



Civil Resolution Tribunal

Date Issued: August 9, 2019

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Civil Resolution Tribunal

Indexed as: *Blasutig v. The Owners, Strata Plan 1474*, 2019 BCCRT 958

B E T W E E N :

ALICE BLASUTIG

APPLICANT

A N D :

The Owners, Strata Plan 1474

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. The applicant, Alice Blasutig (owner), owns a strata lot in the respondent strata corporation, The Owners, Strata Plan 1474 (strata).

2. The owner claims the strata has not considered her disabilities in allocating her a covered parking stall or has acted in a significantly unfair manner by denying her the use of an alternate covered parking stall. She says the location of her current stall makes it difficult for her to get in and out of her car safely.
3. The owner seeks orders that the strata allocate to her a different, mutually agreeable, covered parking stall, that is “safe” considering her physical disability, and reimburse her vehicle towing expense of \$191.20.
4. The strata says it has made its decisions about parking stall allocations in good faith and requests that I dismiss the owner’s claims.
5. The owner is represented by friend and former owner in the strata. The strata is represented by a strata council member.
6. For the reasons that follow, I order the strata to re-assign its covered parking stalls and reimburse the owner’s towing expense¹.

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* (CRTA). 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. 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.
10. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
11. Under section 123 of the CRTA and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

12. The issues in this dispute are:
 - a. Has the strata, or its council, acted in bad faith by refusing to re-allocate the owner's covered parking stall?
 - b. Does the strata have the authority to re-assign parking stalls?
 - c. Has the strata treated the owner in a significantly unfair manner by refusing to re-assign her covered parking stall? If so, what is an appropriate remedy?
 - d. Did the strata discriminate against the owner on the basis of disability?
 - e. Should I order the strata to reimburse the owner \$191.20 for towing expenses?

BACKGROUND, EVIDENCE AND ANALYSIS

13. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
14. In a civil proceeding such as this, the applicant owner must prove each of her claims on a balance of probabilities.

15. The strata is a residential strata corporation located in Nanaimo, B.C. comprising 26 strata lots in a 7-storey high rise building. It was created in 1986 under the *Condominium Act (CA)* and exists under the *Strata Property Act (SPA)*.
16. The strata filed consolidated bylaws at the Land Title Office (LTO) in November 2008, replacing all previous bylaws except the strata's rental restriction bylaw, which was retained under a different number. I find these bylaws are applicable to this dispute. There are subsequent bylaw amendments filed at the LTO, but I find they are not relevant to the dispute.
17. Strata bylaw 34 governs parking. I summarize the relevant parts of bylaw 34 as follows:
 - Bylaw 34(1): An owner must park vehicles "in areas designated or assigned for such purpose".
 - Bylaw 34(3)(c): An owner may not park on the common property in a manner which may compromise the safety or security of residents.
 - Bylaw 34(4)(a): "Undercover parking spaces" shall be allocated by the strata council to owners on a seniority basis determined by the date they purchased their strata lot. Owners are required to pay a user fee of \$20.00 per month per stall for use of an "undercover" or covered stall.
 - Bylaw 34(5): The strata council has a right to tow a vehicle after 24 hours of delivering notice of a parking bylaw violation without further notice in the event of a second or subsequent bylaw infraction. The owner who caused the bylaw infraction shall hold the strata harmless from all costs incurred by the strata, including towing costs.
18. The parties agree the owner has owned her strata lot "for 21 years" or since about April 1998.
19. The strata building is located across a road from a marina. The building is triangular in shape and the apex of the triangle points towards the marina. The main entrance

to the building is on the ground floor at the apex of the triangle. There are 8 covered parking stalls on the ground floor on either side of the building's main entrance. Of the 8 covered parking stalls, 4 are interior stalls without separating walls. The 4 stalls on each end of the covered parking stalls have an exterior wall. The exterior walls separate the covered parking stalls from the building's exterior. The covered parking stalls are shown as CP on the strata plan. There are other uncovered parking stalls on the strata's common property (CP). There is no LCP identified on the strata plan and no record of LCP designations under section 74 of the SPA on the strata's general or common property indices, so I conclude all parking stalls are CP.

