



Civil Resolution Tribunal

Date Issued: May 31, 2019

File: ST-2018-006710

Type: Strata

Civil Resolution Tribunal

Indexed as: *Dullaert v. The Owners, Strata Plan VIS 6296*, 2019 BCCRT 656

B E T W E E N :

Mary Dullaert

APPLICANT

A N D :

The Owners, Strata Plan VIS 6296

RESPONDENT

Mary Dullaert

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Darrell Le Houillier

INTRODUCTION

1. The applicant and respondent by counterclaim, Mary Dullaert (owner), owns strata lot #24 (strata lot) in the respondent and applicant by counterclaim, The Owners, Strata Plan VIS 6296 (strata). The strata lot has an associated parking spot, #42, which is limited common property assigned to the strata lot, as shown on the strata plan.
2. The owner raises four issues in her dispute: the adequacy of parking spot #42; a lack of appropriate communication from the strata council; harassment by a member of the strata council, HC; and the adequacy of the strata council's response to odour complaints the owner made in 2018. The owner asks me to order the strata to provide her with a different parking spot or compensate her for the inadequacy of parking spot #42, communicate promptly and responsively to her, and more effectively respond to her odour concerns. The owner also asks that I order HC to stop harassing her. She also asks for \$5,000 in damages, related to her parking spot and HC's reported harassment.
3. By way of counterclaim, the strata says the owner is abusing legitimate complaint processes with frivolous matters and is harassing the strata council members and the strata's property manager. The strata asks that I order the owner to stop doing so and to provide a financial guarantee to insure that she obeys my order.
4. The applicant is self-represented. The strata is represented by a member of the strata council.

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 must

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 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.

ISSUES

9. The issues in this dispute are whether:
 - a. parking spot #42 is inadequate and, if so, what remedy is appropriate;
 - b. the strata has failed to communicate with the owner and, if so, what remedy is appropriate;
 - c. HC harassed the owner and, if so, what remedy is appropriate;
 - d. the strata inadequately responded to the owner's odour complaints and, if so, what remedy is appropriate; and
 - e. the owner harassed the strata's representative or engage in an abuse of process and, if so, what remedy is appropriate.

BACKGROUND AND EVIDENCE

General Comments

10. I have not summarized all the evidence provided with respect to this dispute. While I have considered all the accessible evidence that was submitted, I have only summarized that which is required to give context to my decision and reasons.
11. There was video evidence that each party referenced, but which I was unable to review. The parties did not submit the video to the tribunal, but rather both sent hyperlinks to webpages that I could not access, but which the parties said contained the video (the video was reportedly the same, except the strata's version was in one part and the owner's was split into two parts). The tribunal requires that evidence be submitted to the tribunal and instructs parties to contact the tribunal if they have difficulty doing so. The parties in this case did neither.
12. Each party described how the video helped their case. The strata says that the video showed council's efforts to resolve the owner's complaint about parking spot #42 and that the owner was dissatisfied. The owner says that the video shows the solution proposed by the strata council, particularly insofar as loading a walker into her car, was unreasonable given her disabilities. Both parties have described their positions in sufficient detail that I do not consider it necessary to review the video to address those points.
13. Additionally, both parties had a reasonable opportunity to present evidence. They were told how to present evidence and were told to contact the tribunal if they were having difficulties. It would have prolonged the decision-making process significantly if I obtained that evidence and I did not consider this to be a reasonable use of the tribunal's time and resources. I concluded that I was able to fairly decide this dispute without the video evidence referenced by both parties.

Before the Owner Moved In

14. In June 2007, plans for the strata's building were filed with the British Columbia Land Title Office as part of the process to create the strata. Parking spaces were to be oriented 90 degrees from the direction of travel of lanes within the parking lot. The lanes were to be 7.71 metres-wide.
15. The plans called for parking spot #42 to be 6 metres-long. The front of the spot was defined by a wall with a door opening into an electrical room. One of the spots adjoining parking spot #42, parking spot #41, was in an identical situation with respect to access to a mechanical room.
16. No amendments to the plans for the strata's building were filed with the British Columbia Land Title Office. Contrary to the plans, the doors providing access to the electrical room and the mechanical room open outward, into parking spot #41 and #42, however.
17. According to the owner, the electrical room door is 36 inches across. Also according to the owner, clearance for the electrical room door, if it opened into the electrical room, would need to be roughly 33 inches.
18. On August 18, 2017, Ms. No, a family nurse practitioner, wrote a letter to the owner, stating the owner had several undefined medical conditions and should have a parking spot near the main door of an unspecified building.
19. On October 26, 2017, the owner was in the process of purchasing the strata lot. The strata's property manager completed a questionnaire that was later appended, as Form B, to the owner's contract to purchase the strata lot. The Form B indicates the strata lot has an assigned parking spot that constitutes limited common property. The Form B does not include any questions about restrictions or limitations on parking spots. It does not indicate whether there were any restrictions or limitations on parking spot #42.

