



# Civil Resolution Tribunal

Date Issued: April 18, 2019

Files: ST-2018-004017 and  
ST-2018-006371

Type: Strata

Civil Resolution Tribunal

Indexed as: *1893569 Alberta Ltd. v. The Owners, Strata Plan BCS 1964,*

2019 BCCRT 479

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

1893569 Alberta Ltd.

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS 1964

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. The applicant, 1893569 Alberta Ltd. (owner) owns strata lot 93 in the respondent strata corporation, The Owners, Strata Plan BCS 1964 (strata).

2. The owner started 2 separate disputes with the Civil Resolution Tribunal (tribunal) against the strata. The Dispute Notice in the first dispute (ST-2018-004017) was issued on June 6, 2018. The Dispute Notice in the second dispute (ST-2018-006371) was issued on August 29, 2018. In both disputes the owner claims that despite its requests, the strata failed to provide access to various documents. The owner wants the strata to give the owner access to the documents it has requested, some on an ongoing basis, and they also want the tribunal to order the strata to comply with its document disclosure obligations under the *Strata Property Act* (SPA).
3. The strata says it has provided the owner with copies of some of the requested documents and given the owner several opportunities to inspect and review all the requested documents. The strata says it has fulfilled its responsibility for document disclosure under the SPA.
4. The owner is represented by an employee or principal and the strata is represented by a council member.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "they said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding

appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

7. 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.
8. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
9. 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.

## **ISSUE**

10. The issue in these disputes is whether the strata has breached its obligations under section 36 of the SPA, and if so, what is an appropriate remedy.

## **BACKGROUND AND EVIDENCE**

11. The strata is a 2-building complex in Vancouver comprised of 176 strata lots. It was established in 2006.
12. On January 22, 2015 the owner sent a letter to the strata's management company stating that they had previously requested a complete listing of the scheduled service and maintenance logs for the building, including scheduled service activity,

completed repairs, and ongoing maintenance schedules. The letter does not state when the owner made this request but indicates the owner had agreed to wait a few months while the strata and property manager investigated the situation.

13. On March 31, 2015 the owner sent a letter to the strata requesting a copy of the complete maintenance history for the mechanical room on the 20<sup>th</sup> floor including all scheduled maintenance and repairs.
14. At a special general meeting (SGM) on April 1, 2015, the ownership approved a security system upgrade by a  $\frac{3}{4}$  vote resolution. The improvements were estimated to cost \$41,272 and included installing hardware at exit doors and additional security cameras at various locations including the townhouse exteriors, common areas and parkade. The ownership agreed this upgrade was to be paid for by a special levy in one installment due June 1, 2015. On April 15, 2015 the strata sent the ownership the minutes of the SGM and the approved special levy schedules.
15. On June 28, 2016 the owner sent a letter to the strata's management company requesting the strata's written policies governing the use of the video surveillance system, access control and monitoring system (fob system), and the personal information it collected through those 2 systems.
16. On January 6, 2017 counsel for the strata sent a letter to the owner which refers to a request the owner made previously. According to this letter the first request was for all personal information pertaining to the owner that the strata had gathered or could have potentially gathered in relation to its video surveillance and fob systems, including all picture and video data, all audio data, and all fob system data. The letter says the strata did not capture audio data, but that it did capture picture and video data through its video cameras which it stored for 1 month. The letter says the strata was in the process of reviewing that data, as well as the data from the fob system to provide any personal information it found from the past month.
17. The January 6, 2017 letter from the strata's counsel also provided the owner with a list of surveillance camera locations and fob monitoring locations throughout the strata. It also explained that the surveillance cameras could capture footage of the

owner's representative entering or leaving the building or moving into or exiting the locations where the cameras were located. With respect to the data provided through the fob system, the strata said it could gather and obtain information about when the owner's representative entered or exited one of the buildings or used their key fob to access one of the fob entry points.

