



Civil Resolution Tribunal

Date Issued: January 2, 2019

File: ST-2018-001626

Type: Strata

Civil Resolution Tribunal

Indexed as: *Maddocks v. The Owners, Strata Plan VR 1489 et al*, 2019 BCCRT 5

B E T W E E N :

David Maddocks

APPLICANT

A N D :

The Owners, Strata Plan VR 1489 and Jonathan Kidney

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about a noise complaint made against the applicant, David Maddocks by the respondent, Jonathan Kidney. The applicant says that Mr. Kidney made false allegations against him and the respondent, The Owners, Strata Plan

VR 1489 (strata), did not handle the matter properly. The respondents disagree with the applicant's position.

2. The applicant and Mr. Kidney are self-represented. The strata is represented by a member of the strata council.

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 121 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 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
7. Under section 123 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. whether Mr. Kidney should pay the applicant \$75 in damages for making false claims against him;
 - b. whether the tribunal should order Mr. Kidney to stay away from the applicant's door;
 - c. whether the tribunal should order the strata to follow the "recommendations" made in a 2008 arbitration award;
 - d. whether the tribunal should order the strata to follow the guidelines set out in section 135 of the *Strata Property Act* (SPA) when dealing with complaints;
 - e. whether the tribunal should order the strata to publish all decisions made by the strata council in accordance with the SPA;
 - f. whether the tribunal should order the strata to amend the minutes of a February 5, 2018 hearing;
 - g. whether the strata should pay the applicant punitive damages.

BACKGROUND AND EVIDENCE

9. The applicant purchased a strata lot, unit 205, in 2005. The respondent, Mr. Kidney, owns a strata lot, unit 305, with another individual who is not a party to this dispute.
10. The bylaws that apply to this dispute are those filed at the Land Title Office on July 16, 2015. Bylaw 3(1) provides that an owner may not use a strata lot in a way that causes unreasonable noise. Further, bylaw 3(7) states that, between the hours of 11:00 p.m. and 7:00 a.m., residents must not run appliances and must keep the audio level of electronic equipment to such a level that it cannot be heard in the common hallway.

11. Bylaw 20(3) provides that the results of votes at a council meeting must be recorded in the council meeting minutes.
12. It would appear that noise transference is a particular issue in the building due to the nature of its construction. At some point in October of 2017, Mr. Kidney knocked on the applicant's door and asked him to turn down the volume on his television. On subsequent dates, Mr. Kidney and the other occupant of his unit noticed what he described as "excessively loud audio" coming from the applicant's suite late at night. On January 10, 2018, Mr. Kidney wrote an email message to the strata's manager to advise that the applicant's television volume had been interfering with his ability to sleep. He asked for the strata manager's assistance with the "noise problem".
13. The strata manager sent the applicant a bylaw infraction letter dated January 11, 2018. Although addressed to the applicant's unit, the letter contained the name of a different owner. The letter advised that a complaint had been received about noise in unit 205, and granted the addressee an opportunity to answer the complaint. The letter also stated that, in accordance with the bylaws, an owner or tenant may be fined \$75.00.
14. The applicant provided a written response to this letter, and attended a hearing at a meeting of the strata council on February 5, 2018. Following this hearing, the strata council decided not to issue a fine or take further action as the January 11, 2018 letter contained errors and the complaint did not contain sufficient detail to permit the council to evaluate it. This decision was recorded in the minutes and was provided to the applicant in a February 7, 2018 letter from the strata manager.

POSITION OF THE PARTIES

15. The applicant denies that loud noise emanated from his unit as described by Mr. Kidney. The applicant states that Mr. Kidney made a false complaint against him and has "continued to hang around outside [his] door". The applicant says that he is not comfortable approaching Mr. Kidney. He asks that Mr. Kidney be required to pay him \$75 in damages and be ordered to stay away from his door.

