



# Civil Resolution Tribunal

Date Issued: July 23, 2019

File: ST-2018-008151

Type: Strata

Civil Resolution Tribunal

Indexed as: *Tugayli v. The Owners, Strata Plan BCS3444*, 2019 BCCRT 902

**B E T W E E N :**

Turgay Tugayli

**APPLICANT**

**A N D :**

The Owners, Strata Plan BCS3444

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicant Turgay Tugayli is the co-owner of strata lot 26, unit 408, in the respondent strata corporation The Owners, Strata Plan BCS3444 (strata). The applicant says the strata has failed to comply with its governance obligations under the *Strata Property Act* (SPA) and bylaws.

2. The applicant says the strata has not held an annual general meeting (AGM) in two years, has held no strata council meetings for six months, and does not provide minutes or financial statements to owners as required under the SPA.
3. The applicant says the strata council president, Alin Stana, has been breaching residents' privacy by flying drones and using closed circuit television systems, without authorization.
4. The applicant requests that the strata be ordered to,
  - a. Hold an AGM,
  - b. Hold a strata council meeting,
  - c. Audit the strata's finances,
  - d. Reconstitute the strata council as an "owners-only council".
5. The strata disagrees with the applicant's claims, except that it admits it has been more than two years since the last AGM. The strata describes the rest of the applicant's dispute as "outrageous, groundless." Specifically, the strata says,
  - a. it provided two hearings before strata council at the applicant's request, but the applicant failed to attend the first one,
  - b. it provided a copy of the strata's financial statements to the applicant a few months ago, and
  - c. a remedy where the tribunal requires the reconstitution of strata council contravenes the SPA.
6. The applicant is self-represented. The respondent strata is represented by Alin Stana.

## **JURISDICTION AND PROCEDURE**

7. 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.
8. 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.
9. Under section 10 of the Act, the tribunal must refuse to resolve a claim that it considers is not within the tribunal's jurisdiction. A dispute that involves one or more issues that are within the tribunal's jurisdiction and one or more that are outside its jurisdiction may be amended to remove those issues that are outside its jurisdiction.
10. 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.
11. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
12. 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.

## **ISSUE**

13. The issues in this dispute are:

- a. Is the strata in breach of its obligations to hold an AGM or a strata council meeting?
- b. If so, what is an appropriate remedy?
- c. Has the applicant established evidence of financial irregularity in the strata's dealings such that the tribunal should order an audit?
- d. Given the alleged problems with strata governance, should the tribunal order that the strata council be reconstituted as an "owners-only council"?
- e. Has the strata breached its obligations to the applicant under the SPA or the bylaws by installing closed circuit television monitoring in common areas?
- f. Has the strata failed to provide producing records or documents to the applicant and, if so, what remedy is appropriate?
- g. Has the strata failed to provide a mailbox to the applicant and, if so, what remedy is appropriate?

## **BACKGROUND AND EVIDENCE**

14. Though I have read all of the evidence provided, I refer only to evidence and submissions I find relevant to provide context to my decision.

### ***Bylaw Amendment History***

15. The general index of the strata filed at the Land Title Office (LTO) shows that there were no registered bylaws prior to the first set of amendments filed January 10, 2013. As no bylaws were filed with the LTO prior to January 10, 2013, under section 120 of the *Strata Property Act* (SPA) I find the strata's bylaws were the Standard Bylaws under the SPA, subject to any subsequent properly filed amendments.

16. Bylaw amendments filed at the LTO on January 10, 2013 were approved at an AGM or special general meeting (SGM) on November 1, 2012.

17. Bylaw amendments filed at the LTO on November 27, 2014 were approved at an AGM or SGM on October 9, 2014. This amendment included adding Bylaw 9, permitting all owners, tenants assigned the owner's right to vote under certain conditions, and spouses or adult children of owners, to be eligible for strata council.
18. Bylaw amendments filed at the LTO on January 21, 2016 were approved at an AGM or SGM on October 1, 2015.
19. Subsequent bylaw amendments were filed at the LTO that are not relevant to this dispute.

