



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Cunningham et al v. The Owners, Strata Plan K 418*, 2018 BCCRT 517

B E T W E E N :

Michael Cunningham and Carol Cunningham

APPLICANTS

A N D :

The Owners, Strata Plan K 418

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Mary Childs

INTRODUCTION

1. The applicants, Michael and Carol Cunningham (owners) are spouses who own a strata lot in the respondent strata corporation, The Owners, Strata Plan K 418 (strata). The owners are self-represented. The strata is represented by a member of the strata council. This dispute is about the owners' objection to a letter the strata sent them regarding a possible bylaw infraction. The owners also challenge

the validity of the bylaws, and say the strata has breached its obligations to provide documents and give them a fair hearing.

JURISDICTION AND PROCEDURE

2. 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.
3. 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.
4. 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.
5. 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.
6. 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 518, whereas, based on section 2 of the *Strata Property Act* (SPA), the correct legal name of the

strata is The Owners, Strata Plan K 518. Given the parties operated on the basis that the correct name of the strata was 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.

ISSUES

7. The issues in this dispute are:
 - a. Whether the strata should retract statements made in a letter to the owners on April 15, 2015.
 - b. Whether the strata has complied with its obligations to provide the owners with written records, as required by section 36 of the SPA.
 - c. Whether the strata's current bylaws are valid.
 - d. Whether the strata acted improperly in requesting that the owners communicate with the strata by mail for any non-emergency matters.
 - e. Whether the strata acted unfairly in the way it conducted a hearing requested by the owners.

BACKGROUND AND EVIDENCE

8. The owners submitted a large volume of evidence in support of their claims. I have considered all the evidence presented by both parties but will comment only upon the evidence which I find relevant to the issues in question.
9. The owners have lived in the strata since 1996. They live in a ground level unit with a paved patio. Behind the patio is a grassy area of common property.

10. In early 2015 the owners notified the strata that some of this grassy area had been disturbed, probably by animals. Animal feces had been found on the common property.
11. The strata wrote to other residents with cats, asking them to stop their cats from roaming on the common property.
12. The strata then wrote a letter dated April 15, 2015 (2015 letter) to the owners. The 2015 letter explained the steps the strata had taken to notify cat owners.
13. The 2015 letter also said that the common property behind the owners' patio appeared to have been altered without the required consent from the strata. The strata asked the owners to return the common property to its original condition within 14 days of the 2015 letter. It also asked the owners to keep all plantings in containers on their patio.
14. The evidence is not clear with respect to what the original condition of the common property had been, although it appears that the owners had planted a small lilac bush, which they removed after receiving the 2015 letter.
15. After receiving the 2015 letter, the owners began to look for a way to challenge its validity. They started to investigate the activities of the strata and to review its bylaws and procedures.
16. As part of their challenge to the validity of the 2015 letter, the owners say that the bylaws referred to in the 2015 letter were not valid because of a mistake made when the strata voted to adopt them.
17. In 2014 the strata passed new bylaws (2014 bylaws) by a vote of over $\frac{3}{4}$ of the strata owners voting at a general meeting, as required by the SPA for bylaw amendments. The SPA also requires that bylaw changes be filed with the Land Title Office (LTO). The wording of the resolution passed by a $\frac{3}{4}$ vote of the strata was to repeal the 'current registered bylaws' with the new ones. The strata members who passed the resolution did not realise that there were no previously registered bylaws had been registered. A set of bylaws had been approved by the

strata in 2007 but they were never registered in the LTO. Under section 120 of the SPA, the strata's bylaws are the Standard Bylaws under the SPA except to the extent that different bylaws are registered in the LTO.

18. In their efforts to get information which would further their challenge to the 2015 letter, the owners asked the strata for copies of many documents. These requests were sent by email to a number of people, including strata managers and individual members of the strata council. The strata provided copies of most of the requested documents. The owners say some are still missing.
19. On December 9, 2016, the strata's property manager sent an email (2016 request) to the owners asking them to send any future non-emergency communications to the strata by Canada Post.
20. On March 6, 2017 the owners hand-delivered a letter to a member of the strata council. In that letter, the owners requested a hearing under section 34.1 of the SPA to address three issues: (a) the 2016 request, (b) the 2015 letter, and (c) the owners' request for documents.
21. The strata agreed to hold a 15 minute in camera hearing (2017 hearing) at the start of its council meeting on March 23, 2017. One of the owners provided 48 pages of written submissions and addressed council in person for at least 15 minutes. At that time, the strata told the owner to stop, although his oral presentation was not finished.
22. The parties disagree on how long the owner was permitted to speak. The owners say he was only given 15 minutes. The strata says he was allowed to extend his presentation beyond the allotted 15 minutes, and that strata members asked him questions after that. I find that the owner was allowed to speak for at least 15 minutes, although I make no finding about whether he was permitted to speak for longer than that.
23. On March 30, 2017, the strata wrote to the owners saying it had considered the presentation and would not take any further action or respond to the owners'

comments. In that letter it suggested the owners consider applying to this tribunal if they were not satisfied with the strata's decision.