20. There is no doubt that the 8 covered parking stalls are considered the premium parking stalls. The owner's assigned covered parking stall "H" is on one end of one set of 4 stalls and has an exterior wall on one side of the stall. (The driver's side if the vehicle is not backed into the stall.)
21. At some point in 2017, the penthouse strata lot owner (PH owner) gave the owner permission to use their assigned covered parking stall "F". It appears permission was given while the PH owner was going to be out of town. In June 2018, the PH house owner wrote to the owner advising they would require the use of their assigned parking stall "F", an interior stall, effective August 1, 2018. The owner originally refused to return the use of the stall to the PH owner but ultimately agreed and began using her assigned covered parking stall "H" in late June 2018.
22. The owner made several requests that the strata permit her to exchange her parking stall for another covered parking stall, stating she had difficulty using her assigned stall. She first requested use of the PH owner's parking stall "F", stating the PH owner was not entitled to its use. She said stall "F" was assigned to the previous PH owner, and that the current PH owners continued to use it, contrary to the strata's parking bylaw about covered parking stalls being based on seniority of purchase date. The strata refused. She then requested the strata re-assign the covered parking stalls to accommodate her disability, saying stall "H" was smaller in width and length than some of the interior covered stalls and that the exterior wall

on the driver side of stall “H” did not allow her to fully open her vehicle door. Based on the photographs provided by both parties, I accept that owner’s submissions about the size and configuration of the parking stalls.

23. Also in June 2018, the owner began parking part way into her assigned stall because she alleges she otherwise had difficulty entering and exiting her vehicle. The strata wrote to her on November 16, 2018 asking her to park her vehicle completely within her assigned stall because of security concerns about someone gaining access the balcony above her strata lot by climbing on her car. The owner continued to park her vehicle partially outside her assigned stall.
24. On January 21, 2019, the strata’s property manager wrote to the owner restating the strata’s security concern with the way the owner was parking her vehicle and, among other things, that it was contrary to bylaw 34(1). The strata stated that if the owner did not comply by February 15, 2019, the strata would tow her vehicle.
25. The owner’s vehicle was towed on February 18, 2019.

Has the strata, or its council, acted in bad faith by refusing to re-allocate the owner’s covered parking stall?

26. The strata council exercises the powers and performs the duties of the strata corporation under section 4 and 26 of the SPA. Strata council decisions are made by majority vote of each individual council member, given the strata corporation itself does not make decisions. Therefore, I find the owner’s claim of bad faith must relate to the individual strata council members.
27. The owner has not named individual council members as respondents in this dispute. I find I cannot make orders against non-parties who have not been given the opportunity to respond to complaints made against them.
28. For these reasons, I dismiss the owner’s claims that the strata council acted in bad faith when it refused to re-allocate the owner’s covered parking stall.

29. Even if the owner had alleged individual council members had acted in bad faith, I would have refused to resolve the owner's claims for lack of jurisdiction under section 10 of the CRTA for the following reasons.
30. A claim of bad faith implies one or more strata council members breached their standard of care under section 31 of the SPA. Section 31 requires a council member to act honestly and in good faith with a view to the best interests of the strata, and exercise the care diligence and skill of a reasonably prudent person in comparable circumstances.
31. The BC Court of Appeal has found that remedies for breaches of section 31 of the SPA are found in section 33 of the SPA. Section 33 is expressly outside of the tribunal's jurisdiction as set out in section 122(1)(a) of the CRTA and must be dealt with by the Supreme Court. (See *Dockside Brewing Co. Ltd. v. Strata Plan LMS 3837*, 2007 BCCA 183 at paragraph 59.)

