



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Doherty v. The Owners, Strata Plan KAS 3313*, 2019 BCCRT 667

BETWEEN:

EDWARD DOHERTY

APPLICANT

AND:

The Owners, Strata Plan KAS 3313

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. The applicant strata lot owner, Edward Doherty (owner), wants 2 parking stalls in the parkade, referred to as R1 and R2, reinstated as common property. The respondent strata corporation, The Owners, Strata Plan KAS 3313 (strata),

assigned the common property as parking stalls for the exclusive use of 2 other owners, to alleviate what it says was a lack of parking in the complex.

JURISDICTION AND PROCEDURE

2. 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*. 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
4. 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.
5. Under section 123 of the *Act*, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;

- c. Order any other terms or conditions the tribunal considers appropriate.

ISSUE

6. The issue in this dispute is whether the strata had the authority to assign common property as additional exclusive use parking stalls.

BACKGROUND AND EVIDENCE

7. The strata was created in September 2007 and is a strata corporation comprising 176 residential strata lots, a combination of apartments and townhomes.
8. The strata plan filed at the Land Title Office shows 139 parking stalls in 2 buildings, one building with 73 stalls and one with 66. The strata added 2 parking stalls to the latter building.
9. It is undisputed that the 2 areas which the strata converted to parking stalls are common property in the parkade. The areas previously provided unobstructed access to 2 storage facilities used by numerous owners. One storage facility houses 27 storage units, and the other houses 17 storage units. The strata says each of the storage facilities in this case have 2 access doors, and only 1 door of each storage facility is now subject to a parking stall.
10. On October 7, 2010, several years prior to the re-classification of the common property to parking stalls, the strata amended its parking bylaws. The relevant bylaw includes the following:
 - a. Bylaw 6(a): A resident shall use only the parking space(s) assigned to their Strata Lot...
 - b. Bylaw 6(k): No parking is permitted except in a designated parking space, nor shall vehicles be parked in a manner, which will in any way obstruct or reduce the width of an access driveway.

- c. Bylaw 6(m): Vehicles shall not be parked in any manner that endangers any person or property or is considered a nuisance by Strata Council, acting reasonably...

- 11. In November 2018, the strata decided to convert the common property space in front of the storage access doors into parking stalls R1 and R2 and held a lottery for granting use of stalls R1 and R2 to owners in the complex. The lottery winners win the right to rent the stalls from the strata. Since that time, the common property spaces have been utilized as parking stalls.
- 12. No strata council meeting minutes or minutes of an annual general meeting (AGM) or special general meeting (SGM) were provided in evidence.

POSITION OF THE PARTIES

- 13. The owner argues that the strata did not have the right to convert common property into parking stalls for the exclusive use of some owners and submits the strata failed to adhere to its obligations under the *Strata Property Act* (SPA). Additionally, the owner states that the parking stalls in question significantly block access to and from the storage facility, creating an unsafe situation.
- 14. The strata says it was within the strata council's jurisdiction to rent out the 2 unassigned parking stalls to help resolve an ongoing parking shortage. The strata also says the storage access doors are still accessible pursuant to the specifications of the fire department and, in any event, the storage facilities each have a second access door.

ANALYSIS

- 15. I have reviewed the photographs of the area in question and the strata plan. Although the strata refers to the areas as "unassigned parking spots", I find the strata plan indicates the areas are common property, and are not classified as parking stalls.

16. Section 76 of the SPA provides that, subject to section 71, the strata may give an owner permission to exclusively use common property that is not designated as limited common property, which permission may be given for a period of not more than 1 year.
17. Section 3 of the SPA requires the strata to manage and maintain common property. Section 71 of the SPA states the strata must not make a significant change in the use or appearance of common property unless:
 - a. The change is approved by a resolution passed by a $\frac{3}{4}$ vote at an AGM or SGM; or
 - b. There are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.
18. There is no evidence before me indicating that the strata has complied with section 71 of the SPA by holding a $\frac{3}{4}$ vote. There is also no suggestion that immediate change was necessary. Although the strata submits that the change was to help alleviate a parking shortage, I do not find a parking shortage satisfies the need for an immediate change to ensure safety or prevent significant loss or damage.
19. Additionally, I consider the change to be significant because while occupied by a vehicle, the parking stalls restrict access to the storage facilities. This impacts all owners who utilize the storage facilities in that area (see *Anthony v. Schnapp*, 2016 BCSC 1839 for a non-exhaustive list of factors relating to whether a change is “significant”).
20. In summary, I find that the strata failed to obtain the necessary $\frac{3}{4}$ vote, which was required under section 71 of the SPA to significantly change the use of common property by converting a storage access area into parking stalls. I therefore order that the strata must remove the parking stalls until such a change is approved by a resolution passed by a $\frac{3}{4}$ vote at an AGM or SGM. This vote, if it occurs, will be subject to all the regular provisions of the SPA.

21. Given the tribunal's mandate of recognizing the ongoing relationship between parties, I encourage the parties to work together in a productive and constructive manner in future, and remind the strata to follow the statutory requirements of the SPA.

TRIBUNAL FEES, EXPENSES AND INTEREST

22. 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. As the owner has been successful in his claim, I order the strata to reimburse his tribunal fees of \$225.

23. The owner claims dispute-related expenses in the amount of \$883.08, discussed below.

24. The owner claims \$519.68 for mileage for his trips between his off-site residence and the strata buildings, advising he had to perform research, take photos and measurements, and serve the strata with this dispute. The tribunal does not typically award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees. I find the owner's claim for mileage while furthering this dispute is equivalent to a claim for his time spent on the dispute. Therefore, I decline to order those expenses.

25. The owner claims \$357 for meal allowances. I decline to order those expenses as the applicant has not provided evidence indicating any money actually spent. I would also not order reimbursement of this expense in any event, for the same reasons as above.

26. The owner claims \$6.40 for photocopying relating to this dispute. I find that expense reasonable in the circumstances, so I order reimbursement of it as a dispute-related expense.

27. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the respondent.

DECISION AND ORDERS

28. I order that the respondent, The Owners, Strata Plan KAS 3313:

- a. Return or restore parking stalls known as R1 and R2 to their previous use as access areas;
- b. Reimburse the owner, Edward Doherty, a total of \$231.40, broken down as follows:
 - i. \$225.00 in tribunal fees; and
 - ii. \$6.40 in dispute-related expenses.

29. The owner is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

30. 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.

31. 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 strata 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.

Andrea Ritchie, Vice Chair