



# Civil Resolution Tribunal

Date Issued: July 3, 2019

File: ST-2018-007328

Type: Strata

Civil Resolution Tribunal

Indexed as: *Mueller v. The Owners, Strata Plan K290*, 2019 BCCRT 801

BETWEEN:

Kevin Mueller

**APPLICANT**

AND:

The Owners, Strata Plan K290

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. The applicant owner, Kevin Mueller (owner), owns strata lot 18 in the respondent strata corporation, The Owners, Strata Plan K290 (strata). The owner says the strata has unfairly applied the strata's bylaws in refusing to permit the owner to install laundry equipment.

2. The owner is self-represented and the strata is represented by its strata council president.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. 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.
5. 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.
6. 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

7. The issue in this dispute is whether the owner should be permitted to install laundry equipment.

## BACKGROUND AND EVIDENCE

8. In a civil dispute such as this, the applicant owner bears the burden of proof. This means the owner has to provide evidence to prove each of his claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
9. The strata was created in 1980 and is a strata corporation comprising 24 residential apartment-style strata lots in a 3-storey building.
10. The strata repealed its bylaws and filed a complete new set of bylaws at the Land Title Office on March 27, 2014. The strata's relevant bylaws are summarized as follows:
  - a. **Bylaw 3(24):** Prior to installation of in-suite laundry equipment, an owner must request permission from the strata. This bylaw further sets out installation and product requirements for laundry equipment.
  - b. **Bylaw 5(1):** An owner must obtain approval from the strata before altering a strata lot.
  - c. **Bylaw 5(2):** The strata must not unreasonably withhold its approval under bylaw 5(1), but may require an indemnity to the strata.
11. The owner purchased strata lot 18, a top floor unit, in early January 2018. On January 9, 2018 he asked the strata for permission to install laundry equipment as well as perform kitchen renovations. In his application, the owner noted the washer and dryer model numbers and stated anti-vibration pads would be installed below the equipment.

12. On January 11, 2018, the owner was advised that the strata declined the installation of the laundry equipment, but approved the kitchen renovations. A revised alteration application was requested, which the owner completed and re-submitted for approval, removing the references to laundry equipment. The revised alteration plan was approved on January 15, 2018.
13. On January 16, 2018, the owner requested the strata provide “reasonable cause” for denying his application for laundry equipment, as he stated his request complied with the strata’s bylaws.
14. On January 19, 2018, the owner was advised that there were ongoing issues with pipe drainage in the building and the pipes were scheduled to be inspected and flushed later that year, therefore his laundry equipment request had been denied.
15. On May 22, 2018, the owner requested a hearing with the strata council seeking to have the council change its decision to decline the owner’s request to install laundry equipment. A hearing was held on May 24, 2018. On May 31, 2018, the strata wrote to the owner and stated it would not approve laundry hookups due to ongoing issues and reports of poor water drainage in the building’s pipes, including water backups occurring in the first-floor units. The strata further advised the pipes were to be “hydro-jetted” in June 2018 and advised that after the work was completed, and if no further water back-ups were reported, the owner was invited to re-apply “a few months after” the work was completed.
16. Hydro-jetting of the building’s common drain pipes occurred on June 20, 2018. The owner followed up in July and August 2018, asking if the drainage problem had been resolved. The matter was discussed in a strata council meeting on August 30, 2018. The minutes from that meeting noted that 2 separate drain technicians that worked on the hydro-jetting project raised concerns that the building’s piping may not have the capacity for all units to have laundry hookups. The strata council instructed the property manager to find an expert who could provide further information before any laundry equipment applications would be considered.

17. The owner took the August 30, 2018 meeting minutes to mean that just because the building's pipes may not be sufficient for "all units" to have laundry hookups, his unit was just 1 set of laundry equipment, and therefore his application should be approved. On September 18, 2018, the strata advised the owner their decision to decline stood, pending an expert opinion on the capacity of the pipes.
18. The Dispute Notice in this claim was issued on October 4, 2018.
19. On March 4, 2019, the strata received a Building Plumbing and Electrical Assessment from an engineering firm, CIMA+. I have summarized the relevant portions of the report as follows:
  - a. For the drainage sanitary system, CIMA+ stated the 3" branch lines pipes were close to maximum capacity, so if clothes washers were added to the suites they would have to be connected to a separate sanitary stack that would run down to connect in the basement to one of the 4" main pipes. Based on the current drainage sanitary system capacity, CIMA+ found that only 2 of 3 vertical strata lots would be able to connect a clothes washer to the system.
  - b. For the domestic hot and cold supply system, CIMA+ stated the cold water system was already undersized for the building load and did not have any capacity to add any more plumbing fixtures to it. Additionally, CIMA+ noted the hot water system was sized adequately currently, but if clothes washers were added to each suite then the hot water system piping would be over its allowable capacity.
  - c. For the suite and building electrical systems, CIMA+ found that both electrical systems had adequate capacity for each strata lot to have a washer and dryer.
  - d. CIMA+ also noted that if a clothes washer was installed in 1 suite, it would require renovations to any suites below it, to make the proper plumbing connections.