POSITION OF THE PARTIES

The 2015 Letter

24. The owners say that the 2015 letter was improperly issued because it was not the result of the violation complaint process contemplated in the SPA, the strata bylaws, or the strata's own protocols. They point to several problems.
25. First, the 2015 letter was not the result of any written complaint from another owner. Second, the strata did not follow its own procedures for determining that a bylaw had been violated before sending the 2015 letter. Third, the 2015 letter did not comply with the requirements of section 135 of the SPA for bylaw violation notices.
26. The owners also say the 2015 letter contained improper allegations about the common property behind their patio. They say some factual statements in the 2015 letter are wrong.
27. The owners are asking for a declaration that they have not breached the bylaws cited in the 2015 letter.
28. The owners also say the strata treated them unfairly by issuing the 2015 letter, because one of the owners has a medical condition which may be relieved somewhat by gardening. They say that the 2015 letter, by effectively requiring them to reduce the scope of their gardening activities, deprived that owner of an important activity.
29. The owners say the 2015 letter was an abuse of power and process. They say that the strata's request to return the common property to its original state was a harsh, burdensome and illegal direction. They say it was significantly unfair because it violated their reasonable expectations about permissible gardening

behind their unit. They ask for \$1,000 to compensate them for reduced quality of life and loss of wellbeing.

30. The strata says that nothing in the 2015 letter requires any action by the tribunal. The strata took no further action after sending the letter. It did not fine the owners or send them any further correspondence regarding the alterations to the common area.
31. The strata also says that the owners are too late to bring a claim about the letter, because they received it more than two years before they filed their Dispute Notice with the tribunal.

The 2014 Bylaws

32. The owners say that the 2014 bylaws were not properly adopted because the resolution to adopt them referred to repealing the current registered bylaws when there were no such bylaws. They say that this mistake was a fatal flaw in the resolution, and that the 2014 bylaws are therefore invalid despite being registered in the LTO. They ask for a declaration that only the SPA standard bylaws apply to the strata.
33. The strata says that the 2014 bylaws are valid because the clear intention of the strata, when the strata voted to adopt them, was to replace the previous bylaws. It says the mistake as to which bylaws were being replaced should not affect the validity of the 2014 bylaws.
34. Alternatively, the strata says that if the 2014 bylaws were not properly passed the tribunal should allow them to remain in force for no less than 4 months so that the strata has time to correct its mistake by properly adopting the 2014 bylaws.

Requests for Documents

35. The owners also argue that the strata failed to provide certain documents they requested. The list of documents requested by the owners over the years is very long. The owners say three items remain outstanding:

- copies of agreements between the strata and its management company for the years 2010 through 2017;
 - a position description for the strata's property manager; and
 - information about a proposed \$4,000 expenditure on repairs.
36. The owners want the tribunal to order the strata to provide copies of those documents.
37. The strata says that it has given the owners copies of all the documents it is required to provide under section 36 of the SPA.
38. It says some of the documents requested did not exist. For example, no position description for the property manager was ever created. As for the service agreements between the strata and the management company, the strata says there is only one written agreement, a copy of which has been provided to the owners.
39. The strata also says that some of the documents requested by the owners are not documents the strata is required to keep or disclose. For example, the strata says nothing in the SPA requires the strata to provide details of the proposed \$4,000 expenditure.

The 2016 Request

40. The owners say the 2016 request to only communicate to the strata by mail for non-urgent matters was unreasonable and a violation of section 63 of the SPA, which sets out the permitted methods of giving a document to a strata corporation. Those methods include email and personal delivery, as well as ordinary mail.
41. The owners say that complying with the 2016 request would be harsh and burdensome because it is difficult for them to walk to a post box, it would create additional expense for stationery and stamps, and it would be slower than email.

42. The strata says the 2016 request was reasonable because the owners had made so many requests, and had sent those requests to so many people, that it had become difficult to keep track of them.
43. The strata has not explained why it would be easier to keep track of requests sent by Canada Post rather than by email.

The 2017 Hearing

44. The owners say that the 2017 hearing was conducted improperly and resolved in a way that was significantly unfair and reprehensible. They say the strata did not allow enough time for the owners to present their concerns and to be given a fair hearing.
45. The owners also say the 2017 hearing was unfair because the strata could not have given sufficient concern to the owners' submissions in the 15 minutes of deliberations before the strata decided not to take any further action.
46. The owners also says the strata acted unfairly after the hearing by sending them a letter advising them that the strata was declining to take any further action. That letter advised the owners they could bring a claim to this tribunal if they were not satisfied with the strata's decision. It did not state any reasons for the strata's decision.
47. The strata says that the 2017 hearing was not unfair because council members were familiar with the owners' concerns, and had been provided with 48 pages of written submissions.
48. The strata says that 15 minutes was sufficient time for the owner to present his oral submissions and that giving more time for those submissions would not have affected the fairness of the hearing.
49. The strata says it did not act unfairly or reprehensibly in its response to the 2017 hearing or in suggesting the owners to apply to this tribunal if they were unsatisfied with the strata's decision.