## **ANALYSIS**

### ***Annual General Meeting***

20. Under section 40(2) of the SPA, the strata must hold an AGM not later than 2 months after the strata's fiscal year end. An AGM is a requirement unless all eligible voters waive, in writing, the holding of the meeting and consent, in writing, to resolutions to approve the budget for the coming fiscal year, elect a council by acclamation, and deal with any other strata business (see section 41).
21. Based on the minutes filed in evidence, I find that the strata held an AGM on January 23, 2017.
22. Prior to that date, the strata held either an SGM or an AGM on each of the following dates, according to the strata's bylaw amendment history:
  - a. October 20, 2011,
  - b. November 1, 2012,
  - c. October 29, 2013,
  - d. October 9, 2014,
  - e. October 1, 2015,

23. Given that section 40(2) requires the strata to hold meetings annually with 2 months of the fiscal year end, I find that the strata has failed to hold a required AGM in fall 2017 for the 2017/2018 year and in October 2018 for the 2018/19 year. The strata agrees that an AGM should have been held by October 31, 2017 for the 2017/18 year, but was not.
24. I order that the strata hold a special general meeting (SGM) within 30 days of this decision, to address its 2018 AGM obligations under the SPA. Thereafter, I order the strata to comply with section 40(2) by holding an AGM within 2 months of each fiscal year end, unless the section 41 waiver requirements are met.

### ***Strata Council Meeting***

25. Section 34.1 of the SPA provides that, on a written request from an owner or tenant, the strata council must hold a hearing within 4 weeks of the request. If the purpose of the hearing is to seek council's decision, council must give the applicant a written decision within one week after the hearing (see section 34.1(3)).
26. Strata council met on August 21, 2018 and continued on August 28, 2018. They produced a single set of meeting minutes that I find were distributed to the applicant by email on request.
27. On October 24, 2018, the applicant wrote to strata council requesting a hearing because he wanted:
- a. an explanation for why he had stopped receiving strata council meeting minutes,
  - b. an explanation for why the building caretaker had been fired and not replaced,
  - c. information on the current active lawsuits involving the strata and the building,
  - d. an explanation about who the current active strata council members were and why they had not communicated,

- e. an explanation for why an AGM and council election was not held in 2018, and
- f. a schedule for the next election and AGM.

28. Strata council responded offering a November 21, 2018 date for the hearing. The applicant replied to say he was out of the country until November 26, 2018. Strata council then offered a hearing on December 12, 2018. The applicant does not contest, and I find that he attended the December 12, 2018 meeting.

29. While I find that the strata met its obligation to provide the applicant with a hearing on request, I find that it did not issue a letter decision answering the applicant's questions. However, section 34.1(3) of the SPA provides that a written decision is only required where the purpose of the hearing is to seek a decision. Here, the applicant did not request a decision. Having said that, it may be practical to address those issues at the SGM or AGM and then provide the minutes to the applicant.

### ***Request for Audit of Strata Finances***

30. Section 35 of the SPA requires the strata to prepare and retain certain records and documents. Section 36 requires the strata, on receiving a request, to make the documents and records referred to in section 35 available for inspection by, and provide copies of them, to the owner.

31. In July 2018, the strata provided the owner with copies of its most recent financial statements dated May 31, 2018 and minutes of strata council meetings held April 26, 2018 and July 16, 2018. The strata says these were provided in response to a verbal request by the applicant. The applicant did not provide evidence that documents were requested but not provided by the strata.

32. On March 8, 2019, the strata management company emailed the applicant a copy of the August 28, 2018 strata council meeting minutes, and a copy of the January 23, 2017 AGM minutes. The strata manager commented, in correspondence, that the January 23, 2017 AGM was the most recent AGM held, as of March 8, 2019.

33. The strata filed a document titled “Approved Operating Budget” showing actual figures for 2015/16, a budget for 2015/16 and an “approved budget” for 2016/17, as evidence in this dispute.
34. The strata says that as of February 28, 2019, it has over a \$200,000 operating surplus. Documents to confirm this surplus were not filed in evidence.
35. Based on the evidence before me, I find that the applicant has not provided evidence of financial irregularity sufficient for me to order an audit of the strata. However, given that the strata has not been holding AGMs in compliance with the SPA, I urge the strata to ensure its financial reporting to owners is brought up to date. Should they wish, the owners could pass a  $\frac{3}{4}$  vote resolution at the upcoming AGM I have ordered to have a financial review or audit.

