



Civil Resolution Tribunal

Date Issued: May 28, 2019

File: ST-2018-005578 and
ST-2018-006434

Type: Strata

Civil Resolution Tribunal

Indexed as: *Prior v. The Owners, Strata Plan VR 269*, 2019 BCCRT 649

B E T W E E N :

Shelley Prior

APPLICANT

A N D :

The Owners, Strata Plan VR 269

RESPONDENT

A N D :

Shelley Prior

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant and respondent by counterclaim, Shelley Prior (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan VR 269 (strata). The strata is the applicant in the counterclaim. The owner is self-represented, and the strata is represented by a council member.
2. The owner alleges the strata has failed to do common property (CP) repairs which include repairing the telephone line servicing her strata lot and addressing noise and vibrations experienced in her strata lot. The owner also alleges the strata has not provided her with copies of strata corporation documents she is entitled to receive and that the strata failed to provide a budget and financial statements with the 2017 and 2018 annual general meeting (AGM) notices.
3. The owner asks for orders that the strata investigate and repair CP, provide copies of requested meeting minutes and budgets, comply with the *Strata Property Act* (SPA), and pay her \$5,000 in aggravated damages.
4. In a counterclaim, the strata denies the owner's claims and alleges the owner owes \$500.00 in unpaid special levy payments, and that her complaints about outstanding CP repairs are unfounded. The strata seeks orders for payment of the \$500.00 special levy, reimbursement of \$1,093.30 it spent to investigate her complaints, and \$3,406.70 in damages suffered by its council members. The strata also requests an order that the owner cease from making future complaints until the alleged issue is proven.

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. 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.
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. 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

9. Given the strata confirmed in its counterclaim reply submissions that the \$500.00 special levy was paid, I find the issue regarding payment of the special levy is resolved and not before me.
10. The issues in this dispute are:
 - a. Is the strata responsible to repair the alleged non-functioning telephone line to the owner's strata lot?
 - b. Has the strata reasonably investigated the owner's claims about noise and vibration affecting the use and enjoyment of her strata lot? If not, what is an appropriate remedy.
 - c. Has the strata provided the owner with the documents she requested in compliance with section 36 of the SPA?

- d. Should I order the strata to comply with the SPA to give proper notice of AGMs and include information required by the SPA in all future AGM notices?
- e. Is the owner entitled to \$5,000 in damages?
- f. Is the strata entitled to reimbursement of \$1,093.30 in expenses paid to investigate the owner's complaints about noise and vibration?
- g. Is the strata entitled to \$3,406.70 in damages allegedly suffered by its council members?
- h. Is the strata entitled to an order that the owner not complain about future issues without proof?

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 owner must prove their claims on a balance of probabilities. The strata must also prove its counterclaims on the balance of probabilities.
- 13. I note at the outset that there are ill-feelings between the owner and the remaining strata and council members as evidenced in affidavits provided by 6 of the 7 remaining owners. However, I put no weight on past actions of the owner in circumstances that do not form part of this dispute.
- 14. The strata is an 8-unit residential strata corporation located in North Vancouver, B.C. The strata was created in September 1975 under the *Strata Titles Act* (STA) and continues to exist under the SPA.
- 15. As shown on the strata plan, the owner's strata lot is located directly above the boiler room. The boiler room is identified on the strata plan as "C.F." meaning common facility as identified on the strata plan. Common facility was a defined term under the STA meaning "a facility that is available to all owners" such as a laundry

room. Other common facilities shown on the strata plan include storage rooms, stairs, corridors and a meter room. I find that these areas designated as common facilities are also CP, as defined under both the STA and the SPA.

16. Under section 120 of the SPA, the strata's bylaws are the Standard Bylaws of the SPA unless different bylaws are filed at the Land Title Office (LTO). Under *Strata Property Regulation* (regulation) 17.11(3)(b), any bylaws under the *Strata Tiles Act* or the *Condominium Act* that were deemed to be bylaws of the strata ceased to have effect on January 1, 2002. LTO records show bylaw amendments were filed between July 1994 and June 1996, so I find the strata's bylaws are the Standard Bylaws plus the previously filed amendments, which are not relevant to this decision.
17. I discuss the bylaws relevant to this dispute below as necessary.

The telephone line

18. The owner says her telephone line has not been working since November 2014. She argues the telephone line to her strata lot is CP and that the strata has failed to repair it under section 72 of the SPA. I agree.
19. The strata says the owner has not proven the telephone line does not work. I disagree. I find opposite to be true and that the telephone line in the owner's strata lot is confirmed not be working based on a June 22, 2017 email from a Telus representative that states "As per our technician's visit, the problem is between the phone room and the suite"
20. The strata says it first became aware of the telephone line issue in July 2015 when advised by the owner. It says it retained a third party to investigate the issue but that there was "no resolution." However, the strata did not provide any details of the investigation, including who investigated and why there was no resolution. The strata also says that the owner's "extensive renovations" to her strata lot caused the issue and that the owner should be responsible for the telephone line's repair. The strata did not provide any evidence to support its allegation that extensive

renovations were completed by the owner. Although the owner admits renovations were done in her strata lot, she denies they were extensive and says the work done would not have affected the common wall.

21. Section 72 of the SPA says that the strata must repair and maintain CP and common assets. Bylaw 8 also makes the strata responsible for repair and maintenance of common assets and CP that has not been designated as limited CP. Section 72 also allows the strata to take responsibility for repair and maintenance of CP by bylaw, but there no such bylaws registered at the LTO.
22. Under section 1(1) of the SPA, CP is defined to include wires located in a floor, wall or ceiling that forms a boundary between a strata lot and another strata lot or CP, or if they are located wholly in a strata lot and are capable or intended to be used by another strata lot.
23. It is common knowledge that utility services for a strata corporation building, such as electricity and telephone, enter the building in one location before being distributed throughout the building to the various strata lots. I have already found the rooms marked as "C.F." on the strata plan are CP. Based on the email from the Telus representative, referenced above, I find the "phone room" is more likely than not the meter room identified on the strata plan. It follows then that the telephone wire running from the CP meter room to the owner's strata lot must be CP until it reaches the telephone jack in the owner's strata lot. I say this because the wire must pass through either the CP parking garage, or more likely, through interior building walls, to travel from the phone room to the owner's strata lot.
24. For these reasons, the strata must repair or replace the owner's telephone line between the phone room and the owner's strata lot, under section 72 of the SPA and bylaw 8, and I so order.
25. The strata is not restricted from running a new telephone line in a different location than the existing wire if the strata reasonably concludes installing the wire in a different location can be done less expensively and meets any building code or best practice requirements.

26. Given my conclusion, I find I do not need to address the owner's arguments relating to significant unfairness.

The noise and vibration

27. For the reasons that follow, I find the strata has not properly investigated the owner's concerns which amounts to the strata acting in a significantly unfair manner towards the owner.

28. The owner argues that since about May 2016, following repairs made to the strata's boiler or plumbing system, she has experienced noise and vibration in her strata lot on a daily but intermittent basis. She says the vibration is a nuisance, citing *The Owners, Strata Plan LMS 3539 v. Ng*, 2016 BCSC 2462 as referenced in *Chen v. The Owners, Strata Plan NW 2265*, 2017 BCCRT 113. The owner believes the noise and vibration come from the CP boiler room located immediately below her strata lot and that the strata has failed to properly repair its CP or common assets as required under section 72 of the SPA. The remedy the owner requests is for the strata to investigate and repair the vibration.

29. There is no dispute that the plumbing equipment located in the boiler room below the owner's strata lot is either common property or a common asset. Therefore, I find the strata is responsible for its repair and maintenance under section 72 of the SPA.

30. The tort of nuisance in a strata setting is an unreasonable continuing or repeated interference with a person's enjoyment and use of their strata lot, and a remedy should be made without undue delay once the respondent is aware of the nuisance (see *The Owners, Strata Plan LMS 3539 v. Ng*, 2016 BCSC 2462).

31. In *Ng*, the court found that an owner brought to the strata's attention facts about a water leak that required investigation, and failure to conduct that investigation amounted to an omission to use reasonable care to discover the facts.

32. I find I cannot agree that a nuisance has been established on the evidence before me.
33. The owner provided several videos of an application on her cell phone that she says shows vibration is occurring. I agree with the strata that there is no evidence as to the quality or reliability of the cell phone application relied upon by the owner. Accordingly, I have put little weight on this evidence.
34. The strata argues that it has spent significant time investigating the owner's concerns and that numerous plumbers hired by the strata have not been able to detect any problems or issues that could be fixed or that could be the cause of the problems described by the owner. I disagree.
35. The strata provided an email exchange between the owner and the council president between May 31 and June 3, 2016 that explained the strata had retained Four Season's Plumbing in July/August 2016 to confirm loose pipes alleged by the owner or her plumber, however a copy of the plumbing invoice was not provided. The email states that the plumber would attend the owner's strata lot to witness the noise and vibration, but it appears that did not occur. It is unclear if the owner did not provide access or if the plumber failed to make the necessary arrangements.
36. Further, the strata says about the same time it "collectively agreed to test the water flows in an attempt to again identify the noise and vibrations alleged by Ms. Prior." The strata does not explain the significance of this testing nor does it provide details as to the nature of the testing or the result.
37. The strata also provided copies of 4 plumbing invoices dated from June 24, 2016 through October 4, 2016. I find the only invoice that supports the strata's position is dated June 24, 2016 from Kodiak Plumbing & Heating (Kodiak) for \$350.00. The description on the invoice states "Inspect boiler room for noise – located powervent noise from HWT".

38. The remaining three invoices from Stevens Plumbing & Heating Ltd. all relate to a lack of heat in the building, and in 1 case, noise from the hot water heating system in a strata lot other than the owner's, which was corrected.
39. While the strata may have spent time investigating the owner's concerns, I do not agree it was significant. Aside from the initial investigation by Four Seasons Plumbing and Kodiak, I find there is little the strata has done to investigate the owner's ongoing issues. I also cannot agree with the strata that the owner's claims are unfounded. Such a conclusion would be difficult to reach without attending the owner's strata lot, which the strata did not do. Rather, I find the strata's failure to conduct further investigation, after being reminded by the owner's lawyer that the issue is ongoing, amounts to unreasonable care to discover the facts as set out in *Ng*.
40. I turn now to the owner's claim of significant unfairness.
41. The tribunal has jurisdiction to determine claims of significant unfairness effectively because the language in section 164 of the SPA is similar to the language of section 123(2) (formerly section 48.1(2)) of the Act, which gives the tribunal authority to issue orders with respect to significant unfairness. (See *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119.)
42. The courts and the tribunal have considered the meaning of "significantly unfair" in a number of contexts, equating it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128, the British Columbia Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable.
43. The Court of Appeal has also considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated in *Watson* at paragraph 28:

The test under s. 164 of the Strata Property Act also involves objective assessment. [*Dollan*] requires several questions to be answered in that regard:

1. What is or was the expectation of the affected owner or tenant?
 2. Was that expectation on the part of the owner or tenant objectively reasonable?
 3. If so, was that expectation violated by an action that was significantly unfair?
44. Applying the test to the facts before me, I find the expectation of the owner was that the strata would reasonably investigate her vibration and noise complaint and that expectation was objectively reasonable. I find the strata's lack of investigation was significantly unfair.
45. I therefore order the strata to take reasonable steps to investigate the owner's noise and vibration concerns by retaining a professional of its choosing to prepare a written report on the issue. The strata must share the results of the investigation with the owner and take steps to rectify any noise or vibration issues its professional may identify within a reasonable period. The owner must provide access to her strata lot on 48 hours written notice from the strata.

The documents request

46. The owner argues the strata has not provided copies of the past 6 years of strata minutes (revised from 10 years in her submissions) and 5 years of budgets that she and her lawyer have requested.
47. The strata says that the former council president, who no longer is an owner and is not available to provide evidence, provided the applicant with the documents she requested. However, the owner says she has only received minutes from the meetings held August 9, 2012, January 27, 2013 and the 2017 AGM and that the remaining documents she requested have not been provided.
48. Section 35 of the SPA sets out record preparation and retention requirements for strata corporations. Section 35(1)(a) requires a strata corporation to prepare minutes of general meetings and council meetings. Section 35(2)(i) requires strata corporations to retain copies of budgets for previous years. *Strata Property*

Regulation (regulation) 4.1(3) provides that the minutes and budgets must be retained for a period of 6 years.

49. Section 36 of the SPA states that a strata corporation must make the records and documents described in section 35, other than bylaws and rules, available for inspection and provide copies of them to an owner within 2 weeks of a request. According to section 36(4), a strata corporation may charge a fee for a copy of a record or document provided and may refuse to issue copies of the requested records and documents until the fee is paid. Regulation 4.2(1) limits the fee to a maximum of \$0.25 per page.
50. There is no restriction on the number of times an owner can request records and documents and I find the owner has not been unreasonable in her requests. I find the strata has failed to provide the owner with 6 years of minutes and 5 years of budgets she has requested, and I order it do so within 30 days of the date of this decision. Given the Dispute Notice was issued on August 1, 2018, I order the strata to provide the owner with:
- a. All minutes of all strata council and general meetings held on or after August 1, 2012 other than those listed above that the owner has received, and
 - b. All budgets approved on or after August 1, 2013.
51. The strata is entitled to charge the owner up to \$0.25 per copy and may withhold issuing the records and documents until the fee is paid.

The AGM notices

52. The applicant argues the strata did not schedule its 2017 and 2018 AGM in accordance with the SPA. For 2017, she says inadequate notice was provided and rectified, but that copies of the budget and financial statement were not included with the notice. For 2018, she says the strata again failed to include the budget and financial statements with the AGM notice and that the notice did not include a description of the matters to be voted on. The owner says the strata has failed to

comply with sections 45 and 103 of the SPA, and seeks an order that strata comply with the SPA requirements for future AGM notices.

53. The strata does not address the 2017 AGM allegations but concedes that it did not initially comply with the 2018 AGM notice requirements. It says that a motion was approved at the 2018 AGM by all owners other than the applicant owner, to waive the “standard notice requirement” for the AGM as required under the SPA. It also says that it provided the owner with the budget and financial summary.
54. Section 45 of the SPA sets out the notice requirements for general meetings and states under subsection 1, among other things, that every owner must receive 2 weeks’ written notice of the meeting. The owner implies that insufficient notice was provided, and that notice was provided by email.
55. Section 61(1) of the SPA sets out how an AGM notice can be delivered and includes by email, if the person receiving the notice provided an email address for that purpose. It is established law that the general meeting notice period is effectively 20 days when considering sections 45(1) and 61(3) of the SPA, and section 25 of the *Interpretation Act*.
56. Based on the evidence, I am unable to conclude if proper notice was given for either the 2017 or 2018 AGM notices as it is unclear which owners, if any, provided the strata with email addresses for the purposes of receiving the AGM notices. Also, copies of the AGM notices and the dates they were emailed to owners were not provided.
57. Section 45(3) requires the AGM notice to include a description of the matters to be voted on, including proposed wording of $\frac{3}{4}$ vote resolutions. Although the owner says these requirements were not met, because the AGM notices and minutes are not in evidence, I am unable to conclude if the strata breached section 45(3) of the SPA.
58. Sections 45(2) and (5) state that a person that has a right to be notified of a general meeting notice may waive their right to be notified, and that if all persons entitled to

notice waive their right to be notified, the meeting may proceed despite the lack of notice. The strata admits that the owner did not waive her right to be notified of the 2018 AGM which I find is an admission that the 2018 AGM was conducted contrary to the SPA.

59. Finally, section 45(4) states that AGM notices must include a budget and financial statement as required under section 103. Section 103 refers to the regulations and regulation 6.6 and 6.7 set out what is required for budgets and financial statements, respectively.
60. Normally, I would not order the strata to follow the requirements of the SPA because of the redundancy of such an order. That is, the strata is required to follow the law so an order for it to do so would be redundant. However, the owner made the strata aware of the budget and financial statement requirements for the AGM notice in 2017, yet the SPA was not followed again in 2018. For this reason, I find it would be helpful to instruct the strata to follow sections 45 and 103 of the SPA when preparing and distributing its AGM notice, and I so order.

