



Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Bodnarchuk et al. v. The Owners, Strata Plan NW 2730*, 2019 BCCRT 427

B E T W E E N :

Peter Bodnarchuk and Alarra K. Hewstan

APPLICANTS

A N D :

The Owners, Strata Plan NW 2730

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicants, Peter Bodnarchuk and Alarra K. Hewstan, are the owners of a strata lot in the respondent strata corporation, The Owners, Strata Plan NW 2730 (strata). The applicants bring this dispute because they have concerns over the strata's attempts to replace privacy screens and fences on the applicants' ground

floor balcony. The applicants also take issue with some aspects of the strata's governance.

2. The strata says that it has not made any decisions about the privacy screens and fences, so this dispute is premature. The strata asks that I dismiss the applicants' claims.
3. The applicants are self-represented. The strata is represented by a member of strata council.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
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.

ORDERS SOUGHT AND ISSUES

8. The applicants seek the following orders:
 - a. That the strata stop its “illegal attempt” to change the fencing and lot lines around the applicants’ balcony.
 - b. That the strata be prohibited from removing retaining walls because doing so would cause issues with the building’s waterproof membrane.
 - c. That the strata comply to the SPA, regulations and bylaws related to giving notice of meetings and recording meeting minutes.
 - d. That the strata council adhere to the Code of Conduct that they signed.
 - e. That the strata conduct itself with honesty and transparency.
 - f. That the applicants be permitted to live without fear of reprisal and property devaluation.
 - g. That the strata pay the applicants \$2,600 in travel costs for attending a strata council hearing.
9. The strata argues that the applicants’ claims about the patio fences are premature because it has not made a decision about how to proceed. The strata also says that it has complied with the SPA and the bylaws in how it has approached issues with the patio fences. The strata asks that I dismiss the applicants’ dispute. The strata also seeks an order that the applicants reimburse the strata for expenses of \$7,445.
10. The issues in this dispute are:
 - a. Is it premature to assess the strata’s plans to replace the current privacy screens and fences? If not, are the strata’s plans significantly unfair to the applicant?
 - b. Should I make any orders about the conduct of the strata council or its members?

- c. Are the applicants entitled to be reimbursed for their travel expenses to attend a strata council hearing?
- d. Should I address the applicants' other allegations?

BACKGROUND AND EVIDENCE

11. In a civil claim such as this, the applicants must prove their case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision. In addition, while I have reviewed all of the caselaw that the parties provided, I only refer to those cases I consider relevant to the outcome of this dispute.
12. The strata consists of 56 residential strata lots in a 3 story building in Surrey. The applicants own strata lot 2, which is on the strata's ground floor. The applicants' purchased their strata lot in 2006. There are a total of 18 ground floor strata lots.
13. All of the ground floor strata lots have patios, except for one that has a balcony. Most of the patios are each enclosed by wood fences that also act as privacy screens.
14. The history of these fences is somewhat murky. The building was constructed in 1989. Apparently, although not part of the original plan, the owner developer installed privacy screens in front of the ground floor patios. These privacy screens were freestanding fences that were parallel to the building. They did not extend to the building, leaving the sides of the patios open.
15. Over the years, most of the ground floor owners added to the privacy screens so that they fully enclosed the patios. According to the strata, some of the ground floor owners sought permission from the strata to extend the fences to enclose the patios. Those owners entered into written agreements that they would be responsible for all future maintenance of the fence extensions. Other owners built the fence extensions without permission. According to the strata, 16 of the 17

ground floor strata lots with privacy screens have added extensions to enclose their patios. Some of the fence extensions have gates.

