Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Grandy v. The Owners, Strata Plan NW 2210*, 2019 BCCRT 1011

B E T W E E N :

CAREY GRANDY

APPLICANT

A N D :

The Owners, Strata Plan NW 2210

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. The applicant, Carey Grandy (owner) is a joint owner of strata lot 49 (SL49) in the respondent strata corporation, The Owners, Strata Plan NW 2210 (strata).

2. The owner says the strata is wrongfully trying to force him to remove an air conditioner/heat pump (AC) that was installed with strata permission in 2003. The owner seeks orders that the strata:

    a. reverse any bylaw violation fines related to the AC.

    b. allow him to keep the AC.

3. The strata denies the owner's claims. It says it did not authorize the installation of the AC in 2003. It says the previous owner of SL49 who installed it did not provide the required documentation to the strata, upon which the authorization was conditional, so the authorization was never completed.

4. The owner is self-represented in this dispute. The strata is represented by a strata council member.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims 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. The tribunal must act fairly and follow the law. It must also recognize any relationships between dispute parties that will likely continue after the tribunal's process has ended.

6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Some of the evidence in this dispute amounts to a "he said, she said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour 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. Further, 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 that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The tribunal may also ask the parties and witnesses questions and inform itself in any way it considers appropriate.

7. 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, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

8. In the Dispute Notice, the owner said the strata failed to provide copies of relevant correspondence, contrary to sections 35 and 36 of the *Strata Property Act* (SPA). The owner later confirmed in his written submissions that he has withdrawn that claim, so I will not address it in this decision.

9. The issues in this dispute are:

    a. Is the owner entitled to keep the AC?

    b. Must the strata reverse bylaw violation fines related to the AC?

EVIDENCE AND ANALYSIS

10. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision. In a civil proceeding such as this, the applicant must prove their claims on a balance of probabilities.

11. The strata was created in 1984, and consists of 80 townhouse-style strata lots.

12. In 2003, the strata repealed and replaced all of its bylaws, except its rental bylaw. The strata has filed 7 sets of amendments since then. Only some of these amendments are relevant to this dispute. I will refer to the applicable bylaws in my analysis below.

13. The documents in evidence show that the AC was installed by MG, the then-owner of SL49, in 2003.

14. GS purchased SL49 in May 2011. In a July 16, 2018 email, GS wrote that when she bought SL49, the AC was already installed, and she considered it a "selling feature." GS said the strata raised no issue about the AC at that time, and the Form B Information Certificate issued by the strata did not mention the AC.

15. GS wrote that when she listed SL49 for sale in 2018, the strata's property manager contacted her realtor and said the AC was not authorized. GS said that was a shock, as she had lived in SL49 for 7 years with no knowledge of that. GS said the AC unit was located in a visible area of the back yard that strata council members had visited multiple times for inspections and for fence and deck construction, but it was never mentioned.

16. A June 15, 2018 letter from the strata to GS says that a complaint had been brought to the strata's attention on that date that an AC had been installed in SL49 without approval. The letter requested that GS immediately remove the AC and submit a proper alteration request. The letter cited bylaws 8.1 and 8.2, which I summarize as follows:

> 8.1 An owner must obtain the written approval of the strata before making or authorizing an alteration to common property, including limited common property.
>
> 8.2 As part of the application for permission to alter common property, an owner must:

a) Submit detailed written plans and description of the intended alteration.

b) Obtain all applicable permits, licences, and approvals from the appropriate governmental authorities, and provide copies to the strata.

17. GS replied to the strata's letter by email on the same day. Her email says, in part, that she received a statement from MG via his realtor that they sought permission from the strata to install the AC, and that a member of the strata council visually inspected it in 2003 before providing approval. No email or statement from MG, or his realtor, was provided in evidence.

18. GS asked the property manager to look into its records from 2003 about the alteration approval for the AC. The property manager replied, stating that the AC was not approved, and the Form B was produced without knowledge that the AC had been installed. The property manager said he had checked the "files on hand", and there was no record of any alteration or approval for the AC.