The Owner's claim for \$5,000 in damages

61. The owner argues she is entitled to damages because of the stress she has endured relating to not having access to a telephone line, living with vibration, which has affected her sleep, well-being and health and that not receiving the requested documents has been frustrating and stressful because it is important to her to be kept apprised of the strata's affairs. She argues \$5,000 is fair compensation for the reckless indifferent behaviour of the strata which she has adversely impacted her for a lengthy period.
62. The strata argues the owner has not provided expert evidence as to the state of her mental health or any pre-existing conditions. It also says the owner has not provided any actuarial report to substantiate the value of her damages claim, which it says is an arbitrary amount. The strata says the owners stress is the result of her own

negative and aggressive behaviour towards other owners and council members who have justifiably limited their contact with her.

63. I have noted the feelings of ill-will between the strata owners and the owner. That is no reason for the strata not to investigate the owner's concerns. However, I do not find the strata's lack of investigation caused the owner to suffer damages.

64. I agree with the strata that the owner has not proven she has suffered any damages. Although the owner provided a doctor's note, I do not find the note sufficient to establish the stress that the owner was experiencing from alleged noise and vibration was caused by the strata. In particular, I do not find the note supports the extent of the distress claimed by the owner or the severity of damages claimed. Therefore, I dismiss the owner's claim for damages.

Is the strata entitled to reimbursement of \$1,093.30 in expenses paid to investigate the owner's complaints about noise and vibration?

65. In its counterclaim, the strata argues the owner should be responsible for the costs of the strata's investigation, given the noise and vibration issues have not been verified.

66. I note that the strata only provided 1 plumbing invoice that noted any investigation into the owner's claims and that invoice totalled \$350.00. However, given my finding that the strata has not reasonably investigated the owner's complaints about noise and vibration, I dismiss the strata's counterclaim for \$1,093.30 in expenses.

Is the strata entitled to \$3,406.70 in damages allegedly suffered by its council members?

67. The strata claims damages for pain and suffering of its council members but has not provided any evidence to support its claim. I do not find the strata's affidavit evidence about the owner's difficult behaviour relating to past actions supports a claim for damages.

68. Therefore, I dismiss the strata's claim for \$3,406.70 in damages.

Is the strata entitled to an order that the owner not complain about future issues until the issue is proven?

69. On its face the strata's claim is not practical or reasonable. For example, if I were to provide the strata its requested remedy that the owner only be able to make complaints about "proven" issues, it could possibly shift responsibility for common property and common assets to the owner, contrary to the SPA. I find that is reason enough for me to dismiss the strata's claim in this regard.

TRIBUNAL FEES AND EXPENSES

70. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason to deviate from the general rule in this case. I find the owner was the successful party and order the strata to reimburse her \$175.00 for tribunal fees. The owner did not claim dispute-related expenses. I dismiss the strata's claims for tribunal fees and note it did not claim dispute-related expenses.

71. 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

72. I order the strata:

- a. Within 30 days of the date of this order, to
 - i. repair or replace the owner's telephone line between the phone room and the owner's strata lot,
 - ii. take reasonable steps to investigate the owner's noise and vibration concerns by retaining a professional of its choosing to prepare a written report and share the results of the written investigation report with the owner. Within 30 days of the date of it receives the report, **Erreur ! Source du renvoi introuvable.** take steps to rectify

any noise or vibration issues its professional may identify within a reasonable period.

iii. pay the owner \$175.00 for tribunal fees,

iv. provide the owner with:

(1) All minutes of all strata council and general meetings held on or after August 1, 2012 other than those listed above that the owner has received, and

(2) All budgets approved on or after August 1, 2013, provided that the strata is entitled to charge the owner up to \$0.25 per copy and may withhold issuing the records and document until the fee is paid.

b. follow sections 45 and 103 of the SPA when preparing and distributing its AGM notice.

73. I order the owner to provide access to her strata lot on 48 hours written notice from the strata.

74. The owner is entitled to post judgement interest under the *Court Order Interest Act*.

75. The owner's remaining claims are dismissed.

76. The strata's claims are dismissed.

77. 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 123.1 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.

78. 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 123.1 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