



# Civil Resolution Tribunal

Date Issued: September 10, 2018

File: ST-2018-000908

Type: Strata

Civil Resolution Tribunal

Indexed as: *Emmanuel v. El Nur et al*, 2018 BCCRT 509

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

John Emmanuel

**APPLICANT**

**A N D :**

Flemming El Nur, Christopher Scott, The Owners, Strata Plan NW  
2003, Corpuz Dondie, and Kelly Raab

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Darrell Le Houillier

## **INTRODUCTION**

1. The applicant, John Emmanuel, is the owner of a strata lot within the respondent strata corporation, The Owners, Strata Plan NW 2003 (strata). The applicant was elected to serve on the strata council at the annual general meeting held on October 26, 2017. The respondents Flemming El Nur (Mr. El Nur), Christopher Scott (Mr. Scott), and Corpuz Dondie (Mr. Dondie), were also elected to serve on the strata council at that meeting.
2. In December 2017 or January 2018, the applicant was informed by Mr. El Nur that he had been removed from the council. The respondent Kelly Rabb (Ms. Raab) was appointed in the applicant's place.
3. The applicant says that he was illegally removed from a position on the strata council. Mr. Dondie supported the applicant's position. The other respondents stated the applicant's removal from council was allowed under the strata's bylaws.

## **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. Did the strata council have the authority to replace the applicant on the council?
  - b. If so, should the applicant be reinstated on the council and should Ms. Rabb be removed from the council?

## **BACKGROUND AND EVIDENCE**

9. On October 26, 2017, the strata held an annual general meeting. At the meeting, four strata council members were elected: the applicant, Mr. El Nur, Mr. Scott, and Mr. Dondie.
10. On November 2, 2017, the council met to see if they could agree on the assignment of positions within the council and the assignment of duties. The parties do not agree whether the applicant agreed to take on the parking portfolio. The first official meeting was scheduled for November 23, 2017.
11. On November 20, 2017, the applicant emailed the rest of the strata council and said that he would be out of town after November 21, 2017. He asked the scheduled council meeting be rescheduled for November 21, 2017. The meeting was not rescheduled.

12. On November 23, 2017, a strata council meeting took place. Mr. El Nur and Mr. Scott attended. Mr. Dondie and the applicant did not. At the meeting, Mr. El Nur was elected president and Mr. Scott was elected vice-president.
13. On December 21, 2017, a strata council meeting took place. It was attended by Mr. El Nur and Mr. Scott, but not by the applicant or Mr. Dondie. The minutes indicate that the inactivity of some members of the council were discussed.
14. On January 4, 2018, Mr. El Nur emailed the rest of the council and the strata's property manager to say that he and Mr. Scott had removed the applicant from council effective January 4, 2018 and replaced him with Ms. Raab. The email indicated the applicant had not been attending council meetings and had refused to communicate directly with the council.
15. On January 25, 2018, a strata council meeting took place. This was the first council meeting since December 21, 2017. The minutes of the meeting do not list the applicant as a member of the council but list Ms. Raab as a member appointed to fill a vacant council position.

## **POSITION OF THE PARTIES**

16. The applicant and the respondent Mr. Dondie say that the applicant had not been appointed in any official capacity before he went out of town in November 2017. They say the applicant was illegally removed from council and replaced by Ms. Raab. They request that I order the applicant to be reinstated to the strata council and Ms. Raab to be removed. The applicant also asked that I order the respondents to reimburse him for his legal costs and filing fees.
17. The respondents other than Mr. Dondie say that the applicant agreed to take on the parking portfolio on November 2, 2017 and that this was confirmed in the council meeting held on November 23, 2017, although the applicant was not present. They also say the applicant refused to carry out his assigned duties, attend meetings, or properly communicate with the rest of the council. They say the council had the right to replace the applicant on the council with Ms. Raab.

18. Additionally, the respondents other than Mr. Dondie say that the current term of the strata council will end between late September 2018 and October 31, 2018. They argue it would be impossible to reinstate the applicant to the council after the annual general meeting, in which the next strata council would be elected. They referenced a previous tribunal decision in support of that argument. They also say it makes little sense to call a special general meeting to remove the applicant from the strata council so close in time to the next annual general meeting.
19. Mr. El Nur and Mr. Scott also say they acted honestly and in good faith with a view to the best interests of the strata and that the applicant did not request a council hearing.
20. The respondents other than Mr. Dondie also say that parties before the tribunal are only entitled reimbursement of legal costs in exceptional circumstances, which do not exist here. They also say that the application should fail and that he should not be reimbursed for any filing fees or legal costs for that reason.

## **ANALYSIS**

### ***Strata Property Act (SPA) and Strata Bylaws***

21. Bylaw 12 of the Schedule of Standard Bylaws under the SPA says that a council member who resigns or is unwilling or unable to act for a period of two or more months may be replaced by the rest of the strata council. This was the authority the respondents other than Mr. Dondie referenced when explaining why the applicant could have been replaced on the council by Ms. Raab.
22. The strata's registered bylaw amendments do not modify bylaw 12. It therefore applies as written to the strata.

