proper elections for members on the strata council and improperly allows only 'volunteers'.
 - The strata improperly deals with strata council members by secret email.
 - The strata council meeting minutes are not properly prepared for the owners.
21. The tenant asks the tribunal to make the following orders against the strata:
- The tenant requests an order for strata council to provide governance as required by PIPA, Fire Code and other applicable legislation.
 - The tenant requests an order the strata conduct elections per the SPA and strata bylaws.
 - The tenant requests an order for the strata to provide minutes correctly.
22. The tenant says the allegations against the strata are supported by the documents submitted. I note much of the evidence submitted by the tenant concerns issues between the strata and the former owner of the strata lot lived in by the tenant.
23. The strata submits it has followed the SPA and other laws at all times. The evidence submitted by the strata included much correspondence from the professional property management company engaged by the strata to assist in day to day strata management.

ANALYSIS

DOES THE TRIBUNAL HAVE JURISDICTION OVER A DISPUTE OF A FORMER TENANT?

24. The first issue to consider is whether the tribunal has jurisdiction over this dispute that is filed by a former tenant no longer living in the strata.

25. The tribunal cannot consider disputes that are not within its jurisdiction: See Act, section 10. The tribunal only has jurisdiction over specific persons and those type of disputes set out in the Act and the SPA.
26. For strata property disputes, section 189.1 of the SPA specifically allows a "strata corporation, owner, or tenant" to file a claim with the tribunal to resolve certain strata property disputes. It is clear from section 189.1 of the SPA that the tribunal has jurisdiction to consider strata property disputes by a tenant living in a strata.
27. There is another factor to consider as the applicant tenant no longer lives in the strata. As set out above, the tenant moved out of the strata in early February 2018. The dispute notice was filed by the tenant on September 13, 2017.
28. The issue of whether the tribunal has jurisdiction over disputes by owners no longer connected to the strata has been considered in other decisions of the tribunal. While I am not bound by previous decisions, I find previous decisions useful in providing guidance. Generally, previous decisions have held the tribunal has jurisdiction over disputes filed when the owner was an owner as defined under the SPA when the Dispute Notice was issued. For example in *542456 BC Ltd v Section 2 of the Owners, Strata Plan VIS 5030 et al*, 2018 BCCRT 84 the tribunal found it had jurisdiction to consider a dispute filed by a former owner so long as the dispute was filed by the owner when they were still an owner. As stated in that decision, "what matters is that when the original Dispute Notice was filed the applicant was an owner as defined in the SPA." Also see *Somers v The Owners, Strata Plan VIS 1601*, 2017 BCCRT 28, where it was held the tribunal did not have jurisdiction to consider a dispute by a former owner who was not an owner when the dispute was filed.
29. I find the same rule applies to a tenant. I find the tribunal has jurisdiction and can consider disputes filed by a former owner or tenant, so long as the owner or tenant was still an owner or a tenant living in the strata when the dispute was filed. As the tenant was living in the strata building when the dispute was filed on September 13, 2017, I find the tribunal has jurisdiction to consider this dispute.

SHOULD THE TRIBUNAL HEAR ALL THE CLAIMS IN THE DISPUTE?

TRIBUNAL DISCRETION TO HEAR CLAIMS

30. Just because the tribunal has jurisdiction to hear a dispute does not mean it must hear every dispute. It would not be reasonable to require that the tribunal must hear each and every dispute simply because it is within the tribunal's jurisdiction. Indeed, the tribunal has the authority to determine its procedure and to decide whether it is appropriate to hear a dispute: See Act, sections 11, 38 and tribunal rule 119.
31. In determining whether to continue a proceeding and hear a claim or dispute from a former owner, the tribunal has considered the following factors set out in *Kervin v The Owners, Strata Plan LMS 3011*, 2017 BCCRT 146 at paragraph 24:
 - a. Whether all of the parties to the claim or dispute agree that the claim or dispute should be resolved by the tribunal;
 - b. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - c. The stage of the tribunal proceeding at which the applicant ceases to be an owner;
 - d. The relative prejudice to the parties of the tribunal's potential order; and
 - e. The effect of continuing the proceeding on the tribunal's resources and mandate.
32. While I am not bound by previous decisions of the tribunal, I find the test considering these factors applies in this dispute concerning a former tenant.
33. I have also considered factors set out by the courts in determining whether to continue a hearing on a dispute that may be moot, academic or otherwise does not resolve a live issue: *Borowski v Canada* 1989 Canlii 123 (SCC); *Binnerley v*