20. On October 27, 2017, the owner's realtor emailed a strata council member asking where the owner might park her electric scooter, as parking it at the front of the spot would restrict access to the building's electrical room.
21. On October 30, 2017, the strata council president, TG, forwarded the owner's email to the rest of the strata council, including HC.
22. On November 11, 2017, HC and the owner exchanged several emails. HC asked owner about her mobility challenges and offered the owner the chance to park her scooter in one of his unused parking spots until permanent storage for her scooter could be arranged. HC suggested the owner may need to charge her scooter in her strata lot and provided advice on public roads that may not be suitable for travel via scooter.
23. The owner provided details to HC about her mobility challenges. In the second email exchange, the owner told HC, "Keep your parking spot. I thought you were a kind and considerate person."
24. The owner subsequently complained to the property manager that the strata did not allow her to store her scooter in the bicycle storage locker, putting it at greater risk of being stolen.
25. On November 19, 2017, the owner emailed HC, asking if she could put a pet enclosure for her cat on her balcony and asking why her scooter could not be stored securely in the parking lot. She did not think it was a good idea to have her scooter inside the building and suggested she could charge it at an electric car charging station.
26. Also on November 19, 2017, HC responded, pointing out there were no charging stations in the building's parking garage. He recommended the owner keep her cat tethered while on her balcony.
27. On November 20, 2017, the owner wrote to HC, enclosing pictures of her cat and scooter to better explain her concerns. The owner raised concerns about the

strata's smoking bylaw and recommended a lawyer review by the bylaws to ensure that they were legal and enforceable.

28. Also on November 20, 2017, HC responded, thanking the owner for the pictures but not addressing the balance of her email.

After the Owner Moved In

29. On December 14, 2017, the owner moved in to the strata's building. On the same day, the property manager created a welcome letter for the owner. The letter provided information related to the strata and encouraged the owner to register with the property manager's website. The website was also discussed in an attachment to the letter. There was no mention of intercom access in the letter or attachment.
30. On December 19, 2017, the owner emailed HC to thank him for telling her when the next strata council meeting was taking place. HC responded on the same day.
31. Later on December 19, 2017, the owner emailed HC and said she wanted 48 hours' notice if anyone wanted access to parking spot #42, with a specific time indicated. The owner also wanted a member of the strata council present. She stated she was allowed to park right up to the door in parking spot #42 and this would probably invalidate the building's insurance. The owner demanded that strata council resolve the issue with her by the next day and provide her with an indemnity agreement to protect her car from any damage from anyone trying to access the electrical room.
32. HC responded by urging the owner give the benefit of the doubt to her new neighbours and to attend a strata council meeting the next day. HC noted that accommodating the owner's scooter-charging needs was on the agenda for the meeting.
33. According to TG, on December 31, 2017, the owner knocked on the door of his strata lot and asked why intercom service had not been connected for her. The president asked if the owner was registered with the property manager's website and she told him she was. He stated that she offered to show him and he

accompanied her to her strata lot, where she showed him on her computer that she had registered with the website. The president called someone who volunteered to set up all new residents on the intercom system and he did that for the owner on the same day.

34. According to TG, the owner criticized the strata's bylaws, the strata council, the noisiness of her neighbours, snow removal on the property, and HC at length. She reportedly stated she was going to set the strata straight, then told the president he knew nothing and she was going to "...take this Strata down".
35. On January 2, 2018, the owner emailed the property manager and sent a copy to HC. The owner stated she received a document package from the property manager on December 22, 2018. She stated she was left without intercom access for 15 days, and was worried about whether she could be reached by emergency medical services if need be. She found it stressful that she did not have access to secure parking for her scooter despite a history of break-ins. The owner asked for a copy of the requirements to get intercom access and a date for a hearing with the strata council.
36. Later on January 2, 2018, HC wrote an email back to the owner, stating that he understood the intercom issue and the scooter storage issues to be resolved. He noted the owner had complained about parking spot #42 and described how he parked his vehicles, including one large truck.
37. According to the owner, she registered with the property manager's website on January 3, 2018 and, once she proved to the strata that she had registered, she was granted access to the intercom. She stated this followed 15 days without access to the intercom, including without access to emergency services.
38. On January 3, 2018, the owner received an automated email from the property manager confirming she had registered with the property manager's website.
39. On January 8, 2018, the owner wrote to HC, stating that she had not received documents from property manager about the intercom until the previous

Wednesday (January 3, 2018) and she found the requirements for intercom access confusing. She wrote that she had previously lived in buildings where not all residents had computers and she expressed doubt that the strata could make everyone register online as a prerequisite for intercom access.

40. On January 12 and 13, 2018, the owner and HC exchanged numerous emails, discussing parking options in parking spots #41 and #42. The owner raised concerns about a large vehicle not fitting in parking spot #42. The emails discussed how various residents of the strata's building managed their parking needs and HC recommended the owner park farther back in parking spot #42. He stated there was enough room for access to the electrical room to be maintained and for her to fit her car within the bounds of the parking spot.
41. By January 25, 2018, the strata council sent the owner a letter through a lawyer. According to the letter, the strata council had arranged for the owner to store and charge her scooter in the bicycle storage area. The letter also addressed concerns the owner raised with respect to intercom access, parking, tree spiralling, snow removal, and pathway accessibility. The letter directed the owner to correspond with the property manager via email in the future, noting the owner had threatened to go through the strata's bylaws carefully and bring all problematic bylaws to the attention of the strata council.
42. On January 31, 2018, the owner replied. She asserted the strata was bound by the Form B, which should have described the electrical room access issue. The owner wrote that she had asked for an indemnity from the strata, in case anyone damaged her car while accessing the electrical room. Since this was denied, she intended to park her car to prevent access to the electrical room so that she could be called and be present whenever access was required.
43. On March 16, 2018, the owner emailed the property manager, asking for a diagram or list showing the assignment of parking spots and spots that were "apparently" rentals. The owner asked how parking spots had been assigned and why the strata

lot had a lesser quality parking spot. The owner stated she wanted unspecified documents and answers to her questions.