16. The parties dispute whether these structures should be called fences or privacy screens. I find that the distinction is irrelevant, but for clarity I will refer to the original structures that ran parallel to the building as privacy screens and the extensions that the owners built to enclose the patios as fence extensions. I will refer to the entire structures as fences.
17. There is a dispute over whether the fences are located on common property or limited common property (LCP). Each of the patios has a small patio that the strata plan shows is designated as LCP for the exclusive use of the adjacent strata lot. The strata says that the privacy screens are located between 0.25 and 1.25 meters from the boundary of each strata lot's LCP, thereby fencing off part of the strata's common property. Neither party submitted a survey. The strata says that it is clear that the initial privacy screens were on common property because the boundary of each of the ground floor strata lots' LCP is flush with the building and the privacy screens are farther away from the building.
18. I do not have sufficient evidence to conclude that all of the original privacy screens are on common property, as the strata alleges. Based on the strata plan and the photographs of the applicants' patio area, it appears that the privacy screen in front of the applicants' patio is on common property, not LCP designated to the applicants' strata lot. It may be that the rest of the privacy screens are also on common property, but because of my findings below, I find that I do not need to determine this issue.
19. There are also retaining walls made of treated wood surrounding the building. None of the retaining walls in the photographs that the parties provided are more than a foot high. Some parts of the retaining walls are inside the enclosed patio areas.
20. The strata filed a complete set of bylaws on January 21, 2002, which replaced all previous bylaws. Bylaw 14 places the obligation on the strata to repair and maintain common property, which reflects the provisions of section 72 of the SPA.

21. On December 16, 2009, the strata filed a bylaw amendment in the Land Title Office replacing the previous bylaw about alterations to common property. The new bylaw goes into significant detail about an owner's ability to alter common property, including fence extensions. However, there is no evidence about whether any of the fence extensions erected by owners, discussed below, have been built since the strata filed this bylaw.
22. On March 15, 1993, the strata's property manager wrote to the former owner of the applicants' strata lot noting that she had constructed a patio fence and gate around the patio area of her strata lot. I infer that the strata is referring to the construction of fence extensions to enclose the patio. The property manager said that this construction was contrary to the strata's bylaws. Nevertheless, the strata retroactively approved the construction but advised the former owner that she would be responsible for the repair and maintenance of the fence extensions. The applicants received a copy of this letter when they purchased their strata lot.
23. The strata received a depreciation report on September 9, 2013. The report stated that the fences were subject to decay and would eventually require replacement. The report estimated that the fences would need to be replaced in 2028.
24. In 2014 and 2015, the strata set out several proposals for the funding of capital projects, which included funds for the replacement of the fences.
25. On April 12, 2016, an engineer provided a building envelope condition assessment to the strata. The engineer recommended removing and replacing all wood components of the fences, noting that a large number of the landscape ties comprising the retaining walls were decayed and almost hollow.
26. The strata held information sessions on April 25, 2016, and January 23, 2017, to discuss capital and non-routine maintenance. The strata advised that it was seeking information about its options for replacing the fences.
27. On October 6, 2017, the strata received a lengthy legal opinion about the fences. The strata's lawyer identified several issues that the strata would have to deal with if

it wished to replace the fences. First, the strata's lawyer advised that the strata should address the fact that some of the ground floor owners' patios were in fact common property, not the owners' LCP. Second, the strata's lawyer advised that the strata's discretion to decide how to replace the fences was constrained by section 71 of the SPA. Section 71 of the SPA says that the strata cannot make a significant change in the use or appearance of common property without a resolution passed by a $\frac{3}{4}$ vote at a general meeting. Third, the strata's lawyer advised that an owner may apply to the Court or the tribunal if they considered the strata's decision to be significantly unfair. The strata's lawyer also provided an opinion about who would have to pay for the removal and replacement of the fences, given the history of how they were constructed.

28. The strata council provided a copy of the legal opinion to the owners and held information meetings on November 7 and 15, 2017. The strata suggested that it remove the fences and replace the original privacy screen with a hedge. The strata suggested that the hedges be planted at the edge of each ground floor strata lot's LCP patio, rather than in their current location, which would effectively shrink the size of each ground floor owner's patio. Each owner would be allowed to install new fence extensions to enclose their patios at their own expense as long as they signed an assumption agreement.
29. The strata held a special general meeting on December 11, 2017 (SGM), which the strata's lawyer attended. The purpose of the SGM was to consider a resolution to remove the fences without replacing them and planting hedges. At the SGM, a group of owners presented a petition opposing the proposal to remove the fences and replace with hedging. 24 of the strata's 56 owners signed the petition, including 10 of the ground floor owners.
30. The strata council proposed a resolution that the hedges be planted adjacent to the boundary of each strata lot's LCP. The proposal would have resulted in a significant change in the use or appearance of common property, so the resolution required a $\frac{3}{4}$ vote. The resolution received 23 votes out of 42 and therefore did not pass. The applicants did not attend the SGM.