BCSPCA 2016 BCCA 259. I note the basic rule that academic issues are generally not determined unless there is good reason to make a determination.

34. Applying the test to the claims in this dispute, I find the tribunal should only continue to hear some of the claims raised by the former tenant.

CLAIM ABOUT DAMAGE TO THE TENANT'S CAR

35. I find the tribunal should hear the dispute concerning the alleged damage to the former tenant's car. Considering the factors set out above, I find the tenant's claim against the strata for alleged damage to the tenant's car is the type of dispute that should be resolved on its merits by the tribunal.
36. I find this is a real claim that is not academic between the strata and the tenant. The tenant claims his car was damaged and he had to spend money to fix it because of the negligence of the strata. While the issue of the car damage is likely only important to the parties, the tenant alleges damage to his car and would be prejudiced if his claim against the strata was not heard. I find the relative prejudice to the parties clearly supports the decision to hear the claim by the tenant against the strata for the alleged damage to the tenant's car.

CLAIMS ABOUT STRATA GOVERNANCE BY THE TENANT

37. However, I find the tribunal should not hear the former tenant's claims concerning the strata governance issues.
38. I find there is not a live dispute between the tenant and the strata concerning the strata governance issues in these circumstances when the applicant tenant has moved away and no longer lives in the strata. I find there would be no purpose in deciding strata governance issues in this dispute other than to 'score points' for or against one or the other party in the dispute. In my opinion, that is not a proper use of this tribunal's resources or within the mandate of the tribunal towards efficient and accessible justice. I find the use of tribunal resources for disputes such as this where there is no live controversy takes away resources from other live disputes waiting to be resolved. The tribunal's resources are valuable and I

find it would be wasteful for the tribunal to continue to apply resources on the dispute issues where the former tenant is not affected by the outcome.

39. I have considered the submissions of the tenant that his issues may not be academic because he may buy a strata lot in this same strata in the future. I do not give this much weight and find it to be speculative. If the former tenant did buy a strata lot in the strata they would have the right to file a dispute with the tribunal if there were new alleged issues.
40. I find in the circumstances of this dispute that the governance claims raised do not involve other current owners or tenants in the strata. While it may be arguable that other owners and tenants may benefit from resolution of the governance claims, there is little evidence the tenant's position is supported by other owners and residents. Further, only the tenant and strata are named parties in the dispute.
41. I find no prejudice to the tenant if the claims relating to the strata governance issue are dismissed, as the tenant has left the strata and is not governed by its bylaws and rules created under the SPA. I find there is no prejudice to the tenant on the governance issues raised including the issues about the strata management contract, council minutes, council communication, strata council elections and council positions.
42. I find there is no prejudice to the strata if I dismiss the governance claims as it has requested the entire dispute be dismissed. I find the strata would be prejudiced if I decided the tribunal should not dismiss the dispute but only refuse to resolve the governance claims, as it would not be a final decision of the tribunal. I find on these facts there is little practical purpose in deciding claims of strata governance such as accuracy of meeting minutes. I find the governance claims are academic, considering all the circumstances.
43. In support of my conclusion to dismiss the academic issues raised in the tenant's dispute, I note section 2(2)(b) of the Act sets out one factor in the tribunal's mandate is to recognize the importance of continuing relationships in the strata. The tenant, of course, does not have a continuing relationship with the strata and

in my opinion this is a further factor to take into account in deciding whether to dismiss the alleged governance claims in the tenant's dispute.