44. On March 20, 2018, the property manager responded, enclosing a strata plan and asking if the owner had any other outstanding requests.
45. On March 20, 2018, the owner replied to the property manager that she wanted to know which parking spots in the building were rented out. The owner suggested she trade parking spot #42 for a rental spot until a different parking spot could be assigned to her permanently.
46. On April 3, 2018, the owner emailed the property manager, stating that another strata lot owner (she indicated to the tribunal that this was HC) told her she would not fit in around the building if she used parking spot #42 as she liked. The owner summarized the historical difficulties she perceived with intercom access, scooter storage, and parking access. She stated she felt discriminated against.
47. Later on April 3, 2018, the property manager responded to the owner's email. The property manager thanked the owner for her email and stated she would forward it to the strata council.
48. Later still on April 3, 2018, the owner sent another email to the property manager, questioning whether strata fees considered each suite's number and quality of parking spots. The owner asked the question be forwarded to the strata council. The property manager responded that she would forward the matter as requested.
49. On April 6, 2018, the owner emailed the property manager and complained that the minutes from the strata council meeting in March 2018 had not been distributed within a two-week timeframe, as required. The property manager responded on the same day, that the minutes would be distributed on April 9, 2018.
50. On April 7, 2018, the owner emailed the property manager and asked her to identify the bylaw which required strata lot owners to register with the property manager's website before intercom service would be connected. The owner also followed up on the minutes from the March 2018 strata council meeting.

51. On April 9, 2018, the property manager responded and stated there was no such bylaw. She explained that an issue in her office was responsible for the delay in distributing the strata council meeting minutes, but they would be out “imminently”. There was no further correspondence related to the March 2018 strata council meeting minutes.
52. On May 7, 2018, the owner emailed the property manager, complaining that the minutes from the strata council meeting in April 2018 were not distributed within the two-week timeframe permitted for distribution.
53. On May 9, 2018, the property manager responded to the owner’s inquiry and stated that the minutes from the strata council’s April 2018 meeting had been distributed. There was no further correspondence related to the April 2018 strata council meeting minutes.
54. On July 16, 2018, the owner and property manager exchanged several emails. The owner indicated she wanted to change some electrical fixtures and outlets in her suite and asked if there was someone the building retained for such work. The property manager and owner debated whether the owner needed to obtain permission from the strata council.
55. On July 17, 2018, the owner emailed the property manager and described an upgrade she wished to do to her flooring. She also complained about a strong smell of perfume in the elevator, stating she was allergic to perfume.
56. Later on July 17, 2018, the property manager emailed the owner and stated she would forward the owner’s perfume complaint to the strata council.
57. On July 18, 2018, the owner wrote to the property manager and described having a strong reaction as a result of perfume exposure. She asked that signs be posted about perfume use or that a bylaw addressing the issue be passed.
58. Later on July 18, 2018, the property manager responded that she had forwarded the owner’s concern to the strata council. The property manager stated the strata could do little but post notices.

59. In a separate email on July 18, 2018, the property manager informed the owner that the changes to her electrical fixtures did not require permission so long as the wires in any walls were unaffected. The property manager stated she would forward the request for a flooring upgrade to the strata council for its consideration.
60. On July 20, 2018, the owner emailed the property manager, stating that an existing bylaw could be used to deal with the perfume issue. The owner stated she noticed a strong odour in the elevator the previous day. The owner complained that the strata council had not done anything to address her complaint and she wanted signs posted the same day.
61. Also on July 20, 2018, the property manager emailed the owner and stated that the bylaw could only be enforced if a person responsible for the nuisance was identified. The property manager added that the strata council was preparing notices for distribution to building residents and for posting. A notice was emailed to strata residents on the same day, asking for residents to be courteous toward other residents who were susceptible to strongly scented products.
62. On July 26, 2018, the property manager wrote to the owner and advised that the owner's request to upgrade her flooring was approved. The property manager also stated that the strata council would be putting up posters addressing fragrance sensitivities.
63. According to the owner, no discussion of the perfume issue appeared in the minutes of the strata council meeting from July 2018. No minutes of that meeting were provided to the tribunal, however.
64. On August 2, 2018, the property manager sent the owner a letter, advising her that another strata lot owner had complained that the owner parked her car in such a way that blocked access to the electrical room. The property manager advised that the owner could face fines if she continued to block access to the electrical room.