18. The January 6, 2017 letter also attached a rule about the collection of personal information that the strata council had adopted at its December 12, 2016 meeting, and which was expected to be voted on by the ownership at the upcoming annual general meeting (AGM). The letter confirms that the only entities who could have been given access to the personal information the strata gathered and obtained through its video surveillance and fob systems were law enforcement, the building caretaker and the strata council.
19. At the strata's AGM on February 27, 2017 the minutes show that the strata council had adopted a rule at its December 12, 2016 meeting about the strata's use of video footage and fob system information in common areas. By a  $\frac{3}{4}$  vote resolution the ownership voted to adopt this rule as a bylaw. This new bylaw 44 was deposited with the LTO on March 9, 2017.
20. On March 9, 2017 counsel for the strata sent a letter to the owner in response to a complaint the owner made to the Office of the Information and Privacy Commissioner for British Columbia (OIPC). The letter characterizes the owner's complaint as being about the strata's inappropriate collection, use, disclosure and protection of the owner's personal information. The letter encloses the strata's bylaw 44 which the strata says are its policies for the video surveillance and fob systems.
21. On August 11, 2017 the owner sent a letter to the strata's management company requesting all documentation and correspondence associated with the strata's common area upgrade as discussed at the 2016 AGM. I note the minutes from the 2016 AGM are not in evidence. The letter also references a telephone conversation the owner's representative says they had with the strata's property management

company during which the owner had already made this request. It is unclear when the owner says this phone call occurred.

22. On April 27, 2018 the owner sent a letter to the strata's management company asking for its privacy policy.
23. On May 14, 2018 the owner sent a letter to the strata's management company requesting a hearing with the strata council. The owner said they requested the hearing because the strata had not allowed owners to obtain or inspect strata records, and they referred specifically to their request for the strata's records of the common area upgrades and maintenance of common areas.
24. The minutes from the strata's June 20, 2018 council meeting state, "The Strata Council reviewed an application filed with the Civil Resolution Tribunal by the Owner of Strata lot 93, asking for information on common areas. After some discussion, the Strata Agent was instructed to file a reply following advice from the Strata Lawyer. A letter by the same Owner in regards to fob usage by the Council Members was also reviewed. After discussion, the Strata Agent was instructed to send a response following advice from the Strata Lawyer."
25. On June 28, 2018 the owner sent a letter to the strata's property manager requesting "all legal documents and opinions regarding the Security System upgrade," including all documents, emails, other correspondence, and privacy complaints. The owner stated this was a standing request, and that they expected the strata to send them all future information on these matters without the owner having to resubmit its request. The owner says the strata did not respond to this letter and that it has failed to provide evidence to refute the owner's claim.
26. On July 12, 2018 the owner sent a letter to the strata's property manager requesting a hearing with the strata council to address the reason the strata had not let owners obtain and inspect all legal correspondence, documents and opinions about the strata's security system upgrade. The owner said it would rely on that letter and its letter of June 28, 2018 at the hearing, so unless the strata had changed its position there was no need for the owner's representative to physically attend the hearing.

27. On July 24, 2018 the strata's management company sent a letter to the owner indicating that twice the owner had requested and been granted a hearing with the strata council and on both occasions the owner cancelled their attendance. The letter invited the owner to attend any of the strata council's next 3 meetings provided the owner gave the council 72 hours' notice in writing so that the owner's hearing could be added to the agenda. The strata says the owner did not respond to this letter or attend any council meetings. The strata says prior to this letter its property manager verbally invited the owner to attend a strata council meeting on several occasions.
28. On August 13, 2018, the owner sent the strata a letter requesting the documents that are the subject of the first dispute, being the strata's documents pertaining to the common area upgrade project, common area maintenance, and the strata's privacy policy. At that time the owner had already started the first dispute but had not yet started the second dispute.
29. The minutes from the strata's September 19, 2018 council meeting state that a council member "updated the Council on the complaints being made by an Owner of Strata Lot 93, to both the Privacy Commissioner and the Civil Resolution Tribunal. One such dispute notice was recently filed in regards to access to documents relating to security upgrades done in the past." The minutes state the council member "noted that each time, a complaint is received, the Strata lawyer has to be hired to look into the legitimacy of the complaints and to file appropriate replies. All this is costing the Strata. It may be noted that the Owner had been given opportunities in the recent past to meet with the Council to discuss issues in an amicable manner, but he failed to avail of them and, instead, chose to file complaints with CRT and OIPC, thus forcing the Strata to hire a lawyer."
30. The owner says the representative of the strata in this dispute has been verbally abusive and threatening to the owner's representative and others but declined to provide further details and has not made a specific claim in that regard. In the absence of evidence or a specific claim, I decline to address this issue further.

## **POSITION OF THE PARTIES**

31. The owner says that starting in June 2016 they have made multiple requests to obtain and inspect the strata's privacy policy, its records of the common area upgrade project, its maintenance records for common areas, and its legal documents and opinions regarding its security system upgrade, including all documents, correspondence and any subsequent privacy complaints. The owner says that despite these requests the strata has failed to provide access to the requested records.
32. The owner wants the strata to provide them with access to the following documents:
  - a. All records pertaining to the common area upgrade project,
  - b. All records pertaining to the common area maintenance,
  - c. All records pertaining to the strata's privacy policy, and
  - d. All legal documents and opinions regarding the security system upgrades.
33. With respect to the owner's request for the documents described in paragraph d. above, the owner wants this to be a standing order such that all future information related to the strata's security system upgrades are disclosed to the owner without them having to make additional requests or take further legal action.
34. The owner also wants the tribunal to order the strata to follow the rules and regulations pertaining to owners obtaining and inspecting strata records.
35. The owner also wants the tribunal to reimburse them a total of \$450 in tribunal fees and \$58.75 in dispute-related expenses.
36. The strata says it has fulfilled its obligation under section 36 of the SPA by providing the owner with access to all the documents they have requested.



## ANALYSIS

37. In a civil claim like this one, the applicant owner must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the owner's position is correct.

38. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

### ***Did the strata breach its obligations under section 36 of the SPA, and if so, what is an appropriate remedy?***

39. Section 35 of the SPA and section 4.1 of the *Strata Property Regulation* (regulation) require the strata to prepare and retain various records. Under section 36 (1) of the SPA, if an owner requests access to any of these records, the strata must make the records available for inspection by an owner within 2 weeks of the request, or within 1 week if the request is for bylaws or rules. Under section 36 (4) of the SPA and section 4.2 of the regulation, the strata must also provide copies of any requested records to an owner, however the strata may charge an owner up to 25 cents per page for copies of the requested records, and it may require payment before providing the copies to the owner.

### ***Records pertaining to the strata's common area upgrade project and common area maintenance***

40. There is a letter in evidence the owner wrote to the strata on January 22, 2015 in which the owner refers to a previous request it made for the strata's documents related to common area maintenance. However, the date of that request is not specified in the letter. The first actual record of the owner requesting documents pertaining to common area maintenance is their March 31, 2015 letter to the strata in which they requested the strata's maintenance history for the 20<sup>th</sup> floor mechanical room. There is no correspondence in evidence showing that the strata responded to this specific request.

41. The only evidence of the owner requesting the strata's documents about its common area upgrade project before starting this dispute is their August 11, 2017 letter. There is no correspondence in evidence showing that the strata responded to this request.
42. The strata says it has made all requested documents available to the owner. They say the owner did not initially pay the copying fee for the documents, so they invited a representative of the owner to view the documents at the strata's management office. The strata says when the representative of the owner arrived at the office he declined their offer for him to read the documents in an office.
43. On another occasion the strata says it assembled the requested documents and left them with the concierge for the representative of the owner to pick up after paying the photocopying fee. The strata says that despite numerous emails and phone calls the owner's representative did not pick up the documents until the concierge saw the owner's representative at the gym and told him the documents were ready for him to pick up. Eventually the representative paid the concierge the photocopying fee and took the documents.
44. The owner denies that any of this happened, however part of their claim for dispute-related expenses is \$16.75 for copies of documents. The owner does not specify which documents this fee was for but says the strata did not give them an opportunity to review the documents before they were copied to ensure they were complete and were the correct documents they had requested. The owner says the documents were not complete but did not specify exactly which documents were copied and which were missing.
45. On balance, I am not satisfied the strata has breached its obligation to disclose documents under section 36 of the SPA. I find the strata's version of events is reasonable, while the owner's version of events is inconsistent. The owner denies having access to the documents while at the same time admitting to paying photocopying fees and receiving some documents. The owner has failed to specify which documents they did not receive or when they received the allegedly

incomplete documents. The owner is responsible for proving their claim, and I find they have not done so.

