



Civil Resolution Tribunal

Date Issued: November 13, 2018

File: ST-2018-003447

Type: Strata

Civil Resolution Tribunal

Indexed as: *Reinholz v. The Owners, Strata Plan K 39*, 2018 BCCRT 715

B E T W E E N :

Oskar Reinholz

APPLICANT

A N D :

The Owners, Strata Plan K 39

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Oskar Reinholz (owner), is an owner of strata lot 10, also known as unit 501, in the respondent strata corporation, The Owners, Strata Plan K 39 (strata).

2. This dispute is about whether the strata should allow the owner to install a gate on the railing of his balcony at his own expense. The owner is self-represented and the strata is represented by a council member.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. 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

7. The issue in this dispute is whether the strata should approve the owner's request to install a gate in the balcony railing of unit 501.

BACKGROUND, EVIDENCE AND ANALYSIS

8. The strata relates to an 11-unit, 6-level residential building located in Penticton, B.C. The owner purchased unit 501 in 2010, as a joint tenant with another individual who is not a party to this dispute.
9. The owner describes the building as being terraced, and the individual units have balconies surrounded by railings. The owner wishes to install a gate in his balcony railing to facilitate access to the flat roof area beyond his enclosed balcony for performing maintenance tasks such as window cleaning, unclogging drains and eavestroughs, and pest control.
10. The owner reported that he made a request to the strata council regarding the gate in September of 2017, and this was denied at an October 2017 meeting. The owner requested a hearing in an April 13, 2018 letter, but his request for a gate was denied again during a May 6, 2018 hearing. Although no documentation regarding the owner's requests or the strata's decisions were provided, the strata did not take issue with the owner's description of events.
11. It is apparent from the submissions that issues have arisen between the owner and the strata and/or other residents of the strata over the years. The owner provided copies of email messages, expense summaries, and strata council meeting minutes regarding a number of occurrences and interactions with which he disagrees. While I have read the submissions in their entirety, I will address only those matters related to the issue in dispute.
12. The owner submits that he should be permitted to have a gate in his balcony railing. He described how he places step stools on either side of the railing and climbs over it to access the roof area, and identified some physical issues that make this challenging for him. He noted that some owners access the roof area through windows, but stated that he cannot do so due to the presence of a shelf in front of his window. Further, the owner advised that the window only opens to a width of 21 inches, and it is difficult to remove the screen. The owner noted that the strata has

an age restriction, and takes the position that mobility-limited seniors should be able to use a gate rather than climb over railings or go through windows.

13. The owner stated that unit 601 has 2 gates on their railings and that the occupants regularly walk on the roof. According to the owner, a precedent in favour of gates was set when the developer constructed the railings and gates for unit 601.
14. The owner requests that I order the strata to permit him to install a gate in his balcony railing at his own expense. Although the owner initially requested reimbursement for tribunal fees, it would appear that these fees were waived. The owner does not claim any dispute-related expenses.
15. The strata submits that the railings are in place to isolate the deck or balcony area from the open roof area, which is a flat membraned gravel roof that is not intended for foot traffic and has no barrier on the edge. According to the strata, residents have accessed the roof through windows, when needed, for nearly 45 years. The strata notes that the owner had impeded access to his own windows through the installation of the shelf, and questioned the frequency with which access would be required for maintenance purposes. The strata also expresses concern about setting a precedent such that other owners would wish to install gates to access the roof area.
16. According to the strata, the gates in unit 601 are not comparable as that unit, which is the penthouse, has a different deck design. In that situation, the gates provide access to 2 separate private deck areas rather than an unprotected roof area.
17. In addition to concerns about foot traffic on the roof surface and a possible safety issue, the strata questions whether it would be a violation of the building code to install a gate that would open onto a roof surface with an unguarded edge. The strata also suggests that arrangements could be made to address the owner's cleaning concerns, if necessary.
18. The strata requests that I dismiss the owner's claim.

19. In response to the strata's submissions, the owner submits that he does not intend to change his use of the roof, which is confined to maintenance purposes. He also states that a representative of the City of Penticton has advised him that a building permit would not be required to install the gate, which only requires strata approval.
20. Section 72 (1) of the *Strata Property Act* (SPA) provides that a strata corporation must repair and maintain common property (CP) and common assets. This responsibility, along with strata responsibility for some forms of limited common property (LCP), including fences, railings and similar structures that enclose balconies, is also reflected in bylaw 14 of the applicable bylaws, which were amended and filed in 2009.
21. Bylaw 11 sets out that an owner must obtain approval before altering a strata lot when the alteration involves, among other things, fences, railings or similar structures that enclose a patio, balcony or yard, or common property located within the boundaries of a strata lot. The strata must not unreasonably withhold its approval, but may require that the owner agree to take responsibility for any expenses relating to the alteration.
22. Bylaw 12 contains a similar requirement that an owner obtain approval before altering CP, including LCP or common assets. In such a situation, the strata may require as a condition of its approval that the owner agree to take responsibility for any expenses relating to the alteration. Unlike alterations to a strata lot, there is no requirement that the strata not unreasonably withhold its approval for alterations to CP or LCP.
23. According to the strata plan filed in 1975, the balcony areas are CP. A May 2009 bylaw amendment appeared to designate all balcony and other areas as LCP. However, under section 74 of the SPA, a strata corporation can only designate CP as LCP by passing a $\frac{3}{4}$ vote resolution at a general meeting and filing the resolution with a sketch plan in the land title office. The general search index of the strata does not show any designations of LCP after the strata plan was filed. As a result, I find the balconies to be CP.

24. In accordance with the bylaws, the owner must obtain permission from the strata before he makes any modifications to his CP railing. There is no requirement that the strata refrain from unreasonably withholding consent to the owner's request, as the area is not included in his strata lot. Further, whether or not a building permit would be required or the municipality would approve of the gate is not a relevant consideration.
25. I find that it was reasonable for the strata to consider safety issues associated with the unprotected edge of the roof, as well as the need to maintain the integrity of the roof structure given its responsibilities under the SPA and the bylaws. I accept that roof maintenance would be a particular issue in this case due to the number of roof areas involved with the terraced design of the building.
26. The owner made submissions regarding physical issues that made accessing the roof area a challenge. However, he did not provide medical evidence to substantiate that the provision of a gate is reasonably necessary to treat a disability. I also note that the strata has indicated that arrangements may be made to address maintenance issues if the owner is physically unable to perform them.
27. The owner has not argued that the strata has treated him in a significantly unfair manner. However, I am satisfied that the evidence does not support that the strata acted in an unfair, or significantly unfair, manner. I do not accept that the presence of gates in unit 601 amounted to a precedent for having gates, and note that details of any permitted gate installation for unit 601 were not provided in evidence. Further, the evidence does not establish that other strata owners have been granted permission for the type of alteration that has been denied to the owner.
28. I acknowledge that it would be the owner's preference to install a gate in order to facilitate easier access to the roof area for maintenance purposes. However, I find that the strata's decision to deny his request was reasonable. I dismiss the owner's request that I order the strata to approve his request to install a gate in his balcony railing.

29. The applicant did not pay tribunal fees or claim dispute-related expenses. As there is no claim for fees or expenses, I make no order in this regard.

30. 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.

ORDER

31. I order that the applicant owner's dispute is dismissed.

Lynn Scrivener, Tribunal Member