65. On August 7, 2018, TG sent out a regular bulletin to residents. Included in his bulletin was a reminder for residents to be mindful of how fragrances can affect their neighbours.
66. On August 8, 2018, the owner attended a meeting of the strata council to discuss her parking stall. A further meeting was scheduled between the owner and members of the strata council on August 14, 2018, to explore possible solutions to the owner's concern. Video recordings were to be taken of that meeting.
67. On August 8 and 9, 2018, the owner and the property manager exchanged several emails. The owner asked how hearings before a strata council could be time-limited. The property manager advised the chair of the meeting could set time limits for discussions.
68. On August 9, 2018, the owner emailed the property manager to complain that someone named Fran had told her she was not wanted in the building and needed to move out because she was causing too much trouble.
69. On August 10, 2018, the property manager emailed the owner back and asked who Fran was. There is no record of any response from the owner.
70. On August 15, 2018, the owner emailed the property manager, complaining that HC's truck was protruding too far out of his parking spot. She described this as a violation of the strata's nuisance bylaws.
71. On August 17, 2018, the owner wrote an email to the property manager and a member of the strata council, complaining about other incidents involving excessive perfume smell. The owner demanded that signs be posted, describing the nuisance bylaw and associated fine. The owner stated she was parked in a designated disabled parking space and would not move her car for several hours so that the elevator could "air out a bit" first. The owner also asked for a decision on the parking issue.
72. On August 20, 2018, the property manager emailed the owner and stated there was little more the strata could do without knowing who was responsible for the perfume.

The property manager asked the owner if she had any suggestions for actions the strata could take.

73. On August 21, 2018, the owner emailed the property manager, advising she had not been provided with a decision on the parking issue, as required under the *Strata Property Act* (SPA). The owner reiterated her request that the strata post information related to the nuisance bylaw and that the strata pass a bylaw at the next annual general meeting, designating the building as scent-free. The owner also suggested that the building be aired out when conditions outside were not smoky.
74. Later on August 21, 2018, the property manager responded via email, again asking for suggestions on what the strata council could do without knowing who was responsible for the perfume scent. There is no record of any reply from the owner. In a separate email on the same day, the property manager advised she would not be returning the owner's calls. She wanted all correspondence in writing and she would consider all correspondence before sending any reply.
75. On August 22, 2018, the owner and property manager exchanged several emails discussing whether a response from the strata on the parking issue was still outstanding. The exchange of emails ended with the property manager telling the owner that she could expect another letter shortly.
76. On August 22, 2018, the strata's property manager emailed and mailed the owner a letter. The letter asked that the owner to write to the property manager rather than to members of the strata council. The letter acknowledged that owners were entitled to receive minutes of strata council meetings within two weeks and the strata was working toward that goal. The letter indicated the owner was able to load her walker into the back seat of her car and she should continue to use parking spot #42; the strata council could not reassign another one or give her one of the building's designated disabled parking spots.
77. On August 26, 2018, the owner emailed the property manager and asked for the date the strata plan was registered and the date of the first strata council meeting, when the council took over from the developer.

78. On August 27, 2018, the property manager answered the owner, providing the date of registration of the strata plan. The property manager did not address the question about the first strata council meeting.
79. From August 27, 2018 to September 5, 2018, the owner exchanged numerous emails with a bylaw enforcement officer in the municipality in which the strata's building was located. By the end of the email chain, the bylaw enforcement officer stated that, as far as the municipality was concerned, the owner had a valid parking spot, regardless if some portion was unusable so that the electrical room could remain accessible.
80. On August 29, 2018, the strata council held a meeting. According to the meeting minutes, the strata council had received numerous pieces of correspondence from the owner and would not be responding. The strata council also decided to remove the fragrance postings that it had previously put up.
81. According to the owner, part of what she had sent to the strata council was the information she had obtained from the municipal bylaw enforcement officer.
82. On August 31, 2018, the owner emailed the property manager, requesting a decision on the parking issue. The property manager responded on September 4, 2018, reminding the owner that all communication was to be in writing. Decisions would be communicated via meeting minutes.
83. On September 4, 2018, the owner emailed the property manager asking if a final decision on the parking issue had been made.
84. Later on September 4, 2018, the property manager reiterated that the owner needed to send all correspondence to her. The property manager would forward that correspondence to the strata council for consideration, and the owner could see their decisions in the strata council meeting minutes.
85. On November 22, 2018, the strata held an annual general meeting. The strata council proposed that the building be designated as scent-free but the motion was defeated.

86. The strata's representative provided to the tribunal an undated letter signed by HC. In the letter, HC summarized his interactions with the owner. He described frequently reaching out to the owner, listening to her complaints, and offering advice.
87. HC stated that, if anyone had engaged in bullying or harassment, it was the owner. He described the owner deliberately blocking access to the electrical room, requiring the strata to threaten to impose a fine. In response, the owner began using a designated disabled parking space.
88. HC stated that three members of the strata council spent an hour in the parking lot trying to resolve her concerns about loading her walker into the back seat of her car. Afterward, the owner agreed that suspending a tennis ball from the ceiling above her parking space would be a good way to help her know how deep into her parking spot she should park. HC stated that he did this work. The owner later telephoned the police and accused him of harassment, despite her earlier agreement to the tennis ball solution.
89. HC stated he also used his pickup truck to illustrate that the owner could extend the back bumper of her car out of her parking spot by the same amount of space necessary to provide access to the electrical room. The owner then complained that HC's truck was interfering with another resident's ability to park. HC stated he moved his truck to his other space and contacted the resident that was allegedly inconvenienced, only to discover the owner had not spoken to him/her.

POSITION OF THE PARTIES

90. The owner says that parking spot #42 is the subject of a size-reducing restriction that the strata either unlawfully placed on the space or that the strata should have disclosed before she purchased the strata lot. The owner seeks assignment of a different parking spot for her strata lot or that the strata compensate her for the decreased value of her strata lot, given the restriction on parking spot #42.

91. The strata says it has no ability to reassign parking spots. The strata also says it should not have to compensate the owner for any reduction in the value of her strata lot associated with having parking spot #42 assigned to it.
92. The owner says the strata has not communicated with her as required. Specifically, it denied her access to the building intercom for 15 days after she moved in to her strata lot, making her feel cut off from emergency services. It denied her secure storage for her scooter until another strata lot owner intervened on her behalf. It provided minutes of strata council hearings later than permitted and did not answer her inquiries and document requests. She seeks an order that the strata council must answer her questions, provide accurate information, respond in a timely fashion, and distribute strata council minutes as required by the SPA.
93. The strata says the strata council works with the property manager to report to all owners in a timely manner but each of the owner's communications may not be responded to.
94. The owner says HC made her life as a disabled person difficult in a number of ways: sending her letters, confronting her about her parking spot and how she could use it, and forcing her to demonstrate getting her walker into her car while filming her, which made her feel humiliated. She seeks an order that HC cease harassing her and that the strata cease making her life as a disabled person difficult. She also seeks financial compensation.
95. The strata denies that HC harassed the owner.
96. The owner says there were strong odours in the elevator of the building and the strata did not adequately address the issue. She seeks an order that the building be designated scent-free and that the strata be ordered to create bylaws saying so.
97. The strata says it cannot make the building scent-free without an appropriate resolution passed at a general meeting.
98. In its counterclaim, the strata says the owner exploited legitimate complaint mechanisms for her frivolous complaints and harassed members of the strata

council and the property manager with excessive correspondence and demands. The strata also noted that the owner had previously brought a different strata corporation before the tribunal and her claims were dismissed. The strata asks that I order the owner to stop engaging in harassment and abuses of process, and to surrender \$1,000, to be placed in trust and returned to the owner if she abides by my orders for one year.

99. Each party requests that I dismiss the claim/counterclaim of the other party.

ANALYSIS

Is parking spot #42 inadequate and, if so, what remedy is appropriate?

100. Parking spot #42 has been designated on the strata plan as limited common property associated with the owner's strata lot. Section 1 of the SPA defines limited common property as common property designated for the exclusive use of the owner(s) of one or more strata lots. No restriction or limitation has been registered on her ability to use parking spot #42. This suggests that no one but the owner can use parking stall #42.

101. The right to exclusive use is modified, however, by section 77 of the SPA. That section states that an owner with rights to use limited common property must allow the strata corporation reasonable access to that property to exercise its powers and fulfill its duties. There is no limitation on how often the strata may access the property or what it may do to exercise its powers and fulfill its duties.

102. Section 6.3 of the British Columbia Fire Code requires that fire alarm and detection system components shall be accessible for inspection or maintenance. This means that there must be sufficient room to open the door providing access to the electrical room. As a result, roughly 91 centimetres of the parking spot must be kept clear to allow the electrical room door to swing outward.

103. Because parking spot #42 provides the sole point of access for the electrical room and because parking spot #42 is limited common property, the strata must

ensure compliance with section 6.3 of the British Columbia Fire Code. It is a duty of the strata to ensure that the electrical room is accessible at all times, which is permitted under section 77 of the SPA.

104. The strata did not have to tell the owner about the effect of section 77 of the SPA. Nothing on Form B asked for such information and the owner has not provided a convincing explanation why the strata should have provided such information. Section 59 of the SPA requires the strata to respond to inquiries in a prescribed form, the Form B, but not to volunteer additional information not specifically requested in that form.

105. The owner is not entitled to a different parking spot. She had the opportunity to assess the parking spot before she purchased the strata lot. As indicated by her realtor's email of October 27, 2017, she was aware of the access issue. If she did not notice or appreciate the implications of the outward-opening door to the electrical room, that is no fault of the strata. For the same reason, the strata is not required to compensate the owner for any decreased value of her strata lot, when compared to other strata lots that are not as affected by the operation of section 77 of the SPA.

106. I recognize that the electrical room door opens outward into parking spot #42, rather than inward, as indicated on the strata plan. The requirements of a strata plan are listed in section 244 of the SPA and section 14.4 of the SPA regulation.

107. Section 244 of the SPA does not require any detail about access to common areas or how a building or parking lot is to be constructed. Generally speaking, the strata plan is to show property boundaries, the exterior of buildings, the size and layout of strata lots, and survey information.

108. Section 14.4 of the regulation lists many requirements for the form of strata plans and information they must contain, but does not require the plans to contain the directions in which doors open, the means by which any areas are accessed, or details related to the construction of parking lots, interior walls, common property, or limited common property.

109. Sections 244 of the SPA and section 14.4 of the SPA regulation describe a significant number of requirements for strata plans. I consider that a strata plan must be accurate in the areas required by those sections. As the effect of the strata plan, as set out in section 239 of the SPA, is only the creation of strata lots, the strata is not bound by any aspects of the plan beyond those required by section 244 of the SPA, section 14.4 of the SPA regulation, or that informs the creation of strata lots.
110. I also appreciate that the owner has argued that it is unfair that her parking spot is less desirable than all other parking spots save one. Section 160 of the SPA, read in conjunction with section 121 of the Act, allows a strata owner to seek a remedy from the tribunal on any decision made by a strata council that is significantly unfair to that owner.
111. The case *Chow v. Strata Plan LMS 1277*, 2006 BCSC 335 (CanLII) (*Chow*) contains a description of what sorts of decisions meet the threshold of significant unfairness. At the very least, such a decision must be oppressive and unfairly prejudicial. An oppressive decision is “burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith”. A decision is “unfairly prejudicial” if it is unjust and inequitable. In *Ernest & Twins Ventures (PP) Ltd. v. Strata Plan LMS 3259*, 2004 BCCA 597 (CanLII), the British Columbia Court of Appeal noted that some strata owners may be treated unfairly without meeting the threshold of significant unfairness.
112. In this case, I find that it is unfair that the owner has one of the two parking spaces that can only be used subject to maintaining accessibility, but it is not significantly unfair. Once the owner raised the issue to the strata council, it needed to consider whether to change the operation of the electrical room door, to bring it into conformity with the strata plan. This is the only decision made about the parking issue that affected the owner. The strata needed to balance the interests of the owner with the interests of the strata as a whole.

113. Fixing the electrical room door would only potentially improve the parking issue, not resolve the issue altogether, as some degree of access to an inwardly-opening door would still be required. Based on the information the owner provided to the tribunal, this would reduce the amount of parking spot #42 that would need to remain clear to provide access to the electrical room from 36 inches to roughly 33 inches. The strata did not address this issue. Consequently, I conclude that changing the direction the door opened would provide only 3 additional inches of usable space within parking spot #42. Given this limited benefit, I do not consider the strata to have acted in a way that was obviously oppressive or unfairly prejudicial on its face. No evidence has been presented to show that this decision was oppressive or unfairly prejudicial as defined in *Chow*. Accordingly, while the access requirements to which parking spot #42 are subjected are unfair to the owner, they are not significantly unfair.

114. I recognize that the usable area of parking spot #42 is less than the size of parking spots as required under the municipality's bylaws. The municipality's bylaws, however, are a matter between the bylaw and the strata. The owner raised the issue with a bylaw enforcement officer, who indicated the municipality was of the position that the parking spot #42 remained valid under the bylaws, notwithstanding the need for constant access to the electrical room. The owner has not provided a convincing argument why I should come to any other conclusion or to subject the strata to a stricter standard of bylaw enforcement than the relevant municipality.

115. I also recognize that the owner considered parking far enough back in parking spot #42 was unreasonable. The information she provided to the tribunal seemed to suggest that parking far back in the spot would make it awkward or difficult for her to load her walker into and remove her walker from the back seat of her car, although she was able to do so if she needed to.

116. The owner's evidence establishes that she used her walker when going to and from her car, but she was able to load her walker into the car before entering it. She was able to get out of her car and unload her walker herself. The owner did not

describe why she could not leave her walker behind and to the side of parking spot #42, reverse her car out some distance if she needed to, then get out to load her walker into the back seat of her car before resuming her trip. I do not consider this to be an unreasonable burden for her and she did not provide sufficient evidence to support that conclusion.

117. The only evidence the owner provided about her disability beyond asserting that she was disabled was the note from Ms. No, which pertained to an unspecified building before the owner bought the strata lot. The owner has not met her burden to prove her case with respect to this issue.

118. For the reasons already provided, I find that the parking spot #42 is not inadequate.

Has the strata failed to communicate with the owner and, if so, what remedy the owner should be given?

119. I have reviewed the communications between the owner and HC, who was acting on behalf of the strata council before the owner moved in to her strata lot on December 14, 2017. HC responded promptly to the emails from the owner and her realtor. His responses addressed the concerns and questions raised in those emails. I consider that HC's emails were respectful and were intended to be helpful.

120. The welcome letter provided to the owner by the property manager lacked information about how she could obtain access to the intercom. When the owner complained to TG that she did not have intercom access on December 31, 2017, he ensured that she obtained access the same day. While the welcome letter from the property manager left something to be desired in terms of the information it provided, the issue was remedied promptly once the owner made a member of the strata council aware that there was a problem.

121. I recognize that the owner reported that she only gained access to the intercom on January 3, 2018. She provided an automated email indicating that she was registered with the property manager's website by that date; however, she also

stated she moved in to her strata lot on December 14, 2017 and was without intercom access for 15 days. The owner's accounts are internally inconsistent and, accordingly, I find the dates provided by TG to be more persuasive.

122. For the same reason, I conclude that the owner invited TG to verify that she had registered with the property manager's website on December 31, 2017 and he accepted that offer. I do not accept that TG required the owner to prove that she had registered with the property manager's website.

123. Between the owner's move-in date on December 14, 2017 and January 25, 2017, the strata council or the property manager had responded to concerns raised by the owner on secure storage of her scooter, a charging station for her scooter, intercom access, parking, tree spiraling, snow removal, and pathway accessibility. In the months that followed, the owner raised concerns about the distribution of strata council minutes, improvements to electrical fixtures and flooring in her strata lot, odour in common areas of the strata building, being harassed by someone named Fran, and objecting to the conduct of HC. The property manager and/or members of the strata council provided a reply on each of those issues.

