



# Civil Resolution Tribunal

Date Issued: December 19, 2018

File: ST-2018-001214

Type: Strata

Civil Resolution Tribunal

Indexed as: *Cheng v. Section 2 of The Owners, Strata Plan BCS 2321 et al*, 2018  
BCCRT 881

B E T W E E N :

Ichu Cheng

**APPLICANT**

A N D :

Section 2 of the Owners, Strata Plan BCS 2321 and The Owners,  
Strata Plan BCS 2321

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

John Chesko

## INTRODUCTION

1. This dispute is about a sectioned strata corporation's request to enter an owner's strata lot.
2. The applicant, Ichu Cheng, is an owner in the respondent strata corporation, The Owners, Strata Plan BCS 2321, which I have added as a respondent as set out below. The owner's strata lot is also located in Section 2 of the Owners, Strata Plan BCS 2321 (residential section). I will refer to the respondents collectively as the strata.
3. The owner is self-represented. The strata is represented by an authorized representative.
4. The owner says the strata is not following the *Strata Property Act* (SPA). The owner says the strata has unfairly targeted the owner with bylaw complaints while refusing to pursue complaints from the owner. The owner submits the strata does not have the right to enter the owner's strata lot to investigate bylaw compliance.
5. The strata submits it has followed the SPA and the strata bylaws. The strata says it requested access to the owner's strata lot according to the bylaws to investigate bylaw compliance. The strata submits the owner's claims should be dismissed.
6. For reasons set out below, I find the strata has complied with the SPA and the bylaws and this dispute should be dismissed. I also find that bylaw 2.7 entitles a person authorized by the strata council to enter the owner's strata lot to investigate bylaw compliance.

## 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. 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).
10. Tribunal documents incorrectly show the name of the respondent residential section as The Owners, Strata Plan BCS 2321 (2), whereas, based on section 2 of the SPA, the correct legal name of the residential section is Section 2 of The Owners, Strata Plan BCS 2321. 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.
11. The tribunal may accept 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.
12. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may 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.

## NOTE ABOUT PARTIES AND ISSUES IN THIS DISPUTE

13. The tribunal has jurisdiction over certain persons and issues set out in the SPA and the Act. It is important to include the correct persons and entities in a claim so that it is clear who and what the claim is about.
14. I find the strata corporation, The Owners, Strata Plan 2321, should be added as a party. See *Yang v Re/Max Commercial Realty*, 2016 BCSC 2147 (Canlii), *Wong v Section 1 of the Owners, Strata Plan NW 2320 et al*, 2017 BCCRT 25 (Canlii). As the strata corporation is the overarching responsible legal entity under the SPA, I find it appropriate to add the strata corporation as a party. See *Bourque et al v McKnight*, 2017 BCCRT 19 (Canlii). I find there is no prejudice to the parties and it would be consistent with the tribunal's mandate for accessible, efficient, flexible and fair justice. See Act section 2. Accordingly, I have amended the style of cause to include the strata corporation.
15. While the owner has not named individuals as parties in this dispute, in their submissions, the owner alleges that members of the strata council are not acting in good faith. I note allegations of bad faith and conflict of interest against individual council members are outside the jurisdiction of the tribunal as the court has determined that remedies under sections 31 and 32 of the SPA fall under section 33 which is expressly outside the tribunal's jurisdiction. See Act, section 3.6(2), *The Owners, Strata Plan LMS 3259 v Sze Hang Holding Inc.*, 2017 BCCA 346 (Canlii). While not bound by other tribunal decisions, I have also considered *Craig v. The Owners, Strata Plan 1526*, 2018 BCCRT 310 (Canlii). While individual allegations are noted as part of the context, I have not addressed the owner's allegations involving individual council members as I find the issues in this dispute are legally between the owner and the strata.

