



# Civil Resolution Tribunal

Date Issued: August 23, 2019

File: ST-2018-006268

Type: Strata

Civil Resolution Tribunal

Indexed as: *Sinclair v. The Owners, Strata Plan NW 193*, 2019 BCCRT 1006

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

Lucille Sinclair

**APPLICANT**

**A N D :**

The Owners, Strata Plan NW 193

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

### **INTRODUCTION**

1. The applicant, Lucille Sinclair (owner), owns strata lot 5 in the respondent strata corporation The Owners, Strata Plan NW 193 (strata).
2. The owner says one of the strata council members is not eligible to sit on council, and the strata improperly amended bylaws, failed to enforce bylaws, and improperly

installed structures on common property. The strata denies the owner's claims and says its council consists of volunteers who have done their best to comply with the Strata Property Act (SPA).

3. The owner is self-represented and the strata is represented by a council member.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, he said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
6. 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.

7. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
8. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Is strata council member T.U. eligible to sit on the strata council, and if not, should she be removed from the strata council?
  - b. Did the strata council improperly amend bylaws related to age and pet restrictions in contravention of the SPA, and if so, what is an appropriate remedy?
  - c. Has the strata failed to enforce its smoking bylaws, and if so, what is an appropriate remedy?
  - d. Did the strata improperly install structures on common property, and if so, what is an appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this one, the owner must prove their claim on a balance of probabilities. This means the tribunal must find it is more likely than not that the owner's position is correct.
11. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.

12. The strata was created in 1974. It is a single building consisting of 6 residential strata lots.
13. In 1974 the strata filed bylaws with the Land Title Office (LTO) which were different than the standard bylaws under the *Strata Titles Act*, which was in force at the time. The strata made subsequent amendments to its bylaws in 1980, 1981, 1989, 2010, 2013, 2017, and 2018, which it filed with the LTO.

***Is strata council member T.U. eligible to sit on the strata council, and if not, should she be removed from the strata council?***

14. Under section 28 (1) of the SPA, the only persons who may serve on council are owners, individuals representing corporate owners, and tenants who have been assigned their landlords' right to stand for council under sections 147 or 148 of the SPA. Section 28 (2) of the SPA allows a strata to pass a bylaw allowing other people outside of those described in section 28 (1) to serve on council, but the strata in this case has not done so.
15. It is undisputed that T.U. was elected to the strata council on June 11, 2018. The evidence before me indicates that T.U. was added to the title of strata lot 6 on September 24, 2018 as a joint tenant with her husband. Prior to that date her husband was the sole owner of the strata lot. The owner says T.U. is not eligible to be on council because she was not an owner at the time she was elected, and she wants T.U. removed from council.
16. The strata says that in June 2018 there had been an empty spot on council for months and T.U. was asked to fill it. It says that when T.U. was elected to council she was in the process of having her name added to title on her husband's strata lot, which has now been completed.
17. There is no evidence that T.U.'s husband assigned his right to stand for council to T.U. under sections 147 or 148 of the SPA. However, there is also no evidence that T.U. acted without her husband's consent, acted contrary to her husband's interests, or acted in bad faith. There is no evidence that anyone opposed T.U.'s election to council in June 2018 because she was not an owner. The courts and this

tribunal have repeatedly recognized that strata council members are volunteers and can be expected to make mistakes. In all the circumstances, and particularly since there are only 6 strata lots and T.U. became an owner within months of joining the strata council, I find there is no basis for her to be removed from council and nothing to be remedied. I dismiss this claim.

18. In her submissions the owner says she wants the strata to hire a professional management company to manage the strata, but I find there is no legal basis for the tribunal to make such an order. The courts have said that decisions about contracting with other parties are decisions for the strata council (see *Enefer v. Strata Plan LMS 1564*, 2005 BCSC 1866). I dismiss this claim. Nothing prevents the owner from raising this issue with the strata council.

***Did the strata council improperly amend bylaws related to age and pet restrictions in contravention of the SPA, and if so, what is an appropriate remedy?***

***Age restriction bylaw***

19. In March 1989 the strata added a bylaw restricting occupancy to persons 50 years or older. On March 21, 2018 the strata filed a bylaw amendment with the LTO repealing the previous age restriction bylaw and lowering the occupancy age restriction to persons 30 years or older. The LTO filing for the bylaw amendment indicates it was approved by a special resolution passed at a general meeting held on March 2, 2018 in accordance with section 128 of the SPA.
20. The owner says there was no general meeting on March 2, 2018, or any other general meeting addressing the bylaw amendment, and that the bylaw amendment was approved by an email poll without proper notice in contravention of the SPA. I note the owner did not submit evidence of the alleged email poll. The owner wants the bylaw amendment repealed and removed from the LTO.
21. I find that the owner has provided insufficient evidence that the March 21, 2018 bylaw amendment was not conducted in accordance with the SPA. Regardless, the

strata appears to have corrected any potential deficiencies in its process by conducting a re-vote on the age restriction bylaw in November 2018.