Does the strata have the authority to re-assign parking stalls?

32. The owner says the strata has the authority under section 76 of the SPA to assign CP parking stalls for periods of up to 1 year, to set and change conditions on renewal, and to cancel the assignments.
33. The strata does not dispute its authority under section 76 of the SPA but states that section 76 does not apply because "with unanimous owner agreement at the October 2005 AGM [annual general meeting]..., the [covered] parking spots in question are allocated only on the basis of seniority of purchase in the building." In response to the owner's submission that Form B – Information Certificates (Form Bs) issued by the strata under the SPA disclose that parking spaces are subject to change, the strata says the Form B statement only applies to uncovered parking stalls.
34. I find the strata has misunderstood the SPA requirements and I agree with the owner's interpretation for the following reasons.

35. Part of the October 14, 2005 AGM minutes were provided in evidence. The minutes reflect that the following question was put to the strata owners under the “New Business” section of the AGM:

Do you want all covered parking to be allocated by purchase date seniority, no exceptions?

36. The minutes also reflect the following motion was unanimously passed by all owners present at the AGM:

As of today, October 14, 2005, all covered parking will be allocated by purchase date seniority.

37. I find the motion passed was a majority vote motion under sections 27 and 50 of the SPA. This is supported by an October 26, 2005 letter from the strata council to the current PH owners, where strata council confirmed the vote was a majority vote. The motion simply provided direction to the strata council that I infer was subsequently incorporated into the strata bylaws. The fact that it was passed unanimously by the all strata owners present at the AGM does not give it special weight. In particular, the resolution cannot be seen to override section 76 of the SPA that deals with short term exclusive use of CP, which is what I find the parking stall assignments to be.

38. Section 76 says that the strata may give an owner or tenant exclusive permission or special privilege in relation to common property that is not LCP. Such permission or privilege may be given for up to 1 year, may be subject to conditions, and may be renewed for further terms of up to 1 year. Finally, the strata may cancel the permission or privilege granted by providing reasonable notice.

39. Given the strata has the authority to cancel a parking stall designation, I find it also has the authority to re-assign a parking stall designation. This authority is not limited to covered parking stalls and applies to all parking stalls. However, re-assignment of parking stalls must comply with the bylaws as I discuss below.

Has the strata treated the owner in a significantly unfair manner by refusing to re-assign her covered parking stall?

40. The owner submits the strata did not assign covered parking stalls in accordance with its bylaw stating the current PH owners were permitted continued use of parking stall “F” even though they purchased the PH after the owner purchased her strata lot. She says parking stall “F” should have been offered to the next owner on the covered parking stall waiting list with the highest seniority. I agree.
41. The evidence is that a waiting list for covered parking stalls existed in May 2005, prior to the current PH owners purchasing the PH. A May 9, 2005 memo from the strata council secretary at the time explains assignment of covered parking stalls was made on the basis of purchase date. The attached owner list shows the owner was sixth on the waiting list for a covered parking stall. The current PH owners had not purchased at that time as their name does appear on the owners’ list.
42. An October 26, 2005 letter to the current PH owners from the then council president states the council approved the PH owners use of covered parking stall “F” at its meeting of October 26, 2005 because it (incorrectly) noted that all covered parking stalls are LCP. The letter also incorrectly stated that the parking stall would revert to CP at the time of the PH was sold and, at that time, could be assigned to the next eligible owner based on the “priority list”. The letter concludes that the priority list was re-affirmed by a majority vote of the owners at the October 14, 2005 AGM.
43. The strata must comply with section 76 of the SPA and its bylaws when assigning covered parking stalls. I have already established that the parking stalls are CP and that the strata must adhere to section 76 of the SPA when granting an owner exclusive permission or special privilege in relation to CP.
44. Section 76 permits an assignment of short-term use of the CP covered parking stalls for maximum period of 1 year and bylaw 34(4) requires covered parking spaces to be assigned to owners on a seniority basis determined by the date they purchased their strata lot.