## **ISSUES**

16. The parties reached agreement on certain issues prior to this adjudication. Those issues are not before me in this decision.
17. The issues in this dispute are:
  - a. Is the strata permitted to enter the owner's strata lot to investigate bylaw compliance?
  - b. Did the strata improperly and without lawful authority allege the owner's tenant violated certain bylaws?
  - c. Are strata bylaws 2.3(1)(b) and 2.7(1)(b)(ii) contrary to section 121 of the SPA?
  - d. Is the owner entitled to an order requiring that the strata council must observe the conflict of interest provisions in section 32 of the SPA?
  - e. Is the strata required to record the results of all strata council voting in the strata council minutes including the particulars of bylaw violations?
  - f. Has the strata improperly failed to act on bylaw complaints made against another strata lot owner by the owner?
  - g. Is the owner entitled to reimbursement of \$255 for tribunal CRT filing fees?

## **BACKGROUND AND EVIDENCE**

18. While I have reviewed the submissions and materials submitted, I will refer to the facts needed to make my decision.
19. The strata corporation comprises a mixed-use building located in Vancouver, British Columbia. It is commonly known as 'the Melville'.
20. The owner is the registered owner of a strata lot in the residential section.

21. The evidence is that the owner purchased the strata lot in 2013. At the times material to this dispute, the owner was renting out the strata lot to various tenants.
22. The central issue of this dispute is about the strata's request to enter the owner's strata lot to investigate bylaw compliance. The owner has refused entry.
23. The background to the dispute starts around November 2016 when the owner received notices from the strata about alleged bylaw complaints for smoking and excessive noise. The owner also received notices of other complaints for noise in January, March and April 2017. The notices set out the alleged bylaw contravention, including date and time information and reference the specific bylaws. The notice provides the owner an opportunity to answer the complaint in writing or to request a meeting with the strata council.
24. The evidence shows that the owners did provide a response to some of the complaints and the strata made a determination upholding the bylaw complaints. The evidence also includes correspondence from the strata reporting to the owner about the result of the strata council deliberations on the alleged bylaw contravention. The correspondence notes that submissions from the owner and tenant were considered.
25. The evidence is that the strata received complaints from various sources about noise in the owner's strata lot and that the flooring in the strata lot may not comply with bylaw requirements. I note the strata bylaws set out specific requirements for flooring materials and installation. The strata minutes also indicate that other strata lots have also received noise complaints. The evidence is that the strata has requested access to the owner's strata lot to investigate noise and if the flooring is compliant with the bylaws.
26. The owner has refused the strata access to their strata lot to investigate. The owner submits the strata is 'out to get' the owner and has no lawful right to enter the owner's strata lot. The owner points to strata approval for the flooring that was given by the council back in 2013.

27. There has been much back and forth correspondence between the owner and the strata on the flooring issue. I note the owner did at one point agree that the strata could enter the strata lot, but only on very strict conditions. The strata did not agree to the conditions and the owner refused to permit entry.
28. The evidence also shows the owner filed 17 bylaw complaints in August and October 2017 against one other strata lot owner. The owner submitted that it filed complaints against the other strata lot owner as retribution to the other owner and the strata.

## **POSITIONS OF THE PARTIES**

29. The owner says the strata wrongfully and without lawful authority demanded entry to the owner's strata lot. The owner submits the strata has not 'justified' the demand to enter the strata lot.
30. The owner says the strata bylaws 2.3(1)(b) and 2.7(1)(b) relied on by the strata to request entry are unenforceable under section 121 of the SPA because the strata did not exercise care and due diligence in accepting the complaint. The owner also submits the strata's request to enter implies the owner used sub-standard material which the owner says is defamatory. The owner also says there are many 'daily living' activities that make noise and it is unreasonable to demand entry when no bylaw contravention is proven.
31. The owner also says it was a strata council member who made the bylaw complaint. The owner says it was a conflict of interest and contrary to section 32 of the SPA that the strata council member did not leave the strata meeting when the owner's issues were being discussed.
32. The owner says the strata's refusal to follow up on the 17 complaints made against the other owner is further proof the strata is biased against the owner. The owner says the strata has an obligation to enforce the bylaw complaints.

