



Civil Resolution Tribunal

Date Issued: August 27, 2018

File: ST-2017-002500

Type: Strata

Civil Resolution Tribunal

Indexed as: *Olson v. The Owners, Strata Plan LMS 188*, 2018 BCCRT 478

B E T W E E N :

Alta Olson

APPLICANT

A N D :

The Owners, Strata Plan LMS 188

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant, Alta Olson (owner) owns strata lot 6, which is unit 6 in the respondent strata corporation, The Owners, Strata Plan LMS 188 (strata).

2. The applicant says the strata refuses to provide extra security gate remotes for her non-resident relatives. The strata says the majority of owners voted to restrict the issuance of extra remotes to residents only.
3. The applicant is self-represented. The respondent appears through a member of its strata council.

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.

ISSUE

8. The issue in this dispute is whether the strata should be required to issue extra remotes to the applicant.

BACKGROUND, EVIDENCE AND ANALYSIS

9. The owner says that at the 2016 annual general meeting (AGM) she asked to purchase remotes for the building security gate for her adult children, but that the strata refused her request for security reasons, saying she had to arrange for some other resident to let her children through the gate if she was not at home.
10. The applicant says the *Strata Property Act* (SPA) is silent on the issue of extra remotes. She describes herself as being over 55, with serious health problems and a pet, and says these are all factors which mean that her adult children should be able to independently open the security gate.
11. The SPA and the strata bylaws are silent on the issue of security remotes or fobs.
12. On April 20, 2017, the owner had a hearing before strata council. On April 24, 2017, the strata council wrote to the owner and again rejected her request for extra remotes. The applicant asks for an order requiring the strata to sell her the extra remotes.
13. On October 17, 2016, the strata installed a new security gate on the main entrance. The next day, the strata says it sent notice to all owners about the new remotes, including an offer that owners could purchase extras.
14. Two remotes were issued for each unit, and owners could obtain extras. However, a problem arose when it was discovered that some of the remotes could open other units' garage doors.
15. At the same time, the strata discovered that the new gate motor could only program up to 50 remotes. The strata contains 15 strata lots. Based on the October 19, 2017 document filed by the strata, it appears that there are 24

residents in the building. If each unit were allocated 2 remotes, 30 remotes would be issued, leaving a maximum of 20 additional remotes that could be programmed to open the security gate.

16. At a special meeting of owners held on October 26, 2016, the majority of owners voted to distribute only two remotes to each unit, with an option for any resident with another vehicle to purchase an additional remote. The minutes show that security problems were central to this decision.
17. I find, under SPA section 27(1), the majority vote of the owners constitutes a restriction on the strata council's power such that the strata council is obligated to follow the will of the majority on this issue.
18. The applicant wants 5 remotes in total. Her children have keys to her townhouse, but cannot use these unless they gain access to the strata complex first, through the security gate.
19. The strata notes that there is an intercom system and a keyed walk-in gate for people to buzz into the complex, as an alternative to using a remote to activate the security gate.
20. The applicant submits that the strata has made exceptions to the 2 remote per unit limit for other owners. The strata says, and I accept, that this exception was made only for residents who had an additional vehicle, and that 3 units did so, because they had multiple adult residents each driving different vehicles.
21. The strata argues that extra remotes would not address health issues, which could be addressed by keeping a phone handy or having a life line, as some other owners do, to call for help in emergencies.
22. The strata also notes that the applicant could obtain additional copies of the key to the walk-in gate for her adult children. The applicant asserts that this would place an extra burden on two of her children "who have disabilities", in making them get out of their vehicle, walk to her unit, unlock the door and then walk back to their

vehicle and wait for the gate to open. The applicant filed no evidence of disability in her adult children that would make it necessary to issue remotes to them.

23. The owner of unit 9 says, in a witness statement, that some of her relatives park outside and walk in.
24. There is a practical limitation in terms of the 50 remote limit for the security gate. Given that a few units have multiple adult residents with additional cars, the strata does not have many extra remotes that can be programmed into the gate. On this practical point, while the strata might be able to issue one extra remote to the applicant, requiring the strata to issue three would be unreasonable.
25. The real question here is whether the strata is obliged to issue extra remotes for non-residents, when the majority of its owners voted to restrict issuance of extra remotes to residents.
26. The applicant referred to her relatives asking members of strata council to buzz them through the security gate when she was unavailable. She says this caused resentment. As well, she mentioned asking another unit owner to buzz in one of her relatives, because she was concerned she would not be back from walking her dogs in time. The other unit owner refused.
27. Imposing on members of strata council or others to buzz relatives through the security gate for expected visitors, without asking them to agree to do so in advance, is not helpful. To the extent that the applicant arranged to have members of strata council buzz in her relatives to gain traction in the dispute, her approach is inappropriate. Like other owners, the applicant can plan her activities so that she is at home when her relatives visit.
28. If the applicant needs to have family members access her unit when she is away or unavailable, whether to care for her pets or for any other reason, that can be arranged through use of (i) her second remote (ii) extra keys to the security gate or (iii) another owner who agrees to assist by buzzing in the designated individual.

The applicant's relatives are not being limited in their ability to visit her or access her unit, based on my findings above.

29. Should the applicant encounter an emergency situation, she should phone for an ambulance or other emergency service.
30. Given the other ways to pass through the security gate, which include an intercom, I find that the applicant has established that the 3 extra remotes would be a convenience to her and her relatives, but not a necessity for access to her unit.
31. The Court in *Chow v. Strata Plan LMS 1277*, 2006 BCSC 335 stated:

It must be accepted that some action of a strata corporation will be unfair to one or more strata lot owners in that the will of the majority may often serve the interest of the majority of owners to the detriment of the minority. Thus, to obtain relief, an owner must establish significant unfairness.

32. In this case, I cannot find that significant unfairness has occurred. There has been no prejudicial or oppressive conduct. On the evidence, the strata has issued extra remotes only where the unit has an additional adult resident with a vehicle. If the applicant had a relative move in with her, for example, that person could be issued a remote for their vehicle. While the will of the majority restricts the issuance of remotes to residents, the applicant has two remotes and several other methods for allowing her non-resident relatives to enter the strata complex.
33. In these circumstances, I find the strata is obligated to follow the direction of the majority of owners to limit the issuance of security gate remotes to residents.

DECISION AND ORDERS

34. I order that the applicant's dispute is dismissed.
35. 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 see no reason in this case to deviate from the general rule. As the strata paid no tribunal fees, I make no order in this regard.

36. Under section 189.4 of the SPA, an owner who brings a tribunal claim against a strata corporation is not required to contribute to any monetary order issued against the strata corporation or to any expenses the strata corporation incurs in defending the claim. I order the respondent to ensure that no [part of the amount ordered to be paid by the respondent, or any other] expenses incurred by the respondent in defending this claim, are allocated to the applicant owner.
37. 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.

Julie K. Gibson, Tribunal Member