45. It is unclear when the PH owners purchased their strata lot. However, if the bylaw was in place at the time the PH owners purchased their strata lot, they should not have been assigned parking stall “F”. If the bylaw was not in place when the PH owners purchased their strata lot, according to the bylaw, the assignment of covered parking stalls by purchase date seniority would have been required at the 1-year anniversary date of when the PH owners were assigned parking stall “F”. At the very latest, I find this would be October 14, 2006, 1 year after the strata owners provided instruction to the strata council.
46. The strata either refused to consider the owner’s position that parking stall “F” should not have been assigned to the PH owners, or incorrectly rejected the owner’s position. I find in doing so they treated the owner in a significantly unfair manner.
47. The tribunal has jurisdiction to determine claims of significant unfairness effectively because the language in section 164 of the SPA is similar to the language of section 123(2) of the CRTA (formerly section 48.1(2)), which gives the tribunal authority to issue such orders. (See *The Owners, Strata Plan LMS 1721 v. Watson*, 2018 BCSC 164 at paragraph 119.)
48. The courts and the tribunal have considered the meaning of “significantly unfair” in a number of contexts, equating it to oppressive or unfairly prejudicial conduct. In *Reid v. Strata Plan LMS 2503*, 2003 BCCA 128, the British Columbia Court of Appeal interpreted a significantly unfair action as one that is burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith and/or unjust or inequitable.
49. The British Columbia Court of Appeal has considered the language of section 164 of the SPA in *Dollan v. The Owners, Strata Plan BCS 1589*, 2012 BCCA 44. The test established in *Dollan* was restated in *Watson* at paragraph 28:

The test under s. 164 of the *Strata Property Act* also involves objective assessment. [*Dollan*] requires several questions to be answered in that regard:

- a. What is or was the expectation of the affected owner or tenant?
- b. Was that expectation on the part of the owner or tenant objectively reasonable?
- c. If so, was that expectation violated by an action that was significantly unfair?

50. Applying the test to the facts before me, I find the stated expectation of the owner was that the strata would assign her covered parking stall "F". Her expectation was supported by her submissions that the strata had erred in assigning or continuing to assign the PH owners covered parking stall "F" and in concluding it not could re-assign CP parking stall assignments.

51. I find the owner's expectation was objectively reasonable as it is consistent with the October 2005 AGM vote, bylaw 34(4)(a) and section 76 of the SPA. Given my finding the strata's position on the parking stall assignments was incorrect, which would have led to a different covered parking stall being assigned the owner, I find the strata's action to deny her a different covered parking stall was wrongful and unfair.

52. For these reasons, I find the strata treated the owner in a significantly unfair manner.

53. What then is an appropriate remedy? The owner suggests the strata could re-assign the covered parking stalls based on the ability or mobility of people using the stalls, but that is not what the bylaw says. Nor does the bylaw allow the strata to assign stalls based on owner's vehicle size as was suggested by the property manager.

54. I find the current covered parking stall assignments have been made contrary to the SPA and the bylaw (at least with respect to the PH owner). I believe my order below will correct the errors made and the significantly unfair actions of the strata toward the owner, given the current PH owners will be at a lower priority than the applicant owner.

