



Civil Resolution Tribunal

Date Issued: June 18, 2019

File: ST-2018-007270

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan VR 245 v. Villegas*, 2019 BCCRT 741

B E T W E E N :

The Owners, Strata Plan VR 245

APPLICANT

A N D :

Lewis Villegas

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The respondent is the owner of a strata lot in the applicant strata corporation, The Owners, Strata Plan VR 245 (strata). This dispute is over the payment of parking stall fees. The strata claims that the respondent used 3 parking stalls but only paid for 1 over the course of several years. The strata claims \$1,160 in arrears.

2. The respondent says that he has paid all of his strata-related fees, including parking stall fees, through an automatic debit agreement with the strata's property manager. He says that if the strata failed to collect parking fees in the past, it is the strata's fault.
3. The applicant is represented by a strata council member. The respondent is self-represented.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may 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

8. The issues in this dispute are:
 - a. Did the strata bring this dispute too late?
 - b. How much, if anything, does the respondent owe the strata for parking arrears?

BACKGROUND AND EVIDENCE

9. In a civil claim such as this, the applicant must prove its case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
10. The strata consists of 60 residential strata lots in a 3-storey apartment style building. The strata includes 1 level of underground parking, which is common property. The respondent has owned his strata lot since 1988.
11. Bylaw 11.1 says that parking stalls must be rented from the strata by an owner. Bylaw 11.3 says that the strata will determine the monthly rental amount for a parking stall. At the times relevant to this dispute, the strata has charged \$20 per month for a parking stall.
12. The strata employs a resident owner as a part-time resident manager. The current resident manager was in the role throughout the time period relevant to this dispute. She is responsible for maintaining parking records, including who is renting each space and the date that each owner started renting each parking stall.
13. The strata says that when there is a change to a parking stall assignment, the resident manager advises the strata's property manager so that the property manager can ensure that the correct owner pays the parking stall fee. The strata says that the property manager keeps a copy of the resident manager's list of parking stall assignments. The strata says that it receives financial statements from the property manager every month, which identify each strata lot's parking fees.

14. It is undisputed that the respondent currently uses 3 parking stalls and that he has paid \$20 per month for each of them since December 1, 2016. It is also undisputed that the respondent has paid for 1 of the parking stalls since he started using it in 1995. This dispute is about the respondent's second and third parking stalls.
15. Both parties made submissions and provided evidence about which specific parking stalls the respondent used. It is undisputed that he has switched several times over the years. I find that it does not matter to the outcome of this dispute which specific parking stalls the respondent used at different times. For clarity, I will refer to the second parking stall and the third parking stall even though the actual parking stall the respondent used may have changed over time.
16. In addition, the evidence is unclear about when the respondent began using the second and third parking stalls. However, because of my findings about the application of the *Limitation Act*, I find that I do not need to determine precise dates.
17. The respondent says that in August 2010, he asked the resident manager to assign him a second parking stall, which she did. The first written record in evidence about the second parking stall is the resident manager's parking stall assignment record dated May 1, 2013. This record shows that the respondent had been assigned 2 parking stalls. The strata's claim for arrears for the second parking stall begin on March 20, 2013, which is the date that the resident manager told the property manager about the respondent's second parking stall.
18. For unknown reasons, the property manager did not change the amount of the respondent's automatic payment and did not charge him for the second parking stall.
19. The strata says that in 2015, the respondent started using a third parking stall.
20. The respondent says that he did not start using the third parking stall until January 2016. The respondent says that he and another owner, FJ, had "grave concerns" about the level of service provided by the property manager. They arranged for the

respondent's wife to park in one of FJ's parking stalls to see if the property manager was staying on top of parking assignments.

21. In May 2016, the resident manager was elected to strata council, so she had access to the detailed financial records from the property manager. On October 6, 2016, the resident manager sent an email to 2 other strata council members noting that the respondent was only paying for 1 parking stall even though he had been using 2 parking stalls for years. While investigating, the strata realized that the respondent was using a third parking stall.
22. The strata contacted the respondent, who ended his experiment with FJ and started using a different parking stall beginning on November 1, 2016, which had been previously unassigned. The respondent began paying for all 3 parking stalls through his automatic payments on December 1, 2016. However, he refused to pay any arrears for parking fees.
23. The strata therefore says that the respondent used the second parking stall from March 20, 2013, through November 1, 2016, and the third parking stall from October 1, 2015, through November 1, 2016.

ANALYSIS

Did the strata bring this dispute too late?

24. The *Limitation Act* applies to tribunal claims, as stated in section 13 of the Act. Under section 6 of the *Limitation Act*, the limitation period for debt claims is 2 years, which means that the strata generally cannot bring a claim for debts that are older than 2 years at the time the tribunal issued the Dispute Notice. The tribunal issued the strata's Dispute Notice on October 2, 2018.¹
25. The strata makes 2 arguments about why it should recover debts older than October 2, 2016.

¹ Under the current version of the Act, which came into force on January 1, 2019, the relevant date is the date that the applicant requests resolution, not the date the tribunal issues a Dispute Notice.