16. The applicant says that the strata council is not recording decisions appropriately and is hiding information about the building. He also suggests that members of the strata council have conflicts of interest that are not addressed properly, and that the appropriate procedures for complaints are not being followed. The applicant says that the strata is not in compliance with an order made in a 2008 arbitration decision.
17. The applicant also says that the minutes of the February 5, 2018 meeting should be amended to reflect the actual status of the noise complaint. He also states that the minutes breached his privacy rights by naming him.
18. The applicant asks that the tribunal order the strata to address deficiencies in the conduct of the strata council, and that the strata pay him \$500 in punitive damages.
19. The applicant also made submissions about the nature of Mr. Kidney's flooring, possible construction deficiencies in the building, whether a sound engineer should assess the building, and another resident who may store items in her parking stall. While I acknowledge this information, it does not relate directly to the issues under dispute, and I will not address it further.
20. The respondent, Mr. Kidney, denies that he made false allegations against the applicant. He also denies that he is "hanging around" outside the applicant's door. According to Mr. Kidney, he stood in the hallway to confirm the source of the noise, which he says was audible through the applicant's door. He points out that the bylaw prohibits noise that can be heard in the common hallway. Mr. Kidney submits that he should not have to pay the applicant anything.
21. The strata says that it has an obligation to all owners, and that there should be a fair approach to noise complaints given the noise transference in the building. The strata says it must verify the accuracy of any complaints, which it was unable to do in this case. The strata did identify the facts that would be required when submitting a noise complaint in the future. The strata's position is that it is in compliance with the arbitrator's order in that it records decisions in strata minutes, and that it did not

breach the applicant's privacy. The strata also denies that members of the strata council are acting in a conflict of interest.

ANALYSIS

Should Mr. Kidney Pay Damages to the Applicant

22. The applicant says that Mr. Kidney made a false claim about noise coming from his unit and provided inaccurate information to the strata. He says that he has found this to be stressful, and takes the position that Mr. Kidney should be assessed \$75 in damages for his conduct.
23. The evidence before me establishes that, at the time he made the complaint, Mr. Kidney believed that the noise that was disturbing his sleep was emanating from the applicant's unit. I do not find that he acted in a malicious or inappropriate way when asking the strata manager for assistance in dealing with the matter. I note that Mr. Kidney's evidence is that he did not realize that the applicant could receive a fine as a result of his complaint, and that his intention was that the applicant receive a warning only.
24. The parties may have differing perspectives as to the level of noise in the applicant's unit and whether or not this noise (whatever its source) warranted a complaint. However, based on the evidence, I find that the applicant has not proven his claim that Mr. Kidney made a false complaint against him. I decline to make an order for damages against Mr. Kidney.

Should Mr. Kidney be Ordered to Stay Away from the Applicant's Door

25. The applicant asserts that Mr. Kidney has been "hanging around" outside the door to his unit. Mr. Kidney denies that he has done so.
26. The evidence does not establish that Mr. Kidney has spent time in front of the applicant's door after making the January 2018 complaint, or that he might do so in the future. Further, even if an evidentiary basis existed, I am not satisfied that I have the jurisdiction to make the requested order.

27. The tribunal's jurisdiction in strata property matters is set out in section 121 (formerly section 3.6) of the Act. The tribunal does not have the jurisdiction to grant "no contact" orders or restraining orders (see, for example, *Knibbs v. Kuan et al*, 2018 BCCRT 152 at paragraph 34; and *The Owners, Strata Plan KAS 950 v. McDade et al*, 2018 BCCRT 462 at paragraph 34).
28. In the absence of statutory jurisdiction, I refuse to resolve this aspect of the applicant's claim under section 10 of the Act.

Should the Strata be Ordered to Follow the 2008 Arbitration Award

29. The applicant's submissions refer to a previous dispute with the strata over the enforcement of pet and noise bylaws which resulted in arbitration. A September 18, 2008 Final Arbitration Award addressed allegations of bylaw breaches of a former owner in the strata, as well as allegations of inappropriate conduct on the part of the strata council. The arbitrator found that, at that time, there was not a uniform practice to document issues that were discussed and decided between meetings by members of the strata council.
30. There were also concerns regarding inconsistent application of the pet bylaw. At paragraph 97, the arbitrator stated that the "Strata Council's documentation of decisions in its minutes and its handling of votes or decisions made that related to Strata Council members, lacked consistency and transparency which has contributed in part to [the applicant's] complaints here."
31. In 2008, it would appear that noise complaints were being made and addressed on an informal basis. The arbitrator noted at paragraph 101 that "in order for the Strata Council to deal with it effectively, they need to know what type of noise it is, what the levels are and when it is occurring. They need to be able to analyze whether it is simply an increased sensitivity to daily living noise or whether something else is going on."
32. At paragraph 102, the arbitrator discussed deficiencies in record-keeping, finding that the strata council "did not ensure that the result of all decisions or votes