31. To move forward, the strata voted to create a committee to look at fence options and make recommendations. While the strata initially faced difficulties getting volunteers, the committee eventually consisted of 4 non-strata council owners and 2 members of strata council. Ms. Hewstan was on the committee as a non-strata council member.
32. On December 13, 2017, Mr. Bodnarchuk emailed a member of strata council with concerns about the SGM. In particular, he was concerned that the owners on the second and third floors were dictating what would happen with the ground floor owner's patios. It appears that the applicants did not appreciate that the resolution required more than a simple majority and believed that the resolution had passed.
33. On December 15, 2017, Mr. Bodnarchuk requested a hearing about the fence issue.
34. On December 18, 2017, the applicants' lawyer sent the strata a letter demanding that the strata not remove the existing fences. Presumably, the applicants' lawyer was also under the impression that the strata had voted in favour of the resolution at the SGM.
35. On January 4, 2018, the property manager sent a letter to the applicants' lawyer confirming that the strata had not approved the removal of the fencing.
36. On January 5, 2018, the strata council held the applicants' requested hearing. According to the minutes, the strata council explained that the strata had not voted to do anything and that a committee was considering options.
37. On August 18, 2018, the applicants emailed about the strata council minutes from a strata council meeting held on July 27, 2018. The applicants were concerned that they did not receive notice of strata council meetings because they wanted to attend. The strata's property manager responded that in order for owners to be permitted to attend a strata council meeting as an observer, the strata must have a bylaw to that effect. The property manager said that since there was no such bylaw, owners were not allowed to attend as observers.

38. The fence committee reported on their findings on August 22, 2018. The report was signed by the 4 non-strata council committee members but not the 2 strata council committee members. The report set out a number of options and recommended a 5 foot cedar fence with regular spacing. The report did not address where the fence should be located.
39. At the strata council meeting on August 28, 2018, the strata council decided to accept the report. The strata council decided that the 2 strata council committee members could either sign on to the committee or write their own report.
40. On October 29, 2018, there was another information session, which included discussion of the fences. The strata council advised that further decisions about the fences and retaining walls were on hold pending the outcome of the applicants' tribunal claims.
41. One of the strata council committee members submitted his own report on November 2, 2018. He took issue with the way in which the non-strata council committee members wrote the report without his input. He advocated for aluminum fencing due to lower maintenance requirements. He also noted that some of the ground floor owners preferred not to replace the fences, preferring hedging as a natural privacy screen. He also did not recommend a location of the new privacy screens.
42. Both parties provided photographs of the applicant's fence and other fences. It is common ground that some parts of the fences are in a state of disrepair. They have peeling paint, rotting wood and generally appear unsightly and rundown. Some parts of the fences do not show any obvious signs of disrepair. Some of the retaining walls also appear to be showing signs of rot.

ANALYSIS

Is it premature to assess the strata's plans to replace the current privacy screens and fences? If not, are the strata's plans significantly unfair to the applicant?

43. The applicants are opposed to any plan for the fences that involves reducing the size of their patio or leaving them with an unenclosed patio. They also take issue with the decision to replace the fences now when the depreciation report suggests it can wait until 2028.
44. With respect to their claim that the strata is attempting to move the boundary of their strata lot, the applicants' position seems to be informed by their interpretation of the Form B they received when they purchased their strata lot. The applicants submit that the Form B explicitly gives them the right to exclusive occupancy of their entire patio because the strata gave permission to build the fence extensions. However, I find that the fact that the strata gave permission to build the fence extensions does not change the fact that some of the enclosed patio is common property that the applicants do not have a legal right to exclusively use. As the strata points out, the owners must pass a $\frac{3}{4}$ resolution to designate common property as LCP, and there is no evidence that the strata has ever done so. See *The Owners, Strata Plan LMS 1162 v. Triple P Enterprises Ltd.*, 2018 BCSC 1502.
45. Therefore, I find the applicants have misunderstood their legal right to exclusive use of their entire patio. This circumstance appears to be the result of a somewhat casual approach to the construction of the fences by the owner developer and the previous owners. Unfortunately, it falls to the current owners to address.
46. The strata says that while the applicants do not specifically use the language of significant unfairness, the nature of their arguments suggests that they are asking me to determine that the strata has acted in a significantly unfair manner. I agree with the strata's characterization of the applicants' claims about the fences. In particular, I find that the thrust of the applicants' submissions is that any plan to change the size or location of the fences would be significantly unfair to them.