## POSITION OF THE PARTIES

20. The owner argues that there is capacity in the building's piping system for his suite to have laundry equipment and therefore the strata is unreasonably withholding permission for his alterations. The applicant seeks an order allowing him to install laundry equipment, \$150 per month for lost rental revenue, and \$20,000 for lost property value.
21. The strata says it is not unreasonably withholding approval for alterations, and its decision to decline the owner's application was based on recent, ongoing drainage issues in the building. The strata further submits allowing only this owner to install laundry equipment would set a precedent for further requests, which they would not be able to approve based on the limitations of the building's piping system.

## ANALYSIS

22. The owner's position is essentially that the engineer's report does not say that **no** laundry equipment can be hooked up to the current building piping system, but that the system cannot withstand **all units** having laundry equipment. The owner therefore proposed in his submissions that the strata approve his alterations request and then remove bylaw 3(24) which permits in-suite laundry. The strata, however, points out that bylaw 3(24) does not "permit" in-suite laundry, but allows owners to request permission to install in-suite laundry, and provides guidelines for the laundry equipment, if approved. I agree with the strata. I find that bylaw 3(24) does not provide the owner with a right to in-suite laundry. The strata submits that it is going to hold a vote on the removal of bylaw 3(24), but was advised to wait until the outcome of this dispute.
23. In any event, for the reasons that follow, I find the strata has not unreasonably withheld approval of the owner's requested laundry equipment installation.
24. The evidence before me is that in October 2016, one of the lower strata lots experienced a drainage back up. In June 2017, another strata lot reported soapy

water rising or backing up into their kitchen sink, and it was suggested it was from the strata lot above draining wash water. At a strata council meeting on June 19, 2017, the property manager was instructed to obtain quotes for the building's drainage pipes and stacks to be inspected and flushed. In November 2017, another lower strata lot reported water backing up into their bathtub. At the December 12, 2017 annual general meeting (AGM), the proposed expense for flushing the vent stacks and sewer drains was approved and, as noted above, it was subsequently scheduled for June 20, 2018.

25. Therefore, in January 2018, when the owner made his first request for the installation of laundry equipment, I find the strata provided good reasons for its position to decline permission at that time. Similarly, in May 2018 when the owner made his second request, the drainage pipes had still not been inspected or flushed, and I find that the strata did not act unreasonably in refusing to change its earlier decision.
26. Given the subsequent engineer's report, I find the strata's continued denial to grant the owner permission to install laundry equipment is reasonable. The engineer stated the building's piping and drainage systems cannot handle the excess capacity that would come with installing laundry equipment in all of the strata's lots. I appreciate the owner's argument that his request is for only 1 suite, and the pipes could therefore "handle it", but I still find his claim must fail, for 2 reasons. First, I agree with the strata that allowing only the owner to install laundry equipment would create an unfair situation for other owners. Second, there is no evidence before me that any other strata lot has had a request to install laundry equipment approved. Therefore, I find the strata has not acted in a way that inequitably applied the bylaws to the owner. In other words, I find the strata's position is reasonable and not significantly unfair to the owner.
27. I find the owner is not entitled to an order that he be permitted to install laundry equipment. Given my conclusions, I also find the owner is not entitled to lost rental revenue or lost property value. Although the owner provided anecdotal evidence

from his realtor colleagues about the average purchase price difference and rental income difference in units with and without laundry equipment, I am satisfied the owner purchased the strata lot knowing it did not contain in-suite laundry, and that the potential installation of in-suite laundry was not guaranteed. I dismiss the applicant's claims.

## **TRIBUNAL FEES, EXPENSES AND INTEREST**

28. 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 not been successful in its claim, I find he is not entitled to reimbursement of his tribunal fees or dispute-related expenses.
29. The strata did not pay tribunal fees, but seeks an order for its dispute-related expenses, including \$1,837.50 for the engineer's report, \$349.13 in charges for work done by the property management company, and \$47.25 in charges from the City of Kelowna for documents.
30. In relation to the engineer's report, I find it is not a proper dispute-related expense. The strata requested the report in September 2018, before this dispute was started. I am satisfied this expense would have been incurred in the course of investigating the building piping issues even if the owner had not commenced this dispute. Therefore, I find the strata is not entitled to reimbursement of the engineer's report as a dispute-related expense.
31. The strata's property manager invoiced the strata for time spent in drafting and filing the strata's Dispute Response. The tribunal does not usually allow parties to recover legal fees, nor does it award compensation for a party's time spent trying to resolve the dispute. I find the strata's claim for the property manager's time spent assisting with the dispute is equivalent to a claim for legal fees. Therefore, I decline to order those expenses.



32. During the course of the dispute, the strata ordered documents from the City of Kelowna, including the permits the owner applied for in relation to his approved renovations. I am satisfied the documents were reasonably ordered as a dispute-related expense. I order the owner to reimburse the strata \$47.25, the amount paid to the City of Kelowna for documents.
33. 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**

34. Within 30 days of the date of this decision, I order the owner to pay the strata a total of \$47.25 for dispute-related expenses.
35. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*.
36. I dismiss the strata's remaining claims for dispute-related expenses.
37. I dismiss the owner's claims.
38. 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.

39. 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.

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Andrea Ritchie, Vice Chair