



Civil Resolution Tribunal

Date Issued: September 27, 2019

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Type: Strata

Civil Resolution Tribunal

Indexed as: *McKinley-Sugai v. The Owners, Strata Plan VR 1913*, 2019 BCCRT 1143

BETWEEN:

MAUREEN MCKINLEY-SUGAI

APPLICANT

AND:

The Owners, Strata Plan VR 1913

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a dispute about who should pay for the repair of a faulty fireplace gas supply valve. The applicant, Maureen McKinley-Sugai (owner), is an owner in the respondent strata corporation, The Owners, Strata Plan VR 1913 (strata).

2. The owner says that further to the bylaws, the strata is responsible for the repair and maintenance of her faulty fireplace gas supply valve. The strata says the repair is the owner's responsibility.
3. The owner requests disclosure of a legal opinion obtained by the strata and requests reimbursement of that portion of her strata fees paid for gas expenses, from February 2018 to January 2019, as a result of her inability to use her fireplace. The strata asserts solicitor-client privilege over the legal opinion and says the owner is not entitled to reimbursement for payment of common expenses.
4. The owner is self-represented. 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 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 act fairly and follow the law. It must also recognize any relationships between parties to a dispute that will likely continue after the dispute resolution 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
7. 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 other way it considers appropriate.

8. Under section 123 of the CRTA, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. Order a party to do or stop doing something;
 - b. Order a party to pay money;
 - c. Order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. Prior to this decision, the parties agreed that the strata would pay for the repairs to the faulty fireplace gas supply valve. Therefore, I will not deal with the issue of who is responsible for those repairs as that issue is no longer before me.
10. The issues remaining in this dispute are:
 - a. Is the owner entitled to disclosure of the legal opinion?
 - b. Is the owner entitled to reimbursement for her share of common gas expenses?

BACKGROUND, EVIDENCE & ANALYSIS

11. In a civil dispute such as this, the applicant owner bears the burden of proof. This means the owner has to provide evidence to prove each of her claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. The strata was created in 1987 and is a strata corporation comprising 44 residential strata lots. The owner owns strata lot 41.
13. The strata was created under the predecessor to the *Strata Property Act* (SPA), the *Condominium Act* (CA). The SPA replaced the CA on July 1, 2000. On November 7, 2003, the strata filed bylaws under the SPA. Amended bylaws were filed on each of

December 21, 2007, December 15, 2011, December 23, 2016 and February 22, 2018. Given the parties' pre-decision agreement, the details of the bylaws are not relevant to this decision.

Is the owner entitled to disclosure of the legal opinion?

14. By way of background, a mandatory fireplace inspection took place for all fireplaces in the strata on January 10 and 11, 2018. During that inspection, it was determined that the owner's fireplace gas supply valve was faulty, and it was shut off. It is undisputed the owner was advised not to use the fireplace, and that a custom-made part was required to repair the faulty valve. The estimated cost of the custom part was approximately \$500.
15. The strata and owner disagreed over who was responsible for paying for the fireplace valve's repair. As noted above, the parties came to an agreement about payment, so I make no decision as to who is responsible for that repair. However, during the time when the parties communicated back and forth over responsibility for the repair, the owner commenced this dispute. The Dispute Notice was issued on May 1, 2019.
16. It is undisputed that on or about May 29, 2019, the strata obtained a legal opinion relating to the dispute. The owner seeks disclosure of the opinion further to sections 35 and 36 of the SPA. The strata, however, asserts solicitor-client privilege over the opinion and says it is exempted from disclosure further to SPA section 169(1)(b).
17. Generally, an owner has the right to review legal opinions obtained by the strata corporation. Section 35(2)(h) of the SPA requires the strata to retain copies of any legal opinions that the strata has obtained. Section 36 requires the strata to provide access to and copies of any records referred to in section 35, including a legal opinion, to an owner if requested.
18. However, the SPA sets out an exception to an owner's ability to access legal opinions. Section 169(1)(b) says that an owner does not have a right to any

information or documents relating to a suit between the strata and the owner, including any legal opinions about that suit.

19. Here, the legal opinion was obtained after this dispute was commenced. Therefore, I find the opinion is a document that relates to a suit between the strata and the owner, and is protected by section 169(1)(b). As a result, I dismiss the owner's claim for disclosure of the legal opinion. I turn then to the owner's second claim.

Is the owner entitled to reimbursement for her share of common gas expenses?

20. The owner says that as a result of the strata's failure to accept responsibility for the fireplace valve repair, she has been unable to use her fireplace since it was shut off in January 2018. She seeks reimbursement for gas expenses she paid as part of her strata fees from February 1, 2018 to January 31, 2019.

21. The strata says the owner could have repaired her fireplace at any time and used it. The strata says an owner's choice to not use their fireplace does not exclude them from having to pay their portion of the strata fees. I agree. Although I acknowledge the owner's argument that if she had paid for the fireplace valve repair, she would have had a difficult time seeking reimbursement from the strata, I note that is the very purpose of the tribunal. That is, if the owner had paid for the repair she could have benefited from the use of her fireplace and still proceeded with a dispute for reimbursement of the repair cost.

22. Additionally, there is no evidence before me about what the strata's yearly gas budget of \$21,500 goes towards. It is unclear whether this just supplies owners' fireplaces, or whether it supplies any common property or common areas, or other appliances within owners' strata lots. Therefore, I am unable to determine whether the owner was still benefiting from the use of the gas through other means, despite not having a functioning fireplace.

23. Given all of the above, I find the owner has not proven that she is entitled to reimbursement for gas expenses paid through her strata fees. I dismiss her claim in this regard.

TRIBUNAL FEES, EXPENSES AND INTEREST

24. 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. As the owner has not been successful, I dismiss her claim for tribunal fees. Neither party claimed dispute-related expenses.

25. 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

26. I order the owner's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair