



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Grunau v. The Owners, Strata Plan LMS 4641*, 2019 BCCRT 907

B E T W E E N :

Judy Grunau

APPLICANT

A N D :

The Owners, Strata Plan LMS 4641

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. The applicant, Judy Grunau, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS 4641 (strata). The applicant says the strata is withholding approval for the installation of a fence. She seeks orders about the

location, installation, and maintenance and repair of the fence. The strata disagrees with the applicant's claims.

2. The applicant is self-represented. The strata is represented by a member of the strata council.

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* (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. 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.
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 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.

ISSUES

7. The issues in this dispute are:
 - a. the location of the fence to be installed;

- b. whether the strata should be responsible for the costs of the installation of the fence; and
- c. whether the strata should be responsible for the future maintenance and repair of the fence.

BACKGROUND AND EVIDENCE

- 8. The applicant is the owner of strata lot 14, which is also known as suite 112. The applicant's strata lot is adjacent to strata lot 13, and the patio areas for the 2 strata lots are adjoining. According to the strata plan, patio areas are designated as limited common property (LCP). The strata plan shows a line between the patio areas, but does not mention fencing.
- 9. The strata repealed its previous bylaws, and filed amended bylaws at the Land Title Office in November of 2014. Bylaw 2.1(b) requires that a strata lot owner repair and maintain their strata lot, except for repair and maintenance that is the responsibility of the strata. Bylaw 3.1 states that the strata will repair, manage and maintain the common property (CP) and common assets.
- 10. Bylaw 13.1 provides that no signs, fences, gates, billboards, placards, advertising or notices shall be erected or displayed without prior written approval from the strata.
- 11. Section 72(2) of the *Strata Property Act* (SPA) permits a strata corporation to, by bylaw, make an owner responsible for the repair and maintenance of LCP that the owner has a right to use. The strata has done so, and bylaw 10.8 states that expenses attributable to LCP that would not have been expended if the areas had not been designated as LCP shall be borne by the owners of the strata lots entitled to use the LCP in proportion that the unit entitlement of such strata lot bears to the aggregate unit entitlement of all strata lots whose owners are entitled to use the LCP to which the contribution relates.
- 12. The applicant says that a fence was installed between strata lots 13 and 14 by the strata's developer. The fence was removed at the request of a previous owner who

owned both strata lots and combined them into a single living space. Some years later, the strata lots were restored to 2 separate spaces, but the partition fence on the patio was not replaced. The applicant purchased her strata lot in September of 2017. As a result of some privacy and boundary issues with the owner of strata lot 13, the applicant wishes to re-install the fence.

13. On May 31, 2018, the applicant wrote to the strata requesting that the partition fence be re-installed. The applicant reiterated this request in subsequent correspondence.
14. On July 13, 2018, the strata's property manager advised the applicant that the strata would provide permission for the fence installation at the applicant's own cost, provided that the strata approve the location, design and colour of the fence, and the applicant sign an alteration agreement and assumption of liability.
15. The applicant requested a hearing before the strata council on the matter, which was held on August 28, 2018. She argued that there was no need for the strata to approve the location or appearance of the fence as it would be the same location and appearance as the fence previously installed by the developer. She also suggested that there was no need for her sign an alteration agreement as the fence was a re-installation. The applicant proposed that the cost of the fence be borne 50% by the strata and 25% each by herself and the owner of strata lot 13. After the hearing, the strata council denied the applicant's cost-sharing proposal.
16. On September 7, 2018, the applicant signed an alteration agreement to assume the full cost of the installation, repair and maintenance of the fence.
17. The applicant hired a contractor to construct the fence. She paid \$1,339.75 for a fence that would be constructed and stained to match existing fencing at the strata. The contractor started work on the project before the strata had provided approval for the location and design of the fence. At the request of the property manager, this work ceased.

18. The applicant and the strata communicated about the appropriate location and appearance of the fence. However, they were not able to come to an agreement. The fence has not been installed, and the applicant says that the components are in storage.

POSITION OF THE PARTIES

19. The applicant's position is that the strata is acting unreasonably about the fence installation, and that it has treated her badly and unfairly. The applicant says that she has had a fence constructed at a cost of \$1,339.75, and that the strata is preventing its installation due to its inability to confirm the exact location for the fence. The applicant states that there are "location holes" in the siding from the previous fence, and submits that these holes were left "as is" and not repaired so that the strata would know where to re-install the fence.

20. Although she had agreed to bear the expense, the applicant says the strata lost its opportunity to have the fence re-installed at her cost when it would not approve the installation of the fence at its original location. The applicant submits that the cost of the fence should be paid by the strata as it failed to have the previous owner take responsibility for it. She also says that the ongoing maintenance of the fence should be paid by the strata as it is CP

21. The applicant asks for orders that the strata install the fence at its cost, and be responsible for the costs associated with its repair and maintenance.

22. The strata denies that it has treated the applicant badly or in an unfair manner. The strata states that its bylaw require strata approval prior to fences being installed on CP, and that it gave that approval to the applicant, subject to the location and design of the fence. The strata states that the applicant has yet to satisfy these conditions.

