



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

Victor Therrien and Fiona Therrien

APPLICANTS

A N D :

The Owners, Strata Plan LMS 3057

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicants, Victor Therrien and Fiona Therrien (tenants), are tenants of Delight Enterprises Ltd. (owner) which owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 3707 (strata).

2. This dispute involves the tenants' use of an electric vehicle trickle charger (EVTC) in the strata's underground parking area, the application of the strata's rules and bylaws surrounding the use of EVTCs, and the tenants' request for records and documents relating to user fees involving EVTCs and to vandalism to their vehicle.
3. The tenants seek orders that the strata
 - a. provide them with records and documents supporting user fees relating trickle chargers and vehicle vandalism,
 - b. ratify rules involving the use of EVTCs,
 - c. apply equal treatment to all residents who are approved to use EVTCs, and
 - d. cease harassing the tenants' family members.
4. The tenants are represented by Fiona Therrien. The strata is represented by a strata council member.
5. For the reasons that follow, I find the strata must provide the tenants with certain requested records and documents described below and reimburse the tenants for one-half of their tribunal fees, being \$112.50. I dismiss the balance of the tenants' claims.

JURISDICTION AND PROCEDURE

6. 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.
7. 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.

8. 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.
9. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Has the strata provided the tenants with documentation they requested supporting the EVTC user fees and about vandalism to the tenants' vehicle? If not, should I order the strata to do so?
 - b. Does the strata need to ratify its rules about the use of EVTCs?
 - c. Should I order the strata to treat all of its residents who use EVTCs equally?
 - d. Has the strata harassed the tenants' family members and, if so, should I order the strata to cease such harassment?

BACKGROUND, EVIDENCE AND ANALYSIS

11. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
12. In a civil proceeding such as this, the applicant tenants must prove their claim on a balance of probabilities.
13. The strata was created in 1997 and consists of a 107-unit residential high-rise located in Vancouver, B.C.

14. On March 13, 2012, the strata filed bylaw amendments at the Land Title Office about
 - a. the use of electrical outlets in the strata's parkade for a vehicle trickle charger be submitted to its property manager for approval prior to it being used (bylaw 41.1(gg)), and
 - b. Privacy matters concerning collection and disclosure of personal information including recordings relating to video surveillance cameras (Division 8, bylaws 1 to 7).
15. In December 2017, the strata wrote to the owner advising that their tenants parking in stall 38 were using a nearby electrical outlet to charge their electric vehicle contrary to bylaw 41.1(gg) and asked that charging of the vehicle cease. The strata took the position that the outlets were for the use of trickle chargers and not for the use of charging electric vehicles. The letter did not distinguish the difference between trickle charging and fully charging an electric vehicle.
16. The strata took the position that the term "vehicle trickle charger" used in bylaw 41.1(gg) was commonly understood to be portable device that is attached to the battery of an internal combustion engine.
17. The tenants disagreed with strata's definition of "trickle charger" and advised the strata that the tenant's charger was indeed a trickle charger used to charge their electric vehicle and was compliant with bylaw 41.1(gg). In an email dated December 17, 2017, the tenants sought approval to charge their vehicle using a EVTC plugged into a 110-volt electrical outlet next to their parking stall and requested a hearing with the strata council, if approval was not granted.
18. On December 20, 2017, the strata wrote to Victor Therrien confirming receipt of his email advising the strata council would consider his request at its next meeting. The letter also stated that all residents using common electrical outlets in the parkade to charge electric vehicles had been asked to not to do so as permission was granted for temporary use only. Finally, the letter advised that the strata would be presenting

a resolution at the next annual general meeting (AGM) to approve the installation of electric car chargers with a user fee of approximately \$400 per year.