47. Section 123(2) of the Act gives the tribunal jurisdiction to remedy a significantly unfair action, decision or exercise of voting rights. This language is largely similar to section 164 of the SPA, which gives the Court the ability to remedy a significantly unfair action, threatened action, decision or exercise of voting rights.
48. The strata argues that the applicants' claims are premature. The strata relies on *Biles v. The Owners, Strata Plan LMS749*, 2017 BCSC 1560. The facts of that case are not applicable to this dispute, but the Court clarifies that in order for an owner to make a claim of significant unfairness under section 164 of the SPA, there must be an action, threatened action or decision. It is not sufficient for an owner to anticipate an unfair action or decision. In other words, for an owner to be able to claim significant unfairness, the strata must take action or make a decision. See also *Liverant v. The Owners, Strata Plan VIS-5996*, 2010 BCSC 286.
49. Applied to this dispute, I find that the strata has not made a decision or taken an action with respect to the replacement of the fences. The replacement of the fences has been a contentious issue for several years. The strata has yet to find consensus on how to move forward. For this reason, I do not find that the applicants have been treated significantly unfairly.
50. I recognize that the owners have valid concerns. They are concerned that the owners in the top 2 floors will make decisions that will only affect the ground floor owners. They are concerned that the strata's ultimate decision will reduce the amount of outdoor space they currently enjoy, which they believe would reduce the value of their property. They also believe that having an unfenced patio would negatively affect their privacy and security. The applicants provided letters from 6 other owners expressing concern about the strata's desire to install privacy screens without fence extensions. The letters also cite privacy and security as their main concerns.
51. The democratic process of the strata's governance means that it is possible that $\frac{3}{4}$ of the owners will pass a resolution to replace the fences in a way that the applicants' find unacceptable. The applicants essentially seek an order that the

strata not consider any option that includes reducing the size of their patio. However, I find that the applicants must wait for the strata to make a decision before making a claim to the tribunal or the Court if the applicants' consider the decision significantly unfair. The tribunal or the Court must have a concrete proposal to assess whether it is significantly unfair to the applicants.

52. I note that the applicants have claimed to speak for the majority of the owners. If that is true, the applicants and those who share their views are free to elect a different strata council to pursue a different fence replacement plan.
53. I recognize, as well, that there is conflicting information about whether the fences need to be immediately replaced. The applicants rely on the statement in the depreciation report that the fences should last until 2028 while the strata relies on the more recent building envelope report suggesting immediate replacement. I find that it is implicit in the applicants' position that the fences will have to be replaced at some point. I make no finding about whether it is necessary to immediately replace the fences or whether it is possible that repairs could extend the life of the fences. I find that the decision about whether to repair or replace the fences and when to replace the fences is within the scope of the strata council's authority under section 72 of the SPA.
54. I also recognize that both parties made extensive submissions about whether particular proposals may or may not be significantly unfair to the applicants. The strata's legal opinion also considers what sorts of changes would likely trigger section 71 of the SPA. Because these issues may be the subject of a future tribunal dispute, I find that it would be inappropriate to comment on whether any potential plan to replace the fence would be a significant change in the use or appearance of common property or would be significantly unfair to the applicants.
55. For the same reasons, I find that the applicants' claim about the retaining walls is premature. As with the fences, the strata has not made any decision about the retaining walls.