19. GS attended a hearing before the strata council on July 5, 2018. In a July 10, 2018 letter, the property manager wrote that the council had decided that the AC was installed without proper approval from the strata, or authorization by the municipality, so GS was requested to remove it within 14 days.

20. GS did not remove the AC, and sold SL49 to the applicant owner later in July 2018.

21. On October 25, 2018, the strata wrote to the owner and said that the AC was installed without authorization of Technical Safety BC. The letter cited bylaw 8.2, and requested that the owner remove the AC within 14 days.

22. The strata's lawyer wrote to the owner on December 11, 2018. He cited bylaw 8.2 and bylaw 4.1, which says a resident must not use a strata lot or common property in a way that causes a nuisance or hazard to another person, or in an illegal manner. The lawyer said the owner was in breach of bylaw 4 and must remove the

AC. The reason given was that the strata's electrician warned that the AC units would likely cause the strata's electrical system to fail due to overload.

Is the owner entitled to keep the AC?

23. The owner says he should be allowed to keep the AC. He says it was approved in 2003, and it has been in place for over 15 years with no evidence showing that it contributed to the failure of any electrical components.

24. The strata says there is no objective evidence that the strata gave permission to install the AC. The strata also says it must serve the best interests of owners, which includes ensuring there is no problem with the electrical system. It says the owner's AC creates a valid concern about electrical safety, which cannot be ignored.

Approval in 2003

25. There is no documentary evidence before me to confirm whether or not the strata approved the AC in 2003. There is no evidence before me from MG, who installed it. GS says, and the bylaw filings from the Land Title Office confirm, that the strata's property management firm has changed twice since 2003.

26. I place significant weight on the written statement of CH, who owned strata lot 50, next to SL49, from 1998 to 2015. She says she lived next door to MG, who installed the AC, for over 20 years. CH wrote that when MG proposed to install the AC, the strata council asked him to check with all the neighbours to ensure they agreed to it. CH says MG spoke to her about installing the AC, and she agreed.

27. I find CH's statement persuasive as she was the only person to provide evidence in this dispute who was actually involved with the strata in 2003. The strata says this evidence is inaccurate and misleading, but I do not agree. As a former owner, CH will not be affected by the outcome of this dispute, so I do not find her evidence self-serving.

28. I am also persuaded by the evidence of ST, who owns strata lot 28. In a written statement, ST said that in August 2004, she spoke to the strata council about

installing an AC in her strata lot. ST said she spoke to the then-vice president of the strata council, B, and was told to draw a plan showing where the AC would be installed. ST said that after a council meeting a couple of days later, she was told to go ahead and install the AC, as it would not be a noise problem to her neighbour DR, who was also a council member. ST wrote that based on that verbal permission from the strata council, she installed the AC. ST also provided a copy of a hand-written drawing showing the back of her strata lot and the AC.

29. ST also wrote that around 2004, the council put out a notice that anyone who wanted to install an AC could contact someone staying in the complex (whose name ST did not remember).

30. I do not accept the strata's argument that ST's statement is inaccurate, misleading, and self-serving. ST's statement is generally consistent with CH's statement, as they both indicate that the council procedure around AC approvals in 2003 and 2004 was casual and verbal, rather than requiring detailed documents and permits. The strata has provided no contrary evidence suggesting that ST's statement is wrong, such as copies of another AC approval application from that time period with more rigorous documentation. It was open to the strata to provide statements from other witnesses, such as past members of the strata council. Since no such evidence was provided, I rely on the statements of CH and ST.

31. In her July 18, 2018 email, GS wrote that there were 4 strata lots in the complex that had ACs installed around 2003-2004. As the strata provided no contrary evidence, I accept this. The strata submits that there is another owner who is subject to pending legal action by the strata if they fail to remove their AC, and who has agreed to stop using their AC. I place no weight no this assertion, as the strata did not provide any evidence or particulars about it.

