



# Civil Resolution Tribunal

Date Issued: February 4, 2019

File: ST-2016-00516

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan NW 1340 v. Ross*, 2019 BCCRT 139

**B E T W E E N :**

The Owners, Strata Plan NW 1340

**APPLICANT**

**A N D :**

Gordon Ross

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

J. Garth Cambrey, Vice Chair

## **INTRODUCTION AND JURISDICTION**

1. This is a summary decision of the Civil Resolution Tribunal (tribunal). It involves a request by the applicant strata corporation, The Owners, Strata Plan NW 1340 (strata), to withdraw its claims and an issue of non-compliance by the respondent,

Gordon Ross (owner). Only the evidence and submissions relevant to this dispute is referenced below.

2. Both parties are self-represented, with the strata represented by a strata council member.
3. Section 36 of the *Civil Resolution Tribunal Act* (Act) applies if a party to a dispute fails to comply with the Act or its regulations. It also applies if a party fails to comply with tribunal rules in relation to the case management phase of the dispute, including specified time limits, or an order of the tribunal made during the case management phase. After giving notice to the non-compliant party, the case manager may refer the dispute to the tribunal for resolution and the tribunal may:
  - a. Hear the dispute in accordance with any applicable rules;
  - b. Make an order dismissing a claim in the dispute made by the non-compliant party; or
  - c. Refuse to resolve a claim made by the non-compliant party or refuse to resolve the dispute.
4. 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).
5. Tribunal documents incorrectly show the name of the respondent as The Owners, Strata Plan, NWS 1340, whereas, based on section 2 of the SPA, the correct legal name of the strata is The Owners, Strata Plan NW 1340. 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.

6. Tribunal rule 133 provides that a party can request permission to withdraw their claims before the end of facilitation by following the directions of the case manager. The strata has requested permission to withdraw its dispute and the case manager has made several unsuccessful attempts to contact the owner to seek their agreement.
7. The respondent owner is the non-compliant party in this dispute and has failed to participate in the case management phase, as required by section 25 of the Act and tribunal rules 94 and 96, by not responding to the case manager.
8. The case manager has referred this issue to me for a decision.
9. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 121 of the 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.
10. For the reasons that follow, I find the dispute should be withdrawn.

## **ISSUE**

11. The issue before me is whether I should approve the applicant strata's request to withdraw its dispute.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. The case manager provided me with the details of the owner's non-compliance by not participating in the tribunal's case management process.
13. At the time of the owner's non-compliance the dispute was in the tribunal's case management phase. A Dispute Notice was issued, and a Dispute Response was provided by the owner, but the parties had not begun the tribunal decision process,

in which the parties provide their evidence and prepare their submissions so that a tribunal member can make a binding decision.

14. The respondent owner participated in the tribunal's facilitation process but has failed to respond to the case manager's request as to whether they agree with strata's request to withdraw its dispute.
15. In particular, the owner has failed to respond to the case manager's request for agreement to the withdrawal of the dispute.
16. On October 9, 2018, the case manager emailed the owner advising the strata wanted to withdraw its claims and asked the owner to confirm if they agreed.
17. On October 19, 2018, the case manager sent another email to the owner asking if they agreed to the withdrawal and gave a deadline of October 25, 2018 to provide an email response.
18. On December 17, 2018, the strata asked the case manager for an update on its request to withdraw. On the same date, the case manager telephoned the owner at 2 different numbers: at one number he received an automated "not in service" recording, and at the other number he left a voice message asking for a return telephone call.
19. On January 4, 2019, the case manager mailed the owner a December 28, 2018 letter giving them a deadline of January 17, 2019 to respond. The letter set out that if a response was not received by the deadline the matter would be referred to a tribunal member with the case manager's recommendation that this dispute be withdrawn without the owner's consent. The letter cited section 36 of the Act as I have set out above.

***Should I approve the applicant strata's request to withdraw it dispute?***

20. For the following reasons, I allow the strata's request to withdraw its claims.
21. Based on the evidence described above, I find that the owner had proper notice of the strata's withdrawal request. I also find the owner knew the consequences if they failed to participate and that the tribunal proceeding could continue without their participation.
22. Where a respondent filed a response but has since failed to comply with the tribunal's directions, I find I can draw an adverse inference against the respondent. This concept is similar to where liability is assumed when a respondent has failed to provide any response to the dispute causing the respondent to be in default. In other words, if the owner refuses to participate in the claim, it is reasonable that I assume that the strata's position is correct.
23. In exercising my discretion under section 61 of the Act, I find the strata's claims should be withdrawn.
24. The tribunal's resources are valuable and its mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly is severely impaired if one party does not want to participate. I find that it goes against the tribunal's mandate to continue to hear this dispute.
25. Rather, I find it would be prudent, practical and in keeping with the objects of the tribunal in accordance with its mandate to grant the strata's request to withdraw its claims and I so order.
26. Given my conclusion above, I find it is not necessary for me to consider the non-compliance issue.

**TRIBUNAL FEES AND EXPENSES**

27. Under section 49 of the Act and tribunal rule 131, the tribunal can make orders regarding payment of fees or reasonable expenses in the case of a withdrawal. The

strata paid \$125 in tribunal fees and may have had dispute-related expenses. However, given the strata received a Dispute Response before seeking permission to withdraw its claims, I find it is not entitled to reimbursement of fees. For the same reason, I also find the strata must bear its own expenses.

## **ORDER**

28. I order that the strata's claims, and therefore this dispute, be withdrawn.

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J. Garth Cambrey, Vice Chair