56. Again, I find that the applicants' concern is valid. The applicants say that they have spoken to experts who have told them that disrupting the soil to replace or repair the retaining walls could cause flooding and damage to the building's waterproof membrane.
57. The strata says that there is no evidence that replacing the retaining walls will disrupt or impact the building envelope or otherwise cause flooding. I agree that the applicants' evidence about the retaining walls is insufficient for me to conclude that the strata cannot remove the retaining walls without causing damage or that the strata should get an engineer's report. The applicants do not provide a report from the expert that they claim to have spoken to about the issues.
58. As with the fences, if the strata makes a decision about the retaining walls that the applicants consider significantly unfair, they may bring a new claim to the tribunal or the Court.
59. In summary, I find that the applicants must allow the democratic process of the strata to play out before bringing a claim. I dismiss the applicants' claims about the fences and the retaining wall.

Should I make any orders about the conduct of the strata council or its members?

60. As mentioned above, the applicants seek multiple orders about the conduct of strata council. I will address them each in turn.

An order that the strata comply to the SPA, regulations and bylaws related to giving notice of meetings and recording meeting minutes.

61. As a general rule, parties are expected to follow the law. It is redundant and unnecessary to make an order requiring the strata to comply with the SPA, the *Strata Property Regulation* (Regulations), or the bylaws because they are already legally obligated to do so.

62. In addition, none of the SPA, Regulations or the bylaws require the strata council to give notice of council meetings.
63. As for keeping minutes, the applicants say that the strata misrepresented and insulted them in the way they described the applicants' hearing in the minutes. They also feel that the strata council acts in a secretive way by keeping "minimal" minutes of their meetings.
64. The purpose of strata council meeting minutes is to inform owners of the decisions the strata council makes. Section 35(1)(a) of the SPA requires the strata to prepare minutes of council meetings, including the results of any votes. It does not place any further requirements on what needs to be in the minutes. See *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610.
65. For these reasons, I dismiss this aspect of the applicants' claim.

An order that the strata council adhere to the Code of Conduct that they signed.

66. Each strata council member signed a "Code of Conduct". The Code of Conduct generally reflects a strata council member's duties under the SPA and the bylaws. The Code of Conduct also includes some general, common sense obligations that a strata council member has, such as spending as much time as necessary to fulfill their obligations and being fair towards all owners.
67. Section 31 of the SPA says that a strata council member act honestly and in good faith with a view to the best interests of the strata corporation and exercise the care, diligence and skill or a reasonably prudent person.
68. I find that the SPA and bylaws govern the strata council members' legal obligations. As discussed above, an order requiring strata council members to follow the law is unnecessary.
69. For these reasons, I dismiss this aspect of the applicants' claim.

70. However, in the interests of assisting the parties to move forward from this dispute, I will comment the strata's efforts with respect to the fence issue. The strata acknowledges that the fence issue is contentious. It is clear that there are strong and contradictory views among the owners. The applicants must acknowledge that the strata council's task in navigating this dispute is not an easy one.
71. With this in mind, I find that the strata council has done an admirable job in informing owners about its options and ensuring that it follows the proper process before performing any work on the fences. Insofar as there have been missteps or miscommunication, I note that members of the strata council are lay people volunteering their time. It would be unrealistic and unreasonable to expect strata council to be perfect. See *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753.
72. I also note that the applicants did not claim against any strata council member. The strata council is not a legal entity that can be the subject of an order. Because the applicants' requested order seeks to govern the conduct of individual strata council members, the applicants would need to bring a claim against the individual strata council members. That said, even if I had found that some or all of the members of strata council had fell below the standard required of them, I would be reluctant to interfere with the democratic wishes of the strata, who elected the strata council.

An order that the strata conduct itself with honesty and transparency.

73. I infer from the applicants' submissions that this order relates to the strata council's refusal to allow the applicants to attend strata council meetings unless there is a hearing. The strata has also been reluctant, at times, to tell the applicants when and where their meetings are held.
74. As discussed above, the strata takes the position that owners are prohibited from attending strata council meetings unless they are participating in a hearing.
75. The Standard Bylaws under the SPA include a specific bylaw that says that owners may attend council meetings as observers. When the strata passed its own bylaws

about strata council meetings, which repealed the Standard Bylaws, it did not include a provision that owners may attend council meetings. The strata submits that absent a specific bylaw allowing owners to attend as observers, they are prohibited from attending.