**Did the strata council have the authority to remove the applicant from the council?**

23. The parties do not agree whether the applicant assumed responsibilities for a parking portfolio at the informal meeting of November 2, 2017. The parties also do not agree as to whether the applicant was fulfilling his obligations to attend meetings and communicate with the rest of the council. Given my conclusion described below, I find the answers to these questions are not required for this decision.
24. Mr. El Nur and Mr. Scott decided to replace the applicant with Ms. Raab using Bylaw 12 as a justification. This section states that the rest of the strata council may be provided with the opportunity to replace a member of the council in certain circumstances.
25. The minutes of the meeting from January 25, 2018 indicate that there was a vacant council position, filled by Ms. Raab. The minutes do not list the applicant as a member of the council. These facts, taken together, most likely indicate that the council had removed the applicant from council before January 25, 2018. The previous meeting took place on December 21, 2017. Although non-participating council members (presumably including the applicant) were discussed at that meeting, there was no vote to remove the applicant in that meeting. The applicant was still on the council at the end of the meeting on December 21, 2017.
26. According to Mr. El Nur's email on January 4, 2018, he and Mr. Scott decided to remove the applicant from the strata. Mr. El Nur's email does not mention Mr. Dondie as being involved in that decision. It did not take place at a council meeting. As a result, the information suggests that Mr. El Nur and Mr. Scott decided to replace the applicant with Ms. Raab without any formal council process or involving Mr. Dondie in the decision. Bylaw 12 provides that the rest of the council must consider the issue. That requirement was not met in this case because Mr. Dondie was not involved in the decision and it was not made in a

council meeting. As a result, I find that the strata council did not have the authority to remove the applicant from the strata council.

27. The strata's bylaws do not permit the council to appoint a new council member other than by use of the powers granted in bylaw 12. I have already concluded the process required by that section was not properly used. I find that the strata council accordingly did not have the authority to replace the applicant with Ms. Raab on the strata council.

**Should the applicant be reinstated on the council and should Ms. Rabb be removed from the council?**

28. In cases where a strata council or a portion of one has negatively impacted another person without legal justification, an attractive remedy is to reverse that action as much as possible. This appeals to the guiding principal of fairness. Several of the respondents referred me to an earlier tribunal decision, which says reinstating a member of a council is impossible once the strata's next annual general meeting has taken place and a new council has been elected. In this case, the annual general meeting has not taken place and a new council has not been elected.
29. I recognize there are significant reasons to not reinstate the applicant. The annual general meeting is scheduled to take place within two months. It may be that there is no other strata council meeting and that, if I removed the respondent Ms. Raab from the strata council and replaced the applicant as he wishes, there would be no practical effect. I also recognize that, if there is one strata council meeting left, putting the applicant back on the strata would virtually ensure some level of conflict at that meeting. I do not find those concerns to be persuasive, however.
30. The other side of the argument is that the strata owners elected the applicant to serve on the council. He was removed without their input and without input from the whole of the council. This would undermine the confidence of the strata, that two elected members of the council can decide among themselves who will sit on the council and decide matters for the whole of the strata.

31. It is not a sufficient answer to say that the strata council will be inconvenienced or that there may be no practical effect. The governance of the council is too important a matter to ignore. Even with the uncertainty in this case, I do not think it would be appropriate for the tribunal to allow the applicant's unauthorized removal from the strata council to continue. I also think it is not appropriate to allow the unauthorized appointment of someone to serve on the council who was not elected by the owners of the strata, given the bylaws do not permit the council to appoint members other than to replace a member under bylaw 12 as I have discussed.
32. For these reasons, I order that the applicant should be immediately reinstated on the council. I also order that Ms. Raab immediately be removed from the council.

## **DECISION AND ORDERS**

33. I order that:
  - a. the applicant immediately be reinstated on the strata council; and
  - b. Ms. Raab immediately be removed from the strata council.
34. 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.
35. Mr. El Nur's email from January 4, 2018 indicated that he and Mr. Scott decided to remove the applicant from council. The respondent Mr. Scott did not provide information to the contrary despite having had the chance to do so. The strata council did not make this decision. I consider Mr. El Nur and Mr. Scott should bear the expense of the filing fees. I therefore order Mr. El Nur and Mr. Scott to each reimburse the applicant \$112.50, half of his tribunal fees.
36. Tribunal rule 132 indicates that an order for one party to reimburse the legal costs of another party will only be granted in exceptional cases. The applicant has not



argued how this case was exceptional and I do not see any reason to say it is. The general rule applies and the applicant will not be reimbursed for his legal costs.

37. The applicant is entitled to post-judgment interest.
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.

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Darrell Le Houillier, Tribunal Member