### ***Request to Require an Owners-Only Council***

36. The applicant seeks an order requiring the strata council to be made up of owners only, because he says the current strata council president is not an owner and is “abusing his power.”
37. Section 28 of the SPA restricts the persons who may be strata council members to owners, individuals representing corporate owners, tenants who have been assigned their landlord’s right to stand for council subject to certain conditions, or others if the strata passes a bylaw allowing it.
38. Bylaw 9 currently provides for some exceptions to an owners-only council, including tenant council members or spouses or adult children of owners. I do not have jurisdiction to order that current council or non-owners be prohibited from being nominated to or voted onto council.
39. Standard bylaw 11, which I have found applies to the strata, requires that the strata may remove one or more council members by a resolution passed by a majority vote at an AGM or SGM.



40. At the January 23, 2017 AGM, the minutes recorded that the owners elected a strata council consisting of 5 owners, including Mr. Stana, from a group of 12 nominees. I do not have evidence before me proving whether Mr. Stana is an owner. I find it unnecessary for me to make that determination. There is no record of an election for the next 2018/2019 strata council and I find that no election was held.
41. It is also worth noting that section 31 of the SPA says that strata council members must act honestly and in good faith with a view to the best interests of the strata corporation, and exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.
42. Given my finding that an AGM should have been held in 2018 but was not, I order that elections for the new strata council take place at the 2018 AGM, which I have ordered to be held within 30 days of this decision. Thereafter, strata council elections should be held annually at the AGM, subject to the section 41 SPA waiver provisions.
43. I decline to order an owners-only council given the language in Bylaw 9 and the lack of evidence that the strata council president has used his powers improperly.

### ***Closed Circuit TV in Common Areas***

44. The applicant says Alin Stana has been breaching residents' privacy by flying drones and using closed circuit television systems, without authorization.
45. There was no evidence filed about the use of flying drones. I find this allegation was unproven.
46. The applicant filed a news media video in which strata owners complain about Mr. Stana and the strata council levying what they view as unauthorized or exorbitant fines.
47. In the video, Mr. Stana agrees that cameras have been installed in the common areas. He says these systems are compliant with privacy legislation.

48. Bylaw 32 provides that closed circuit television and video surveillance are installed in certain common areas of the building, with video files to be used “only for the purposes of law enforcement and/or for the enforcement of those strata corporation bylaws and rules which relate to the safety and security of the building and its occupants.”
49. I find the use of CCTV compliant with the strata’s current bylaws, given that the applicant has not provided sufficient evidence to meet the burden of proving otherwise.
50. I find that the applicant has not proven an improper use of the CCTV set up in the common areas.

### ***Mailbox***

51. The applicant filed a photograph where a hand is indicating what looks like an empty mailbox slot in a bank of mailboxes. The applicant labelled this photograph “No Services, No Mailbox since January 5<sup>th</sup>”.
52. The strata says, and I find, that Canada Post regulates the mail box assemblies in the strata pursuant to the *Canada Post Corporations Act* and the *Mail Receptacles Regulations*. The strata says it tried to assist by contacting Canada Post, and that eventually the affected panel was filled and delivery of mail to resumed. I make no finding against the strata regarding the mailbox issue.

### **TRIBUNAL FEES and EXPENSES**

53. 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. Here, because the failure to hold an AGM and to elect a strata council is a significant departure from SPA obligations, I order the strata to reimburse the applicant his full tribunal fees of \$225.
54. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owner.

## DECISION AND ORDERS

55. I order that, within 30 days of this decision:

- a. the strata hold an SGM to address its 2018 AGM obligations, including electing a new strata council,
- b. the strata then comply with section 40(2) of the SPA by holding an AGM within 2 months of each fiscal year end, unless the section 41 waiver requirements are met, and
- c. the strata pay the applicant \$225 in tribunal fees

56. I dismiss the remainder of the applicant's claims.

57. 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 56.5(3) 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.

58. 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 56.5(3) 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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Julie K. Gibson, Tribunal Member