19. On the same date, in response to the tenants' request for a hearing, the strata wrote to the owner (with a copy to the tenants) inviting the owner to the January 17, 2018 council meeting.
20. On December 27, 2017 and again on January 5, 2018, the tenants requested copies of information about other residents who the tenants witnessed were using similar charging arrangements. In particular, they requested details of requests made and the strata's approval for the trickle chargers of several vehicles they say were plugged into common electrical outlets in the parkade. The tenants identified stall numbers and vehicle manufacturers for 8 electric vehicles, 2 motorcycles, and 1 scooter in the parkade that were using 110-volt outlets to charge their electric vehicles and 2 scooters parked in what they say were common areas of the parkade.
21. On January 17, 2018, the strata wrote to the owner declaring it had decided not to take any further action for the earlier alleged contravention of bylaw 41.1(gg).
22. Also on January 17, 2018, the strata council approved a rule permitting the use of 110-volt electrical outlets for charging electrical vehicles to a maximum of 8 hours per day provided the trickle charger met certain guidelines, was approved by the strata before being used, and the user (here the tenants) signed a user agreement that formed part of the rule. The rule purported to permit the strata to charge user fees of either \$25 or \$50 per month for the use of an electrical outlet. The lesser user fee for hybrid vehicles and the greater user fee for fully electric vehicles. The strata council minutes show the tenants attended the meeting and that requests to use parking stall electrical outlets had been received from "a tenant and an owner".
23. On January 22, 2018 the strata wrote to the owner (with a copy to the tenants) approving the owner's use of the outlet near their parking stall under the newly adopted rule provided the tenants signed the user agreement. The letter stated the \$50 monthly user fee would be assessed to the owner's strata lot.

24. On January 29, 2018, Fiona Therrien wrote to the strata property manager requesting the following:
- a. Updated strata bylaws,
 - b. Updated ratified rules of the strata,
 - c. Formulae used to establish the user fees for trickle chargers, noting there appears to be different formulae for different vehicles,
 - d. Permission letters for all residents currently using parkade electrical outlets, along with the user fee charged to them,
 - e. Confirmation on the enforcement of the rule with respect to the limitation on the number of hours in a 24-hour period that a vehicle may be plugged in, noting the existing trickle chargers are plugged in without interruption.
25. In a February 5, 2018 letter to the owner, in addition to confirming a rule violation letter was sent to the tenants, the strata acknowledged receipt of the tenants' request for documentation but stated the documents could not be provided, citing section 36(1) of the *Strata Property Act* (SPA) as the reason why.
26. Section 36(1) provides that a strata corporation must make the records and documents referred to in section 35 of the SPA available for inspection by and provide copies of them to:
- a. An owner,
 - b. A tenant who has been assigned the landlords right to inspect and obtain copies of record and documents, or
 - c. A person authorized in writing by an owner or tenant referred to in a) or b) above.
27. In the February 5, 2018 letter to the owner, the strata stated that in order for it to send the tenants the information they requested, the owner must provide the strata with a letter that it is "relinquishing [its] rights as an Owner to vote at [general meetings] receive important notices and reports, etc." I disagree with the strata's

characterization of what the owner was required to provide as the strata's request does not align with section 36 of the SPA as described above. There is nothing in section 36 that requires an owner to give up their voting rights and nothing that relieves the strata's obligation to provide relevant meeting notices to the owner. However, I find nothing turns on the statements made by the strata in its February 5, 2018 letter to the owner.

28. The Dispute Notice for this strata property claim was issued on February 16, 2018. This timing is relevant given the AGM that was held shortly afterward, as discussed below.
29. The strata passed a new bylaw 42 at its March 7, 2018 AGM that included the same wording as contained in the January 17, 2018 rule, including the user agreement. The bylaw amendment was registered at the Land Title Office on March 9, 2018.
30. In a March 19, 2018 letter to owner, the strata advised that it had sent a survey to all residents who were using a trickle charger but had not received any responses. The letter included a survey on the use of trickle chargers and requested the owner return the completed survey by May 1, 2018.
31. On April 5, 2018, the tenants reported vandalism of their electric vehicle to the strata's property manager and requested copies of video camera surveillance recordings to assist them and the police in determining who caused the damage.
32. On April 30, 2018, after the tenants advised the owner that the strata's property manager refused to provide them with the requested documentation, a representative of the owner provided email authorization for Fiona Therrien "to obtain documents pertaining to the vehicle charging and assist the Police to tackle the subsequent vandalism incident."
33. An email from the property manager to the tenants on the same date directs the tenants to forward any requests for documents to the tribunal.