32. I place no weight on GS's statement about what MG's realtor told her, because it is double hearsay. However, based on the statements of CH and ST, the fact that 4 other strata lots have AC units, and the fact that the property management firm changed twice since 2003, I find that the absence of application of authorization

records from 2003 does not prove that the SL49 AC was never approved. Rather, I find that the evidence before me, particularly the uncontradicted statements of CH and ST, show that the strata's process around 2003 was informal and verbal.

33. If the strata had produced documentation showing that any of the 3 other strata lots with ACs provided written applications with permit copies at the time of installation, or received approval in writing, I would be persuaded that the SL49 AC was never approved. However, there is no such evidence before me.

34. The strata submits that the owner, who bought SL49 in 2018, must provide "objective evidence" of AC approval from 2003. I find this position unreasonable, given the lack of any other written evidence showing the approval (or rejection) of any other ACs in the strata.

35. Also, the photo provided by the strata shows that the AC unit is clearly visible outside SL49, under the deck above. I agree with GS that someone from the strata council would have seen it in the 15 years it was there, before GS was asked to remove it in June 2018.

36. For all of these reasons, I conclude that the SL49 AC was approved at the time of its installation in 2003.

Electrical Safety

37. The strata says the owner cannot keep his AC because it poses an electrical hazard. I do not accept this argument, for several reasons.

38. First, I note that in all the original correspondence from the strata asking for the AC to be removed, there is no reference to electrical safety. In the June 15, 2018 letter to GS, the strata did not cite bylaw 4, and wrote that the AC had been installed without approval. That letter said GS could apply for approval for an AC.

39. The strata's July 10, 2018 letter to GS says the AC was installed without proper approval from the strata or the municipality. The strata's subsequent letter to GS, dated August 14, 2018, gave a different reason that the AC had to be removed. The

August 14, 2018 letter did not mention municipal approval, but said the AC's power load was beyond the strata complex's current capacity, in accordance with National Electrical code section 8-202(c).

40. The strata's October 25, 2018 letter to the owner said the AC was installed without authorization of Technical Safety BC, but did not mention electrical safety.

41. This correspondence shows that the strata's requirements were a "moving target". The strata first suggested that GS could get approval for the AC, then raised municipal approval, then electrical load, then Technical Safety BC approval. I find these shifting requirements were unreasonable in the circumstances. First, there is no evidence before me establishing that approval from the municipality or Technical Safety BC is required, or even available, for home AC systems. Also, since the AC had already been installed for 15 years, and since other owners had ACs, a reasonable course of action would have been to set out exactly what was required for retroactive approval, and apply that standard to all current owners with AC units.

Electrical Report

42. The strata relies on an August 7, 2108 email from DC, who it says is their electrician. Tribunal rule 8.3 says that an expert must state their qualifications in any written expert opinion evidence, and that expert opinion evidence will only be accepted from a person the tribunal decides is qualified by education, training, or experience to give that opinion.

43. DC did not state his qualifications in his email, and did not even say he is an electrician (although the owner did not dispute that.) For that reason, I do not accept DC's evidence as expert opinion. However, for thoroughness I will address the content of DC's email.

44. DC's email is not a formal report on the strata's electrical capacity. Rather, DC says he "used a few methods and found a few helpful spreadsheets online." He also said he had been called on numerous occasions to replace main breakers and check panels.

45. DC did not specifically refer to any particular AC unit. He said the main breaker seemed to have trouble with current above 60 amps for long period of time, and he was very concerned about what would happen after adding an additional 30 amps to an aging system.

46. DC cited some provisions of the National Electrical Code. He said that when a 30 amp heat pump was allowed in a strata lot, "it adds serious stress to the entire complex and will damage the transformers." DC also wrote, "I could not determine with out going more in depth to each power shed and transformer. I am making a safe assumption that the Air Conditioning loads were not calculated at the original time of installation."