46. However, I am mindful of the ongoing relationship between the parties and that the owner has the right to continue to request documents from the strata whether or not they have received those documents in the past. The owner is clearly not satisfied with the documents they have received to date about the strata's common area upgrade project and its common area maintenance, and it is unclear from the evidence before me exactly which documents the owner says it has not received. Therefore, without finding the strata has done anything in breach of the SPA, I find it would be useful to order the strata to make these documents available to the owner.
47. I find the owner's letter of August 13, 2018 sets out in detail the documents the owner seeks. The evidence before me is that the parties have struggled to arrange for the owner to view documents in the past. Therefore, within 14 days of the date of this decision, I order the parties to agree in writing on a time and date for the owner's representative to attend the strata manager's office to inspect the documents requested in the owner's August 13, 2018 letter pertaining to the common area upgrade project and common area maintenance. Should the owner wish to receive photocopies of any of these documents, I order the owner to provide to the strata in writing a list of the exact documents it wishes to receive. The strata is then entitled to charge the owner a maximum of 25 cents per page, which fee is payable before the owner may receive copies of the documents.

### ***Records pertaining to the strata's privacy policy***

48. It appears the owner first requested the strata's privacy policy in its June 28, 2016 letter and again in its April 27, 2018 letter. There is no correspondence in evidence indicating the strata responded directly to these requests.
49. However, the strata says it has already given the owner the strata's privacy policy. The strata says the policy was attached to the agenda for the February 2017 AGM, which the strata sent to all owners in advance of the meeting. They say the ownership discussed the privacy policy at the February 2017 AGM and it was

approved by an overwhelming majority. The strata says its privacy policy is also available on its property manager's website.

50. While the strata does not explicitly state that bylaw 44 is its privacy policy, based on its description above I find the strata is referring to bylaw 44 as its privacy policy. The minutes from the February 2017 AGM show that bylaw was passed at that meeting. I note that in its March 9, 2017 letter the strata sent the owner the newly passed bylaw 44.
51. On the evidence before me I am not satisfied that the strata breached its obligation under section 36 of the SPA. At the time of the owner's first request in June 28, 2016 the strata does not appear to have yet created its privacy policy, as it was first passed as a rule at its December 2016 strata council meeting. I am satisfied that once bylaw 44 was passed the strata sent it to the owner. The strata says its privacy policy is available online, and while the owner generally denies all of the strata's submissions, they do not specifically deny that the policy is available online. I find the strata has provided the owner with a copy of its privacy policy and I dismiss this claim.

### ***Legal documents and opinions regarding the strata's security system upgrades***

52. The owner says they have made both informal and formal requests for the legal documents and opinions regarding the strata's security system upgrade documents, however the only evidence of such a request is the owner's letter dated June 28, 2018. It is unclear what the owner means by "informal request."
53. The strata says it did not seek legal advice with respect to its security system upgrades in 2015 and says it has told the owner this many times. It says it received the wording for what is now bylaw 44 from its property manager and that it is a standard bylaw for similar stratas. The strata says the wording of the bylaw was probably vetted by legal counsel at some point, but the strata did not seek legal advice with respect to it. The owner notes that the strata has had the same property manager since 2006, and they question why, if this bylaw was standard, the

property manager took over 10 years to introduce it to the strata. I find the strata's explanation of how it acquired the wording of bylaw 44 to be reasonable. I also find the owner's concern about the delay in implementing the bylaw is unfounded because the strata has discretion, unless petitioned by 20% or more the registered owners, to present bylaw amendments for approval by the ownership as they become necessary.

54. The strata says it invited the owner's representative to its property manager's office to inspect all documents related to its security system upgrade on 2 separate occasions, both of which the owner declined. The strata did not specify the dates it made these invitations. The owner says they have never been invited to the strata's property manager's office to view or obtain these documents.
55. The owner says the minutes of the June 20, 2018 and September 19, 2018 strata council meetings show that the strata sought legal advice regarding its security system upgrades, so any of the records related to this legal advice should be included in the documents the owner has requested. However, the strata says these minutes refer to legal advice the strata sought in relation to the disputes the owner brought to the tribunal, not to any legal advice it sought or received relating to the security system upgrade. Based on the clear wording of those minutes, I agree with the strata.
56. The owner says 2 letters they received from the strata's lawyer on January 6, 2017 and March 9, 2017 as well as a letter they received from the strata's insurer on April 7, 2017, prove the strata sought legal advice from third parties regarding the security system upgrade. The January 6, 2017 letter is a response to the owner's requests about the strata's use of the owner's personal information. The March 9, 2017 letter is a response to the owner's complaint to the OIPC. I find that neither of these letters indicates that the strata received legal advice about its security system upgrades. I find the April 7, 2017 letter from the strata's insurer has nothing to do with the strata's security system upgrades and makes no reference to the strata obtaining legal advice on any issue.