76. I disagree with the strata that it requires a bylaw to permit owners to observe strata council meetings. That said, I also find that owners do not have an automatic right to attend strata council meetings absent a bylaw. Rather, I find that it is within the strata council's discretion, acting reasonably, to decide whether to allow an owner to attend as an observer.

77. The strata council has discretion to control its own process. For example, the strata council may decide what input, if any, an observer may have. There may be times when an observer could offer helpful advice or information but there may also be times when an observer's input is disruptive and unhelpful. In addition, there may be times when allowing an observer would be inappropriate because it would unreasonably invade another owner's privacy. Again, absent a bylaw permitting owners to attend a strata council meeting as observers, the strata council's obligation is to act reasonably.

78. That said, I find that the order that the applicants seek is too vague and subjective to be enforceable or useful. I dismiss this aspect of the applicants' claim.

An order that the applicants be permitted to live without fear of reprisal and property devaluation.

79. The applicants request an order that they be allowed to maintain a "peaceful, comfortable life, including privacy & security, without fear of reprisal and property devaluation". Again, I find that this requested order is too vague and subjective to be enforceable or useful. I also reiterate my finding, above, that the strata council members have fulfilled their obligations under section 31 of the SPA to act honestly and in good faith and to exercise reasonable care, diligence and skill. I dismiss this aspect of the applicant's claim.

Are the applicants entitled to be reimbursed for their travel expenses to attend a strata council hearing?

80. The applicants claim \$2,600 in travel expenses to attend the strata council hearing in January 2017. The applicants only live part of the year in Canada. There is no evidence that they changed their flights to attend the strata council hearing. If they did change their flights, there is no evidence that they incurred any additional cost beyond what it would have already cost them to fly home, such as airline receipts.
81. More importantly, it was the applicants' choice to request a hearing. It appears that the applicants' urgency was driven by their misunderstanding about whether the proposal at the SGM had passed. I find that there was no reason for the applicants to rush back to Canada for a hearing, because the strata had made no decision about replacing the fences. I note that the strata had an obligation under section 34.1 of the SPA to hold a hearing within 4 weeks of the applicants' request. There is no evidence that the applicants offered to delay their hearing until their scheduled return.
82. The applicants' primary complaint is that the strata did not allow them to attend by telephone. This is a valid point, as the strata identified no reason for the applicants to attend in person. However, I find that the applicants have not proven that they were forced to incur travel expenses as a result of the strata's decision because they chose to insist upon a prompt hearing when there was no reason for urgency.
83. I dismiss this aspect of the applicants' claim.

The Applicants' Other Allegations

84. The applicants made other allegations that were unrelated to any of the orders they sought. That said, in the interests of providing closure to these allegations and recognizing the ongoing relationship between the applicants and the strata, I will comment on some these allegations.

85. First, the applicants allege that a member of strata council has been invading their privacy by entering their patio and looking into their windows. This strata council member is a “volunteer gardener”. The applicants allege that the gardener uses his gardening role as a pretense to intimidate and disrespect the applicants and other ground floor owners. The applicants also say that other ground floor owners are disturbed by the gardener’s behaviour.
86. I note that the applicants’ window faces common property and it is reasonable that gardeners will be present outside of their window from time to time. In addition, all owners have a right to access common property, even it if is in front of the applicants’ window. That said, the applicants also have a reasonable expectation of privacy in their own home.
87. The applicants’ interpretation of the gardener’s activities is subjective. It is possible that the gardener is acting in a belligerent way. It is also possible that the bad blood between the applicants and the strata council has caused the applicants to interpret innocent behaviour in a negative light.
88. That said, the gardener did not give evidence in this dispute. The applicants did not provide any objective evidence, such as photographs of the gardener or statements from other ground floor owners, about his behaviour, nor is he a party in this dispute. I therefore make no finding about whether the applicants’ allegations are true.
89. Second, the applicants’ reply submissions focus extensively on the fact that the strata had a lawyer draft their submissions. The applicants believe that the strata breached the Act and the tribunal rules because the strata did not get the tribunal’s permission to be represented by a lawyer. The applicants requested that I disregard the strata’s submissions because of this perceived breach of the Act and the tribunal rules.
90. While it is true that parties must generally represent themselves before the tribunal, there is nothing in the Act or the tribunal rules that prevent a party from hiring a lawyer to help a party with tasks like completing documents, conducting legal