Has the strata provided the tenants with their requested documentation supporting the EVTC user fees and vandalism to the tenants' vehicle? If not, should I order the strata to do so?

34. The tenants say that of the documents they requested in Ms. Therrien's January 29, 2018 email described above, they only received an incomplete copy of the strata's bylaws and rules slipped under their strata lot entrance door.
35. The strata says that the owner did not request any records or documents, assign its rights to the tenant to inspect or obtain records or documents, or authorize the tenants to request records and documents as required under section 36(1) of the SPA. The strata also says that the authorization provided by the owner on April 30, 2018 as described above is immaterial to these proceedings because it occurred after the Dispute Notice was issued. I disagree.
36. Based on my review of the evidence, I find the owner did authorize Ms. Therrien to obtain the January 29, 2018 requested records and documents and they are not immaterial to these proceedings. Rather, they are a substantive claim of the tenants made before the Dispute Notice was issued. I also find the requested documents are required to be kept by the strata under section 35 of the SPA, noting that disclosure of formulae for calculating user fees and enforcement of the rule (now bylaw 42) about enforcing time limitations for charging vehicles, is only required if these are matters contained in correspondence issued or received by the strata or strata council under section 35(2)(k) of the SPA.
37. As a result, I find the tenants are entitled to receive the documents requested in Ms. Therrien's January 29, 2018 email as clarified above, and I order the strata to make them available to the tenants, if they exist. The tenants must advise the strata within 15 days of the date of this decision if they wish to view the records and documents or if they wish to have copies of them. If copies are requested, the strata is entitled to charge \$0.25 per page.
38. The tenants' also requested video surveillance camera recordings from the date their vehicle was damaged in the evening or April 4 or early morning of April 5, 2018. I find the owner authorized the recordings to be released to the Ms. Therrien

on April 30, 2018 and that the strata's bylaw addressing its privacy policy expressly states that personal information includes video images obtained via the "video surveillance system" and that such records will be disclosed upon request during the course of criminal investigations involving vandalism to a tenant's personal property as set out Division 8 bylaws 1 through 7.

39. Based on my review of the Division 8 bylaws and given the owner's authorization for Fiona Therrien to obtain this information, I find the strata is required to make such recordings available to the tenants if they are still available
40. I order the strata to make the above described records and documents available to the tenants within 10 days of the date it receives the tenants request about viewing or receiving copies of the records and documents.

Does the strata need to ratify its rule about the use of the EVTCs?

41. The tenants seek an order that the strata ratify its January 17, 2018 rule about the use of trickle chargers. They say the user fee contained in the rule cannot be imposed, until the rule is ratified.
42. While I agree with the tenants that *Strata Property Regulation* (regulation) 6.9 does not permit the strata to charge a user fee until the rule has been ratified, I find the ratification of the rule is not required considering the rule was converted to bylaw at the March 7, 2018 AGM.
43. So even though, under section 125(6) of the SPA the rule ceased to have effect on March 7, 2018 because it was not ratified at the AGM held on that date, the newly adopted bylaw containing the same wording and user fees is enforceable from March 9, 2018, the date it was registered.
44. In their final reply, the tenants submit the strata's new bylaw 42 approved at the is contrary to the SPA. They argue that amendments to regulation 6.9, that came into force on March 7, 2018 during the course of these proceedings, clarify that variable user fees are permitted but that none of the criteria set out in regulation 6.9(2) is contained in the bylaw.

45. The March 7, 2018 amendment to regulation 6.9 states:

Section 6.9 is amended by renumbering the section as section 6.9(1) and by adding the following subsection:

(2) A user fee imposed by a strata corporation may be a fixed amount or an amount determined on a reasonable basis, including, but not limited to, the following:

- a. The user's rate of consumption;
- b. The recovery of operating or maintenance costs by the strata corporation;
- c. The number of users;
- d. The duration of use. [Emphasis added]

46. I disagree with the tenants' interpretation of the amendment as I find regulation 6.9(2) is discretionary and does not set requirements that must be used by a strata corporation but rather guidelines that a strata corporation may use.