26. First, the strata argues that it did not discover the claim until October 6, 2016, when the resident manager realized that the respondent had not been paying for the second and third parking stall. The strata says that the resident manager had not been a member of strata council before 2016 and therefore did not have access to the detailed financial records.
27. Section 8 of the *Limitation Act* says that a person discovers a claim when they knew or reasonably should have known about the loss giving rise to the claim.
28. The strata's evidence is that the resident manager, who the strata employs, told the property manager, who is an agent for the strata, about the second parking stall in May 2013. There is no explanation about why the property manager failed to make the appropriate changes to the respondent's account, but I find that the strata had actual knowledge of the respondent's use of the second parking stall in May 2013.
29. As for the third parking stall, the strata's own evidence is that it knew that the respondent was using a third parking stall in 2015. I find that the strata had actual knowledge of the respondent use of the third parking stall in 2015.
30. The strata says that the strata council received detailed financial statements monthly that identified how much each strata paid in parking fees. The strata therefore knew each time it received a financial statement that the respondent was only paying for 1 parking stall while the strata knew that he was using 2 or 3 parking stalls. For these reasons, I reject the strata's arguments that it did not discover the claim until October 2016.
31. Second, the strata argues that a letter that the respondent wrote to the strata on November 27, 2017, is an acknowledgement of liability that should extend the limitation period. Section 24(1) of the *Limitation Act* says that if a person acknowledges a claim, the claim must be considered discovered on the day the person made the acknowledgement. The strata says that because the respondent acknowledged that he had been using the second and third parking stalls during the relevant times, he also acknowledged the strata's claim for the associated parking fees.

32. I disagree with the strata's arguments. While the respondent admitted to using the second and third parking stalls, he specifically denied liability for any parking fees other than those he had paid starting on December 1, 2016. An acknowledgement of a debt under the *Limitation Act* must include an admission that the person is liable to pay at least some of what is claimed. See *Ryan v. Moore*, 2005 SCC 38. In this dispute, the respondent explicitly denied any liability to pay arrears.
33. Therefore, I find that the *Limitation Act* bars the recovery of any parking stall fees that arose before October 2, 2016.

How much, if anything, does the respondent owe the strata for parking fee arrears?

34. The respondent's primary argument is that because he agreed to have the property manager automatically collect any strata fees from him, the system "guarantees" that his monthly fees include any parking fees. He argues that by knowingly allowing him to park, the strata agreed to a "binding contract" not to charge him. He also argues that he should not have to pay for the strata's and property manager's mistake of not charging him sooner.
35. I do not find these arguments persuasive. The bylaws are clear that a parking stall costs \$20 per month. I find that just because the strata council, resident manager and property manager failed to make sure that the respondent was paying for the second and third parking stalls does not mean that he was not required by the bylaws to pay for them.
36. The respondent made additional submissions about the third parking stall, namely that he was using FJ's parking stall with his permission. However, the respondent says that he started using his own third stall in November 2016, after the end of his experiment with FJ. Because of my finding about the limitation period, I do not need to decide whether the respondent would have been liable for parking fees while he was parking in FJ's stall because the strata brought its claim for those parking fees too late.

37. Therefore, I find that the respondent must pay for the second and third parking stall for November 2016, which totals \$40. The strata is barred by the *Limitation Act* from collecting the rest.

The Strata's Record Keeping

38. Although it was not a part of the claim, in an effort to assist the parties moving forward I will comment on the strata's practices with respect to the allocation of parking stalls.

39. Section 76 of the SPA says that the strata may give an owner or tenant permission to exclusively use common property for a period of not more than 1 year, which can be renewed. The strata's system for allocating parking stalls seems to assume that these allocations can be permanent, which is incorrect. They must be reviewed and renewed annually. The strata can also change the allocation of parking stalls at any time, as long as doing so would not be significantly unfair.

40. Based on my review of that evidence, and meaning no disrespect to the resident manager, the strata's records about the allocation of the parking stalls have not been consistently accurate or complete. In addition to ensuring compliance with the SPA, formally renewing parking stall assignments on an annual basis should help the strata maintain a more accurate record, and I encourage the strata to do so.

TRIBUNAL FEES, EXPENSES AND INTEREST

41. 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 find that the strata was substantially unsuccessful because it received only \$40 of the \$1,160 claimed. I dismiss its claim for tribunal fees and dispute-related expenses. The respondent did not claim any dispute-related expenses.

DECISION AND ORDERS

42. I order that within 14 days of the date of this decision, the respondent pay the strata \$41.21, broken down as follows
- a. \$40 in parking arrears, and
 - b. \$1.21 in pre-judgment interest under the *Court Order Interest Act*.
43. I order that the strata immediately cancel all parking arrears on the respondent's strata lot account for parking in the second and third parking stalls from March 20, 2013 to October 1, 2016, inclusive.
44. I dismiss the strata's remaining claims.
45. The strata is also entitled to post judgement interest under the *Court Order Interest Act*, as applicable.
46. 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.
47. 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.

Eric Regehr, Tribunal Member