(recognizing that many decisions are made by consensus, which is the same as a unanimous vote in favour of the decision) were reflected in the minutes as required by the [SPA]”. While the arbitrator acknowledged the importance of keeping personal details out of the minutes for privacy concerns, she stated at paragraph 104 that “it does remain necessary to include enough information about votes and decisions made by Strata Council to allow the owners to know what is going on”. She also stated at paragraph 105 that “[i]f a Strata Council member abstains from a vote or decision because of a personal interest in the matter, that should be specifically referred to in the minutes. This is for the protection of both the Strata Council and the Strata Council member making the request”.

33. As set out at paragraph 193 of the award, the arbitrator ordered the strata council record in the minutes of future meetings all decisions made, whether by formal vote or by consensus. For decisions made with respect to members of the council, the arbitrator ordered that the council record the decisions, including whether the council member in question attended, made submissions or abstained from the vote or decision. The arbitrator also ordered that the strata council follow the provisions of the SPA in handling complaints by council members against other owners, and in handling complaints by owners against council members.
34. Although the applicant suggests that the strata has not been complying with the “recommendations” made in the arbitration award, a review of the minutes provided in evidence appears to show that it has.
35. The available minutes document and record decisions made by the strata council. Some minutes also make note of whether there was a split in the votes, identifying how many votes were in favour and against an issue. While it does not appear that all decisions are explicitly identified as being unanimous or made by consensus, I do not find that this contravenes the order made by the arbitrator as the decisions themselves are documented. I am satisfied that the minutes contain sufficient information for an owner to determine what occurred. I also note that the SPA does not require that the minutes record the discussions that lead to a decision (see

Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.), 2016 BCSC 2147 and *Kayne v. Strata Plan LMS 2374*, 2007 BCSC 1610).

36. The minutes also make note of situations that involve potential conflicts of interest for strata council members. The minutes also show when council members with a potential conflict of interest do not participate in a particular discussion, and identify whether or not these members return to the meetings after the pertinent discussions conclude.
37. Based on the evidence before me, I find that the issues with consistency and transparency that were identified by the arbitrator have been rectified. As the strata is following the arbitrator's decision, it is not necessary for me to make an order in this regard.

Should the Strata be Ordered to Comply with Section 135 of the SPA

38. Section 135 of the SPA deals with the complaint, right to answer and notice of decision. It provides that a strata corporation must not impose a fine against a person for a contravention of a bylaw or rule unless it has received a complaint about the contravention; given the owner the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested.
39. In this case, the strata manager sent the January 11, 2018 letter regarding the noise complaint before the strata council became aware of the issue. The strata council granted the applicant's request for a hearing and provided him with information he requested. It would also appear that the strata manager asked Mr. Kidney for further information, which was disclosed.
40. After the hearing at the February 5, 2018 council meeting, the strata decided not to take further action or impose a fine. In addition to identifying errors in the January 11, 2018 letter, the strata council determined that the information in the complaint was insufficient to support a fine. The minutes from this meeting also state that the strata will not process any bylaw complaints that do not contain information about

the date, time, place, duration of incident, and other facts necessary to make a decision.

41. I acknowledge the applicant's view that it was difficult for him to obtain information from the strata council and/or strata manager regarding the complaint. However, there is no indication that he did not receive all the information he requested. The applicant also received a hearing with the strata council before being advised of the decision. In the circumstances, I find that the strata provided particulars of the complaint, a right to answer and notice of its decision after the hearing.
42. I find that the strata's conduct was consistent with the requirements of section 135 of the SPA. Therefore, it is not necessary for me to issue an order to ensure its compliance.