47. Although the parties provided evidence as to the cost of charging an electric vehicle, the tenants did not argue that the amount set out in the bylaw was unreasonable.

48. For these reasons, I find the strata does not need to ratify its January 17, 2018 rule and I decline to grant the order sought by the tenants.

49. I note the evidence suggests the strata-imposed fines against the owner of the tenants' strata lot under the unratified rule. However, the owner is not a party to this dispute and the tenants do not claim relief from such fines and I find that any issue about fines imposed under the unratified rule are not before me.

50. I also note that submissions were made by both parties about bylaw fines and proper notification being given under section 135 of the SPA. Given the tenants did not claim relief from bylaw fines I do not find these submissions to be relevant and I will not consider them. However, I would caution the strata to ensure it strictly

follows section 135 of the SPA by assessing fines against the tenants directly to the tenants rather than through the owner, and, that under section 130 of the SPA, the strata cannot fine an owner for their tenants' bylaw breach.

Should I order the strata to treat all of its residents who use EVTCs equally?

51. Based on the evidence, I do not find that the strata has treated the tenants differently than other owners or tenants in the strata. The requested documentation about approval to use 110-volt electrical outlets in the parking garage prior to bylaw 42 being passed in March 2018 was not provided to the tenants and is not before me so it is not possible for me to determine if a different basis of approval was used for residents other than for the tenants.
52. I have not been provided with evidence to suggest the strata's different user fees for hybrid vehicles and full electric vehicles is unreasonable.
53. Further, it is undisputed that the strata sent out a survey to all strata residents using the parkade electrical outlets following the passing of bylaw 42. The results of the survey were not provided as evidence nor were any approvals given by the strata as result of receiving a completed survey.
54. For these reasons, I do not find the tenants were treated differently than other residents in the strata who charge electrical vehicles in the parkade.
55. Accordingly, I decline to grant the order sought by the tenants in this regard.

Has the strata harassed the tenants' family members and, if so, should I order the strata to cease such harassment?

56. The tenants allege that the strata's concierge and property manager have harassed their family members but have not provided any evidence to support these allegations. Nor are the concierge and property manager named parties in this dispute or likely permitted to be named in this dispute under the tribunal's strata property claim jurisdiction.
57. Accordingly, I decline to grant the order sought by the tenants in this regard.

58. As part of their submissions, the tenants say their privacy was breached by the strata's concierge and property manager. I note that the alleged breach of privacy was not originally claimed by the tenants and I decline to address it.

TRIBUNAL FEES AND EXPENSES

59. 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 find the tenants were partially successful and I order the strata to reimburse them one-half of their tribunal fees, or \$112.50.

60. The tenants made no claim for dispute-related expenses, so I make no order in that regard.

61. 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.

ORDERS

62. I order that the tenants must, within 10 days of the date of this order, provide written direction to the strata as to whether they wish to view or receive copies of the records and documents listing in paragraph 63 below.
63. I order that the strata must, within 10 days of receiving written direction from the tenants or one of them, provide the tenants with the following records and documents, if they exist:
- a. Updated strata bylaws,
 - b. Updated ratified rules of the strata,
 - c. Correspondence sent or received by the strata or strata council that identifies formulae used to establish the user fees for trickle chargers,
 - d. Permission letters for all residents currently using parkade electrical outlets, along with the user fee charged to them,
 - e. Correspondence sent or received by the strata or strata council that confirms the enforcement of the rule or bylaw with respect to the limitation on the number of hours in a 24-hour period that a vehicle may be plugged in,
 - f. Video surveillance camera recordings of the evening of April 4 or early morning of April 5, 2018 from the parkade camera(s) located near the tenants' vehicle.
64. I also order the strata to pay the tenants \$112.50 for tribunal fees.
65. The owner is entitled to post-judgement interest under the *Court Order Interest Act*, as applicable.
66. I order that the tenants' remaining claims are dismissed.
67. 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.

68. 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.

J. Garth Cambrey, Vice Chair