33. The owner requests the following orders:

- An order the strata formally withdraw the request to inspect the owner's strata lot and floor.
- A declaration strata bylaws 2.3(1)(b) and 2.7(1)(b)(ii) are contrary to section 121 of the SPA.
- An order the strata must observe the conflict of interest provisions in section 32 of the SPA.
- An order that strata council minutes must record all particulars of bylaw violations and voting.
- An order the strata enforce the strata bylaws.
- An order the strata reimburse the owner's tribunal filing fees.

34. The strata submits bylaw 2.7(1) specifically requires that an owner must allow an authorized person to enter their strata lot to investigate bylaw issues. The strata says it has a statutory duty to follow up on the complaint about the owner's strata lot and that the owner is also obligated under the strata bylaws and SPA to be reasonable and cooperative.

35. The strata says it has followed the requirements of the SPA, the bylaws and the law in dealing with the bylaw complaints related to the owner's strata lot. The strata points to the correspondence submitted, which it says shows proper notice and the opportunity to respond. The strata further notes that the strata considered responses from the owner and tenant before coming to determinations about bylaw compliance. The strata submits there is no reason the bylaws pointed to by the owner are contrary to section 121 of the SPA and notes similar bylaws have been considered and upheld.

## ANALYSIS

36. I have reviewed all the submissions and evidence, but only address the evidence and arguments to the extent necessary to explain my decision.
37. The applicant owner has the burden of proof on the balance of probabilities. That means the tribunal must find it is more likely than not the applicant owner's position is correct.
38. Strata corporations in British Columbia are governed by the SPA. Under the SPA and the law, a strata is owned and controlled by all of the strata owners, who in turn elect a group of owners to serve on the strata council. The strata council is responsible for the operation of the strata. The strata council is required to follow the requirements of the SPA, the strata bylaws and the law. In carrying out its duties, the strata council must also exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. The standard of care required for a strata council is not perfection, it is reasonableness. The law recognizes strata councils are made up of real people volunteering their time for the good of the strata community and gives them some latitude.
39. Provided the strata council follows the requirements of the SPA and the strata bylaws, the strata council generally has flexibility to set its own procedures. See *Schuler v The Owners, Strata Plan BCS 4064*, 2018 BCCRT 175 (Canlii).

### ***IS THE STRATA PERMITTED TO ENTER THE OWNER'S STRATA LOT TO INVESTIGATE BYLAW COMPLIANCE?***

40. I find the strata is authorized to enter the owner's strata lot pursuant to strata bylaw 2.7. The bylaw states that 'an owner, tenant, occupant or visitor must allow a person authorized by the strata to enter the strata lot' if there is an emergency or where the strata is carrying out its responsibilities. Paragraph 2.7(1)(ii) specifically makes it clear the strata can enter a strata lot to ensure compliance with the strata bylaws.

Where the strata follows the procedure set out in the bylaw, the owner is required to allow entry.

41. It is reasonable and logical that persons from the strata may need to enter an owner's strata lot from time to time to exercise the powers and perform the strata's duties. It is also reasonable and logical that persons from the strata may have to enter a strata lot to investigate bylaw compliance. I do not accept the owner's submission that the strata must be 'sure' about the bylaw complaint before it can enter an owner's strata lot. If the owner's submission were to be accepted, it would be impossible for a strata to investigate whether there was a valid bylaw complaint. If the strata was already 'sure', it would not need to investigate. The owner's position would create an impossible situation.
42. I have also considered and reject the owner's submission that the strata must agree to very strict terms before the owner will allow the strata to enter. There are no such requirements in bylaw 2.7 and the strata does not need to agree to the owner's terms before it enters the strata lot. In carrying out its investigation, the strata would of course be required to act reasonably.
43. I find the strata has acted reasonably and is allowed to enter the owner's strata lot for the purpose of investigating bylaw issues about noise and flooring in the owner's strata lot. For clarity, I find the strata, after issuing the owner or owner's tenant notice in accordance with bylaw 2.7, is entitled to enter the owner's strata lot.