50. The strata asks that I dismiss the applicant's claims.

ANALYSIS

The 2015 Letter

51. The 2015 letter was dated April 15, 2015. The owners say they received it on or about April 18, 2015, by ordinary mail. The Dispute Notice in this matter was issued July 18, 2017 based on the owners' application submitted on April 26, 2017.

52. The *Limitation Act* applies to tribunal disputes. A limitation period is a specific time period within which a person may pursue a claim. If the time period expires, the right to bring the claim disappears. The statutory limitation period in this case is 2 years, which expired April 18, 2017, before the owners filed their dispute. For that reason, I find their claim for a remedy regarding the 2015 letter is barred under the *Limitation Act*.

The 2014 Bylaws

53. The parties agree that when the 2014 bylaws of the strata were adopted, the strata had not registered any bylaws with the LTO. Thus, the wording of the resolution to adopt the 2014 bylaws was inaccurate when it said the existing registered bylaws were to be repealed.

54. I find that the mistake was a minor one and did not affect the validity of the 2014 bylaws. It is clear that the strata intended to adopt the 2014 bylaws, and that it intended these bylaws to replace the ones which were previously in effect.

55. Registered bylaws may be valid despite minor and technical irregularities in their adoption: *Thiessen v. Strata Plan KAS2162*, 2010 BCSC 464. The 2014 bylaws were passed by the required $\frac{3}{4}$ vote and were registered with the LTO as required by the SPA. I dismiss the owners' claim that the 2014 bylaws are invalid.

Requests for Documents

56. The SPA, in section 35, requires the strata to keep certain records and documents for periods specified in regulations. Section 36 of the SPA says that the strata must provide copies of those records and documents to owners who request them.
57. When an owner requests records or documents, the strata must comply within 2 weeks, except for requests for bylaws or rules, with which the strata must comply within 1 week.
58. The owners requested many documents from the strata. They say that only 3 documents remain outstanding. The strata says those documents do not exist. I accept the strata's explanation. The evidence submitted by the parties shows that the strata provided many documents to the owners, and there is no reason to think that they have deliberately refused to provide the ones the owners are asking for.
59. The strata cannot provide the owners with documents which do not exist. For that reason, I dismiss the owner's claim that the strata be ordered to provide more documents.

The 2016 Request

60. Section 63 of the SPA lists permitted methods of giving documents to a strata corporation. That section applies to any document which is required or permitted under the SPA, the bylaws, or the rules of the strata.
61. The 2016 request asked the owners to confine their non-emergency communications to correspondence by Canada Post regular mail. It appears that in practice, however, the owners continued to communicate with the strata by other means and the strata continued to respond to emails from the owners.
62. I find that the strata does not have the power to require the owners to limit themselves to one form of communication with the strata. The SPA allows owners to use many different methods to communicate with a strata corporation, and the

strata cannot override that legislation. Section 63(1)(c)(i) of the SPA says that an owner may communicate with a strata corporation by sending email to the strata's email address.

63. It is clear from the wording of the 2016 request, however, that it is no more than a request. The strata did not threaten to ignore any email from the owners, and the evidence shows that the parties continued to communicate by email. For this reason, I make no order with respect to the 2016 request.

The 2017 Hearing

64. The tribunal can make an order to remedy significant unfairness on the part of a strata corporation: *Owners, Strata Plan BCS 1721 v Watson*, 2018 BCSC 164. The owners say that the 2017 hearing was significantly unfair because they were allotted only 15 minutes for their oral presentation.
65. The 2017 hearing was not the first opportunity for the owners to raise their concerns with the strata. By the time of the 2017 hearing, the strata was familiar with the factual background and the position of the owners. In addition, the owners had given the strata 48 pages of written submissions to accompany the oral presentation.
66. The strata complied with all the procedural requirements of the SPA in holding the hearing and responding within the required time frame.
67. I find that the 2017 hearing was not unfair. The strata is required to provide an oral hearing, but it is not required to allow unlimited time for that hearing. The owners had sufficient opportunities to make submissions to the strata and to answer questions. The history of communications between the owners and the strata shows that the strata was well aware of the owners' concerns, and of the factual background.
68. I dismiss the owners' claim that the 2017 hearing was unfair.

DECISION AND ORDERS

69. I order that the owners' claims are dismissed.
70. 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 dispute the strata is the successful party but it has paid no fees and has not claimed any dispute-related expenses. I therefore make no order for reimbursement of expenses.
71. 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 strata to ensure that no expenses incurred by the respondent in defending this claim are allocated to the applicant owner.

Mary Childs, Tribunal Member