



# Civil Resolution Tribunal

Date Issued: August 15, 2019

File: ST-2017-006812

Type: Strata

Civil Resolution Tribunal

Indexed as: *Ireland et al v. The Owners, Strata Plan VIS6016*, 2019 BCCRT 974

**BETWEEN:**

Glenna Mae Ireland and Garnet James Renning

**APPLICANTS**

**AND:**

The Owners, Strata Plan VIS6016

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Micah Carmody

## **INTRODUCTION**

1. The applicants Glenna Mae Ireland and Garnet James Renning (owners) own strata lot 15 in the respondent strata corporation, The Owners, Strata Plan VIS6016 (strata). The owners say that the strata has failed to provide any parking spaces for visitors, failed to enforce parking rules and bylaws, failed to maintain accurate

records, failed to follow the correct procedure in removing a council member, and failed to conduct maintenance and repairs in a timely and reasonable manner.

2. The owners request an order that the strata provide and enforce visitor parking spaces for the exclusive use of guests. They also request an acknowledgment or declaration that the 2-person council resulting from the resignation of one member of the 3-person council in 2017 was a legal strata council.
3. The strata requests that the visitor parking be left for the strata to enforce, and says enforcement will be more effective now that it has engaged the services of a property management company. The strata says it validly elected a new council in 2017 in response to an owner's request.
4. The owners initially requested numerous other remedies, including the repair of a fence and exterior painting. With help from a tribunal case manager, the parties agreed to certain orders for the fence repair and painting. I address those orders below, but because the parties agreed on the orders, I have not considered the merits of the owners' requests. I understand that the owners withdrew their requests for the other remedies, leaving just the 2 issues noted above.
5. The owners are represented by Ms. Ireland. The strata is represented by a council member.

## **JURISDICTION AND PROCEDURE**

6. 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.

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 CRTA 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**

10. The issues in this dispute are:
  - a. Is the strata required to provide and enforce exclusive visitor parking?
  - b. Was the 2-person strata council in 2017 a valid strata council? Did the strata validly create a new council on August 5, 2017?

## **EVIDENCE & ANALYSIS**

### ***A. Visitor Parking***

11. There is no dispute that parking has long been an issue for the strata's residents. Each of the 15 strata lots has a 1-car garage, except lots 8 and 9 which have 2-car garages. There are 5 visitor parking spaces on the common property, 1 of which is painted as an accessible parking space. The other 4 are painted for visitor use. This has been the case from the beginning, as confirmed by the developer's disclosure statement, which says that there will be 5 visitor parking spaces on the common property, one of which is "reserved for handicapped parking."

12. Many owners have 2 or more vehicles and nearby street parking is limited. In 2006 the strata created a 48-hour rule, under which anyone could park in a visitor's parking stall for up to 48 hours, but the strata says it proved difficult to enforce. The strata created a set of parking rules while Ms. Ireland was on the strata council (2011 parking rules). It ratified those rules at the 2011 annual general meeting (AGM). Residents were still allowed to park in visitor parking, but only if their garage was also used for parking. Residents who did not park in their garage could not park in the visitor's parking. Vehicles belonging to residents had to be registered with council, and violators were subject to towing or a fine, or both.
13. In subsequent years, residents and council members disagreed about how or whether to enforce the 2011 parking rules. There is no evidence that they were ever rescinded.
14. In 2014 the strata council resolved to designate 2 of the 4 regular visitor parking spaces as visitor-only, to be reserved exclusively for visitors. Minutes from 2014 to 2018 show that council made several attempts to obtain appropriate signage and secure a contract with a towing company. A towing contract was signed but it is not clear whether any vehicles were towed under that contract. Because of the brief nature of meeting minutes, it is not always apparent whether the council was discussing enforcing visitor-only parking or enforcing the rule from 2011 that prohibited all parking on common property other than the visitor parking spaces.
15. Minutes from the July 21, 2018 AGM note that Ms. Ireland wanted to know about the enforcement of visitor parking. The minutes say council was still considering that, but all agreed that having the signage put up was a step in the right direction. The strata did not dispute the owners' assertion that signs have not been erected.
16. The owners say that at present, to be sure of having a parking space available for a guest, it is necessary to keep one's garage space open for the guest and park the vehicle normally parked in the garage on the street or in visitor parking. They submit that those who use their garages for parking and follow the rules are being deprived

of a benefit they purchased along with their strata lot. They say the lack of visitor parking is a hardship for those needing visitor parking for their guests.