22. On November 10, 2018 the strata held a special general meeting (SGM) to vote on amendments to the age restriction, pet restriction, and smoking restriction bylaws. I address the outcome of the votes on the pet restriction and smoking restriction bylaws further below.
23. The agenda for the November 10, 2018 meeting states that the owners would vote on repealing the age restriction bylaw and replacing it with the following:

Subject to the Strata Property Act of British Columbia, occupancy of any strata lot is restricted to persons 30 years or older, not withstanding ownership or rental where permitted. Definition “occupant” – Person(s) domicile for more than 60 days, be they renter, visitor or owner  
[reproduced as written]

24. The minutes indicate the vote passed with 5 in favour and 1 opposed.
25. Section 128 of the SPA requires the ownership to approve any bylaw amendments at a general meeting by a resolution passed by a  $\frac{3}{4}$  vote. The owner has provided no evidence to establish that the minutes from the November 10, 2018 SGM are inaccurate. Therefore, I find the age restriction bylaw amendment passed in November 2018 was in accordance with the SPA.
26. However, on November 21, 2018 the strata filed the bylaw amendment with the LTO which states, “revote on Bylaw # BB4102352 (age restriction) from 50 years to 30 years.” While in substance this reflects the intention of the bylaw amendment, the wording is different from the amendment the owners voted on at the November 10, 2018 SGM. The strata is required to file the amendment as passed by special resolution at the SGM, and I find the strata must correct this inconsistency. Therefore, within 14 days of the date of this decision I order the strata to file a bylaw amendment with the LTO to amend the age restriction bylaw using the exact wording of the special resolution in the November 10, 2018 SGM agenda.

## ***Pet bylaw***

27. In March 1974 the strata introduced a bylaw prohibiting pets except those permitted by the strata in writing. In January 2013 the strata amended the 1974 pet bylaw restricting ownership of pets to 2 cats.
28. The owner says that at the strata's August 16, 2018 council meeting, 3 members of council, 1 of whom attended by proxy, approved a bylaw amendment to allow dogs. The owner says council members should not be allowed to attend meetings by proxy, and that the bylaw amendment is invalid. She wants the tribunal to order that any vote by council to amend the pet restriction bylaw without calling a general meeting is void.
29. However, the owner did not submit the minutes from the August 16, 2018 meeting, or any other evidence that the meeting occurred as she claims, or at all. Specifically, she provided no evidence that the council voted to amend the pet bylaw or that a proxy attended and voted on behalf of one of the council members. The strata provided no evidence about this meeting.
30. At the November 10, 2018 SGM the owners passed a special resolution to repeal the pet restriction bylaw and replace it with the following:

Ownership of pets in the building will be restricted to 1 cat & 1 dog or 2 cats. Dogs may be no larger than 12" at shoulder and must be leashed when on common property. Owners are responsible for curbing their pet.
31. The minutes indicate the special resolution passed with 5 in favour and 1 opposed. The owner has provided no evidence to establish that the minutes from the November 10, 2018 SGM are inaccurate. Therefore, I find the pet restriction bylaw amendment passed in November 2018 was in accordance with the SPA.
32. However, on November 21, 2018 the strata filed the bylaw amendment with the LTO which states: "revote on Bylaw #BB3004365 (pet restrictions) from 2 cats to 1 cat & 1 dog no taller than 12 inches high." I find this amendment does not reflect the intention or the wording of the amendment passed at the November SGM, and it

must be corrected. Therefore, within 14 days of the date of this decision I order the strata to file a bylaw amendment with the LTO to amend the pet restriction bylaw using the exact wording of the special resolution in the November 10, 2018 SGM agenda.

33. The owner says T.U. owns a dog in contravention of the previous bylaw allowing only 2 cats, and she wants T.U.'s dog removed from the strata property. However, she provided no evidence to establish that T.U. owns a dog, the size of T.U.'s dog, or any other evidence to support this claim, and I dismiss it. I also note that as of November 21, 2018 this issue may have been moot depending on the size of T.U.'s alleged dog, since the amended pet bylaw allows dogs up to 12 inches high as of that date.