124. While the owner stated that she did not receive any response on the question of secure storage for her scooter until another strata owner intervened, she did not provide additional detail. I do not find her bare assertion in this regard to be persuasive. It is unclear whether the owner meant that nothing was done until HC intervened, although HC was the designate from the strata council who responded to the owner's concern about storage of her scooter. Based on the information before me, I consider the strata council to have been responsive without the intervention of a third party.

125. The owner also raised a concern about the strata's bylaws generally and the smoking bylaw specifically to HC on November 20, 2017; however, the vague concerns described by the owner do not require a response. The owner was free to raise more specific concerns but she did not. She was free to suggest amendments to or additions to the strata's bylaws at the annual general meeting but she did not.

126. With respect to the owner's parking-related concerns, the strata council provided a substantive answer to the owner's request for reassignment of another parking spot to her. The strata council attempted to assess the owner's needs and suggested a solution to try to address her concern.

127. With respect to the owner's odour-related concern, the strata council posted notices in the building. It emailed notices to all residents and TG recommended considerate use of fragrances in his bulletin on August 7, 2018. The strata council also proposed a bylaw to designate the building as scent-free, as the owner requested, although that measure was ultimately defeated in the annual general meeting. While the owner made some suggestions to address her concern, the strata was not obligated to do as she wished. The strata was not obligated to "air out" the building, to threaten fines for those wearing excessive fragrance, or do the other specifics demanded by the owner. I conclude that the actions undertaken by the strata with respect to the owner's odour complaints were reasonable and responsive.

128. With respect to what the owner described as requests for documents, I find that those requests were all met, insofar as the strata's obligations to meet them were concerned. The owner repeatedly raised concerns about strata council minutes being released late and, on each occasion, the property manager seems to have distributed the minutes in due course. The late distribution of strata council minutes does not seem to be an ongoing problem and the owner seems to have been provided with all requested minutes.

129. The other requests made by the owner did not take the form of requests for specific documents, but rather for information. The strata and the property manager are not under an obligation to comb through historic documents and provide answers for the owner. The owner did not request specific meeting minutes or the strata plan, yet the property manager attempted to discern what document would provide the information the owner wanted and provide it to her. On March 20, 2018, the property manager even followed up to ask if the owner had other outstanding requests. If the owner wants to know whether the strata fees are differentiated

based on the number and quality of parking spots assigned to each strata lot, she can request relevant documents from the strata or from the Land Title Office, which should describe the calculation of strata fees.

130. While the owner also requested information about which parking spots are associated with which strata lots, that information appears in the evidence presented to the tribunal. Similarly, the strata plan contains information about how parking spot #42 came to be assigned to her strata lot. As such, the owner has access to that information at the issue is moot.

131. The owner also provided information to the property manager and/or the strata council about HC reportedly telling her she would not fit in if she used parking spot #42 as she wished and about her communications with a municipal bylaw enforcement officer. Absent requesting specific action from the strata council or complaining about a violation of a specific bylaw, it is unclear what further communication the owner might wish. The property manager and/or strata council acknowledged receipt in each case. There was no follow-up but it is not clear what follow-up is requested or needed. I conclude that the strata was not deficient in communication on those issues.

132. Lastly, I find that having a lawyer or property manager handle communications from the owner was a reasonable step for the strata council to take. The owner sent a large volume of emails and members of the strata council found her needs to be overwhelming. I do not fault the owner for the amount of correspondence she sent but the strata is free to run its affairs as it sees fit, provided it acts fairly toward the owner. I have seen no indication that the strata has shirked its responsibilities by designating the property manager and/or a lawyer to deal with the owner. I have seen no indication of unfairness toward the owner in this delegation either.

133. I appreciate that the property manager and strata council were not perfect in all aspects of communication. In some cases, the owner did not receive replies. On other issues, there may have been delays in communication. The SPA does not

subject a strata council member acting on behalf of a strata to a standard of perfection, however.

134. Section 31 of the SPA requires strata council members to act honestly and in good faith with a view toward the best interests of their strata corporation, and to exercise the care, diligence, and skill of a reasonably prudent person in comparable circumstances. This is the same requirement as exists for the property manager who fulfills some of their obligations on their behalf. I conclude that the property manager and the strata council met the burden imposed by section 31 of SPA, insofar as communicating with the owner is concerned.

135. My conclusion on this point recognizes that this case involves a great number of communications from the owner, whose correspondence verges on confrontational and hostile at times. The owner demands immediate responses and has raised numerous concerns and inquiries without any apparent regard for the fact that the members of the strata council are volunteering their time to serve the other owners within the strata.

136. Based on the circumstances of this case, I conclude that any communication failures on the part of the strata have been resolved. I conclude that the owner should not be given any remedy.

Did HC harass the owner and, if so, what remedy the owner should be given?

137. I have considered the conduct of HC as revealed through the evidence provided to the tribunal and I find that he did not harass the owner. I consider HC's questions about the owner's mobility needs and scooter to have been reasonable inquiries made in an attempt to accommodate her needs. It was through the efforts of HC that the owner obtained secure parking for her scooter. Additionally, HC worked to resolve the owner's concern about her parking space through emails and by attending the parking lot with her in August 2018, to try to problem-solve around her using her car while maintaining access for the electrical room.

138. HC's attempts were not baseless demands for information or efforts to make the owner's life more difficult. He offered the owner use of his parking stall for her scooter, despite being under no obligation to do so. While that may not have addressed all the owner's concerns, such an offer is inconsistent with the owner's allegations of harassment. So too was HC's subsequent conduct. For example, the owner acknowledged that HC helped her by telling her about a strata council meeting in December 2017, when she wanted to raise issues of concern to her.