***DID THE STRATA IMPROPERLY AND WITHOUT LAWFUL AUTHORITY  
ALLEGE THE OWNER'S TENANT VIOLATED CERTAIN BYLAWS***

44. As noted above, the owner's claim in this dispute was focused on whether the strata was permitted to enter the owner's strata lot. As part of the owner's submission challenging whether the strata could enter the owner's strata lot, the owner also challenged the strata's authority to find the owner's tenants violated strata bylaws.

45. Section 135(1) of the SPA sets out the following requirements that must be met before a strata can impose a fine:
- a. the strata must have received a complaint;
  - b. the strata must give the owner or tenant a written explanation of what the complaint is about;
  - c. the owner or tenant must be given a reasonable opportunity to respond to the complaint, including the opportunity to have a hearing in person at a council meeting if the owner or tenant requests one.
46. Section 135(2) requires a strata to provide written notice of bylaw decisions as soon as feasible.
47. The procedure for bylaw complaints must also comply with basic principles of procedural fairness and must not be significantly unfair. See *Chorney v Strata Plan, VIS 770*, 2016 BCSC 148 (Canlii). The strata must strictly follow the requirements of section 135 of the SPA: *Terry v The Owners, Strata Plan NW 309*, 2016 BCCA 449.
48. I find the strata has properly met the requirements of section 135 of the SPA in how it handled the bylaw contraventions related to the owner's tenant. As noted above, the strata properly notified the owner about the alleged conventions and provided sufficient particulars to understand the alleged bylaw contravention. I note the notices set out in some detail the alleged bylaw contravention along with specific date and time information. The notice also set out the bylaw and clearly provided an opportunity for a written response or a meeting with the strata council to respond to the allegation. I note the evidence also supports that the owner and tenant provided responses to the strata council.
49. I note that even if I had found any of the bylaw contraventions were not properly assessed according to the section 135 procedure, it would not have changed my decision about the strata's right to enter the owner's strata lot. As noted above, the

strata is authorized to enter the owner's strata lot to investigate the bylaw issue and I have found the strata request reasonable. Compliance with the section 135 procedure on previous complaints is a different issue than the strata's right to inspect as part of a new bylaw compliance investigation.

***ARE STRATA BYLAWS 2.3(1)(b) and 2.7(1)(b)(ii) CONTRARY TO SECTION 121 OF THE SPA?***

50. I have considered the owner's argument that bylaws 2.3(1)(b) and 2.7(1)(b)(ii) are unenforceable as contrary to section 121 of the SPA because the strata should not have accepted the bylaw complaints. I disagree.
51. Bylaw 2.3(1)(b) prohibits unreasonable or repetitive noise. Bylaw 2.7(1)(b)(ii) requires an owner to allow an authorized agent of the strata to enter their strata lot to ensure compliance with the SPA and the strata's bylaws.
52. I find the owner's complaint about the bylaws is in essence about how the strata is applying the bylaws. The owner has complained that the bylaws should not be enforced because the strata should not have accepted the complaint. The owner has also submitted that the bylaws are unenforceable because the bylaw suggests the owner used substandard material which is defamatory. The owner also points to examples where reasonable daily use could be considered repetitive.
53. I find that the owner has not raised a valid issue that the bylaws are not enforceable and I dismiss this claim. I also find the owner has not shown application of the bylaws is unreasonable at the investigation stage. I note that both bylaw 2.3(1)(b) and 2.7(1)(b)(ii) are almost identical to the standard bylaw in the SPA. I also note the Supreme Court has upheld similarly worded bylaws: *Popoff v Krafczyk*, 1990 Canlii 589 (BCSC).