55. Reading section 76 of the SPA and bylaw 34(4)(a) together, I find the strata must allow each owner the option of choosing a covered parking stall based on the date the owner purchased their strata lot. The owner who has owned their strata lot for the longest period must be given the first choice of covered parking stalls. Then, the owner who has owned their strata lot for the next longest period must be given the choice of any remaining covered parking stalls, and so on until all 8 covered parking stalls are chosen.
56. I find that *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610, applies to grants under section 76. I find the grants must be in writing, they can be for a maximum of 1 year, and they must be renewed before the 1-year expiry. The strata must also document the short-term exclusive use of CP covered stalls grants in its next council meeting minutes. Renewals and future grants under section 76 of the SPA must also be documented in the strata council meeting minutes.
57. An owner who chooses not to have a covered parking stall will remain on the waiting list. The waiting list priority must be on the basis of when the owner purchased their strata lot, and the first owner on the list will be offered the first vacant covered stall when a stall next becomes available, which includes the expiry of the term of any other grant under section 76, unless an owner who has owned a strata lot for a longer period chooses to exchange their stall for the vacant stall. In other words, owners may change covered parking stalls to stalls they find more desirable, but may only have 1 stall at any given time.
58. I find the process I have described above for assigning covered parking stalls to strata lot owners (covered parking stall assignment process) to be reasonable and fair and I order the strata complete the covered parking stall assignment process within 20 days of the date of this decision.
59. In making this order, I acknowledge the strata wrote to the PH owners about the time they purchased their strata lot confirming they were permitted to use covered parking stall "F". This confirmation was clearly in error as it was based on the parking stall being LCP, which it is not, and did not take into account covered

parking stall priority based on purchase date that was established as early as May 2005, confirmed at the October 2005 AGM, and brought into the bylaws by at least November 2008.

60. I realize my order will affect the PH owners, and other owners using covered parking stalls. I have not asked for submissions from the PH owners or other owners as I find the strata has clearly erred in its allocation of the covered parking stalls and has the ability to correct the error under section 76 of the SPA. I find that further submissions would not assist in correcting the strata's error and would not result in a different conclusion.
61. Nothing in this decision restricts the strata from amending its bylaws to adopt a different process for assigning covered parking stalls provided that process is fair and reasonable.

Did the strata discriminate against the owner on the basis of disability?

62. Given my conclusion about the owner's claim for significant unfairness, I see no need to consider her claim of discrimination. Accordingly, I make no order about this.

Should I order the strata to reimburse the owner \$191.20 for towing expenses?

63. For the reasons that follow, I find the owner is entitled to reimbursement of towing expenses in the amount of \$191.20.
64. Section 133(1)(b) of the SPA enables the strata to do what is reasonably necessary to remedy a contravention of its bylaws, including removing objects from the CP. While I agree that under bylaw 34(5) the strata is able to tow a vehicle on 24 hours for a bylaw contravention, had the strata properly followed bylaw 34(4)(a) about seniority, the owner's vehicle would more than likely not have been towed.

65. The owner provided a copy of the towing receipt from Mid Island Towing and proof of payment by credit card. Therefore, I find the strata must reimburse the owner \$191.20 for her towing expenses.

TRIBUNAL FEES AND EXPENSES

66. Under section 49 of the CRTA, 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. The owner was the successful party and I order the strata to reimburse her \$225.00 for tribunal fees. The owner did not claim dispute-related expenses other than towing expenses, so I make no order in that regard.

67. The *Court Order Interest Act* (COIA) applies to the tribunal. I find the owner is entitled to pre-judgement interest under the COIA on the towing expense from February 18, 2019, the date the payment was made, until March 5, 2019, the date the Dispute Notice was issued. I calculate pre-judgement interest to be \$1.77.

68. 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 ORDER

69. I order the strata, within 20 days of this decision, to:

- a. Re-assign all covered parking stalls consistent with section 76 of the SPA and bylaw 34(4)(a) following the covered parking stall assignment process I have set out above,
- b. Pay the owner a total of \$417.97, broken down as follows:
 - i. \$191.20 for towing expenses,
 - ii. \$1.77 for pre-judgement interest under the COIA, and
 - iii. \$225.00 for tribunal fees.

70. I dismiss the owner's remaining claims.

71. The owner is also entitled to post-judgment interest under the COIA, as applicable.

72. Under section 57 of the CRTA, 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. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

73. 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 CRTA, 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. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

J. Garth Cambrey, Vice Chair

¹ Paragraph 6 amended to correct and inadvertent error relating to reimbursement of towing expenses