



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Behr v. The Owners, Strata Plan LMS 423*, 2018 BCCRT 701

B E T W E E N :

Jeffrey Behr

APPLICANT

A N D :

The Owners, Strata Plan LMS 423

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This dispute is about the validity of a strata corporation bylaw.
2. The applicant, Jeffrey Behr (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 423 (strata). The strata is made up of

townhouse-style buildings. Each strata lot includes an indoor garage, fronted by a common property driveway.

3. The owner says the strata's bylaw 49.1, which states that strata lot owners are responsible for garage door maintenance costs, is invalid and unenforceable. He says the garage doors attached to each strata lot are common property, and the strata is therefore not entitled to enact a bylaw assigning maintenance costs to individual owners. The owner seeks an order that bylaw 49.1 be repealed.
4. The strata says bylaw 49.1 is valid and enforceable.
5. The owner is self-represented. The strata is represented by the strata council president.
6. For the reasons set out below, I find that bylaw 49.1 is invalid and unenforceable.

JURISDICTION AND PROCEDURE

7. 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.
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. 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.

10. 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

11. The issue in this dispute is whether the strata’s bylaw 49.1 is valid and enforceable.

EVIDENCE, FINDINGS & ANALYSIS

12. I have read all of the evidence provided, but refer only to evidence I find relevant to provide context for my decision.

13. Bylaw 49.1 states as follows:

Strata lot owners will be responsible for all costs relating to the repair, maintenance and replacement of that Strata lot’s garage door.

14. The strata says bylaw 49.1 is valid because it was passed by a ¾ vote resolution at an annual general meeting (AGM) on October 17, 2006. The strata says the bylaw was properly registered with the Land Titles Office on December 14, 2006, and again as part of a consolidation approved at the 2014 AGM and registered on October 29, 2014.

15. The strata says the garage doors are part of each strata lot, so it is appropriate that individual owners are responsible for repairs. The strata says the strata plan shows that the boundary line between the garage and the common property driveway is a straight line. The garage door is recessed and is almost flush with the interior drywall of the garage, which is part of the strata lot, so the garage door falls within the boundary of the strata lot and is part of the strata lot.

16. The owner says the garage doors are common property, because they are not designated as limited common property (LCP) on the strata plan, and because they are on the vertical exterior of the building.

Status of Garage Doors

17. First, I find that the garage doors are not LCP, as they are not designated as such on the strata plan and there is no evidence that the doors were designated as LCP by a $\frac{3}{4}$ vote passed under section 74 of the SPA.

18. Second, it is undisputed that the garages are part of each strata lot, as shown on the strata plan. The driveways in front are common property. Section 68(1) of the SPA sets out the following rule to determine strata lot boundaries:

Unless otherwise shown on the strata plan, if a strata lot is separated from another strata lot, the common property or another parcel of land by a wall, floor or ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the wall, floor or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor or ceiling that faces the other strata lot, the common property or the other parcel of land.

19. The photographs provided in evidence show that the garage doors are set back from the midway point in the surrounding structural walls. The garage door tracks, on which the vertical doors run, are actually behind the doorframe. For that reason, I find that the garage doors are part of each strata lot, and are not common property. I note that in *Ducharme et al v. The Owners, Strata Plan BCS 753*, 2018 BCCRT 262, at paragraph 95, a tribunal vice chair found that garage doors were part of the strata lot, as the garage was part of the strata lot. Although that decision is not a binding precedent, I rely on the vice chair's reasoning.