research, preparing submissions, and gathering and organizing evidence, provided the lawyer does not speak or represent the party in any tribunal proceeding. See *Wang v. The Owners, Strata Plan LMS 2970*, 2018 BCCRT 473. I find that the strata did not breach the Act or the tribunal rules by having a lawyer help draft its submissions.

91. The applicants believe that the strata's decision to have a lawyer help them has created an uneven playing field. However, the applicants' submissions were lengthy and detailed. Even though the applicants were not successful, I find that I was able to fully understand and consider the applicants' concerns. While I appreciate that the applicants were surprised and upset to find themselves responding to submissions that a lawyer had helped draft, I find that there is nothing procedurally unfair about the strata getting help from a lawyer.
92. The applicants also allege that the strata hired the lawyer without the knowledge or consent of the owners. The majority of the owners may or may not agree with the strata about whether it was the best course of action. I find that this question is best left to the strata's democratic process.
93. Third, the applicant makes 2 allegations about improper behaviour at the SGM.
94. First, the applicants submit that the strata improperly disregarded the petition. There is no provision in the SPA or the bylaws for the owners to make decisions by presenting a petition to the strata council at a general meeting. The owners make decisions by voting at general meetings, either by appearing in person or designating a proxy to vote on their behalf. The petition had no legal significance in the context of the SGM. I find that the strata did nothing improper in refusing to act on the petition. I note that the petition was not a petition under section 43 of the SPA, which allows owners holding at least 20% of a strata corporation's votes to require their strata corporation to hold a special general meeting and consider a resolution or other matter specified in the petition. It was simply a petition expressing disapproval of the strata's proposal.

95. Second, the applicants allege that the strata's lawyer told the strata council meeting that they could "change" some of the votes. The applicants were not present and they base this allegation on what other owners told them. No other owner gave evidence that the strata's lawyer suggested changing the votes. This allegation is farfetched. If the strata's lawyer wanted to change the owners' votes to suit the strata council's alleged desired outcome, it makes no common sense that he would say so openly to all of the owners present at the meeting. In any event, this is a serious allegation without any evidentiary foundation. I find that the strata's lawyer did not suggest that the strata could change the owners' votes at the SGM.

TRIBUNAL FEES AND EXPENSES

96. 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. The applicants have not been successful so I dismiss their claim for tribunal fees and dispute-related expenses.

97. The strata has claimed reimbursement of its legal fees of \$7,445. While it may have been reasonable for the strata to have the assistance of a lawyer in this dispute, tribunal rule 132 provides that the tribunal will only order that a party be reimbursed for legal fees in extraordinary circumstances. The strata says that the "extraordinary circumstance" in this dispute is that the applicants brought the dispute prematurely. Therefore, the strata says that this dispute has not resolved the applicants' primary concern, which is how the strata will replace the fencing.

98. While I agree that the applicants' claims were premature, I find that this dispute was not extraordinary. I dismiss the strata's claim for reimbursement of its legal fees. The strata did not incur tribunal fees and did not claim any other dispute-related expenses.

99. I note that the applicants expressed concern that they would have to contribute to the legal fees the strata incurred in this dispute. I find that the strata must comply with the provisions in section 189.4 of the SPA, which, among other things, says

that section 167 of the SPA applies to tribunal claims. Section 167(2) of the SPA says that an owner is not liable to contribute to the strata corporation's expenses incurred defending a dispute that the owner brings against the strata corporation. Therefore, I find that the applicants must not be required to contribute to the strata's legal fees incurred to defend the applicant's claims in this dispute.

DECISION AND ORDER

100. I dismiss the applicants' claims and this dispute.

101. I dismiss the strata's claim for reimbursement of its legal fees.

Eric Regehr, Tribunal Member