23. According to the strata, the applicant knew that there was no fence when she purchased the strata lot. The strata says that neither the disclosure statement nor the strata plan refer to partition fencing, and that the fencing that was installed

previously was removed prior to the first sale at the request of the buyer. To the best of the strata's knowledge, this was done prior to the first annual general meeting (AGM). The strata says that it is unaware of any holes, and has no documentation from the owner developer about them. The strata's position is that the proposed fence is an alteration to CP that an owner would be required to pay for and agree in writing to take responsibility for its costs, including repair and maintenance.

ANALYSIS

24. As a preliminary matter, the parties made submissions about the fact that the applicant works for the same property management company that manages the strata. It does not appear that the applicant works on the strata's file. I do not find her employment to be relevant to this dispute.

Location of the Fence

25. The parties have differing views as to whether the information provided by the applicant to the strata establishes the proper location for the re-installed fence. The applicant provided photos that do show the presence of the former fence between the patio areas of strata lots 13 and 14. Given the angles of the images and the distance at which the photos were taken, it is not possible to ascertain the exact location of the originally installed fence.

26. The applicant says that holes in the building's siding show the location of the previous fence. The strata says a surveyor put a yellow tape between the exterior fence and the building to indicate the boundary between the strata lots, and provided an image of it. No surveyor's report, diagrams, or sketches have been provided. Based on the images in evidence, I am unable to determine whether the location proposed by the applicant or the strata is the correct boundary between the strata lots (or whether they are, in fact, referring to the same location).

27. In my view, the best source of information for this matter is the strata plan. The strata plan clearly identifies an LCP patio area for each strata lot. The patio for each

strata lot is identified as having dimensions of 3.15 x 1.93, and the plan shows a dividing line between these 2 areas. I am satisfied that the appropriate place for the fence is the dividing line which shows the boundary of each LCP patio.

28. The applicant asks for an order confirming the location of the fence at the site of the holes. As the evidence does not establish on a balance of probabilities that this is the boundary between the LCP patio areas, I decline to issue that order. As noted, the appropriate location for the fence is the dividing line as shown on the strata plan.

Cost of Installing the Fence

29. The applicant seeks an order that the strata pay for the installation of the fence, while the strata takes the position that these costs are the responsibility of the applicant. Both parties refer to the patio areas as CP but, as noted above, they are designated as LCP on the strata plan.
30. As noted by the applicant, the strata's minutes do not contain information about the decision to allow the previous owner to join the 2 strata lots. Although photographs do indicate that a fence was installed between strata lots at some point, it would appear that this was removed by the developer prior to the first AGM. There did not seem to be an alteration agreement involved with this removal. Section 5 of the SPA requires the owner developer to exercise the powers and perform the duties of a council from the time the strata corporation is established until a council is elected at the strata corporation's first AGM. There is no evidence before me indicating that the owner developer imposed a requirement on the original owner to replace the partition fence on the patio area when the strata lots were returned to their separate states.
31. I do not find that the fact that there was a fence previously on the LCP patio means that the strata is obliged to replace it. Neither the strata plan nor the disclosure statement refer to partition fencing. I find that the applicant purchased the strata lot without the fence and that re-installing it amounts to an alteration that requires permission from the strata.

32. The applicant was entitled to ask permission from the strata to install a new fence as contemplated by the bylaws. However, she will be responsible for the cost. I dismiss this portion of the applicant's claim.

Repair and Maintenance of the Fence

33. The applicant also asks for an order that the strata take responsibility for the costs of maintaining and repairing the fence. As discussed above, the strata has adopted bylaw 10.8, which allows the strata to charge strata lot owners with the expenses attributable to LCP that would not have been expended if the areas had not been designated as LCP.

34. I find that the partition fencing is aimed at restricting the use of the patio areas to the owners of the strata lots adjacent to the LCP patios. It would not be necessary to have such fencing if the areas were CP available for the use of all owners, as opposed to LCP designated for the exclusive use of particular owners. As such, under bylaw 10.8, I find that the applicant is responsible for the expenses associated with the fencing. The same is true for all other strata lot owners whose strata lots enjoy the benefit of this and other types of LCP. I dismiss the applicant's claim in this regard.

35. In summary, I have dismissed the applicant's claims regarding her identified location of the fence and the costs associated with installing and repairing it. I find that the strata did not unreasonably withhold permission to install the fence, as the applicant did not provide the required documentation about its location and design. On this basis, I decline to order the installation of the fence as requested by the applicant.

36. Nothing in my decision would prevent the applicant from obtaining approval for her fence installation by providing the requested information to the strata. The information as to the dividing line between the strata lots, which I have found to be the appropriate location for the fence, is available on the strata plan. Further, it

would be open to the applicant to request approval as to the appearance of the fence. Although the images provided by the applicant show the unassembled materials, it is not possible to confirm the height, width or final appearance of the proposed fence. The applicant may wish to obtain a sketch or other diagram from her contractor about this.

TRIBUNAL FEES AND EXPENSES

37. 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 applicant was unsuccessful, I dismiss her claims for reimbursement of tribunal fees and dispute-related expenses.
38. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicant.

DECISION

39. I dismiss the applicant's claims and this dispute.

Lynn Scrivener, Tribunal Member