17. The owners say the strata is required to provide at least 2, and possibly 5, visitor parking spaces, based on City of Victoria bylaws and the developer's disclosure statement, both of which I discuss below. The owners also argue that section 258 of the SPA makes visitor parking a legal requirement.
18. The strata requests that the visitor parking be left for the strata to enforce. The strata notes that it has allowed the owners "almost exclusive use of the accessible visitor parking space," which the owners do not substantially dispute.

### ***The SPA, bylaws, and rules***

19. Under section 3 of the SPA, the strata is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners. Under section 26 of the SPA, the strata council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules. Section 27(2) of the SPA provides the strata council with the discretion to determine whether a person has contravened a bylaw or rule. Under section 133 of the SPA the strata may do what is reasonably necessary to remedy a contravention of its bylaws or rules.
20. According to the Continuing Legal Education Society's BC Strata Property Practice Manual, if parking is common property, in the absence of a lease, it is under the control of the strata corporation and can be allocated by the strata council, subject to any applicable bylaws.
21. The strata filed bylaws with the Land Title Office on June 7, 2006. Under its bylaws, the strata is required to control, manage and administer the common property for the benefit of all owners. This echoes the language in section 3 of the SPA. The strata council may also levy fines against owners for breaches of bylaws and rules. There are no bylaws specific to visitor parking.

22. Under the standard bylaws, an owner, tenant, occupant or visitor must not use common property in a way that unreasonably interferes with the rights of other persons to use and enjoy the common property, or is illegal, or is contrary to a purpose shown on the strata plan.
23. There are no parking spaces or designated parking areas shown on the strata plan. The area between the three buildings is shown as common property.
24. As noted above, the 2011 parking rules are still in place. They only prohibit owners who do not park in their garage from using visitor parking. Owners who park in their garage and therefore currently allowed to park in visitor parking.

### ***Analysis***

25. Has the strata managed the common property visitor parking adequately, for the benefit of all owners? The phrase, "for the benefit of [all] owners," which appears in the SPA and the strata's bylaws, has been interpreted to mean the greatest good for the greatest number, as determined by the owners in a democratic setting. Having visitor parking strictly enforced would benefit owners who have visitors. Having the flexibility to sometimes park an extra vehicle in an available visitor parking space would benefit owners of multiple vehicles. The difficult decisions that involve weighing those competing concerns are best left to all the owners to determine democratically, as expressed in bylaws and rules.
26. There are no bylaws specifically about visitor parking. The only rules in place are the 2011 parking rules, which allow owners to park in visitor parking with certain conditions.
27. The courts have addressed the strata's discretionary powers to enforce its bylaws in various circumstances. In *Strata Plan LMS 3259 v. Sze Holding Inc.*, 2016 BCSC 32, the Supreme Court held that a strata council has discretion whether to enforce its bylaws in certain circumstances but that such discretion is limited, particularly in circumstances where the strata owners have a reasonable expectation that the bylaw will be consistently enforced. The BC Court of Appeal confirmed that a strata

corporation need not enforce a bylaw, even where there is a clear breach, if the effect of the breach on other owners is trifling. See *Abdoh v. The Owners of Strata Plan KAS 2003*, 2014 BCCA 270.

28. I find that the strata has discretion to enforce its bylaws and rules in limited circumstances. In exercising its discretion, the strata must be reasonable, and consider the expectations of the owners with respect to prior enforcement of the bylaw. That is, if the strata has consistently enforced the bylaw or rule, it might be unreasonable for the strata not to continue to enforce it.
29. On review of the council meeting minutes, I am satisfied that the strata is reasonably enforcing its 2011 parking rules. The evidence shows that enforcement of the 2011 parking rules has been challenging, but it cannot be said that the strata has ignored its duty to enforce its rules.
30. Does the developer's disclosure statement, which indicates that there will be 5 visitor parking stalls, require the strata to maintain 5 visitor parking stalls and enforce their exclusive use for visitors? In my view, the answer to this question is 'no'. The disclosure statement is not a strata plan. Had the strata plan designated parking spaces for visitor parking, then arguably standard bylaw 3(1)(e) would prevent the strata from effectively converting those spaces into resident parking. That bylaw prohibits the use of common property in a way that is contrary to a purpose for which it is intended, as shown on the strata plan. There is no indication expressly or by necessary implication on the strata plan that any parts of the common property must be used for visitor parking.
31. Does the municipal bylaw, which required 2 designated visitor parking stalls, require the strata to maintain and enforce exclusive use for visitors of 2 visitor parking stalls? An email from a City of Victoria planning technician indicates that that when the strata was formed, it required 21 parking stalls, 10% of which had to be for visitor parking. Today, visitor parking stalls are in addition to, not part of, the required parking stalls, so the strata's 22 parking stalls would be 1 short of the requirement. However, it is considered legal non-conforming (grandfathered).