44. For these reasons, I dismiss the governance claims raised by the tenant.

ISSUES TO RESOLVE

IS THE STRATA LIABLE FOR DAMAGE TO THE TENANT'S CAR?

45. To succeed the applicant tenant has the burden of proof on the balance of probabilities. That means the tribunal must find it is more likely than not the applicant's position is correct.

46. The tenant says the strata is responsible for the damage to his car as it failed to provide proper notice of the contractor.

47. In order to be successful in an action for negligence, the tenant must demonstrate that the strata owed a duty of care, that the strata's behaviour breached the standard of care, that the tenant sustained damage, and that the damage was caused by the strata's breach of care. See *Mustapha v Culligan of Canada Ltd.*, 2008 SCC 27, *Borgfjord* 2016 BCCA 317.

48. The standard of care required for a strata, and therefore its council, is not perfection. The law recognizes strata councils are made up of real people volunteering their time for the good of the strata community and gives them some latitude. The standard required of a strata is that it must act reasonably in all the circumstances. See *Kayne v LMS 2374*, 2013 BCSC 51, *John Campbell Law Corp v Strata Plan 1350*, 2001 BCSC 1342, and *Wright v Strata Plan No 205*, 1996 Canlii 2460 (BCSC), affirmed 1998 Canlii 5823 (BCCA).

49. Section 31 of the SPA states that in exercising the powers and duties of the strata, the strata council members must act honestly and in good faith with a view to the best interests of the strata. I find there is no evidence to suggest that individual strata council members did not act honestly and in good faith. Further, only the strata is a respondent in this dispute.

50. I am unable to find the tenant has met the required onus to prove his case. Considering the evidence as a whole, I find the tenant has not proven the strata was negligent or failed to act reasonably. I find it more likely than not the strata provided notice of the contractor's visit in the email notices on March 28, 2017. I have considered the tenant's submission about whether the email was sent March 28 or 29, but find it is not material. The SPA section 61(vii) specifically provides for notices to be sent by email to an email address provided for the purpose of receiving notices. Based on the evidence as a whole, I find the strata properly distributed notice as required by the SPA.
51. I have put little weight on the written statements that appear to have been written many months after April 4, 2017. In my opinion, the emails and documents dated close to the actual events in March and April 2017 were strongest and best line up with the whole of the evidence. I also agree with the strata that it is more likely than not that any damage from the contractor's work on April 4, 2017 would have been noticed at that time and the 2 month delay in bringing the issue forward does not assist the tenant.
52. I have considered the photographs submitted by the tenant showing the contractors working around the tenant's car. I am left wondering why the tenant did not just move his car at the time, rather than document the contractor's work? Why did the tenant wait until June to report damage? In my view the evidence, including much of the tenant's own evidence, is consistent with the position of the strata.
53. Even if I had found there was no notice, I would still have found the strata was not liable as the tenant's evidence did not prove on a balance of probabilities the damage claimed was caused in fact or in law by the strata. I agree with the strata that there was little or no evidence the strata, or even the contractor, caused the damage claimed. As implied earlier, I also would have found the tenant could have moved his car and avoided any risk of damage. The tenant's own evidence of pictures and videos of the contractors working around the tenant's car clearly show the tenant was aware of the work and could have moved his car.

54. As I have found the tenant did not prove his case of negligence against the strata, it is not necessary for me to consider whether the bylaws of the strata might have shielded it from liability.
55. Overall, I find the tenant failed to prove the strata was negligent and liable for the damage to the tenant's car. I find the tenant's claim against the strata for damages to his car must be dismissed.

Is the applicant entitled to expenses and reimbursement of \$225 for tribunal fees?

56. 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 expenses.
57. As the tenant has not been successful, I decline to order reimbursement of expenses or fees.

DECISIONS AND ORDERS

58. I order the tenant's claims are dismissed.
59. 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 tribunal's order. 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.
60. 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. 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.

John Chesko, Tribunal Member