***Has the strata failed to enforce its smoking bylaws, and if so, what is an appropriate remedy?***

34. In July 2017 the strata added a bylaw prohibiting smoking in strata lots, interior common property, on patios or balconies, and within 8 meters of doors, windows or air intake.
35. At the November 10, 2018 SGM the ownership voted on a special resolution to repeal the smoking restriction bylaw and replace it with a bylaw that would allow tobacco and e-cigarettes to be smoked on open sun decks or patios. However, this resolution was defeated, so the July 2017 bylaw remains in place.
36. The owner says the strata council has allowed owners to set up a designated smoking area on common property. She wants the strata to enforce the bylaw such that no one is allowed to smoke on strata lots or common property.
37. I note the July 2017 smoking restriction bylaw does not prohibit smoking on all common property. Rather, it prohibits smoking on interior common property, patios, balconies, and any area within 8 meters of doors, windows, or air intake. The owner has not specified the location of the alleged designated smoking area or provided evidence that the strata has allowed such an area. However, it is possible that such



an area could exist on the exterior common property without contravening the smoking bylaw if it is more than 8 meters from doors, windows, or air intake. For these reasons, I find the owner has not established that the strata allows owners to smoke in a designated area on common property or that such an area is in contravention of the smoking restriction bylaw.

38. The owner also says T.U.'s husband frequently smokes on his balcony in contravention of the bylaw, but she provided no evidence to support this claim. I note that section 135 of the SPA sets out the process for addressing an alleged bylaw contravention, and it allows an owner to complain to the strata about a bylaw contravention. There is no evidence the owner has done so before bringing this claim to the tribunal. For all of these reasons, I dismiss this claim. Nothing prevents the owner from making a complaint to the strata about any alleged bylaw contraventions, and should the owner make such a complaint the strata is obligated to follow the process set out in section 135 of the SPA.

***Did the strata improperly install structures on common property, and if so, what is an appropriate remedy?***

39. The owner says the strata installed structures on common property without a vote at a general meeting. She wants the tribunal to order the removal of these structures. However, the owner has failed to specify the nature or location of the alleged structures.
40. The owner submitted an August 25, 2017 letter from the City of White Rock notifying the strata that it had constructed an exterior deck and over-height fence without obtaining the required building or plumbing permit. The letter required the strata to bring the deck and fence into compliance with the zoning bylaw within 14 days, failing which the City of White Rock would send the file to its bylaw enforcement section, which could result in fines or injunctive proceedings.
41. The evidence indicates that on October 12, 2017 a representative of the City of White Rock attended the strata property for a site meeting. In an email dated October 25, 2017, the representative suggested removing the deck and replacing it

with pavers without encroaching on the root zone of adjacent trees or discussing the possibility of a development variance permit with the City of White Rock. The email also suggested that the strata discuss its plans for a shed with the City of White Rock to determine the possibility of connecting it to an existing building so that it would not be an accessory structure.

42. On the evidence before me, I find the owner has not established that the strata has installed any structures on common property in breach of the SPA. The evidence suggests that the strata is cooperating with the City of White Rock to remedy zoning contraventions related to a fence and deck. However, without evidence about the precise location of the fence or deck on the strata property, or when and how they were installed, I find there is no basis to make any related order. I dismiss this claim.

## **TRIBUNAL FEES, EXPENSES**

43. 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. I see no reason in this case to deviate from the general rule. Since the owner was partially successful, I find she is entitled to reimbursement of half her tribunal fees in the amount of \$112.50. She claims \$369.86 in dispute-related expenses, but her evidence indicates she spent \$111.59 on strata documents and \$32.31 on registered mail for a total of \$143.90. I find these to be reasonable dispute-related expenses. Since the owner was partially successful I find she is entitled to half this amount for a total of \$71.95.
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, unless the tribunal orders otherwise.

## DECISION AND ORDERS

45. Within 14 days of the date of this order the strata must pay the owner a total of \$184.45, for \$112.50 in tribunal fees and \$71.95 in dispute-related expenses.
46. Within 14 days of the date of this order the strata must:
  - a. file a bylaw amendment with the LTO to amend the age restriction bylaw using the exact wording of the special resolution to amend the age restriction bylaw in the November 10, 2018 SGM agenda.
  - b. file a bylaw amendment with the LTO to amend the pet restriction bylaw using the exact wording of the special resolution to amend the pet restriction bylaw in the November 10, 2018 SGM agenda.
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 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. 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 Provincial Court of British Columbia.

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Sarah Orr, Tribunal Member