57. The owner says these 3 letters show the strata retained 2 law firms to deal with issues surrounding the security system upgrades. The first 2 letters are from Access Law Group. The third letter is from the strata's insurer, not legal counsel. Therefore, these letters are proof the strata retained 1 law firm, not 2. Again, I find that both letters from that law firm are in response to issues the owner raised with the strata, not to the actual upgrade of the security system.
58. The owner says the strata's privacy officer told their representative in front of the strata's property manager that the strata had sought legal opinions and advice about the strata's security system upgrades. However, the owner has not disclosed when such a statement was allegedly made, and the strata denies that it sought legal advice on this issue. Without any supporting evidence, I find the owner has not established that the strata's privacy officer made such a comment.
59. The owner refers to the minutes of the strata council's March 18, 2015 meeting which state that, in relation to an issue with a marina lease and easement, the strata hired a lawyer to review the lease. The minutes show a council member found a lawyer who would do this work "at a friends and family rate of \$500" which was approved unanimously by council. I find there is nothing to indicate that this issue has anything to do with any of the issues the owner raises in either of their disputes. The fact that the strata retained legal counsel for an unrelated issue in March 2015 does not mean the strata sought legal advice with respect to its security system upgrade.
60. The owner says the strata did not respond to their July 12, 2018 letter, however, the strata submitted its letter dated July 24, 2018 which is addressed to the owner and which I find to be a direct response to the owner's July 12, 2018 letter.
61. The owner says throughout their submissions that the strata has failed to prove its position, however it is the owner who is responsible for establishing their claim, and I find they have not done so. On balance, I am satisfied that the strata did not obtain legal opinions or advice in relation to its security system upgrades, and therefore I find there is no basis on which to order the strata to disclose to the owner

documents that do not exist. I find the strata is not in breach of section 36 of the SPA with respect to this request from the owner.

62. The owner asks the tribunal to make a standing order with respect to these documents, such that the strata must disclose to the owner any documents covered by this request that the strata creates or obtains in the future without the owner having to make additional requests. However, since I have found the documents the owner requests do not exist, I find it unlikely that the strata will create or obtain such documents in the future, and therefore I find there is no basis for such an order. I dismiss the owner's claim. I note the owner is free to make additional requests to the strata under section 36 of the SPA as necessary. Any such request should be as detailed as possible.
63. The owner wants the tribunal to order that the strata must comply with its document disclosure obligations under the SPA generally, however I have not found the strata to be in breach of these obligations, and the strata is already obligated to abide by the obligations set out in the SPA. Therefore, I find there is no purpose for making such an order and I decline to do so.

## **TRIBUNAL FEES AND EXPENSES**

64. 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. While I have ordered the strata to make some documents available for the owner's inspection, I have not found the strata to be in breach of its document disclosure obligations under the SPA. Therefore, as the owner was generally unsuccessful, I find they are not entitled to reimbursement of their tribunal fees or dispute-related expenses in either dispute.
65. 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.

## DECISION AND ORDERS

66. I order that:

- a. Within 14 days of the date of this order, the parties must agree in writing on a time and date for the owner's representative to attend the strata manager's office to inspect the documents requested in the owner's August 13, 2018 letter pertaining to the strata's common area upgrade project and common area maintenance.
- b. Should the owner wish to receive photocopies of any of the documents described above, I order the owner, within 2 weeks of viewing the documents, to provide to the strata in writing a list of the exact records or documents they wish to receive. The strata is then entitled to charge the owner a maximum of 25 cents per page, which fee is payable before the owner may receive the documents.

67. The remainder of the owner's claims are dismissed.

68. 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.

69. 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.

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Sarah Orr, Tribunal Member