32. In my view, the strata is required to maintain at least 2 visitor parking spaces, but it has done so. At present there are 4 parking spaces identified as visitor parking, and one space identified as accessible. Whether the strata is complying in form and not in substance with the municipal bylaw is a matter for the municipal authorities.
33. I find that it would not be appropriate to interfere with the strata's governance regarding visitor parking. How the strata balances the needs of residents with multiple vehicles against the needs of residents with guests is a matter for the democratically-elected council, subject to the SPA's general requirements that it enforce its rules and bylaws and manage the common property parking spaces for the benefit of all owners. As discussed above, there is no evidence that the strata has not met those requirements.
34. The owners also argue that visitor parking is a legal requirement under section 258 of the SPA. I disagree. Section 258 says that an owner developer may designate parking stalls as limited common property for the exclusive use of owners and sets out how the owner develop may do so. It does not establish any requirement for visitor parking, which is common property and not limited common property.
35. In conclusion, I find that the strata has met its obligations under the SPA, bylaws and rules with respect to visitor parking. I decline to grant the orders requested by the owners.

### ***B. Strata Council***

36. At the June 24, 2017 AGM, three individuals volunteered to serve on council – Ms. Ireland and two others. Immediately following the AGM, the council met to elect officers. The council designated a treasurer, a secretary, and a member at large. No member was willing to serve as president, but the council members agreed to seek more member volunteers and a president. On June 30, 2017 the secretary resigned, leaving 2 council members. Council did not appoint a replacement member.



37. The owners seek an acknowledgment that a 2-person council resulting from the resignation of one member of 3-person council is a legal strata council. Specifically, the owners seek a declaration that the actions undertaken by council between June 30 and August 5, 2017 when it consisted of Ms. Ireland and 1 other member, were legal actions undertaken in good faith and in the best interests of all the owners.
38. The strata has interpreted the owners' request for this declaration as a challenge to its August 5, 2017 election of a new council at a special general meeting.
39. I find that this issue is moot for two reasons. First, no decision of either strata council has been challenged. Second, a new strata council was elected at the 2018 AGM. As a result, I find that here is no live controversy between the parties. See *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC).
40. That said, given that the strata council elected in 2018 had only 3 members, it appears that council membership may continue to be an issue for the strata. To that end, I will briefly note that the standard bylaws say that council must have at least 3 and not more than 7 members. The tribunal has previously confirmed that where the strata's bylaws do not make replacement of resigning member mandatory, the council can continue to act so long as there is quorum (*Clayton v. Chantler et al*, 2017 BCCRT 18). Under the standard bylaws, a 2-person council has a quorum of 2. The standard bylaws also require that council elect at its first meeting a president, a vice president, a secretary and a treasurer. The president and vice president cannot hold more than one office at a time and cannot be replaced by other members.
41. Because I have found that the issue of the status of prior strata councils moot, I decline to make any order or declaration.

### ***C. Fence repair and exterior painting***

42. The parties agreed to an order in partial settlement of this dispute, resolving all issues related to the repair of a fence, and exterior painting. I have made the order requested and agreed to by the parties, below, with one change. The change was

required because the draft order had the strata take actions by July 31, 2019, a date that has already passed. I have modified the order such that if the strata has not already taken those actions, it will do so within 30 days of the date of the order.

## **TRIBUNAL FEES AND EXPENSES**

43. 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 owners had partial success in that they obtained an order by consent but had rest of their claims dismissed. I therefore order the strata to reimburse the owners for half of their tribunal fees of \$225.00, equaling \$112.50. Neither party claimed any dispute-related expenses.
44. 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**

45. I order the strata to:
- a. If it has not already done so, then within 30 days of this decision, replace all damaged or broken fence panels on the east perimeter fence as identified in the 2014 and 2018 depreciation reports. The strata will hire a contractor and act on the contractor's reasonable recommendations.
  - b. By December 31, 2019, complete the exterior painting as outlined in the 2014 Depreciation Report.
  - c. Within 30 days of this decision, pay the owners \$112.50 for tribunal fees.
46. I dismiss the rest of the owners' claims.
47. 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. The order can only be filed if, among other things, the

time for an appeal under section 123.1 of the CRTA 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.

48. 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 owner 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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Micah Carmody, Tribunal Member