47. I am not persuaded by DC's opinion for several reasons. First, as previously stated, I have no evidence about his qualifications. Second, and most significant, DC seemed to be unaware that the AC had already been operating in SL49 for 15 years. Thus, when he said he was concerned about the effect of "adding an additional 30 amps", he was unaware that the addition was not new. DC also said that adding a heat pump added stress to the system and "will damage the transformers." However, DC reported no actual damage, even after 15 years of operating 4 ACs in the strata complex.

48. The third reason I am unpersuaded by DC's email is that he admits he did not make a final determination, as he did not do the required in-depth inspection of each power shed and transformer. He also based his opinion on the assumption that air conditioning loads were not calculated at the time of installation, but he did not consult the original building specifications to confirm this assumption. For these reasons, I find DC's opinion speculative rather than conclusive.

49. The December 11, 2018 letter from the strata's lawyer to the owner says the owner was in breach of bylaw 4 and AC unit must be removed for the following reasons:

> The Strata Corporation's electrician has warned that the [AC] Unit adds stress to the Strata Corporation's electrical system and that transformers

> will likely fail due to the over load. Currently, the Strata Corporation's main breakers are failing under the additional load.
>
> More importantly, the electrician contacted Technical Safety BC who informed him that that the [AC] Unit in question would overload the Strata Corporation's electrical circuitry and was should not have been installed

50. I infer that there was no other electrician's report obtained, as none was provided in evidence. I find that the lawyer's summary is a vast overstatement of the findings set out in DC's email. DC never actually said the transformers would "likely fail", and he did not actually look at them. DC also did not say the main breakers were failing, or that such failure was due to the AC. Rather, DC seemed unaware that the AC had already been installed, and he merely said he had to replace some of them in the past. He said the main breaker seemed to have trouble with current above 60 amps for long periods of time, but he did not say it was failing.

51. Finally, there is no evidence before me confirming that DC, or another electrician, contacted Technical Safety BC about the AC unit. Also, there is no evidence about what Technical Safety BC actually said.

52. For all of these reasons, I find that the strata has not established that the owner's AC is an electrical or safety hazard. As explained above, I am not persuaded by DC's email for the reasons stated, and there is no other evidence before me establishing any hazard or electrical problem. Most significantly, I find that none of the strata's evidence accounts for the fact that the AC unit has been operating without proven or apparent problems since 2003. I find that this fact outweighs the speculative future risks to the electrical system.

53. The strata has also provided no evidence establishing that the electrical system could not be upgraded. Since I have found that the SL49 AC was approved in 2003, the strata may have to investigate this option.

54. For all of these reasons, I conclude that it is reasonable in the circumstances to allow the owner to keep and operate his AC unit.

Must the strata reverse bylaw violation fines related to the AC?

55. The parties agree that the owner was fined for violations of bylaws 8.2 and 4, after he refused to remove the AC. The fines were imposed on a continuing basis, and the specific amount is not in evidence.

56. For the reasons set out above, I find the strata must reverse all of these fines because the owner has not violated any bylaws. I find the AC was approved in 2003, and the AC is not a proven safety hazard.

TRIBUNAL FEES AND EXPENSES

57. As the owner was successful in this dispute, in accordance with the Act and the tribunal's rules I find he is entitled to reimbursement of $225.00 in tribunal fees. Neither party claimed dispute-related expenses, so none are ordered.

58. The strata corporation must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against the owner.

ORDERS

59. I order the following:

    a. The owner is entitled to keep and operate his existing AC.

    b. The strata must immediately reverse all bylaw violation fines related to the owners' AC.

    c. Within 30 days of this decision, the strata must reimburse the owner $225 for tribunal fees.

60. The owner is entitled to post-judgment interest under the *Court Order Interest Act,* as applicable.

61. Under section 57 of the CRTA, a party can enforce this final tribunal decision by filing a validated copy of the attached order in the Supreme Court of British

Columbia (BCSC). 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 a BCSC order.

62. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia (BCPC). However, the principal amount or the value of the personal property must be within the BCPC's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the CRTA, the owner can enforce this final decision by filing a validated copy of the attached order in the BCPC. 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 a BCPC order.

Kate Campbell, Tribunal Member