Maintenance and Repair Bylaws

20. Having determined the garage doors are part of the strata lot, I must now address whether the strata or the individual strata lot owners are responsible for their maintenance and repair.
21. In general, strata lot owners are responsible for maintaining and repairing their own strata lot, and strata corporations are responsible to maintain and repair common property and common assets. However, section 72(3) of the SPA states that the strata corporation may, by bylaw, take responsibility for the repair and maintenance of specified portions of a strata lot.
22. In this strata's bylaws, bylaw 3.1 says that an owner must repair and maintain the owner's strata lot, except for repair and maintenance that is the responsibility of the strata corporation under the bylaws. However, in bylaw 12.1.4, some aspects of strata lot repair are assigned to the strata corporation, as allowed under section 72(3) of the SPA. Specifically, bylaw 12.1.4 says the strata corporation must repair and maintain the following:
 - (i) the structure of a building;
 - (ii) the exterior of a building;
 - (iii) patios, chimneys, stairs, balconies and other things attached to the exterior of a building;
 - (iv) doors, windows and skylights on the exterior of a building or that front on common property, and
 - (v) fences, railings and similar structures...
23. As stated previously, bylaw 49.1 says that strata lot owners are responsible for the costs of repairing, maintaining, and replacing each strata lot's garage door.
24. There is a conflict between bylaw 49.1 and bylaw 12.1.4. Bylaw 49.1 says garage doors are the responsibility of individual strata lot owners, but bylaw 12.1.4(iv) says

the strata is responsible for repair and maintenance of all exterior doors of a strata lot that front on common property. The garage doors are exterior doors, and they also front on common property.

25. It could be argued that bylaw 49.1 is meant as a specific exception to the rule about exterior doors in bylaw 12.1.4(iv). However, that is not expressly stated in the bylaws. Also, that argument is less persuasive given that bylaw 49.2 says that an owner may only replace their existing garage door with permission from the strata council, and bylaw 49.6 allows for strata corporation funds to pay for garage doors, as follows:

Should the strata corporation decide by 3/4 vote resolution that the majority of garage doors be replaced at one time by special levy, owners who have already replaced their door at their own expense, will be reimbursed the amount of their special levy contribution.

26. If the garage doors are part of each strata lot and fully the owner's responsibility, as submitted by the strata, it does not logically follow that the strata council could forbid an owner from replacing their garage door, or that the strata corporation could use strata corporation funds, collected by special levy, to pay for garage doors. If the special levy contemplated in bylaw 49.6 passed, owners would have to pay to replace their garage doors regardless of whether they wanted to do so. This leads to the conclusion that garage doors maintenance and replacement is a shared responsibility of the strata corporation, rather than the responsibility of individual owners, as contemplated in bylaw 49.1.
27. Under section 72(3) of the SPA, the strata can take responsibility for portions of a strata lot. The strata has done so in bylaw 12.1.4, and also in bylaw 49.6. Because the bylaws conflict, and because bylaw 49.6 allows for strata funds to pay for garage doors in some instances I find that bylaw 49.1 is invalid.
28. I therefore allow the owner's claim, and order that bylaw 49.1 is invalid and unenforceable.

Summary

29. For all of these reasons, I allow the owner's claim. I order that bylaw 49.1 is invalid and unenforceable.
30. 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. As the owner was successful in this dispute, I find he is entitled to reimbursement of \$225 in tribunal fees.
31. The strata claims reimbursement of \$25 for tribunal fees. As the strata was unsuccessful, I do not grant reimbursement. The strata also claims reimbursement of legal fees, and provided various invoices to support that claim. Even if the strata had been successful, I would not order reimbursement of legal fees. Tribunal rule 132 says that except in extraordinary cases, the tribunal will not order payment legal fees. This follows from the general rule in section 20(1) of the Act that parties are to represent themselves in tribunal proceedings. I see no reason to depart from this general rule in this case, and therefore I do not order reimbursement of legal fees.
32. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner, unless the tribunal orders otherwise.

DECISION AND ORDERS

33. I order that bylaw 49.1 is invalid and unenforceable.
34. I order that within 30 days of this decision, the strata must pay the owner \$225 for tribunal fees. The owner is entitled to post-judgment interest on that amount, under the *Court Order Interest Act*.
35. 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.

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.

Kate Campbell, Tribunal Member