



Civil Resolution Tribunal

Date Issued: July 26, 2019

File: ST-2018-008640

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ball v. The Owners, Strata Plan EPS 3286*, 2019 BCCRT 909

B E T W E E N :

William Ball

APPLICANT

A N D :

The Owners, Strata Plan EPS 3286

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. This is a summary decision of the Civil Resolution Tribunal (tribunal). It is not based on the merits of the dispute.

2. The applicant, William Ball (owner) owns a strata lot in the respondent strata corporation, The Owners, Strata Plan EPS 3286 (strata).
3. The dispute is broadly about whether the owner's medical marijuana use contravenes strata bylaws, and whether the owner should be exempt from bylaws for medical reasons.
4. In this summary decision, I refuse to resolve the dispute because the owner did not request or attend a hearing before the strata council, as required in section 189.1(2) of the *Strata Property Act* (SPA). My reasons are set out below.
5. The owner is self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the 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.
7. 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.
8. 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.

9. 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

10. Should the tribunal refuse to resolve the owner's dispute?

EVIDENCE, FINDINGS AND ANALYSIS

11. I have only commented upon the evidence and submissions as necessary to give context to my reasons.
12. The Dispute Notice and owner's submissions set out several claims related to strata bylaws and his use of medical marijuana. He seeks the following:
 - a. A declaration that the owner is not breaking any bylaws, and/or that for medical reasons he is permanently exempt from applicable bylaws about smoking and nuisance.
 - b. A declaration that the strata cannot remove him from his home due to medical marijuana use.
 - c. An order that the strata must disclose complaint letters it has received against him.
 - d. An order that the strata must conduct air quality testing on 4 floors of the strata building.
 - e. \$5,000 in damages.
13. The strata contests all of the owner's claims for various reasons and submits it has not fined the owner under its bylaws, or taken any other enforcement procedures against him. The strata also submits that the owner did not request a hearing before the strata council, or inform the strata council about his claims before filing his dispute with the tribunal.

14. SPA section 189.1(2)(a) says that before an owner may request that the tribunal resolve a dispute about a strata property matter, the owner must have requested a hearing before the strata council. Section 189.1(2)(b) says the tribunal may waive this hearing requirement at the request of a party.
15. No party has requested a waiver of the hearing requirement. The owner has not disputed the strata's assertion that no hearing was requested or held, and has not provided contrary evidence on this point. Although the hearing issue was raised in the strata's Dispute Response Form and in its submissions, the owner provided no response on this point.
16. I find that since the hearing issue was clearly raised in the strata's dispute response and submissions, the owner had sufficient opportunity to respond. I therefore accept that there was no strata council hearing, and no hearing request.
17. Based on my review of the evidence and submissions in this dispute, I decline to exercise my discretion under SPA section 189.1(2)(b) to waive the strata council hearing requirement in this dispute. Neither party requested a waiver. Also, for the following reasons, I find a waiver is not appropriate given the facts and issues in dispute.
18. A tribunal vice chair considered the purpose of the section 189.1 hearing requirement in a previous tribunal decision, *Ducharme v. The Owners, Strata Plan BCS 753*, 2019 BCCRT 219, a tribunal vice chair said the purpose of section 189.1 was to attempt to have the parties resolve their dispute at hearing, before making a formal application to the tribunal (paragraph 76). While this decision is not binding on me, I agree with this reasoning and adopt it.
19. In *Buschau v. The Owners, Strata Plan LMS 1816 et al*, 2018 BCCRT 413, I waived the section 189.1 hearing requirement because the evidence in that dispute showed that while the applicant owner had not requested a formal hearing before the strata council, she was a member of the council, and had discussed her claims at a strata council meeting before filing her dispute. The discussion was documented in meeting minutes. I therefore found that the strata was aware of the applicant's

claims and had sufficient opportunity to respond to them before the dispute was filed, so it was unlikely that a formal hearing before the strata council would resolve the dispute.

20. The evidence before me in this dispute is different from *Buschau*, as the owner did not bring all of his claims before the strata council before filing his dispute, and the strata council denies having pre-dispute knowledge of at least some of the owner's claims. I find that this is contrary to the purpose of section 189.1, as set out in *Ducharme*. While I accept that some of the owner's complaints were set out in one or more emails to the strata council, I find that this does not meet the hearing requirement in section 189.1.
21. In *The Owners, Strata Plan BCS 1721 v. Watson*, 2018 BCSC 164, the BC Supreme Court said that even though the tribunal had not formally waived the hearing requirement, this was acceptable because the strata corporation respondent had not raised the hearing issue. In the dispute before me, the respondent strata has raised the hearing issue, which is different from what occurred in *Watson*.
22. For all of these reasons, I find the hearing requirement in SPA section 189.1 was not met, and I find it is not appropriate in the context of this dispute to waive the hearing requirement.
23. As previously stated, section 189.1 says that an owner may not request that the tribunal resolve a dispute unless they have requested a hearing before the strata council, or unless that hearing requirement is waived. Since there was no hearing request and I do not waive the hearing request, the owner was not entitled to file his dispute with the tribunal. I therefore find all of the owner's claims and therefore this dispute are outside the tribunal's jurisdiction.
24. Section 10(1) of the *Civil Resolution Tribunal Act* says the tribunal must refuse to resolve a claim that it considers not within its jurisdiction.

25. For this reason, I conclude that this dispute is not within the tribunal's jurisdiction, and I must refuse to resolve it.

26. Nothing in this decision prevents the owner from filing a fresh dispute after the section 189.1 requirements are met, subject to the applicable limitation periods.

TRIBUNAL FEES

27. In accordance with the Act and the tribunal's rules, as the owner was not successful in this dispute, I order no reimbursement of tribunal fees.

28. The strata must comply with the provisions in section 189.4 of the SPA, which include not charging dispute-related expenses against the owner.

DECISION AND ORDERS

29. I refuse to resolve the owner's claims, and this dispute, under section 10(1) of the Act.

Kate Campbell, Tribunal Member