139. The owner did not provide evidence to indicate that she expressed any reservations about being filmed accessing her car while being filmed at the time. This strategy seemed to have been decided by unanimous agreement at the August 2018 strata council meeting. It is unclear why the owner felt humiliated by the experience or why the fault was ascribed to HC. In any case, the owner has not established that HC harassed her. The owner's assertion that HC had told her she would not fit in, devoid of any context, is insufficient.

140. For the reasons already provided, I find that HC did not harass the owner.

Did the strata adequately respond to the owner's complaints about odours and, if not, what remedy the owner should be given?

141. As I have already indicated, the strata responded to the owner's complaints about odours with a variety of actions. They posted signs advising requesting moderation in scent use within the building. They emailed notices to all residents to the same effect. TG included a similar request in his next bulletin sent to strata owners. At the request of the owner, the strata council proposed a bylaw at the next annual general meeting, that the building should be designated "scent-free." Even if the odour complaint was not discussed in the July 2018 strata council meeting, the strata council responded to the owner's complaints.

142. The property manager canvassed with the owner what more she would like done to avoid having bothersome fragrances used in the building. The owner asked that the nuisance bylaw be enforced to deal with the situation.

143. As the property manager repeatedly communicated to the owner, in order for a bylaw to be enforced, the strata must be able to identify who contravened the bylaw. Enforcement of bylaws is described in sections 129 of the SPA. The strata may remedy the breach of a bylaw and may enforce conformity to the bylaw through fines or the denial of access to recreational facilities. The latter two enforcement mechanisms require the identification of a person who violated an applicable bylaw.

144. No such information is available here. I consider the strata to have taken reasonable steps to address the owner's concerns. The strata was not obligated to post or distribute notices, nor to keep posted notices up for a certain period of time. The strata did not need to threaten bylaw enforcement, which could limit their discretion to not enforce the bylaw in subsequent, particular circumstances. They introduced a "scent-free" bylaw as the owner requested, but that proposed bylaw was voted down. No enforcement processes were available to the strata and, as a result, I consider that the strata met its obligations with respect to the owner's complaint of odours in common areas of the building.

145. For the reasons already provided, I conclude that the strata adequately responded to the owner's complaints about odours.

Did the owner harass the strata's representatives or engage an abuse or process and, if so, what remedy the strata should be given?

146. The strata says that the worker has excessively corresponded with and made demands of the strata, either through the strata council or the property manager. The strata also stated that the owner abused legitimate complaint mechanisms to advance complaints that the strata thought were baseless.

147. After reviewing the various statements describing the interactions between the owner and various representatives of the strata, and after reviewing all correspondence provided to me, I do not think that the owner was engaging in harassment or an abuse of process. The owner complained frequently and strongly about a range of subjects. She also adopted a threatening posture at several points, including when emailing HC on December 19, 2017, speaking with TG on

December 31, 2018, writing to the strata council on January 31, 2018, and writing to the property manager and strata council on August 17, 2018, but there is insufficient evidence to conclude that she did so with an improper motivation.

148. The strata presented evidence that the owner told TG she intended to “take down” the strata and would go through the bylaws with a fine-tooth comb and bring forward any of concern to her. The owner raised a number of issues in the first months after moving in. Later, however, she seemed focused on her parking spot and on the odour issue she observed in the building. She wrote and spoke to representatives of the strata frequently on those issues, but she had some legitimate concerns. I note that her concern about odours, for example, is not dismissed because it had no merit, but rather because there is no viable method of enforcement of the bylaws given the limited information available.
149. As a Vice Chair of the tribunal noted in *Mellor v. The Owners, Strata Plan KAS 463*, 2018 BCCRT 1 (CanLII), it will be a rare circumstance where an owner’s document requests of his or her strata will be found to be frivolous or vexatious. I consider the same general principle to apply in cases where an owner raises concerns about bylaws or complaints to the strata. So long as there is some basic level of legitimacy to an owner’s complaints and concerns, I am reluctant to conclude that they were frivolous or vexatious. In this case, I find there to be some legitimacy to the owner’s complaints and concerns. This is particularly so with respect to the issues about which she most frequently communicated with the strata’s representatives, the issues she raised in this dispute.
150. I have also reviewed the previous tribunal decision referred to me by the strata. That decision was anonymized for reasons that are not clear to me. Because this decision is not anonymized and the owner is the same in each case, I will not refer to that decision by name.
151. The owner was unsuccessful in her previous dispute brought before the tribunal. That case has nothing to do with the present dispute, however.

152. For the reasons I have already provided, I conclude that the owner did not harass the strata's representatives or engage in an abuse of process.

TRIBUNAL FEES AND EXPENSES

153. 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.

154. In this case, both parties were unsuccessful. I do not consider it appropriate for either party to pay the expenses of the other party in this case. I therefore make no order for the reimbursement of tribunal fees.

155. As set out in 189.4 of the SPA, the strata must not charge dispute-related expenses against the owner, unless the tribunal orders otherwise. I do not order otherwise.

DECISION AND ORDERS

156. I dismiss the owner's complaint and the strata's counterclaim.

Darrell Le Houillier, Tribunal Member