***IS THE OWNER ENTITLED TO AN ORDER REQUIRING THAT THE STRATA COUNCIL MUST OBSERVE THE CONFLICT OF INTEREST PROVISIONS IN SECTION 32 OF THE SPA?***

54. As noted above, the tribunal does not have jurisdiction to consider claims that individual members of the strata council may be in a personal conflict under section 32. Allegations that individual council members may be in a personal conflict of interest are outside the jurisdiction of the tribunal: See *Act*, section 3.6(2), *The Owners, Strata Plan LMS 3259 v Sze Hang Holding Inc.*, 2017 BCCA 346 (Canlii), *Craig v. The Owners, Strata Plan 1526*, 2018 BCCRT 310 (Canlii).
55. I note the owner is not left without any recourse and may bring a Supreme Court action under section 33 of the SPA to remedy a violation of section 32 of the SPA.

***IS THE STRATA REQUIRED TO RECORD THE RESULTS OF ALL STRATA COUNCIL VOTING IN THE STRATA COUNCIL MINUTES INCLUDING PARTICULARS OF BYLAW VIOLATIONS?***

56. Bylaw 3.11(3) specifically requires that 'the results of all votes at a council meeting must be recorded in the council meeting minutes'.
57. The bylaw sets out a minimum requirement that the strata minutes record that the strata has put its mind to an issue and made a decision. Where the minimum requirements set out in the bylaw are met, the strata council minutes will meet the bylaw requirements. I do not find that the strata minutes need to show the distribution of votes, as suggested by the owner. The exact format and detail of how the strata records the results of the votes in the minutes is properly within the discretion of the strata council. This is consistent with the SPA, the bylaws and the law, which recognize strata councils have flexibility in their procedures.
58. I have reviewed the strata council meeting minutes submitted by the owner dating from August 23, 2017 to June 19, 2018. I find the minutes set out the 'results of all

votes at the strata council meeting' as required under bylaw 3.11(3) of the strata bylaws where the minutes indicate a motion was "carried".

59. I do not accept the owner's submission that the strata council meeting minutes are required to include 'particulars' of bylaw infractions. As noted above, the strata has a discretion in setting its procedures, provided it follows the requirements in the SPA, the bylaws and the law. See *Kayne v The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, which found the SPA does not set out any degree of detail for strata minutes except recording the outcome of a vote.
60. I reject the owner's argument that particulars about the bylaw infractions were required in the strata minutes for the owner to appreciate the situation. As described above, the SPA sets out specific requirements to make sure an owner who is facing bylaw infractions receives sufficient information about the alleged bylaw infraction.

***HAS THE STRATA IMPROPERLY FAILED TO ACT ON BYLAW COMPLAINTS  
MADE AGAINST ANOTHER STRATA LOT BY THE OWNER?***

61. I dismiss the claim by the owner that the strata has improperly failed to act on bylaw complaints made against another strata lot by the owner.
62. As noted above, the strata through the strata council is obligated to manage the affairs of the strata. One of the strata council's duties is to receive and consider bylaw complaints. The strata may, after reasonable consideration, decide that no further action is required.
63. I find the owner has not shown the strata was in breach of the SPA and the bylaws in its handling of the 17 bylaw complaints filed by the owner. I find on the evidence the strata acted reasonably in its dealings with the owner and handling the complaints filed by the owner. I find the owner has not shown the strata treated the owner improperly or unfairly.

64. I also note the owner submitted that at least 9 of the bylaw complaints were filed for the purpose of seeking information. The owner also admitted that they filed the complaints in retribution. This further reinforces my decision that the strata properly handled the owner's bylaw complaints.

***IS THE OWNER ENTITLED TO REIMBURSEMENT OF \$255 FOR TRIBUNAL FEES?***

65. As I have found for the strata, the owner is not entitled to reimbursement of the tribunal filing fees.

66. 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.

**ORDERS**

67. For the reasons set out above, I dismiss the owner's claims and this dispute.

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John Chesko, Tribunal Member