Should the Strata be Ordered to Publish Decisions as required by the SPA

43. Section 35 of the SPA addresses the records of a strata corporation. It requires that the strata corporation prepare, among other things, "minutes of annual and special general meetings and council meetings, including the results of any votes".
44. As noted above, bylaw 20(3) also provides that the results of votes at a council meeting must be recorded in the council meeting minutes.
45. I have already found that the strata council's decisions are being recorded in the minutes as contemplated by the 2008 arbitration order. In addition, I have found that previous deficiencies regarding recording decisions and possible conflicts of interest appear to have been addressed. My review of the evidence provided suggests that this applies not only to the minutes of regular council meetings, but to the minutes of annual and special general meetings.
46. As the strata is in compliance with section 35 of the SPA (and its own bylaw), it is not necessary for me to make an order in this regard.

Should the February 5, 2018 Minutes be Amended

47. The applicant requests that the minutes of the February 5, 2018 be amended to remove his name, as he feels it was a breach of his privacy to identify him. The minutes name the applicant as a guest at the strata council meeting for the purpose of a hearing. The portion of the minutes that discusses the hearing and complaint does not contain any personal information about the applicant or details of the complaint, other than identifying it as relating to noise.
48. The applicant does not dispute the notion that the minutes should accurately reflect who is in attendance at a meeting of a strata council. The minutes in question contain no other personal information. I do not find that the listing of the applicant's name amounted to a breach of his privacy, and find that there is no basis to amend the minutes to remove his name.
49. The applicant's primary concern appears to be that the minutes accurately reflect the status of the complaint against him. He asks that the minutes be amended to reflect that the warning letter sent to him was unfounded rather than withdrawn. His view appears to be that the strata council's decision "not to issue a fine or take further action at this time" is not reflective of a final decision.
50. I am satisfied that, based on the evidence, the strata council made a decision about the complaint and that it has been dealt with. I note that the February 7, 2018 letter from the strata manager to the applicant advised that the complaint was removed from the strata's record. This is not indicative of an unresolved or ongoing matter. I would point out that there is nothing to prevent the strata from investigating a new complaint, should one be made in the future.
51. Although the applicant feels that the complaint made against him was baseless, I do not agree with his position that the minutes should be amended to describe the complaint as "unfounded". The strata council's determination was that there was insufficient evidence about the complaint, and that there were errors in the initial letter to the applicant. It did not investigate the matter and make a specific finding

for or against the applicant. In these circumstances, describing the complaint as unfounded would not be reflective of the facts.

52. I am satisfied that the minutes of the February 5, 2018 strata council meeting and hearing contain an accurate description of what occurred. I decline to order that they be amended as requested by the applicant.

Should the Strata Pay the Applicant Damages

53. The applicant requested an order that the strata pay him \$500 in punitive damages. This request appears to be based on his view that the strata had not followed the 2008 arbitration order.

54. As discussed above, I have made a finding that the strata followed the order made by the arbitrator. Even if it had not, I would not be inclined to make an order for this type of award. Punitive damages are reserved for situations involving conduct that is malicious and high-handed, and I do not find the circumstances here to be consistent with that conduct.

55. I decline to make an order for punitive damages payable by the strata.

TRIBUNAL FEES AND EXPENSES

56. 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.

57. The applicant requested reimbursement for tribunal fees and expenses for land title searches, registered mail delivery and photocopying expenses, and an amount for income he lost due to participating in the tribunal's process. As the applicant was not successful, I dismiss his claim for tribunal fees and dispute-related expenses. Even if I had found in favour of the applicant, I would decline to make an order for lost income as the tribunal generally does not award a party expenses for their own time spent on a dispute.

58. Mr. Kidney did not claim any tribunal fees or dispute-related expenses. The strata had asked for reimbursement of tribunal fees, but later advised that this fee had been refunded by the tribunal and that it considered this issue to be resolved. Accordingly, I make no order for the reimbursement of fees or expenses to the respondents.

59. 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

60. I order that the applicant's claims, and this dispute, are dismissed.

Lynn Scrivener, Tribunal Member